

of the employing agency official to whom the appeal may be taken;

(2) Within 30 days of receipt of the employing agency decision denying the claim, a participant may appeal the employing agency decision. The appeal must be in writing and must be addressed to the employing agency official designated in the initial employing agency decision. The appeal may contain any documents and comments that the employee deems relevant to the claim;

(3) The employing agency must take a decision on the participant's appeal not later than 30 days after it receives the appeal. The agency's decision on the appeal must be written in an understandable manner and must include the reasons for the decision as well as any appropriate references to applicable statutes and regulations. If the decision on the employee's appeal is not made within this 30-day time period, or if the appeal is denied in whole or in part, the participant will have exhausted his or her administrative remedy and will be eligible to file suit against the employing agency in the appropriate Federal district court pursuant to 5 U.S.C. 8477. There is no administrative appeal to the Board of an agency final decision.

(b) Where it is determined that lost earnings resulted from an employing agency error, nothing in this part shall be deemed to preclude an employing agency from paying lost earnings in the absence of a claim from the employee.

§1606.15 Time limits on participant claims.

(a) Participant claims for lost earnings pursuant to §1606.14 of this part must be filed within one year of the later of:

(1) January 1, 1991, or

(2) The participant's receipt of the earliest of the TSP Participant Statement, TSP Loan Statement, employing agency earnings and leave statement, or any other document that indicates that the employing agency error has affected the participant's TSP account;

(b) Nothing in this section changes the provision of paragraph (d) of §1606.11 that no lost earnings shall be payable with respect to delayed con-

tributions unless and until the contributions are submitted to the TSP recordkeeper in accordance with 5 CFR part 1605, nor does anything in this section extend any time limits for correcting contributions under 5 CFR part 1605. Thus, notwithstanding paragraph (a) of this section, if a participant is unable to have contributions corrected due to time limits contained in 5 CFR part 1605, no lost earnings shall be payable with respect to those contributions.

PART 1620—CONTINUATION OF ELIGIBILITY

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AUTHORITY: 5 U.S.C. 8474 and 8432b; Pub. L. 99–591, 100 Stat. 3341; Pub. L. 100–238, 101 Stat. 1744; Pub. L. 100–659, 102 Stat. 3910; Pub. L. 104–188, 110 Stat. 1755.

Subpart A—House Cafeteria Employees

§ 1620.1 Continuation of eligibility to participate in the Thrift Savings Plan.

(a) *Scope.* When the food service operations of the House of Representatives were transferred to a private contractor, Congressional food service employees were provided the opportunity by Pub. L. 99–591 to elect to continue their retirement coverage under subchapter III of chapter 83 and chapter 84 of title 5, United States Code. These regulations govern participation by these employees in the Thrift Savings Plan. They apply to employees who made that election pursuant to paragraph (b) of this section prior to becoming employed by the private contractor. They apply to the incumbent contractor and to any successor contractors that hold the contract to provide food service to the U.S. House of Representatives.

(b) *Eligibility requirements.* In order to be eligible to participate in the Thrift Savings Plan, an individual must:

(1) Have been a Congressional employee (as defined in section 2107 of title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing food service operations for the House of Representatives under the administrative control of the Architect of the Capitol;

(2) Have been subject to subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title;

(3) Have elected to remain covered under Federal service retirement provisions no later than January 2, 1987;

(4) Have made the transition from Congressional employee to private contractor employee without a break in service; and

(5) Continue to be employed to provide food services to the U.S. House of Representatives without a break in service. A “break in service” means a separation from employment of at least three calendar days.

(c) *Employee deductions.* An employee who elects to continue coverage under title 5 retirement provisions and who desires to participate in the Thrift Savings Plan shall be governed by the Federal Retirement Thrift Investment Board regulations located in title 5, Code of Federal Regulations, part 1600. Employee participation will be through deductions from his or her basic pay and the employer will, in accordance with procedures established by the Board, pay into the Thrift Savings Fund the amounts deducted from the employee’s pay.

(d) *Employer contributions.* For employees covered by the Federal Employees’ Retirement System, the employer providing food services under the contract shall, in accordance with procedures established by the Board, pay into the Thrift Savings Fund amounts equal to the agency contributions which would be required if the employee were a Congressional employee covered by the Federal Employees Retirement System.

[52 FR 26293, July 14, 1987]

Subpart B—Cooperative Extension Service Employees

SOURCE: 53 FR 10038, Mar. 28, 1988, unless otherwise noted.

§ 1620.10 Scope.

This subpart applies to any individual participating in the Civil Service Retirement System or the Federal Employees’ Retirement System who has been appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(5)).

§ 1620.11 Definitions.

(a) As used in this subpart, the term *employing authority* means that organization within a State which employs an individual covered by § 1620.10 of this part and which has authority to make personnel compensation decisions for such employees.

(b) As used in this subpart, the term *participating* means paying contributions to the basic annuity under either the Civil Service Retirement System or the Federal Employees’ Retirement System.

§ 1620.12 Contributions by employing authority.

(a) An employing authority, at its sole discretion, may choose to make employer contributions for individuals in its employ who are participating in the Federal Employees’ Retirement System as if that authority were the individual’s employing Federal agency under the provisions of 5 U.S.C. 8432(c).

(b) If an employing authority chooses to make employer contributions, such contributions may be made for any period of eligible service since January 1, 1984. These contributions consist of the automatic one percent contribution (5 U.S.C. 8432(c)(1)(A)) and the employer matching contribution (5 U.S.C. 8432(c)(2)), as well as contributions for periods of eligible service after April 1, 1987 and contributions for eligible service prior to April 1, 1987 (5 U.S.C. 8432(c)(1)(B) and (C), and 8432(c)(3)).

(c) An employing authority may only commence employer contributions or terminate employer contributions during a Thrift Savings Plan election period. The employing authority must provide all affected employees with a notice of this decision to commence or terminate employer contributions at least 45 days before the beginning of the applicable election period.

(d) An employing authority that has chosen to make employer contributions must treat all of its employees who are eligible to receive employer contributions in the same manner.

(e) The employing authority must not make any employer contributions on behalf of individuals who are subject to the Civil Service Retirement System.

§ 1620.13 Prior employer contributions.

Any employing authority that has made employer contributions before the publication date of this subpart will not be deemed to have chosen to make these contributions by virtue of these payments. However, if such an authority fails to choose to make employer contributions, contributions previously made on behalf of an eligible employee may not be retrieved.

§ 1620.14 Deadline for employing authority to begin employee contributions.

An employing authority must allow employees participating in the Federal Employees' Retirement System or the Civil Service Retirement System to make contributions to the Thrift Savings Plan no later than the pay period following its acceptance of the employee's election form.

§ 1620.15 Initial election period for employees.

Employees who are participating in the Civil Service Retirement System or the Federal Employees' Retirement System must be permitted to file an election form with the employing authority identifying the amount, if any, of their contribution to the Thrift Savings Plan at any time within 60 days of the date of publication of this subpart. Any employee who was eligible to participate in a prior election period, but was denied the opportunity to do so, must be given the opportunity to make any election which he or she could have otherwise made in 1987 or 1988.

§ 1620.16 Computing percentage of basic pay.

When the employing authority computes a percentage of basic pay to determine the amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used must be the same as that used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

§ 1620.17 Retroactive employer and employee contributions.

(a) *Retroactive employer contributions.* An employing authority that has chosen to make employer contributions may make the employer contributions described in § 1620.12(b) on behalf of employees participating in the Federal Employees' Retirement System to the extent that neither the employing authority nor the Federal Government has already made these contributions. The employing authority must make these retroactive employer contributions in accordance with the procedure described in § 1620.37 of this part.

(b) *Retroactive employee contributions.* Employees participating in the Civil Service Retirement System or the Federal Employees' Retirement System shall be allowed to make, on a retroactive basis, all employee contributions for eligible periods of service with the employing authority unless these employees have already had the opportunity to make contributions for these periods of service. Retroactive employee contributions shall be made in accordance with the procedures described in § 1620.36 of this part.

§ 1620.18 Payment to the recordkeeper; notice.

(a) *Payment.* Employing authorities will make applicable employer contributions, if any, and employee contributions (deducted from the employee's actual pay) to the Board's Recordkeeper. At this time, the Recordkeeper is the National Finance Center, Department of Agriculture, New Orleans, Louisiana.

(b) *Notice.* Within 30 days from the date of the publication of this part, the Department of Agriculture must notify each employing authority concerning the applicability of these regulations to employees covered by § 1620.10 of this part.

§ 1620.19 Other regulations.

Employing authorities and individuals covered by § 1620.10 of this part are governed by the regulations in chapter VI, title 5, Code of Federal Regulations to the extent that those regulations are not inconsistent with this subpart.

Subpart C—Union Employees and Intergovernmental Personnel Act Employees

SOURCE: 53 FR 10039, Mar. 28, 1988, unless otherwise noted.

§ 1620.30 Scope.

This subpart applies to any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System who—

(a) Has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) or 8401(11) of title 5, United States Code; or

(b) Has been assigned, on an approved leave without pay basis, from a Federal agency to a State or local government under subchapter VI of chapter 33, title 5, United States Code.

§ 1620.31 Definitions.

As used in this subpart, the terms—

(a) *Employing authority* means any entity that employs an individual covered by § 1620.30 of this part and which has authority to make personnel compensation decisions for such employees; and

(b) *Participating* means that the employee (or employing authority on behalf of the employee) is paying contributions to the basic annuity under either the Civil Service Retirement System or the Federal Employees' Retirement System.

§ 1620.32 Contributions by employing authority.

(a) An employing authority, at its sole discretion, may choose to make employer contributions for individuals in its employ who are participating in the Federal Employees' Retirement System as if that authority were the individual's employing Federal agency under the provisions of 5 U.S.C. 8432(c).

(b) If an employing authority chooses to make employer contributions, such contributions may be made for any period of eligible service since January 1, 1984. These contributions consist of the automatic one percent contribution (5 U.S.C. 8432(c)(1)(A)) and the employer matching contribution (5 U.S.C.

8432(c)(2)) as well as contributions for periods of eligible service dating from April 1, 1987 and contributions for eligible service prior to April 1, 1987 (5 U.S.C. 8432(c)(1) (B) and (C), and 8432(c)(3)).

(c) An employing authority may only commence employer contributions or terminate employer contributions during a Thrift Savings Plan election period. The employing authority must provide all affected employees with a notice of this decision to commence or terminate employer contributions at least 45 days before the beginning of the applicable election period.

(d) An employing authority that has chosen to make employer contributions must treat all of its employees who are eligible to receive employer contributions in the same manner. If an employing authority chooses to provide employer make-up contributions, it must provide those contributions on behalf of an employee who has returned to his or her agency of record or transferred to another Federal agency without a break in service to the extent that they relate to his or her past service with such authority.

§ 1620.33 Deadline for employing authority to begin employee contributions.

An employing authority must allow an employee participating in the Civil Service Retirement System or the Federal Employees' Retirement System to begin making contributions no later than the pay period following its acceptance of the employee's election form.

§ 1620.34 Initial election period for employees.

Employees who are participating in the Civil Service Retirement System or the Federal Employees' Retirement System must be permitted to file an election form with the employing authority identifying the amount, if any, of their contribution to the Thrift Savings Plan at any time from the publication date of these regulations through June 30, 1988. Any employee who was eligible to participate in a prior election period, but was denied the opportunity to do so, must be given the opportunity to make any election which

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he or she could have otherwise made in 1987 or 1988.

[53 FR 10039, Mar. 28, 1988, as amended by 53 FR 17685, May 18, 1988]

§ 1620.35 Computing percentage of basic pay.

When the employing authority computes a percentage of basic pay to determine the amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used must be the same as that used in computing any amount that the individual involved is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

§ 1620.36 Employee make-up contributions.

(a) If the employee chooses, the employing authority must compute the amount of employee contributions for which the employee would have been eligible to make after April 1, 1987, from the employee's net payable salary according to a schedule of equal payments that the employee has agreed to. The employee must make this election within 30 days of the date that he or she is notified by the employing authority of the opportunity to schedule make-up payments, or forfeit the opportunity to do so. The employing authority may set a ceiling on the number of pay periods over which the make-up payments may be made; however, this ceiling may not be less than two times the number of pay periods in which the payments could have been made. The payment schedule must begin no later than the pay period following the date of the agreed-upon schedule and it may not contain more than four times the number of pay periods in which the payments could have been made.

(b) If the agreed-upon payment schedule cannot be met because the employee has insufficient net pay or because the employee has reached an annual ceiling for tax-deferred contributions under 26 U.S.C. 402(g) or 415, the payment schedule will be suspended until the employee is again able to make full payments through payroll

deductions. Pay periods that are prescribed in the payment schedule, and for which an employee is unable to make payments because of insufficient net pay or a ceiling on tax-deferred contributions, will not be counted against the maximum number of pay periods applicable to the schedule and the maximum number of applicable pay periods must be extended accordingly. Employees may not make partial payments under a payment schedule.

(c) If an employee chooses to contribute the make-up amount, he or she may terminate that decision and that termination shall be irrevocable. If an employee separates from employment in such a way as to become ineligible to participate in the Thrift Savings Plan, the employee may terminate the retroactive contribution or accelerate the contribution by lump sum payment from the final salary payment (not including any lump sum annual leave payment). If the employee dies, the retroactive contribution of the deceased employee will be terminated as of the final salary payment.

(d) The retroactive payment amount is not subject to the maximum pay period contribution limitations; however, these amounts must be included when determining amounts subject to annual ceilings on contributions under 26 U.S.C. 402(g) or 415.

(e) In the event an employee does not have sufficient net pay to make all of the Thrift Savings Plan deductions, the employee's regular Thrift Savings Plan deduction shall take precedence over the employee's payment schedule contribution.

§ 1620.37 Make-up contributions by employing authority.

Make-up contributions by the employing authority are not subject to the limitations on maximum pay period contributions; however, these amounts must be included when determining amounts subject to any applicable annual ceiling described in 26 U.S.C. 415.

§ 1620.38 Payment to the record-keeper.

The employing authority is responsible for transmitting employer and

employee contributions to the employee's Federal agency of record. Employee contributions will be deducted from the employee's actual pay. The employee's agency of record is responsible for transmitting the employer and employee contributions to the Board's Recordkeeper. The employee's election form (TSP-1) will be filed in the employee's official personnel folder.

§ 1620.39 Notices.

(a) Federal agencies who are employers of record of any individuals covered by § 1620.30 of this part must notify employing authorities and affected employees of the application of these regulations no later than 30 days from their publication date.

(b) Each employing authority must notify the Board no later than 60 days from the publication date of these regulations that it employs individuals covered by § 1620.30 of this part. Entities which become employing authorities after the publication date of these regulations must provide the Board with this notice within 60 days of employing an individual covered by § 1620.30 of this part.

§ 1620.40 Other regulations.

Employing authorities and individuals covered by § 1620.30 of this part are governed by the regulations in chapter VI, title 5, Code of Federal Regulations, to the extent that those regulations are not inconsistent with this subpart.

Subpart D—Certain Civil Service Retirement System Employees

SOURCE: 53 FR 10041, Mar. 28, 1988, unless otherwise noted.

§ 1620.50 Scope.

This subpart applies to any individual who is participating in the Civil Service Retirement System as a result of a provision of law described in section 8347(o) of title 5, United States Code.

§ 1620.51 Definitions.

As used in this subpart the terms—

(a) *Employing authority* means that organization that employs an individual covered by § 1620.50 of this part and which has authority to make personnel compensation decisions for such employees; and

(b) *Participating* means paying contributions to the basic annuity under the Civil Service Retirement System.

§ 1620.52 Deadline for employing authority to begin employee contributions; notice to Board.

An employing authority must begin making contributions from an employee covered by § 1620.50 of this part no later than the pay period following its acceptance of the employee's election form. These contributions must be made to the Board's Recordkeeper. The employing authority must notify the Board no later than 60 days from the publication date of these regulations that it employs individuals covered by § 1620.50 of this part.

§ 1620.53 Initial election period for employees.

Employees who are covered by § 1620.50 of this part must be permitted to file an election form with the employing authority identifying the amount, if any, of their contribution to the Thrift Savings Plan at any time before the expiration of 60 days after the publication date of this subpart. Any employee who was eligible to participate in a prior election period, but was denied the opportunity to do so, must be given the opportunity to make any election which he or she could have otherwise made in 1987 or 1988.

§ 1620.54 Retroactive employee contributions.

Employees participating in the Civil Service Retirement System shall be allowed to make, on a retroactive basis, all employee contributions for eligible periods of service with the employing authority unless these employees have already had the opportunity to make contributions to the Thrift Savings Plan for these periods of service. Retroactive employee contributions shall be made in accordance with the procedures described in § 1620.36 of this part.

§ 1620.55 Computing percentage of basic pay.

When the employing authority computes a percentage of basic pay to determine the amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used must be the same as that used in computing any amount that the individual involved is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System.

§ 1620.56 Payment to the recordkeeper.

Employing authorities will make applicable employee contributions (deducted from the employee's actual pay) to the Board's Recordkeeper. At this time, the Recordkeeper is the National Finance Center, Department of Agriculture, New Orleans, Louisiana.

§ 1620.57 Other regulations.

Employing authorities and individuals covered by § 1620.50 of this part are governed by the regulations in chapter VI, title 5, Code of Federal Regulations, to the extent that those regulations are not inconsistent with this subpart.

Subpart E—Bankruptcy Judges and Magistrates

SOURCE: 54 FR 32786, Aug. 10, 1989, unless otherwise noted.

§ 1620.70 Scope.

This subpart applies to any bankruptcy judge or magistrate who has chosen to receive an annuity under 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100-659. Such a bankruptcy judge or magistrate may participate in the Plan only as allowed in the following regulations. A bankruptcy judge or magistrate who is not covered by 28 U.S.C. 377 or section 2(c) of the Act may participate in the Plan as allowed under either 5 U.S.C. 8351, if a CSRS employee, or 5 U.S.C. 8430-8440, 8471-8479, if a FERS employee.

§ 1620.71 Definitions.

As used in this subpart, these terms have the following meanings:

Account balance means the total amount of money in an individual account;

Act means the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100-659;

Bankruptcy judge or *judge* means an individual described in 28 U.S.C. 377(h)(1), as added by the Act;

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Government retirement plan;

CSRS employee means any employee covered by CSRS or any equivalent Government retirement plan;

Employee contributions means any contributions made under 5 U.S.C. 8432(a) or 5 U.S.C. 8351(a);

Employer contributions means Government basic contributions and Government matching contributions;

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, U.S.C., and any equivalent Government retirement plan;

FERS employee means any employee covered by FERS or any equivalent Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Government basic contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Government matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Investment Fund means the G Fund, the F Fund, or the C Fund;

Judges' annuity means an annuity under 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100-659;

Magistrate means an individual appointed pursuant to 28 U.S.C. 631;

Participant means any person with an individual account in the Thrift Savings Fund;

Recordkeeper means the organization designated by the Board as the Plan's recordkeeper;

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431-8440, 8471-8479.

§ 1620.72 Plan contributions after choosing judges' annuity.

(a) A judge or magistrate who has chosen to receive a judges' annuity is entitled to contribute to the Plan. Except as otherwise provided in this subpart, these judges and magistrates are covered by the same rules and regulations as apply to CSRS participants in the Plan.

(b)(1) Judges and magistrates who have chosen to receive a judges' annuity may elect to contribute up to 5 percent of their basic pay per period to the Plan. Basic pay has the same meaning as under 5 U.S.C. 8331(3). Amounts received under a judges' annuity are not basic pay, and no Plan contributions may be made from those annuity payments.

(2) Retirement under 28 U.S.C. 377, including removal from office under section 377(d) on the ground of mental or physical disability, is a separation from service.

(c) A judge or magistrate who has chosen to receive a judges' annuity is not entitled to receive employer contributions under 5 U.S.C. 8432(c). This limitation does not apply retroactively or in any other way cause a judge or magistrate who previously was eligible to receive employer contributions under 5 U.S.C. 8432(c) to forfeit those contributions. However, as indicated in § 1620.76 below, the judge or magistrate may receive a reduced annuity under 28 U.S.C. 377 or section 2(c) of the Act as a result of such contributions.

[54 FR 32786, Aug. 10, 1989, as amended at 59 FR 1889, Jan. 13, 1994; 61 FR 58755, Nov. 18, 1996]

§ 1620.73 Election of Plan benefits after choosing judges' annuity.

(a) A judge or magistrate who has chosen to receive a judges' annuity and who separates after age 65 entitled to an immediate annuity under either section 28 U.S.C. 377 or section 2(c) of the Act, or who separates at any age entitled to a disability annuity under 28 U.S.C. 377(d), may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(b).

(b) A judge or magistrate who has chosen to receive a judges' annuity and who separates before reaching age 65, but who is entitled to receive an annuity under 28 U.S.C. 377(c) or section 2(c) of the Act upon reaching age 65, may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(c). However, the period described in section 8433(c)(3) will be the period that begins on or after the date on which the judge's or magistrate's annuity under 28 U.S.C. 377 or section 2(c) of the Act commences.

(c) A judge or magistrate who has chosen to receive a judges' annuity and who separates before becoming eligible under 28 U.S.C. 377 or section 2(c) of the Act for an immediate annuity or an annuity upon reaching 65 is required to transfer his or her Plan account balance to an eligible retirement plan as defined in 26 U.S.C. 402(a)(5)(E)(iv).

[54 FR 32786, Aug. 10, 1989. Redesignated at 59 FR 1889, Jan. 13, 1994]

§ 1620.74 Spousal rights.

(a) A spouse or former spouse of a judge or magistrate who is a Plan participant and who has not chosen a judges' annuity retains the rights provided under 5 U.S.C. 8351, if the judge or magistrate is a CSRS employee, or under 5 U.S.C. 8435 and 8467, if the judge or magistrate is a FERS employee.

(b) A spouse or former spouse of a judge or magistrate who is a Plan participant and who has chosen a judges' annuity is entitled to whatever rights are provided under 5 U.S.C. 8435 and 8467 with respect to the judge's or magistrate's entire Plan account. Section 5 U.S.C. 8351 does not apply to a spouse

or former spouse of a judge or magistrate who has chosen a judges' annuity, even if the judge or magistrate was a CSRS employee before choosing a judges' annuity.

[54 FR 32786, Aug. 10, 1989. Redesignated at 59 FR 1889, Jan. 13, 1994]

§ 1620.75 Offset of judges' annuity.

Under rules to be established by the Administrative Office of the United States Courts, the annuity received by a judge or magistrate under 28 U.S.C. 377 or section 2(c) of the Act will be reduced by the amount of employer contributions to the Plan made on behalf of the judge or magistrate.

[54 FR 32786, Aug. 10, 1989. Redesignated at 59 FR 1889, Jan. 13, 1994]

Subpart F—Article III Justices and Judges

SOURCE: 54 FR 32787, Aug. 10, 1989, unless otherwise noted.

§ 1620.80 Scope.

This subpart applies to any justice or judge of the United States, as defined in 28 U.S.C. 451.

§ 1620.81 Definitions.

As used in this subpart, these terms have the following meanings:

Account balance means the total amount of money in an individual account;

Act means the Federal Employees Health Benefits Amendments Act of 1988, Public Law 100-654 (November 14, 1988);

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Government retirement plan;

CSRS employee means any employee covered by CSRS or any equivalent Government retirement plan;

Election period means the last calendar month of an open season and is the earliest period in which an election to make or change a contribution during that open season can become effective;

Employee contributions means any contributions made under 5 U.S.C. 8432(a) or 5 U.S.C. 8351(a);

Employer contributions means Government basic contributions and Government matching contributions;

FERS means the Federal Employees' Retirement System established by Chapter 84 of Title 5, U.S.C., and any equivalent Government retirement plan;

FERS employee means any employee covered by FERS or any equivalent Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Government basic contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Government matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Investment Fund means the G Fund, the F Fund, or the C Fund;

Judge means a judge of the United States, as defined in 28 U.S.C. 451;

Justice means a justice of the United States, as defined in 28 U.S.C. 451;

Open season means the period during which participants may elect to begin making contributions to the Thrift Savings Plan, or change the rate of contributions, or discontinue (without losing the right to recommence contributions the next open season) the amount currently being contributed to the Thrift Savings Plan;

Participant means any person with an individual account in the Thrift Savings Fund;

Recordkeeper means the organization designated by the Board as the Plan's recordkeeper;

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431-8440, 8471-8479.

§ 1620.82 Periods for making or changing contributions.

(a) *Initial Election Period.* Any justice or judge who is receiving basic pay may elect to make contributions to the Plan during a special election period beginning on November 15, 1988 and continuing through January 13, 1989, which is the 60-day period immediately following the effective date of the Act. Any properly completed election forms that are accepted by the payroll office during this 60-day period will be effective no later than the next pay period beginning after the date of acceptance.

(b) *Subsequent Election Periods.* For every election period that begins after the beginning date of the initial election period described in paragraph (a) of this action, including the election period from January 1, 1989 through January 31, 1989, justices and judges are subject to the provisions of 5 U.S.C. 8432(b) and part 1600 of 5 CFR, and may choose to stop, start, or change their rate of contribution to the Plan in accordance with those provisions and applicable regulations. Accordingly, justices and judges who are appointed after January 13, 1989, and who were not previously eligible to make contributions to the Plan, must wait until the second election period after they are appointed to make contributions to the Plan.

§ 1620.83 Contributions to the Plan.

(a) Pursuant to section 401 of the Act, justices and judges may contribute an amount up to 5 percent of basic pay per pay period to the Plan. For purposes of these contributions, "basic pay" has the same meaning as that contained in 5 U.S.C. 8331(3). Salary or annuity payments received under 28 U.S.C. 371 (a), (b), and 372(a), are not "basic pay."

(b) A justice or judge contributing to the TSP is not entitled to receive employer contributions under 5 U.S.C. 8432(c). However, any employer contributions previously made on behalf of a justice or judge while he or she served as a FERS employee will remain identified as employer contributions for recordkeeping purposes.

[54 FR 23787, Aug. 10, 1989, as amended at 59 FR 1889, Jan. 13, 1994; 61 FR 58755, Nov. 18, 1996]

§ 1620.84 Election of Plan benefits.

(a) A justice or judge who retires under section 371 (a) or (b) or section 372(a) of title 28, may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(b).

(b) A justice or judge who resigns or separates before having met the age and service requirements listed in section 371(c) of title 28 is required to transfer his or her Plan account balance to an eligible retirement plan as defined in 26 U.S.C. 402(a)(5)(E)(iv).

[54 FR 23787, Aug. 10, 1989. Redesignated at 59 FR 1890, Jan. 13, 1994]

§ 1620.85 Spousal rights.

For purposes of amounts held in the Plan, a spouse or former spouse of a justice or judge who is a Plan participant is entitled to the rights provided under 5 U.S.C. 8351(b)(7).

[54 FR 23787, Aug. 10, 1989. Redesignated at 59 FR 1890, Jan. 13, 1994]

Subpart G—Nonappropriated Fund Employees

SOURCE: 61 FR 41486, Aug. 9, 1996, unless otherwise noted.

§ 1620.90 Scope.

This subpart applies to any employee of a Nonappropriated Fund (NAF) instrumentality of the Department of Defense (DOD) or the U.S. Coast Guard who elects to be covered by the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS) and to any employee in a CSRS or FERS covered position who elects to be covered by a retirement plan established for employees of a NAF instrumentality pursuant to the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, Pub. L. 101-508, 104 Stat. 1388, 1388-335 to 1388-341 (codified largely at 5 U.S.C. 8347(p)(1) and 8461(n)(1) (1994)), as amended by section 1043 of the National Defense Authorization Act for Fiscal Year 1996, Pub. L. 104-106, 110 Stat. 186, 434-439.

§ 1620.91 Definitions.

As used in this subpart, the terms—

Basic pay means the pay from the NAF instrumentality used to compute the amount the individual is required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in CSRS or FERS, as the case may be.

Covered by means paying contributions to the Civil Service Retirement and Disability Fund under either CSRS or FERS.

Move means moving from a position covered by CSRS or FERS to a NAF instrumentality of the DOD or Coast Guard, or *vice versa*, without a break in service of more than 1 year.

Thrift Savings Plan (TSP) election means a request by an employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period, or to change the allocation of future TSP contributions among the investment funds and made effective pursuant to 5 CFR part 1600.

§ 1620.92 Employees who move to a NAF instrumentality on or after August 10, 1996.

(a) Any Thrift Savings Plan (TSP) elections:

(1) Made during a previous employment by an employee who moves to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS; and

(2) Which is still in effect as of the date of the move shall be implemented by the NAF instrumentality and shall begin with the date of the move.

(b) If an employee who moves to a NAF instrumentality on or after August 10, 1996, does not have a current election to contribute to the TSP, he or she shall be permitted to make such an election during the first TSP Open Season, as described in 5 CFR 1600.2, during which he or she is eligible to do so under 5 U.S.C. 8432.

(c) An employee who moves to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS must be permitted during the appropriate Open Seasons to elect under 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, to make future contributions to the

Thrift Savings Fund from his or her basic pay.

(d) For an employee who moves to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by FERS, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund in accordance with Board procedures on behalf of such employee any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c).

(e) In the case of an employee who moves to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS, any TSP contributions described in 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, for which such employee is eligible and which are not made in accordance with this section because the employee moves to the NAF instrumentality but does not make an immediate election to be covered by CSRS or FERS, shall be made up according to the error correction procedures contained in 5 CFR part 1605.

§ 1620.93 Employees who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965.

(a) *Future TSP contributions.* (1) *Employee Contributions.* An employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of such move may elect to make any future contributions to the TSP in accordance with 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, within 30 days of the date of his or her election to be covered by CSRS or FERS. Such contributions shall begin being deducted from the employee's pay no later than the pay period following the election to contribute to the TSP. Any TSP election which may have been in effect at the time of the employee's move will not be effective for any future contributions.

(2) *Agency Automatic (1%) Contributions.* If an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, elects to be covered by FERS, the NAF instrumentality must also contribute each pay period to the Thrift Savings

Fund on behalf of such employee any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c)(1), beginning no later than the pay period following the employee's election to be covered by FERS.

(3) *Agency Matching Contributions.* If an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, elects to be covered by FERS and also elects to make contributions to the TSP pursuant to paragraph (a)(1) of this section, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of such employee any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c)(2), beginning at the same time as the employee's contributions are made pursuant to paragraph (a)(1) of this section.

(b) *Retroactive TSP Contributions.* (1) Without regard to any election to contribute to the TSP under paragraph (a)(1) of this section, the NAF instrumentality shall take the following actions with respect to an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of the move:

(i) *Agency Automatic (1%) Make-up Contributions.* The NAF instrumentality shall, within 30 days of the date of the employee's election to be covered by FERS, contribute to the Thrift Savings Fund an amount representing the Agency Automatic (1%) Contribution for all pay periods during which the employee would have been eligible to receive the Agency Automatic (1%) Contribution under 5 U.S.C. 8432, beginning with the date of the move and ending with the date that Agency Automatic (1%) Contributions begin under paragraph (a)(2) of this section. Lost earnings will not be paid on these contributions unless they are not made by the NAF instrumentality within the time frames required by these regulations.

(ii) *Employee Make-up Contributions.* (A) Within 60 days of the election to be covered by FERS, an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, and who elects to be covered

by FERS, may make an election regarding Employee Make-up Contributions. The employee may elect to contribute all or a percentage of the amount of Employee Contributions which the employee would have been eligible to make under 5 U.S.C. 8432 between the date of the move and the date Employee Contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the date that Agency Automatic (1%) Contributions begin under paragraph (a)(2) of this section.

(B) Within 60 days of the election to be covered under CSRS, an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS, may make an election regarding make-up contributions. The employee may elect to contribute all or a percentage of the amount of Employee Contributions which the employee would have been eligible to make under 5 U.S.C. 8351 between the date of the move and the date Employee Contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the pay period following the date the election to be covered by CSRS is made.

(C) Deductions made from the employee's pay pursuant to an employee's election under paragraph (b)(1)(ii) (A) or (B) of this section, as appropriate, shall be made according to a schedule that meets the requirements of paragraphs (b) (2) and (3) of this section.

(iii) *Agency Matching Make-up Contributions.* The NAF instrumentality must pay to the Thrift Savings Fund any Matching Contributions attributable to Employee Contributions made under paragraph (b)(1)(ii)(A) of this section that the NAF instrumentality would have been required to make under 5 U.S.C. 8432(c), at the same time that such Employee Contributions are contributed to the Fund.

(2) The NAF instrumentality may set a ceiling on the number of pay periods over which the contributions referred to in paragraph (b)(1)(ii) of this section may be made; however, this ceiling may not be less than two times the number of pay periods in which the

payments could have been made. The payment schedule must begin no later than the pay period following the date the employee elects such schedule and it may not contain more than four times the number of pay periods in which the payment could have been made. When setting the number of payments, the employee's remaining period of employment with the Federal Government should be considered to ensure that the employee will have sufficient time to make up these contributions.

(3) If the agreed-upon payment schedule cannot be met because the employee has insufficient net pay or because the employee has reached an annual ceiling for tax-deferred contributions under 26 U.S.C. 402(g) or 415, the payment schedule will be suspended until the employee is again able to make full payments through payroll deductions. Pay periods for which an employee is unable to make payments because of insufficient net pay or a ceiling on tax-deferred contributions, will not be counted against the maximum number of pay periods applicable to the schedule and the maximum number of applicable pay periods must be extended accordingly.

(4) If an employee chooses to contribute the make-up amount, he or she may subsequently terminate that decision at any time and that termination shall be irrevocable. If an employee separates from Federal or covered NAF employment, the employee may accelerate the contribution by lump sum payment from the final salary payment. If the employee dies, the retroactive contributions of the deceased employee will be terminated as of the final salary payment.

(5) The make-up payment amount is not subject to the maximum pay period contribution limitations; however, these amounts must be included when determining amounts subject to annual ceilings on contributions under 26 U.S.C. 402(g) or 415.

(6) In the event an employee does not have sufficient net pay to make all of the TSP deductions, the employee's regular TSP deduction shall take precedence over the employee's payment schedule contribution.

(7) Make-up contributions shall be reported for investment by the NAF instrumentality when contributed, according to the employee's election for current TSP contributions. If the employee is not making current contributions, the retroactive contributions shall be invested according to an election form (TSP-1-NAF) filed specifically for that purpose.

(c) An employee who is covered by a NAF retirement plan is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement coverage shall be removed from the TSP as required by the regulations at 5 CFR part 1605.

(d) A TSP election made by an employee of a NAF instrumentality who elected to be covered by CSRS or FERS prior to August 10, 1996, which was properly implemented by the NAF instrumentality because it was valid under then-effective regulations, is effective under the regulations in this subpart.

§ 1620.94 Employees who move from a NAF instrumentality to a Federal Government agency.

(a) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by a NAF retirement system is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement coverage shall be removed from the TSP as required by the regulations at 5 CFR part 1605.

(b) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by CSRS or FERS will become eligible to participate in the TSP as follows:

(1) If the employee was previously eligible to participate in the TSP under a prior period of Federal Government service, the employee will be eligible to participate in the TSP the first Open Season (as determined in accordance with 5 CFR 1600.3(d)) beginning after the effective date of the CSRS and FERS coverage.

(2) If the employee was not previously eligible to participate in the

TSP, the employee will be eligible to contribute to the TSP in the second Open Season (as determined in accordance with 5 CFR 1600.3(d)) beginning after the effective date of the CSRS or FERS coverage.

§ 1620.95 Payment of TSP contributions.

The NAF instrumentality shall deduct any Employee Contributions authorized under this section from the pay of the employee each pay period and shall remit such amounts to the Thrift Savings Fund in accordance with this subpart and Board procedures. The NAF instrumentality shall contribute any future Agency Automatic (1%) Contributions and Agency Matching Contributions to the Thrift Savings Fund each pay period in accordance with this subpart and Board procedures. The NAF instrumentality shall contribute make-up contributions to the Thrift Savings Fund in accordance with this subpart and Board procedures.

§ 1620.96 Loan payments.

NAF instrumentalities shall deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the recordkeeper in accordance with 5 CFR part 1655 and Board procedures. Loan payments may not be deducted and transmitted for employees who elect to be covered by the NAF retirement system. Such employees will be considered to have separated from Government service and must prepay their loans or a taxable distribution will be declared.

§ 1620.97 Transmission of information.

Any employee who moves to a NAF instrumentality shall be reported by the losing Federal Government employing agency to the TSP recordkeeper as having transferred to a NAF instrumentality of the DOD or Coast Guard rather than as having separated from Government service. If the employee subsequently elects not to be covered by CSRS or FERS, the NAF instrumentality must submit an Employee Data Record to report the employee as having separated from Federal Government service as of the date of the move.

§ 1620.98 Notices.

All NAF instrumentalities employing any individuals covered by § 1620.90 must notify affected employees of the application of the regulations in this subpart as soon as practicable.

§ 1620.99 Other regulations.

NAF instrumentalities and individuals covered by § 1620.90 are governed by the regulations in this chapter, to the extent that the regulations in this chapter are not inconsistent with this subpart.

Subpart H—Military Service

SOURCE: 60 FR 19990, Apr. 21, 1995, unless otherwise noted.

§ 1620.100 Scope.

(a) *General.* To be covered by this subpart, an employee must have:

(1) Been separated from Federal civilian service or entered leave-without-pay status in order to perform military service;

(2) Been reemployed; and

(3) Become eligible to seek reemployment by virtue of a release from military service, discharge from hospitalization, or other similar event that occurred on or after August 2, 1990.

(b) *Other rules.* Except as provided in this part, the rules governing contributions to the TSP set forth in 5 CFR part 1600 will apply to persons reemployed under this subpart.

§ 1620.101 Definitions.

As used in this subpart:

(a) *Basic pay* has one of two meanings:

(1) For the portion of the retroactive period when an employee did not receive a Federal civilian salary, the rate of basic pay is that which would have been payable to the employee if the employee had remained continuously employed in the position which he or she last held before separating (or entering leave-without-pay status) to perform military service;

(2) For the portion of the retroactive period that occurs after the employee is reemployed, his or her actual basic

pay will be used to calculate contributions.

(b) *Current contributions* means those contributions that are made prospectively for any pay period after the employee has been reemployed.

(c) *Employee* means any Federal employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under 38 U.S.C. chapter 43 occurs on or after August 2, 1990.

(d) *Leave-without-pay* means a temporary nonpay status and absence from duty (including military furlough) to perform military service.

(e) *Recordkeeper* means the organization designated by the Federal Retirement Thrift Investment Board as the Thrift Savings Plan's recordkeeper.

(f) *Reemployed or reemployment* means reemployed in (or restored to) a position pursuant to 38 U.S.C. chapter 43, which is subject to 5 U.S.C. chapter 84 or which entitles the employee to contribute to the Thrift Savings Plan pursuant to 5 U.S.C. 8351.

(g) *Retroactive period* means the period for which an employee is entitled to make up missed Employee Contributions and to receive retroactive Agency Automatic (1%) Contributions and Agency Matching Contributions.

(1) *Beginning of retroactive period.* For an employee who was eligible to make contributions when military service began, the retroactive period begins on the date following the effective date of separation or, in the case of leave-without-pay, the date the employee enters leave-without-pay status. For an employee who was not eligible to make contributions when military service began, the retroactive period begins on the first day of the first pay period in the election period during which the employee would have been eligible to make contributions had the employee remained in Federal civilian service.

(2) *End of retroactive period.* The retroactive period ends on the earlier of the following two dates: the date before the first day of the first election period during which a contribution election could have been made effective after reemployment, or the last day of the pay period before the pay period during which routine current contributions

are begun after the employee is reemployed (or restored). If an employee who was making contributions when he or she separated elects not to make routine current contributions, the ending date of the retroactive period is the last day of the pay period during which the employee elects to terminate contributions.

(h) *Separation or separated* means the period an employee was separated from Federal civilian service (or entered a leave-without-pay status) in order to perform military service.

§ 1620.102 Processing contribution elections.

(a) *Current contribution elections.* Immediately upon reemployment, an employee's agency will give an eligible employee the opportunity to submit a contribution election form (Form TSP-1) to make current contributions. The effective date of the current Form TSP-1 will be the first day of the first full pay period in the most recent TSP election period. If the employee is reemployed during a TSP Open Season but before the election period, he or she can also submit an election form that will become effective the first day of the first full pay period in the following election period.

(b) *Retroactive contribution elections.* (1) An employee has the following options for making retroactive contributions:

(i) If the employee had a valid contribution election form (Form TSP-1) on file when he or she separated, that election form will be reinstated for purposes of retroactive contributions upon the employee's reemployment, unless a new contribution election form is submitted to terminate all retroactive contributions or those contributions that would have been made from the date of separation through the end of the Open Season that occurred immediately after the separation.

(ii) Instead of making the contributions for the retroactive period under the reinstated contribution election form, the employee may submit a new election form for any Open Season that occurred during the retroactive period. However, the allocation election on each Form TSP-1 for the retroactive

period must be the same as the allocation election on the current Form TSP-1.

(2) An employee who terminated contributions within two months before entering military service will be eligible to make a retroactive contribution election effective for the first Open Season that occurs after the effective date that the contributions were terminated. This election may be made even if the termination was made outside of an Open Season.

[60 FR 19990, Apr. 21, 1995, as amended at 62 FR 18234, Apr. 14, 1997]

§ 1620.103 Processing lost earnings.

(a) *Agency Automatic (1%) Contributions.* Subject to the *de minimis* rules in 5 CFR part 1606, employing agencies are required to pay lost earnings on the Agency Automatic (1%) Contributions that are made for the retroactive period.

(b) *Agency Matching Contributions.* Subject to the *de minimis* rules in 5 CFR part 1606, employing agencies are required to pay lost earnings for the agency contributions that match make-up Employee Contributions.

(c) *Make-up Employee Contributions.* Employing agencies may not pay lost earnings for make-up Employee Contributions associated with the retroactive period.

(d) *Lost earnings calculation.* Lost earnings will be calculated on all retroactive agency contributions using the rates of return for the Government Securities Investment Fund (G Fund), unless the employee submitted one or more interfund transfer requests during the period of separation. In the case of interfund transfer requests, the earnings will be calculated using the G Fund rates of return until the first interfund transfer was processed. The contribution that is subject to lost earnings will be moved to the investment fund(s) the employee requested and lost earnings will be calculated based on the earnings for that fund(s). The amount of lost earnings calculated will be posted to the investment fund(s) to which the contribution was moved. If there were no interfund transfers processed during the lost earnings calculation period, the

amount of lost earnings calculated will be posted to the employee's G Fund account.

§ 1620.104 Agency payments to record-keeper; agency ultimately chargeable.

(a) *Agency making payments to record-keeper.* The current employing agency will always be the agency responsible for making payments to the record-keeper for all contributions (both employee and agency) and lost earnings, regardless of whether some of that expense is ultimately chargeable to a prior employing agency.

(b) *Agency ultimately chargeable with expense.* The agency ultimately chargeable with the expense of agency contributions and lost earnings attributable to the retroactive period is ordinarily the agency that reemployed the employee. However, if an employee changed agencies during the period between the date of reemployment and October 13, 1994, the employing agency as of October 13, 1994, is the agency ultimately chargeable with the expense.

(c) *Reimbursement by agency ultimately chargeable with expense.* If the agency that made the payments to the record-keeper for agency contributions and lost earnings is not the agency ultimately chargeable with that expense, the agency that made the payments to the recordkeeper may, but is not required to, obtain reimbursement from the agency ultimately chargeable with the expense.

§ 1620.105 Restoring forfeited Agency Automatic (1%) Contributions.

If an employee's Agency Automatic (1%) Contributions were forfeited because the employee was not vested when he or she separated to perform military service, the employee must notify the employing agency that a forfeiture occurred. Employing agencies will submit a written request to the recordkeeper to restore any Agency Automatic (1%) Contributions that were forfeited from an employee's account because he or she was not vested at the time the employee separated to perform military service.

§ 1620.106 Returning withdrawals.

(a) *General.* Employees who are subject to the TSP automatic cashout provisions (employees whose account balances were \$3,500 or less) and employees who separated without eligibility for retirement benefits and prior to March 1995 withdrew amounts greater than \$3,500, may elect to have the separation for military service treated as if it had never occurred. These employees will be allowed to return amounts to the Thrift Savings Plan that represent the full amount of the withdrawal. Eligible employees must notify the recordkeeper by April 21, 1996, or one year from the date of reemployment, whichever is later, of their intent to return the withdrawn funds.

(b) *Documentation.* An eligible employee who elects to return the full amount of a withdrawal under this section must provide documentation of reemployment to the recordkeeper. The recordkeeper will notify the employee of the amount of funds to be returned and the deadline for making that payment. The employee must provide the funds in a single payment to the recordkeeper within 90 days after the recordkeeper sends the employee the notice advising of the amount and procedures for returning the funds.

(c) *Earnings.* Employees will not receive retroactive earnings on any amounts withdrawn that they later return to their accounts.

(d) *Taxable distribution reversed.* Employees who return withdrawn funds under this section may be eligible to have a taxable distribution associated with a loan reversed. At the time the recordkeeper notifies the employee of the amount required to return the withdrawn funds, it will notify the employee whether he or she is eligible to have a taxable distribution reversed.

§ 1620.107 Agency responsibilities.

(a) *General.* Each employing agency must establish procedures for implementing these regulations. These procedures must at a minimum, require agency personnel to identify and notify eligible employees concerning their options under these regulations and tell them the time period within which those options must be exercised. For employees who are reemployed on or

after August 2, 1990, and before April 21, 1995, the agency must perform these functions by June 20, 1995. For employees who are reemployed on or after April 21, 1995, employing agencies must perform these functions within 60 days of the employee's reemployment. An employee must submit a written request to the employing agency to make up Employee Contributions for the retroactive period on or before April 21, 1996, or one year from the date the employee was reemployed, whichever is later, or forfeit the right to make up these contributions.

(b) *Agency records; procedure for reimbursement.* The agency that is making the payments to the recordkeeper for all contributions (both employee and agency) and lost earnings will obtain from prior employing agencies whatever information is necessary in order to make accurate payments. If a prior employing agency is ultimately chargeable under § 1620.104(b) for all or part of the expense of agency contributions and lost earnings, the agency making the payments to the recordkeeper will determine the procedure to follow in order to collect amounts owed to it by the agency ultimately chargeable with the expense.

(c) *Payment schedule; matching contributions report.* Agencies will, with the employee's consent, prepare a payment schedule for making retroactive Employee Contributions. In addition, the employing agencies will calculate the Agency Matching Contributions that will be reported for investment to the recordkeeper in equal installments for each pay period covered by the payment schedule. The employing agency may impose limits on the maximum amount of time during which an employee may make up the missed contributions. This maximum amount of time may be no less than two times and no more than four times the number of pay periods that were covered by the period of missed contributions. An employee may decide to terminate the make-up contributions; however, such a decision is irrevocable.

(d) *Agency Automatic (1%) Contributions.* Employing agencies must calculate the Agency Automatic (1%) Contributions for all reemployed FERS employees, report these contributions

to the recordkeeper, and submit lost earnings records to cover the retroactive period by June 20, 1995, or 60 days from the date of reemployment, whichever is later.

(e) *Forfeiture restoration.* When notified by an employee that a forfeiture of the Agency Automatic (1%) Contributions occurred after the employee separated to perform military service, the employing agency must submit a written request to the recordkeeper to restore these funds.

(f) *Thrift Savings Plan Service Computation Date.* The agencies must review the Thrift Savings Plan Service Computation Date for all reemployed Federal Employees' Retirement System employees for purposes of crediting military service performed during the separation period. If the period of military service has not been credited, the agency must submit a corrected Thrift Savings Plan Service Computation Date to the recordkeeper.

Subpart I—Certain Employees of the District of Columbia Financial Responsibility and Management Assistance Authority

SOURCE: 61 FR 2873, Jan. 29, 1996, unless otherwise noted.

§ 1620.110 Scope.

The District of Columbia Financial Responsibility and Management Assistance Authority (Authority) was established by the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104-8, 109 Stat. 97, which was amended by the Omnibus Consolidated Rescissions and Appropriations Act of 1996, section 153, Pub. L. 104-134, 110 Stat. 1321. Although the Authority is an agency of the District of Columbia Government, certain of its employees may elect Federal Employees' Retirement System (FERS) or Civil Service Retirement System (CSRS) coverage. This subpart governs participation in the Thrift Savings Plan (TSP) by employees of the Authority who elect to be covered by FERS or CSRS.

[61 FR 55202, Oct. 25, 1996]

§ 1620.111 Definitions.

As used in this subpart:

Authority means the District of Columbia Financial Responsibility and Management Authority.

Basic pay means basic pay as defined in 5 U.S.C. 8331(3), and it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, United States Code, or any equivalent Government retirement plan.

Election period means the last calendar month of an open season and is the period in which an election to make or change contributions during that open season can first become effective.

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, United States Code, and any equivalent retirement system.

Open season means the period during which employees may make an election with respect to their contributions to the Thrift Savings Plan.

Recordkeeper means the organization under contract to the Board to perform recordkeeping services. This currently is the National Finance Center, United States Department of Agriculture, P.O. Box 61500, New Orleans, Louisiana 70161-1500.

Retirement election means an election by an eligible employee of the Authority to remain covered by either CSRS or FERS.

Thrift Savings Plan (TSP) election means a request by an eligible employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period (including a request to terminate contributions), or to change the allocation of TSP contributions among the TSP investment funds, as described at 5 CFR 1600.4. A TSP election must be

§ 1620.112

made on Form TSP-1, Thrift Savings Plan Election Form.

[61 FR 2873, Jan. 29, 1996, as amended at 61 FR 55202, Oct. 25, 1996]

§ 1620.112 Eligibility requirements.

To be eligible to participate in the TSP, an employee of the Authority must be covered by FERS or CSRS pursuant to the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended.

[61 FR 55202, Oct. 25, 1996]

§ 1620.113 Notice to an employee of his or her right to participate in the TSP.

The Authority must notify an employee of his or her right to participate in the TSP at the time the employee is required to be notified of his or her right to elect to be covered under FERS or CSRS.

§ 1620.114 Employee contributions.

(a) An employee of the Authority who is separated from Federal service for less than 31 full calendar days before commencing employment with the Authority and who is covered by FERS or CSRS will be eligible to contribute to the TSP as though he or she had transferred to the Authority from the losing Federal agency, *i.e.*, as though the employee did not have a TSP separation as defined by the TSP.

(b) An employee of the Authority who is separated from Federal service for 31 or more full calendar days before commencing employment with the Authority and who is covered by FERS or CSRS will be eligible to contribute to the TSP as follows:

(1) If the employee was previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the first open season (as determined in accordance with paragraph (d) of this section) beginning after the date the employee commences employment with the Authority.

(2) If the employee was not previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the second open season (as determined in accord-

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ance with paragraph (d) of this section) beginning after the date the employee commences employment with the Authority.

(c) An employee of the Authority with no period of prior Federal service who elects to be covered by FERS will be eligible to contribute to the TSP in the second open season (as determined in accordance with paragraph (d) of this section) beginning after the effective date of the FERS coverage.

(d) If an employee of the Authority who is described in paragraphs (b) and (c) of this section is employed by the Authority during an open season but before the election period (the last calendar month of the open season), that open season will be considered the employee's first open season.

(e) TSP employee contributions from employees of the Authority are subject to the limits described at 5 CFR part 1600, subpart C.

[61 FR 55202, Oct. 25, 1996]

§ 1620.115 Employer contributions.

(a) If an eligible employee of the Authority elects to be covered by FERS, the Authority must contribute on the employee's behalf each pay period to the Thrift Savings Fund, in accordance with Board procedures, an amount equal to 1 percent of the employee's basic pay paid to such employee for that period of service, as required by 5 U.S.C. 8432(c)(1)(A), beginning:

(1) Immediately upon employment with the Authority if the employee separated from Federal service less than 31 full calendar days before commencing employment with the Authority and was eligible to participate in the TSP when he or she separated from Federal service; or

(2) With the first pay period in which the employee is eligible to contribute to the TSP (as determined in accordance with § 1620.114 of this subpart) for all other FERS employees of the Authority.

(b) If a FERS employee of the Authority elects to participate in the TSP under § 1620.114 of this subpart, the Authority must contribute on behalf of such employee each pay period to the Thrift Savings Fund, in accordance with Board procedures, any matching

contributions which he or she is eligible to receive under 5 U.S.C. 8432(c).

§ 1620.116 TSP contributions.

The Authority is responsible for transmitting, in accordance with Board procedures, any employee and employer contributions that are required by this subpart to the Board's Record-keeper.

§ 1620.117 TSP loan payments.

The Authority shall deduct and transmit TSP loan payments for employees in accordance with 5 CFR part 1655 and Board procedures. An employee of the Authority who separates from Federal service with an outstanding TSP loan and who elects to be covered under FERS or CSRS must notify the recordkeeper that he or she has commenced employment with the Authority.

§ 1620.118 Failure to participate or delay in participation.

If an employee of the Authority who elects to be covered by FERS or CSRS fails to participate or is delayed in participating in the TSP because of a delay in the implementation of the Act, the employee may request that retroactive corrective action be taken in accordance with 5 CFR part 1605, as though the delay were attributable to employing agency error. Lost earnings shall be payable pursuant to 5 CFR part 1606 due to delay described in this section, as though the delay were attributable to employing agency error.

[61 FR 55202, Oct. 25, 1996]

§ 1620.119 Other regulations.

The Authority and individuals covered by § 1620.110 of this subpart are governed by the regulations in 5 CFR chapter VI, to the extent the regulations in 5 CFR chapter VI are not inconsistent with this subpart.

**PART 1630—PRIVACY ACT
REGULATIONS**

Sec.

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- 1630.18 Penalties.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 55 FR 18852, May 7, 1990, unless otherwise noted.

§ 1630.1 Purpose and scope.

These regulations implement the Privacy Act of 1974, 5 USC 552a. The regulations apply to all records maintained by the Federal Retirement Thrift Investment Board that are contained in a system of records and that contain information about an individual. The regulations establish procedures that (a) authorize an individual's access to records maintained about him or her; (b) limit the access of other persons to those records; and (c) permit an individual to request the amendment or correction of records about him or her.

§ 1630.2 Definitions.

For the purposes of this part—

- (a) *Agency* means agency as defined in 5 USC 552(e);
- (b) *Board* means the Federal Retirement Thrift Investment Board;
- (c) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;
- (d) *Maintain* means to collect, use, or distribute;
- (e) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Board, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, identifying number, symbol, or other identifying particular