

§ 1501.14

the applicant resides, and such payment is considered in the interest of good administration and funds are available for this purpose.

[18 FR 6371, Oct. 7, 1953, as amended at 21 FR 5249, July 14, 1956]

§ 1501.14 Decision of the Board.

After the employee or person being considered for employment has been given a hearing, the Board shall promptly make its decision. The determination of the Board shall be in writing and shall be signed by the members of the panel. It shall state the action taken, together with the reasons therefor, and shall be made a permanent part of the file in every case.

§ 1501.15 Transmission of Determination to the Secretary of State.

The Board shall transmit its determination in each case to the Secretary

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of State for transmission to the Secretary General of the United Nations, or the executive head of any other public international organization concerned. In each case in which the Board determines that, on all the evidence, there is a reasonable doubt as to the loyalty of the person involved to the Government of the United States, it shall also transmit a statement of the reasons for the Board's determination in as much detail as the Board deems that security considerations permit.

§ 1501.16 Notification of individual concerned.

A copy of the determination of the Board, but not of the statement of reasons, shall be furnished in each case to the person who is the subject thereof.

CHAPTER VI—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

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**PART 1600—EMPLOYEE ELECTIONS
TO CONTRIBUTE TO THE THRIFT
SAVINGS PLAN**

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AUTHORITY: 5 U.S.C. 8351, 8432(b)(1)(A), 8474(b)(5) and (c)(1).

SOURCE: 52 FR 45802, Dec. 2, 1987, unless otherwise noted.

Subpart A—General

§ 1600.1 Definitions.

Terms used in this part shall have the following meanings:

Act means the Federal Employees' Retirement System Act of 1986, as amended.

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 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.

Board means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

CSRS means the civil service retirement system established by Subchapter III of Chapter 83 of Title 5, United States Code.

CSRS employee means *employee* as defined in 5 U.S.C. 8331(1) or *Member* as defined in 5 U.S.C. 8331(2).

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

Employee or *FERS employee* means *employee* as defined in 5 U.S.C. 8401(11) or *Member* as defined in 5 U.S.C. 8401(20).

Employing agency means the agency which is responsible for making contributions to the Thrift Savings Plan on behalf of a FERS employee or a CSRS employee.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

FERS means the Federal employees' retirement system established by chapter 84 of title 5, United States Code.

Highly compensated employee means an employee with annual basic pay of more than \$50,000. This amount is subject to adjustment from time to time in accordance with applicable tax laws and regulations.

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

Thrift Savings Plan means the activity established pursuant to subchapter III of Pub. L. No. 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986.

[52 FR 45802, Dec. 2, 1987, as amended at 61 FR 58754, Nov. 18, 1996]

Subpart B—Elections

§ 1600.2 Periods for making elections.

(a) *Initial open seasons.* The first open season will commence on February 15, 1987 and end on April 30, 1987. The period April 1, 1987 through April 30, 1987 is a designated election period pursuant to 5 U.S.C. 8432(b)(4)(A). The second open season will commence on May 15, 1987 and end on July 31, 1987. The period July 1, 1987 through July 31, 1987 is a designated election period pursuant to section 6001(c)(2) of Pub. L. 99–509 (Oct. 21, 1986), the Omnibus Budget Reconciliation Act of 1986.

(b) *Subsequent open season.* An open season will begin on November 15 of each year and end on January 31 of the following year and another open season will begin on May 15 of each year and end on July 31 of the same year. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season shall be extended through the next business day.

(c) *Number of elections.* Except for an election to terminate, an employee may make only one election during an open season.

(d) *Belated elections.* When an employing agency determines that an employee was unable, for reasons beyond the employee's control, to make an election within the time limits prescribed by these regulations, that agency may accept the employee's election within 30 calendar days after it advises the employee of that determination. Such election shall become effective not later than the first pay period beginning after the date that the agency accepts the employee's election form.

[52 FR 45802, Dec. 2, 1987, as amended at 59 FR 55331, Nov. 7, 1994]

§ 1600.3 Eligibility of a Federal Employees' Retirement System employee to make an election.

(a) Each employee who was an employee on January 1, 1987 and continues as an employee without a break in service from January 1, 1987 through April 1, 1987 may make an election during the open season which begins on February 15, 1987 and ends on April 30, 1987.

(b) Except as provided in paragraph (c) of this section, each employee who is not eligible by virtue of paragraph (a) of this section to make an election during the open season beginning on February 15, 1987 shall not be eligible to make an election until the second open season (determined in accordance with paragraph (d) of this section) beginning after such employee's date of commencement of service as an employee.

(c) Any employee who is reemployed by the federal government and who, during a previous period of service, had become eligible to participate in the Thrift Saving Plan under the foregoing paragraphs (a) or (b) of this section shall be eligible during the first open season (determined in accordance with paragraph (d) of this section) beginning after the date of reemployment to make an election.

(d) For an employee employed or reemployed during any open season, but whose employment or reemployment during such open season is prior to the election period occurring during the last calendar month of such open season, the open season during which the employee was employed or reemployed shall be considered the first open season.

[52 FR 45802, Dec. 2, 1987, as amended at 53 FR 23379, June 22, 1988]

§ 1600.4 Types of elections.

(a) *Contribution.* During an open season, an eligible employee may elect any one of the following:

- (1) To make contributions;
- (2) To change the amount of existing contributions; or
- (3) To terminate contributions.

(b) *Investment choices.* Contributions made for pay periods beginning in 1987 will be invested only in the Government Securities Investment Fund established by 5 U.S.C. 8438(b)(1)(A). Subsequent contributions may be invested in accordance with regulations which will provide contributing employees the option of investing limited amounts in the Fixed Income Investment Fund and the Common Stock Index Investment Fund established by 5 U.S.C. 8438 (b)(1)(B), (b)(1)(C), and (b)(2).

§ 1600.5 Termination of contributions.

Notwithstanding §§ 1600.4 and 1600.6, an employee may elect to terminate contributions to the Thrift Savings Plan at any time. If an employee makes an election to terminate during an open season, the employee, if otherwise eligible, may make an election to resume contributions during the next open season. If the election to terminate contributions is not made during an open season, the employee may not make an election to resume contributions until the second open season beginning after such election to terminate.

§ 1600.6 Method of election.

Each employee shall make an election, as described in § 1600.4 or § 1600.5, by completing and submitting to the employing agency an original or facsimile of Form No. TSP 1, entitled "Election Form," at any time during the open season. This form must be accepted by the employing agency, as evidenced by the signature of the responsible agency official on the election form, before an election can become effective.

§ 1600.7 Effective dates of elections.

For each employee whose election form is accepted by the employing agency during the portion of an open season which precedes a prescribed election period, the election, except for an election to terminate contributions, shall become effective as of the first day of the first pay period beginning on or after the first day of the election period. Elections accepted by the employing agency during the last calendar month of the open season (i.e., the elec-

tion period) shall become effective no later than the first day of the first pay period beginning after the date on which the employing agency accepts the election form. An election to terminate contributions to the Thrift Savings Plan, whenever made shall become effective as of the last day of the pay period in which the employing agency accepts the election form.

Subpart C—Program of Contributions

§ 1600.8 General.

Once an employee's election to make contributions to the Thrift Savings Plan becomes effective, the employing agency shall, for the pay period the election becomes effective and for each subsequent pay period until a new election becomes effective, deduct from the employee's basic pay the percentage of basic pay or the whole dollar amount elected by the employee not to exceed the applicable maximum contribution set forth in § 1600.10. If the employee's elected whole dollar amount exceeds the amount of pay available for such deduction, no deduction will be made for that pay period.

§ 1600.9 Contributions in whole numbers.

Except in the case of a 7.5 percent contribution made by a CSRS employee as described in § 1600.10(b) of this part, contributions may be made only in whole percentage amounts or whole dollar amounts.

§ 1600.10 Maximum contributions.

(a) *FERS employees.* Except as provided in paragraph (c) of this section, for the period starting with the first pay period beginning on or after April 1, 1987 and ending with the last pay period beginning on or before September 30, 1987, the maximum FERS employee contribution is 15 percent of basic pay. Starting with the first pay period beginning on or after October 1, 1987, the maximum FERS employee contribution is 10 percent of basic pay.

(b) *CSRS employees.* For the period starting with the first pay period beginning on or after April 1, 1987 and ending with the last pay period beginning on or before September 30, 1987,

the maximum CSRS employee contribution is 7.5 percent of basic pay. Starting with the first pay period beginning on or after October 1, 1987, the maximum CSRS employee contribution is 5 percent of basic pay.

(c) *CSRS employees who transfer to FERS.* The maximum employee contribution for CSRS employees who have transferred to FERS and have elected to participate in the Thrift Savings Plan, as described in § 1600.12, is 10 percent of basic pay.

(d) Section 402(g) of the Internal Revenue Code places a ceiling on the amount which an employee may save on a tax-deferred basis through plans such as the Thrift Savings Plan. Employee contributions to the Thrift Savings Plan may be restricted or refunded to conform with this limit.

[52 FR 45802, Dec. 2, 1987, as amended at 53 FR 23379, June 22, 1988]

§ 1600.11 Required reductions of contribution rates.

The employing agency shall reduce the contribution of any FERS employee or CSRS employee whose elected contribution exceeds the applicable maximum percentage set forth in § 1600.10 (a) or (b). For any FERS employee or CSRS employee covered by this section who has elected to contribute a percentage of basic pay, the employing agency shall automatically reduce the contribution rate to the applicable maximum percentage. For any FERS employee or CSRS employee covered by this section who has elected to contribute a whole dollar amount, the employing agency shall reduce the whole dollar amount to the highest whole dollar amount which does not exceed the applicable maximum percentage.

Subpart D—Civil Service Retirement System Employees

§ 1600.12 Election period for Civil Service Retirement System employees who transfer to the Federal Employees' Retirement System.

(a) *General.* Section 8432(b)(3) of the Act authorizes the Executive Director to provide a reasonable period following the election by an eligible CSRS employee to transfer to FERS for that

employee to make an election to contribute to the Thrift Savings Plan.

(b) *Individual election period.* Notwithstanding § 1600.2(c), each CSRS employee who transfers to FERS may make an election to contribute to the Thrift Savings Plan at the same time the individual elects to become subject to FERS and for 30 calendar days after the effective date of such election. The election options set forth in § 1600.4 shall be available to each such individual, and elections shall be made by the method described in § 1600.6. An election to contribute to the Thrift Savings Plan shall become effective no later than the first day of the first pay period following the acceptance of the election form by the employing agency. Such individual shall be subject to all provisions of this part except as limited by § 1600.10(c).

(c) Beginning upon the effective date of the employee's election to transfer to FERS, until the employee makes an election to contribute to the Thrift Savings Plan under paragraph (b) of this section, the rate of contribution as a CSRS employee will be considered to be the rate of contribution as a FERS employee. The preceding sentence shall not apply where the CSRS employee's contribution rate was 7.5%. In such case, until the employee elects otherwise, the employee's FERS contribution rate shall be 7%.

§ 1600.13 Contributions by Civil Service Retirement System employees.

(a) *General.* 5 U.S.C. 8351 permits CSRS employees to elect to contribute to the Thrift Savings Plan for investment in the Government Securities Investment Fund only. The initial open season for CSRS employees who were employees as of March 31, 1987 shall be February 15, 1987 through April 30, 1987. The next open season for such employees with no intervening break in employment shall be May 15, 1987 through July 31, 1987. An election made during an open season by a CSRS employee shall become effective as described in § 1600.7.

(b) *Election upon reemployment.* A CSRS employee reemployed on or after April 1, 1987, who was not previously eligible to contribute to the Thrift Savings Plan, may make an election to

contribute as described in §1600.4(a)(1) during the second open season (determined in accordance with paragraph (d) of this section) beginning after the date of the employee's reemployment.

(c) A CSRS employee reemployed on or after April 1, 1987 who was previously eligible to contribute to the Thrift Savings Plan may make an election to contribute as described in §1600.4(a)(1) during the first open season (determined in accordance with paragraph (d) of this section) beginning after the date of the employee's reemployment.

(d) For a CSRS employee employed or reemployed during any open season, but whose employment or reemployment during such open season is prior to the election period occurring during the last calendar month of such open season, the open season during which the employee is employed or reemployed shall be considered the first open season.

(e) Applicability of other sections. All sections in subparts A through C shall apply to CSRS employees except for §§1600.3, 1600.4(b), and 1600.10 (a) and (c), or where otherwise specifically stated.

[52 FR 45802, Dec. 2, 1987, as amended at 53 FR 23379, June 22, 1988]

Subpart E—Elections by Certain Senior Officials Who Were Brought Under Social Security Coverage on January 1, 1984, Pursuant to the Social Security Act Amendments of 1983

§1600.14 Officials covered by Social Security who elected full CSRS coverage.

Officials who elected full coverage by both the CSRS and Social Security systems have the option pursuant to 5 CFR 846.201, to transfer to FERS. Alternatively, such officials may elect CSRS offset coverage or may elect to continue full CSRS coverage. If such officials transfer to FERS, they may make an election to participate in the Thrift Savings Plan under the rules and conditions described in §1600.12. If

such officials elect either full or offset CSRS coverage, they may not make any special election to participate in the Thrift Savings Plan as a result of such election and they will continue to be treated as CSRS employees under this part.

§1600.15 Officials covered by Social Security who elected to have no other retirement coverage.

Officials who have only Social Security coverage have the option pursuant to 5 CFR 846.201 to transfer to FERS. Alternatively, such officials may elect CSRS offset coverage or may elect to continue to have no retirement coverage other than Social Security. If such officials transfer to FERS, they may make an election to participate in the Thrift Savings Plan under the rules and conditions described in §1600.12. If such officials elect coverage under the CSRS offset system, they may make an election to participate in the Thrift Savings Plan as a CSRS employee at the same time as the election to become subject to the CSRS offset system, or within 30 calendar days after the effective date of such election. If such officials continue coverage under Social Security only, they may not participate in the Thrift Savings Plan.

§1600.16 Officials who elected interim CSRS and Social Security coverage.

Officials who elected interim CSRS and Social Security coverage have the option pursuant to 5 CFR 846.201 to transfer to FERS. Alternatively, such officials may elect CSRS offset coverage. If such officials transfer to FERS, they may make an election to participate in the Thrift Savings Plan under the rules and conditions described in §1600.12. If such officials elect coverage under the CSRS offset provisions, they may not make any special election to participate in the Thrift Savings Plan as a result of such election and they will continue to be treated as CSRS employees under this part.

Subpart F—Miscellaneous

§ 1600.17 CSRS employees who are appointed without a break in service to a position mandatorily covered by Social Security and who are consequently covered by either FERS or the CSRS offset system.

(a) CSRS employees who are appointed to a position mandatorily covered by Social Security, who are consequently required by law to become subject to FERS as a result of such appointment, and who do not have a break in employment of more than three calendar days between their old and new positions, will be eligible to make a new election to participate as a FERS employee in the Thrift Savings Plan under this part, under the rules and conditions described in § 1600.12.

(b) CSRS employees who are appointed to a position mandatorily covered by Social Security, who are required by law to become subject to the CSRS offset system as a result of such appointment, and who do not have a break in employment of more than three calendar days between the old and new positions will be eligible to participate as an employee under CSRS offset in this new position. They may not make any special election to participate in the Thrift Savings Plan as a result of such appointment. These officials shall continue to be treated as CSRS employees under this part.

§ 1600.18 Reemployed participants who had previously terminated TSP contributions.

An employee reemployed by an agency after terminating contributions to the Thrift Savings Plan pursuant to § 1600.5 shall be eligible to contribute to the Thrift Savings Plan under the provisions of § 1600.3(c) (in the case of FERS employees) and § 1600.13(c) (in the case of CSRS employees).

PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

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1601.1 Definitions.

Subpart B—Investing New Contributions

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- 1601.3 Erroneous investment of contributions.

Subpart C—Interfund Transfers

- 1601.4 Eligibility to redistribute money among the three investment funds.
- 1601.5 Methods of requesting an interfund transfer.
- 1601.6 Timing and effective dates of interfund transfers.
- 1601.7 Error correction.

AUTHORITY: 5 U.S.C. 8351, 8438, 8474 (b)(5) and (c)(1).

SOURCE: 56 FR 594, Jan. 7, 1991, unless otherwise noted.

Subpart A—Definitions

§ 1601.1 Definitions.

Account balance means the amount of money in a participant's Thrift Savings Plan account as of the effective date of an interfund transfer;

Acknowledgment of risk means an acknowledgment that any investment in the C Fund or the F Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

Agency Automatic (1%) Contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Agency Matching Contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Allocation election means an election by a participant of the percentages of new contributions to his or her account that are to be invested in the C Fund, F Fund and/or G Fund;

Board means the Federal Retirement Thrift Investment Board.

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

Calendar year means the period from and including January 1 through and including December 31 of any year;

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5,

U.S.C., and any equivalent Federal Government retirement plans;

CSRS employee or *CSRS participant* means any employee or participant covered by CSRS or an equivalent Federal Government retirement plan, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, 5 U.S.C. 8440a, or 5 U.S.C. 8440b.

Election period means the last calendar month of an open season and is the earliest period in which a choice to make or change an election (other than an election to terminate contributions) during that open season can become effective;

Election Form means Form TSP-1;

Employee Contributions means any contributions made pursuant to 5 U.S.C. 8432(a), 5 U.S.C. 8351, 5 U.S.C. 8440a, or 5 U.S.C. 8440b.

Employer Contributions means Agency Automatic (1%) Contributions and Agency Matching Contributions;

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

FERS employee or *FERS participant* means any employee or participant covered by FERS or an equivalent Federal 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);

Interfund transfer means the redistribution of a participant's existing account balance among the three investment funds;

Interfund Transfer Request means submission of a properly completed Interfund Transfer Request (Form TSP-30) or proper entry of an interfund transfer through use of the ThriftLine.

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

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

the Thrift Savings Plan, or to allocate new Employee and Employer Contributions to the Thrift Savings Plan among the investment funds;

Participant means any person with an account in the Thrift Savings Fund or who would have an account but for an employing agency error;

Source of contributions means Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions;

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

Thrift Savings Plan, TSP, 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 *et seq.*

ThriftLine means the automated voice response system by which TSP participants may, among other things, make interfund transfer requests by telephone.

TSP recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. As of the date of publication of this part 1606, the TSP recordkeeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

[56 FR 594, Jan. 7, 1991, as amended at 60 FR 36633, July 17, 1995]

Subpart B—Investing New Contributions

§ 1601.2 Investing new contributions in the TSP investment funds.

(a) *Removal of investment restrictions.* Pursuant to section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), Public Law 101-335, beginning with the first full pay period starting on or after January 1, 1991, all FERS and CSRS participants may invest all or any portion of their new Employee Contributions in the C Fund, the F Fund, and/or the G Fund. FERS participants may also invest their new Agency Automatic (1%) Contributions and Agency Matching Contributions in the C Fund, the F Fund, and/or the G Fund.

(b) *Allocation elections.* Each participant may indicate his or her choice of investment funds by completing an Election Form (TSP-1). The Election Form must be accepted by the employing agency in accordance with this part and with regulations then governing employee elections to contribute to the Thrift Savings Plan (5 CFR part 1600) and will be processed as provided in those regulations. The following rules apply to allocation elections:

(1) The percentages elected by a participant for investment of new contributions in the C Fund, F Fund and/or G Fund must be applied to Employee Contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions. Different percentage elections may not be made for different sources of contributions;

(2) Contributions may be directed to be invested in the C Fund, F Fund and/or G Fund only as a percentage of contributions to the TSP each pay period, and the allocation percentages may only be in 5 percent increments. The sum of the percentages elected for the three investment funds must equal 100%;

(3) Except in the case of a CSRS participant who has submitted an Election Form which contains an election to terminate contributions, an allocation election must be made on every Election Form in order for that Election Form to be accepted by the employing agency;

(4) In order to be accepted by the employing agency, an Election Form submitted by a FERS participant must:

(i) Contain an election to contribute a whole dollar amount or a percentage of basic pay each pay period; or

(ii) Contain an election to terminate Employee Contributions; or

(iii) Indicate that the participant has not been making Employee Contributions and that the participant is not choosing to start making Employee Contributions on that Election Form;

(5) In order to be accepted by the employing agency, an Election Form submitted by a CSRS employee must:

(i) Contain an election to contribute a whole dollar amount or a percentage of basic pay each pay period; or

(ii) Contain an election to terminate Employee Contributions;

(6) Any participant who elects to invest any contributions in the C Fund and/or F Fund must sign the acknowledgement on the Election Form that the investment is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment. If the acknowledgement of risk section of the Election Form is not signed when required, the Election Form will not be accepted;

(7) If an Election Form completed by a participant does not comply with all of the provisions of paragraphs (b)(1) through (b)(6) of this section, the Election Form will have no effect and must be returned to the participant by the employing agency. Except as provided in paragraph (c) of this section, no changes in the investment of new contributions will be made effective unless a properly completed Election Form is accepted in accordance with this Part and the regulations governing employee elections to contribute to the Thrift Savings Plan (5 CFR part 1600).

(8) An election to terminate Employee Contributions must, in accordance with 5 CFR 1600.7, be made effective so that the Employee Contributions will be terminated with respect to basic pay earned in the pay period following the pay period in which the employing agency accepts the Election Form. In the case of termination by a FERS participant, the allocation election on the Election Form must be made effective with respect to Agency Automatic (1%) Contributions for the pay period following the pay period in which the employing agency accepted the Election Form.

(9) All Agency Automatic (1%) Contributions made on behalf of FERS participants who do not have an allocation election in effect must be reported by the employing agency for investment in the G Fund;

(10) Except as provided in paragraph (c) of this section, once an Election Form becomes effective, it remains effective until superseded by a subsequent Election Form or until the employee separates from service.

(c) *Transition rule.* Beginning with the first full pay period starting on or after January 1, 1991, all new contributions to any participant's account which are made pursuant to an Election Form that was made effective prior to the first full pay period starting on or after January 1, 1991, must be reported by the employing agency for investment in the G Fund unless the participant has made a different allocation election during the open season commencing November 15, 1990 and ending on January 31, 1991, which is effective as of the first full pay period starting on or after January 1, 1991. Where contributions to a participant's account are invested in the G Fund pursuant to this paragraph, new contributions to the participant's account must continue to be reported by the employing agency for investment in the G Fund unless and until a new allocation election is made effective. For open seasons subsequent to the open season commencing November 15, 1990 and ending on January 31, 1991, a participant who does not wish to change his or her current allocation election does not need to submit a new Election Form.

(d) *Contributions for pre-1987 service.* Any other provision of this section notwithstanding, any Agency Automatic (1%) Contributions made pursuant to 5 U.S.C. 8432(c)(3) must be reported by the employing agency for investment in the G Fund, regardless of any allocation election that may be in effect at the time the contribution is made.

§ 1601.3 Erroneous investment of contributions.

Where employing agency errors have caused money to be invested in an incorrect investment fund, correction of such error must be accomplished exclusively through the procedures described in 5 CFR part 1606.

Subpart C—Interfund Transfers

§ 1601.4 Eligibility to redistribute money among the three investment funds.

(a) Subpart C of this part applies only to redistributing participants' existing account balances among the C Fund, F Fund, and G Fund. Subpart C

of this part does not apply to participants' choice of the investment funds in which new contributions are to be invested; those choices are covered in subpart B of this part.

(b) *Removal of investment restrictions.* Pursuant to section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), Public Law 101-335, starting December 31, 1990 FERS and CSRS participants may, in accordance with this part, invest all or any portion of their account balances in the C Fund, F Fund, or G Fund. Interfund transfer elections will be applied to participants' Employee Contributions, Agency Automatic (1%) Contributions, Agency Matching Contributions, and earnings attributable to all three sources of contributions.

[56 FR 594, Jan. 7, 1991, as amended at 60 FR 47837, Sept. 14, 1995]

§ 1601.5 Methods of requesting an interfund transfer.

(a) To make an interfund transfer, participants may either submit to the TSP recordkeeper a properly completed Interfund Transfer Request (Form TSP-30), or may enter the interfund transfer request over the telephone by using the ThriftLine. Forms TSP-30 generated prior to October 1990, which were preprinted with a participant's name and address, described restrictions on the amounts which could be invested in the C Fund and the F Fund, and specified an effective date for the interfund transfer, are obsolete forms. They will be rejected by the TSP recordkeeper if submitted to make an interfund transfer request. Similarly, Form TSP-30-S, which was designed for use only by certain FERS participants to make interfund transfers effective as of the end of December 1990, are obsolete forms which will be rejected by the TSP recordkeeper if submitted to make an interfund transfer request.

(b) To make an interfund transfer request, a participant must designate the percentages of his or her account balance that are to be invested in the C Fund, the F Fund, and/or the G Fund. The percentages selected by the participant must be in multiples of 5 percent and must total 100 percent. An interfund transfer request has no effect

on contributions made by a participant after the effective date of the interfund transfer (as determined in accordance with § 1601.6); such subsequent contributions will continue to be allocated among the investment funds in accordance with the participant's election under subpart B of this part.

(c) The percentages elected by the participant will be applied to the participant's account balance attributable to each source of contributions as of the effective date of the interfund transfer, as determined in accordance with § 1601.6.

(d) Participants who have at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund are eligible to make interfund transfer requests using the ThriftLine since they must, at some previous time, have submitted an Acknowledgment of Risk; such participants need not, if using Form TSP-30 to make a written interfund transfer request, complete the section of the form that contains the acknowledgment of risk. Participants who have not at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund are not eligible to make interfund transfers using the ThriftLine until a properly completed Acknowledgment of Risk for ThriftLine Interfund Transfer (Form TSP-32) has been received by the TSP recordkeeper. Participants who have not at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund must complete the Acknowledgment of Risk section of Form TSP-30 if they make a written interfund transfer request, unless a properly completed Form TSP-32 has been received by the TSP recordkeeper.

(e) An Interfund Transfer Request (Form TSP-30) that has been submitted to the TSP recordkeeper will not be processed and will have no effect, if:

(1) It is not signed and dated, or otherwise is not properly completed in accordance with the instructions on the form; or

(2) In the case of a participant who has not previously invested any portion of his or her TSP account in the C Fund or the F Fund and for whom a properly completed Form TSP-32 has

not been received by the TSP recordkeeper, the acknowledgment of risk section of the Form TSP-30 is not signed; or

(3) The participant is not otherwise eligible to make an interfund transfer (e.g., because he or she is scheduled for a withdrawal of the entire account balance).

(f) If a Form TSP-30 is rejected, the form will have no effect. The participant will be provided with a brief written statement of the reason the form was rejected.

[60 FR 36633, July 17, 1995]

§ 1601.6 Timing and effective dates of interfund transfers.

(a) *Annual limit.* A participant may have no more than twelve interfund transfers made effective during any calendar year, one in each calendar month.

(b) *Effective dates.* Interfund transfer requests received by the TSP recordkeeper (whether by Form TSP-30 or on the ThriftLine) on or before the 15th day of a month (or, if the 15th day is not a business day, by the next business day) shall be effective as of the end of the month during which the interfund transfer request was received. Interfund transfer requests received by the TSP recordkeeper after the 15th day of a month (or, if applicable, by the next business day) will be effective as of the end of the month following the month during which the interfund transfer request was received. Account balances that are reallocated among the investment funds effective as of the end of any month will reflect the effects of all other account activity posted to the account effective during or as of the end of that month.

(c) *Multiple interfund transfer requests.*

(1) If two or more properly completed interfund transfer requests with different dates (as determined by paragraph (c)(3) of this section) are received for the same participant after the 15th day of one month (or, if applicable, after the next business day), but on or before the 15th day of the next month (or, if applicable, the next business day), the interfund transfer request with the latest date (as determined by paragraph (c)(3) of this section) will be made effective and the earlier

interfund transfer request(s) will be superseded.

(2) If two or more properly completed interfund transfer requests with the same dates are received for the same participant after the 15th day of one month (or, if applicable, after the next business day), but on or before the 15th day of the next month (or, if applicable, the next business day), the following rules shall apply:

(i) If one or more of the interfund transfer requests was submitted using the ThriftLine and one or more was made on Form TSP-30, the request(s) made on the ThriftLine will supersede the request(s) made on Form TSP-30;

(ii) If more than one of the interfund transfer requests were made on the ThriftLine, the request entered at the latest time of day will supersede the earlier request(s); and

(iii) If more than one of the interfund transfer requests were submitted using Form TSP-30, all such forms will be rejected, unless they all contain identical percentage allocations among the TSP investment funds, in which case one will be accepted.

(3) For purposes of determining the date of an interfund transfer request:

(i) The date of an interfund transfer request made on the ThriftLine is the date of its telephone entry;

(ii) The date of an interfund transfer request made on Form TSP-30 is the signature date set forth on the form by the participant; and

(iii) Central time will be used for determining the date on which a transaction is entered on the ThriftLine.

(d) *Cancellation of interfund transfer requests.* Interfund transfer requests may be canceled either in writing or by entering the cancellation of the ThriftLine.

(1) *Cancellation by letter.* A participant may cancel an interfund transfer request by submitting a letter to the TSP recordkeeper requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation letter must be received on or before the 15th day of the month as of the end of which the interfund transfer is to be effective (or, if applicable, by the next

business day). Unless the letter states unambiguously the specific interfund transfer request it seeks to cancel, the written cancellation will apply to any interfund transfer request with a date (as determined under paragraph (c)(3) of this section) before the date of the cancellation letter. If the date of a cancellation letter is the same as the date of an interfund transfer request and the request was made on Form TSP-30, the Form TSP-30 will be canceled; if the request was made on the ThriftLine it will only be canceled if the written cancellation specifies the date of the ThriftLine request to be canceled.

(2) *Cancellation on the ThriftLine.* (i) An interfund transfer request may also be canceled by entering the cancellation on the ThriftLine on or before the 15th day of the month (or, if applicable, the next business day) as of the end of which the interfund transfer is to be effective. A cancellation entered on the ThriftLine will apply to a pending interfund transfer request entered on the ThriftLine before the entry of the cancellation. A cancellation entered on the ThriftLine can only apply to interfund transfer requests submitted on Forms TSP-30 that were:

(A) Dated on or before the date of the cancellation; and

(B) Received and entered into the TSP recordkeeping system before the cancellation is attempted on the ThriftLine.

(ii) The Board cannot guarantee that the TSP recordkeeper will enter Forms TSP-30 into the TSP recordkeeping system before the 15th day of the month, regardless of the date the Form TSP-30 may have been received. Thus, participants cannot rely on the ThriftLine to cancel an interfund transfer request that was submitted on Form TSP-30, and participants are discouraged from attempting to do so. The Board is not responsible for any consequences of a participant's inability to cancel on the ThriftLine an interfund transfer request submitted on Form TSP-30.

[60 FR 36633, July 17, 1995]

§ 1601.7 Error correction.

Errors in processing interfund transfers will be corrected in accordance

with the Error Correction Regulations found at 5 CFR part 1605.

PART 1603—VESTING

Sec.

1603.1 Definitions.

1603.2 Basic vesting rules.

1603.3 Service requirements.

AUTHORITY: 5 U.S.C. 8432(g), 8432b(h)(1), 8474(b)(5) and (c)(1).

SOURCE: 52 FR 29835, Aug. 12, 1987, unless otherwise noted.

§ 1603.1 Definitions.

Terms used in this part shall have the following meaning:

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1);

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

CSRS employee means any employee, Member, or participant covered by CSRS, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, or 5 U.S.C. 8440a to 8440d;

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

FERS employee means an employee, Member, or participant covered by FERS;

First conversion contributions refers to the retroactive agency contributions, including interest on these contributions, made under 5 U.S.C. 8432(c)(3)(C) to the TSP accounts of employees who were automatically converted to the Federal Employees' Retirement System on January 1, 1987;

Individual account means the total of all sums contributed to the Thrift Savings Plan by or on behalf of a CSRS employee or FERS employee, plus earnings allocated to the employee's account under 5 CFR part 1645;

Separation date means the effective date of an employee's separation from Government service;

Separation from Government service has the same meaning as provided in 5 CFR 1650.3;

Service means:

(1) Any non-military service that is creditable under either 5 U.S.C. chapter 83, subchapter III, or 5 U.S.C. 8411, provided however, that such service is to be determined without regard to any time limitations, any deposit or redeposit requirements contained in those statutory provisions after performing the service involved, or any requirement that the individual give written notice of that individual's desire to become subject to the retirement system established by 5 U.S.C. chapters 83 or 84; or

(2) Any military service creditable under the provisions of 5 U.S.C. 8432b(h)(1) and the regulations issued at 5 CFR part 1620, subpart H;

Vested means those amounts in an individual account which are nonforfeitable; and

Year of service means one full calendar year of service.

[62 FR 33968, June 23, 1997]

§ 1603.2 Basic vesting rules.

(a) All amounts in a CSRS employee's individual account are immediately vested.

(b) Except as provided in paragraph (c) of this section, all amounts in a FERS employee's individual account (including all first conversion contributions) are immediately vested.

(c) Except as provided in paragraph (d) of this section, upon separation from Government service without meeting the applicable service requirements of § 1603.3, a FERS employee's agency automatic (1%) contributions and attributable earnings will be forfeited.

(d) If a FERS employee dies (or died) after January 7, 1988, without meeting the applicable service requirements set forth in § 1603.3, the agency automatic (1%) contributions and attributable earnings in his or her individual account are deemed vested and shall not be forfeited. If a FERS employee died on or before January 7, 1988, without meeting those service requirements, his or her agency automatic (1%) contributions and attributable earnings are forfeited to the Thrift Savings Plan.

[52 FR 29835, Aug. 12, 1987, as amended at 62 FR 33969, June 23, 1997]

§ 1603.3 Service requirements.

(a) Except as provided under paragraph (b) of this section, FERS employees will be vested in their agency automatic (1%) contributions and attributable earnings upon separating from Government only if, as of their separation date, they have completed three years of service.

(b) FERS employees will be vested in their agency automatic (1%) contributions and attributable earnings upon separating from Government service if, as of their separation date, they have completed two years of service and they are serving in one of the following positions:

(1) A position in the Senior Executive Service as a non-career appointee (as defined in 5 U.S.C. 3132(a)(7));

(2) Positions listed in 5 U.S.C. 5312, 5313, 5314, 5315 or 5316;

(3) A position placed in level IV or level V of the Executive Schedule, pursuant to 5 U.S.C. 5317;

(4) A position in the Executive Branch which is excepted from the competitive service by the Office of Personnel Management because of the confidential and policy-determining character of the position; or

(5) A Member of Congress or a Congressional employee.

[52 FR 29835, Aug. 12, 1987, as amended at 60 FR 24535, May 9, 1995; 62 FR 33969, June 23, 1997]

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

Subpart A—Definitions

Sec.

1605.1 Definitions.

Subpart B—Employing Agency Errors

1605.2 Makeup of missed or insufficient contributions.

1605.3 Removal of erroneous contributions.

1605.4 Back pay awards and other retroactive pay adjustments.

1605.5 Misclassification of retirement coverage.

1605.6 Procedures for claims against employing agencies; time limitations.

Subpart C—Board or TSP Recordkeeper Errors

1605.7 Plan-paid lost earnings and other corrections.

1605.8 Claims for correction of Board or TSP Recordkeeper errors; time limitations.

Subpart D—Miscellaneous Provisions

1605.9 Miscellaneous provisions.

AUTHORITY: 5 U.S.C. 8351 and 8474.

SOURCE: 61 FR 68472, Dec. 27, 1996, unless otherwise noted.

Subpart A—Definitions

§ 1605.1 Definitions.

The following definitions apply for purposes of this part:

Account or *TSP account* means a participant's account in the Thrift Savings Plan;

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432 (c)(1) or (c)(3);

Agency contributions means agency automatic (1%) contributions and agency matching contributions;

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

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 required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the CSRS or the FERS, as the case may be;

Board means the Federal Retirement Thrift Investment Board;

Board error means any act or omission by the Board that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants (including, but not limited to, TSP communications materials and other publications);

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 Federal Government retirement plan;

CSRS employee or *CSRS participant* means any employee, member, or participant covered by CSRS, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, or 5 U.S.C. 8440a through 8440d;

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8432(a), 5 U.S.C. 8351 or 5 U.S.C. 8440a through 8440d;

Employer contributions means agency automatic (1%) contributions and agency matching contributions;

Employing agency means any entity that provides or has provided pay to an individual, thereby incurring responsibility for submitting to the Thrift Savings Fund contributions made by or on behalf of that individual; any entity responsible for submitting TSP loan payments on behalf of an individual; or any other entity that has employed an individual and has provided information that affects or has affected that individual's TSP account;

Employing agency error means any act or omission by an employing agency that is not in accordance with all applicable statutes, regulations, or administrative procedures, including internal procedures promulgated by the employing agency and TSP procedures provided to employing agencies by the Board or TSP recordkeeper;

Executive Director means the Executive Director of the Board under 5 U.S.C. 8474;

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

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

FERS employee or *FERS participant* means any employee, member, or participant covered by FERS;

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

Interfund transfer means the movement of all or a portion of a participant's existing account balance among the TSP investment funds;

Investment fund means the C Fund, the F Fund, the G Fund, and any other

TSP investment funds created subsequent to December 27, 1996.

Investment fund election means a choice by a participant concerning how TSP contributions shall be allocated among the TSP investment funds;

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings and to determine the investment fund in which money would have been invested had an error not occurred;

Makeup contributions means employee or employer contributions that are made for an earlier period during which they would have been made but for an employing agency error;

Negative adjustment record means a data record submitted by an employing agency to remove money from a participant's account;

Open season means the period during which participants may choose to begin making contributions to the TSP, to change or discontinue the amount currently being contributed to the TSP (without losing the right to recommence contributions the next open season), or to allocate prospective contributions to the TSP among the investment funds;

Participant means any person with an account in the TSP, or who would have an account in the TSP but for an employing agency error;

Recordkeeper error means any act or omission by the TSP recordkeeper that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants (including, but not limited to, TSP communications materials and other publications);

Source of contributions means either employee contributions, agency automatic (1%) contributions, or agency matching contributions;

Thrift Savings Plan, TSP, or Plan means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99-335, 100 Stat. 514, which has been codified, as amended, primarily at 5 U.S.C. 8401-8479; and

TSP Recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the

TSP. As of the effective date of these regulations, the TSP recordkeeper is the National Finance Center, Office of the Chief Financial Officer, United States Department of Agriculture, located in New Orleans, Louisiana.

Subpart B—Employing Agency Errors

§ 1605.2 Makeup of missed or insufficient contributions.

(a) *Applicability.* This section applies whenever, as the result of an employing agency error, a participant does not receive all of the contributions to his or her account to which the participant is entitled. This includes, but is not limited to, situations in which an employing agency error prevents a participant from making an election to contribute to the TSP, the employing agency erroneously fails to implement a contribution election properly submitted by a participant, the employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or the employing agency erroneously contributes less to the TSP than it would have contributed had the error not occurred. The corrections required by this section must be made in accordance with this part and procedures provided to employing agencies, from time to time, by the Board or the TSP recordkeeper in bulletins or other guidance. It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to correction under this section.

(b) *Missed employer contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required to be made under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required to be made under 5 U.S.C. 8432(c)(2) based on employee contributions that have been made, or contributions required to be made under 5 U.S.C. 8432(c)(3), then:

(1) The employing agency must promptly submit, in a lump sum, all such missed contributions to the TSP record keeper on behalf of the affected participant. Makeup contributions must be allocated by the employing agency among the TSP investment

fund(s) using the participant's current investment fund election at the time the makeup contributions are made. If no such election is on file, the contributions will be reported by the employing agency for investment in the G Fund.

(2) If applicable, the employing agency must also submit any lost earnings records required under 5 CFR Part 1606.

(c) *Missed employee contributions.* Within 30 days of receiving information from his or her employing agency that indicates that the employing agency acknowledges that an error has occurred that has caused less employee contributions to be made to the participant's account than would have been made had the error not occurred, a participant may elect to establish a schedule of makeup contributions to replace the missed contributions through future payroll deductions, in addition to any regular TSP contributions that the participant is entitled to make. The following rules apply to makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the amount of contributions to be made each pay period over the duration of the schedule. The contribution amount per pay period may vary during the course of the schedule, but the amounts to be contributed should be established when the schedule is created. The schedule may not exceed four times the number of pay periods over which the errors occurred.

(2) The employing agency may, but need not, set a ceiling on the length of the schedule of makeup contributions which is less than four times the number of pay periods over which the errors being corrected occurred. The ceiling may not, however, be less than twice the number of pay periods over which the errors being corrected occurred.

(3) The employing agency must implement the schedule of makeup contributions as soon as practicable after the participant has made an election to implement a makeup schedule.

(4) Makeup contributions will not be considered in applying the maximum amount per pay period that a participant is permitted to contribute to the TSP (e.g., 5% of basic pay for CSRS

participants, 10% of basic pay for FERS participants), but will be included for purposes of applying the annual limits contained in 26 U.S.C. 402(g)(1) and 26 U.S.C. 415.

(5) When establishing a schedule of makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions, would exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made.

(i) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit(s) contained in I.R.C. 402(g) and 415.

(ii) A schedule of makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

(6) A participant may elect to terminate a schedule of makeup contributions at any time, but may not elect to make partial payments under the schedule. Any such termination is irrevocable. If a participant separates from employment that makes the participant eligible to contribute to the TSP, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck. No contributions may be made other than by payroll deduction from pay that constitutes basic pay.

(7) To the extent a participant makes up missed employee contributions, the employing agency must contribute any agency matching contributions that would have been made had the employing agency error that caused the missed employee contributions not been made. The agency matching contributions must be made in installments over the course of the schedule

of makeup contributions. The participant may not receive matching contributions associated with any employee contributions that are not made up. If the makeup contributions are suspended in accordance with paragraph (c)(5) of this section, the payment of agency matching contributions must also be suspended.

(8) Makeup contributions must be reported by the employing agency for investment among the TSP investment fund(s) using the participant's current investment fund election at the time the makeup contributions are made. If no such election is on file, the contributions must be reported by the employing agency for investment in the G Fund.

(9) Where a participant has transferred to a different employing agency from the one at which the participant was employed at the time of the missed contributions, it remains the responsibility of the former employing agency to determine whether an employing agency error is responsible for the missed contributions. If it is determined that such an error has occurred, the current agency must take any necessary steps to correct the error. The current agency may seek reimbursement from the former agency of any amount that would have been paid by the former agency had the error not occurred.

(10) Makeup employee contributions may be made only by payroll deduction from pay that constitutes basic pay. Contributions by check, money order, cash, or other form of payment, directly from the participant to the TSP, or from the participant to the employing agency for deposit to the TSP, are not permitted.

(11) If applicable, the employing agency must submit any lost earnings records required under 5 CFR Part 1606.

[61 FR 68472, Dec. 27, 1996, as amended at 63 FR 24380, May 1, 1998]

§1605.3 Removal of erroneous contributions.

(a) *Applicability.* This section applies whenever, as a result of an employing agency error, a TSP account contains money that should not have been contributed to the account and which, therefore, must be removed from the

account. This includes, but is not limited to, situations in which, because of an employing agency error, employee contributions in excess of those elected by a participant are contributed to the participant's account, employee contributions (and any associated agency matching contributions) are made on behalf of a participant who did not elect to have any contributions made, excess employer contributions are made to a participant's account, or employee contributions are made in excess of the amount permissible because of an improper retirement classification that is subsequently corrected (e.g., a CSRS employee is permitted to make contributions in excess of 5% of basic pay during a temporary misclassification as FERS).

(b) *Negative adjustment records.* (1) In order to remove money from a participant's account, the employing agency must submit, for each pay date involved, a negative adjustment record indicating the amount of the contribution being removed, the pay date for which it was made, the source(s) of the contributions involved (i.e., employee contributions, agency automatic (1%) contributions or agency matching contributions), and the investment fund or funds to which the erroneous contribution was made. A negative adjustment record may be for all or a part of the contributions made for the applicable pay date, investment fund and source of contributions, but for each investment fund and source of contributions the negative adjustment may not exceed the amount of contributions made for that pay date.

(2) Negative adjustment records must be submitted in accordance with this part and with procedures provided to employing agencies from time to time by the Board or the TSP recordkeeper in bulletins or other guidance. Negative adjustment records must also include any additional information required in any such bulletins or other guidance.

(c) *Processing negative adjustment records.* Negative adjustment records will be processed in accordance with the following rules:

(1) Negative adjustment records received and accepted by the TSP recordkeeper by the second-to-last business

day of a month will be processed effective as of the end of that month. Negative adjustment records accepted by the TSP recordkeeper on the last business day of a month will be processed effective as of the end of the following month.

(2) When negative adjustment records are processed, the TSP recordkeeper will determine separately, for each pay date and source of contributions involved, the amount of any investment gains or losses on the money the agency seeks to remove from the account and the investment fund or funds in which that money is currently invested. In making these determinations, investment gains and losses from the different TSP investment funds will be netted against each other. Investment gains and losses for different sources of contributions will be treated separately; gains and losses for different sources of contributions will not be netted against each other. The TSP recordkeeper will take into consideration any interfund transfers made effective on or after the date on which the erroneous contribution was processed.

(3)(i) Multiple negative adjustment records in the same processing cycle will be processed in the order of the applicable pay dates, starting with the earliest pay date.

(ii) If the participant's account does not have sufficient funds in the applicable source of contributions to pay the amount of a negative adjustment, the adjustment to that source of contributions will not be processed. Funds may not be taken from another source of contributions to cover the negative adjustment. The employing agency may, at a later date, resubmit the record that was not processed. It will be processed if, at that time, there are sufficient funds for the applicable source of contributions.

(iii) If there are sufficient funds in the applicable source of contributions to pay the amount required by a negative adjustment record, but any of the investment funds does not have sufficient money to pay the portion that is attributable to that investment fund (e.g., because of a loan), then the amount required will be removed from the other investment fund(s), *pro rata*,

based on the participant's total account balance in each investment fund for that source of contributions.

(d) *Employee contributions.* The following rules apply to removal of employee contributions from a participant's account:

(1) If there is a net investment gain on the erroneous employee contribution made for a pay date, then the full amount of the erroneous contribution will be returned to the employing agency. Subject to §1605.9(a), the investment earnings on the erroneous contribution will remain in the participant's account.

(2) If there is a net investment loss on the erroneous employee contribution made for a pay date, then the employing agency will receive only the amount of the erroneous contribution reduced by the investment loss. However, the investment loss does not affect the employing agency's obligation to refund to the participant the full amount of the erroneous contribution.

(3) If an employing agency removes erroneous employee contributions from a participant's account, it must also remove, under paragraph (e) of this section, any associated agency matching contributions.

(e) *Employer contributions.* The following rules apply to removal of employer contributions from a participant's account:

(1) Employer contributions will only be returned to the employing agency if the negative adjustment record submitted to remove the contributions is processed within one year of the date the contribution was processed. If more than one year has elapsed when the negative adjustment record is processed, the amount of the employer contribution plus (or minus) any investment gains (or losses) will be removed from the participant's account and used to offset TSP administrative expenses rather than returned to the employing agency. The employing agency's obligation to submit negative adjustment records to remove erroneous contributions from a participant's account is not affected by whether the contribution has been in the account for more or less than one year at the time the negative adjustment record is to be processed.

(2) Subject to paragraph (e)(1) of this section, if there is a net investment gain within a source of contributions for an erroneous employer contribution, then the employing agency will receive the full amount of the negative adjustment submitted. The earnings attributable to the erroneous contributions in the applicable source of contributions will be removed from the participant's account and used to offset TSP administrative expenses.

(3) Subject to paragraph (e)(1) of this section, if there is a net investment loss within a source of contributions for an erroneous employer contribution, then the employing agency will receive only the amount of the erroneous contribution reduced by the investment loss.

§1605.4 Back pay awards and other retroactive pay adjustments.

(a) *Participant not employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was separated from Government employment:

(1) If the participant is reinstated to Government employment, then immediately upon reinstatement the employing agency must give the participant the opportunity to submit a contribution election form (Form TSP-1) to make current contributions. The effective date of the form will be the first day of the first full pay period in the most recent TSP election period. If the participant is reinstated 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.

(2) The participant must be given the following options for electing makeup contributions:

(i) If the participant had a valid contribution election form (Form TSP-1) on file when he or she separated, upon the participant's reinstatement to Government employment that election form will be reinstated for purposes of makeup contributions, unless a new contribution election form is submitted to terminate all makeup 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 contributions for the period of separation under the reinstated contribution election form, the participant may submit a new election form for any open season that occurred during the period of separation. However, the investment allocation on each Form TSP-1 for the period of separation must be the same as the investment allocation on the current Form TSP-1.

(3) Lost earnings will be calculated and credited to the participant's account, in accordance with 5 CFR Part 1606, using the rates of return for the G Fund, unless the participant 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 participant 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 by the interfund transfer. 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.

(b) *Participant employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was not separated from Government employment:

(1) The participant will only be entitled to makeup contributions for the period covered by the back pay award or retroactive pay adjustment if, for that period, the participant had designated a percentage of basic pay to be contributed to the TSP or had designated a dollar amount of contributions each pay period which had to be reduced (because of an applicable 5% or 10% limit on contributions per pay period) as a result of the reduction in pay

that is made up by the back pay award or other retroactive pay adjustment.

(2) The employing agency must compute the amount of additional employee contributions that would have been contributed to the participant's account had the action leading to the back pay award or other retroactive pay adjustment not occurred. The employing agency must also compute the amount of agency matching contributions and agency automatic (1%) contributions that would have been payable had that action not occurred.

(c)(1) Makeup employee contributions required under paragraphs (a) and (b) of this section must be computed before the back pay or other retroactive pay adjustment is made. The makeup employee contributions must be deducted from the back pay or other retroactive pay adjustment and contributed to the TSP. However, contributions must not be made that would cause the participant to exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year.

(2)(i) If employee contributions are deducted from a back pay award or other retroactive pay adjustment, the employing agency will be responsible for contributing the associated agency matching contributions at the same time the employee contributions are made. Regardless of whether a participant elects makeup employee contributions, the employing agency must make, in a lump sum payment, all appropriate agency automatic (1%) contributions associated with the back pay award or other retroactive pay adjustment.

(ii) Any makeup contributions (both employee and employer) associated with a back pay award or other retroactive pay adjustment must be reported by the employing agency for investment among the TSP investment fund(s) using the participant's investment fund election in effect at the time the makeup contributions are made. If no such election is on file, the

contributions must be reported by the employing agency for investment in the G Fund.

(d) The employing agency must pay any lost earnings on TSP contributions derived from back pay awards or other retroactive pay adjustments that are required to be paid under 5 CFR Part 1606.

(e) If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, then the participant will have the option, which must be exercised by notice to the Board within 90 days of reinstatement, to restore to his or her TSP account the amount withdrawn. The right to restore the withdrawn funds will expire if the notice is not provided to the Board within 90 days of reinstatement. No earnings will be paid on any restored funds.

[61 FR 68472, Dec. 27, 1996, as amended at 63 FR 24381, May 1, 1998]

§ 1605.5 Misclassification of retirement coverage.

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected—

(1) The employing agency must, under § 1605.3, remove all employee contributions that exceeded 5% of basic pay for the pay period(s) involved, and refund to the participant the amount contributed. In addition, the employing agency must submit negative adjustment records to remove all employer contributions made to the participant's account during the period of misclassification that have been in the account for less than one year. The participant may choose whether or not he or she wishes to have the remainder of the employee contributions made during the period of misclassification removed from his or her account and refunded to the participant; and

(2) If the participant's account at any time contains no employer contributions that have been in the account for less than one year, the TSP record-keeper will remove from the account any employer contributions that have

been in the account for one year or more (and associated earnings), and will use such amounts to offset TSP administrative expenses.

(b) If a FERS participant is misclassified as a CSRS participant, when the misclassification is corrected he or she may not elect to have the contributions made while classified as CSRS removed from his or her account. The employing agency must make in a lump sum payment, pursuant to § 1605.2(b)(1), the appropriate agency automatic (1%) contributions and agency matching contributions on the employee contributions that were made while the participant was misclassified as CSRS. The participant may also elect to make, under § 1605.2(c), additional contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification. If such contributions are made, the employing agency must also submit any associated agency matching contributions and any lost earnings records required under 5 CFR Part 1606.

§ 1605.6 Procedures for claims against employing agencies; time limitations.

(a) *Agency procedures.* Each employing agency must establish procedures for participants to submit claims for correction under this subpart. Each employing agency's procedures must include the following:

(1) The employing agency will provide the participant with a decision on any claim within 30 days of receipt of the claim unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. Any decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial (including citations to any applicable statutes, regulations or procedures), a description of any additional material that would enable the participant to perfect his or her claim, and a statement of the steps to be taken to appeal the denial.

(2) The employing agency must permit a participant at least 30 days to appeal the employing agency's denial of all or any part of his or her claim for

correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial denial decision or in procedures promulgated by the agency. The participant may include with his or her appeal any documentation or comments that the participant deems relevant to the claim.

(3) The employing agency must issue a written decision on a timely filed appeal within 30 days of receipt of the appeal unless the employing agency provides the participant with good cause for taking a longer period to decide the appeal. The employing agency decision must include the reasons for the decision, as well as citations to any applicable statutes, regulations, or procedures.

(4) If the agency decision on the appeal is not issued in a timely manner, or if the appeal is denied in whole or in part, the participant will be deemed to have exhausted his or her administrative remedy and will be eligible to file suit against the employing agency under 5 U.S.C. 8477. There is no administrative appeal to the Board of a final agency decision.

(b) *Time limit for filing claims.* (1)(i) Upon discovery of administrative errors, employing agencies are required to promptly correct those errors under this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the employing agency, the affected participant may file a claim for correction with his or her employing agency. The claim must be filed within one year of the earlier of:

(A) Receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(B) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error.

(ii) For purposes of paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section, in the case of a participant who has been improperly classified as to retirement coverage, the receipt of a document indicating the participant's retirement code classification is not, in and of itself, sufficient to notify the participant that his or her retirement

classification is incorrect. However, receipt of a document indicating a change in retirement code classification, in addition to a written notice to the participant that the change may have implications for his or her TSP account, may be deemed by an employing agency to be sufficient to advise the participant that his or her retirement classification had been incorrect prior to the change. The one-year time limit will not commence with respect to retirement coverage misclassification errors unless and until the participant receives a written notice of the error that specifically mentions the TSP.

(2) If a participant fails to file a claim for correction of an administrative error in a timely manner (or fails to appeal a denial of a claim in a timely manner) under paragraph (b)(1) of this section, the agency may still correct any administrative error that is brought to or comes to its attention.

Subpart C—Board or TSP Recordkeeper Errors

§ 1605.7 Plan-paid lost earnings and other corrections.

(a) *Plan-paid lost earnings.* (1) Subject to paragraph (a)(2) of this section, if, because of an error committed by the Board or the TSP recordkeeper, a participant's account does not receive credit for earnings (which may be positive or negative) that it would have received had the error not occurred, the account will be credited with the difference between the earnings (if any) it actually received and the earnings it would have received had the error not occurred. The errors that warrant crediting of lost earnings under this paragraph (a) include, but are not limited to:

(i) Board or TSP recordkeeper delay in crediting contributions or other monies to a participant's account;

(ii) Improper issuance of a loan or withdrawal payment to a participant or beneficiary which requires the money to be restored to the participant's account; and

(iii) Investment of all or part of a participant's account in the wrong TSP investment fund(s) (e.g., improper

processing or failure to process an interfund transfer request).

(2) A participant's TSP account will not be credited with earnings under paragraph (a)(1) of this section if, during the period the participant's account received credit for less earnings than it would have received but for the Board or recordkeeper error, the participant had the use of the money on which the earnings would have accrued.

(3) In the case of an error described in paragraph (a)(1)(iii) of this section, the affected participant will, upon discovery of the error, be given a choice whether or not to have the error corrected. If the participant chooses correction, the account will be placed in the position it would have attained had the error not occurred, including crediting of earnings (positive or negative as the case may be) that would have accrued had the error not occurred and reallocation of the account balance among the investment funds in the proportions that would have existed had the error not occurred.

(4) Where the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP recordkeeper error, earnings under paragraph (a)(1) of this section will be computed for the relevant period based upon the investment funds in which the affected monies would have been invested had the error not occurred. If the period for which lost earnings are paid is a period for which the participant did not, and should not, have had an account in the TSP, then the earnings will be computed using the G Fund rate of return for the relevant period.

(b) *Reversal of loan distributions.* If, because of Board or TSP recordkeeper error, a TSP loan is declared a taxable distribution under circumstances that make such declaration inconsistent with FERSA, 5 CFR Part 1655, with the provisions of the documents (including instructions) signed by or provided to the participant in connection with the application for or issuance of the loan, or with other procedures established by the Board or TSP recordkeeper in connection with the TSP loan program, the taxable distribution will be reversed. The participant will be pro-

vided an opportunity to reinstate or repay in full the outstanding balance on the loan.

(c) *Other corrections.* The Executive Director may, in his discretion and consistent with the requirements of applicable law, correct any other errors not specifically addressed in this section or provide any other relief to a participant, including payment of lost earnings from the TSP, if the Executive Director determines that the correction or relief would serve the interests of justice, fairness, and equity among the participants of the TSP.

§ 1605.8 Claims for correction of Board or TSP Recordkeeper errors; time limitations.

(a) *Filing claims.* Claims for correction under this subpart may be submitted initially either to the TSP recordkeeper or the Board. The claim must be in writing and may be from the affected participant or beneficiary or from a representative of the participant or beneficiary. The written claim must state the basis for the claim.

(b) *Processing claims.* (1) If the initial claim is submitted to the TSP recordkeeper, the TSP recordkeeper may either respond directly to the participant or the person making the claim on behalf of the participant, or may forward the letter to the Board for response. The decision whether the TSP recordkeeper should respond directly or forward the claim to the Board will be made in accordance with guidance and procedures established by the Board or, if no such specific guidance is available, in consultation with the Board's staff. If the TSP recordkeeper responds to a participant's claim, and all or any part of the participant's claim is denied, the participant may request review by the Board within 90 days of the date of the recordkeeper's response.

(2) If the Board denies all or any part of a participant's claim (whether upon review of a TSP recordkeeper denial or upon an initial review by the Board), the participant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the participant does not submit to the Board a request for review of a claim denial by the TSP Recordkeeper within the 90 days permitted

under paragraph (b)(1) of this section, the participant shall not be deemed to have exhausted his or her administrative remedy.

(c) *Time limits for filing claims.* (1)(i) Upon discovery of errors subject to correction under this subpart, the Board or TSP recordkeeper will promptly correct such errors in accordance with this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the Board or TSP recordkeeper, the affected participant must file a claim for correction within one year of the earlier of:

(A) His or her receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(B) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error.

(ii) For purposes of paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this section, in the case of a participant whose retirement coverage has been improperly classified, the receipt of a document indicating the participant's retirement code classification is not, in and of itself, sufficient to notify the participant that his or her retirement code classification is incorrect.

(2) If a participant fails in a timely manner to file a claim for correction (or fails in a timely manner to request reconsideration of a claim) under paragraph (c)(1) of this section, the Board or TSP recordkeeper may still correct any administrative error that is brought to or comes to its attention.

Subpart D—Miscellaneous Provisions

§ 1605.9 Miscellaneous provisions.

(a)(1) If all employee contributions are removed from a participant's account under the rules set forth in this part, but earnings on any of those employee contributions or other residual amounts are left in the account, the earnings will remain in the account unless the participant was ineligible to have an account in the TSP at the time the earnings were credited to the account and remains ineligible. In that case, the earnings will be removed from the account and paid to the ineli-

gible participant. If earnings remain in the account under this paragraph (a), they will be subject to withdrawal from the participant's account upon separation from Federal employment under the same withdrawal rules as apply to any other money in a participant's account.

(2) If any residual earnings on employer contributions remain in a participant's account after all employer have been removed from the account, those residual earnings will be removed from the account and used to offset TSP administrative expenses.

(b) If a participant fails to participate in the TSP due to circumstances beyond his or her control but not due to circumstances attributable to employing agency, Board, or TSP recordkeeper error, the participant will be entitled to elect to participate effective not later than the first pay period after the participant submits a contribution election form (Form TSP-1), regardless of whether the form is submitted during an election period. Such belated elections will be permitted on a prospective basis only; no makeup contributions will be permitted under this part.

(c) If TSP contributions are invested in the wrong investment fund(s) because of employing agency error, that error may be corrected only in accordance with 5 CFR 1606.7. Such errors may not be corrected under this part.

(d)(1) The address for the TSP recordkeeper is: National Finance Center, TSP Service Office, Post Office Box 61500, New Orleans, LA 70161-1500.

(2) The address for the Board is: Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, DC 20005.

[61 FR 68472, Dec. 27, 1996, as amended at 62 FR 48936, Sept. 18, 1997]

PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS

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- 1606.14 Employing agency procedures.
- 1606.15 Time limits on participant claims.

AUTHORITY: 5 U.S.C. 8432a, 8474 (b)(5) and (c)(1).

SOURCE: 56 FR 606, Jan. 7, 1991, unless otherwise noted.

Subpart A—General Provisions

§ 1606.1 Purpose.

The purpose of this part 1606 is to implement section 2 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), Public Law 101-335, enacted July 17, 1990. The TSPTAA amended chapter 84 of title 5, United States Code by inserting section 8432a, authorizing the Executive Director to prescribe regulations pursuant to which employing agencies shall be required to pay to the Thrift Savings Fund amounts representing lost earnings caused by employing agency errors relating to the Thrift Savings Plan (TSP) described in subchapter III of chapter 84.

§ 1606.2 Definitions.

The following definitions apply for purposes of this part:

Agency Automatic (1%) Contributions means any contributions made under 5 U.S.C. 8432(c)(1);

Agency Matching Contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Board means the Federal Retirement Thrift Investment Board;

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 Federal Government retirement plan;

CSRS employee or *CSRS participant* means any employee, member, or participant covered by CSRS or an equivalent Federal Government retirement plan, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, under 5 U.S.C. 8440a, or under 5 U.S.C. 8440b.

Employee Contributions means any contributions made under 5 U.S.C. 8432(a), under 5 U.S.C. 8351, under 5 U.S.C. 8440a(a), or under 5 U.S.C. 8440b(a);

Employer Contributions means Agency Automatic (1%) Contributions and Agency Matching Contributions;

Employing agency means any entity that provides or has provided pay to an employee or member, thereby incurring responsibility for submitting to the Thrift Savings Fund contributions or loan payments made by or on behalf of that employee or member, or any other entity that has employed an employee or member and has provided information that affects or has affected that employee's or member's TSP account;

Employing agency error means any act or omission by an employing agency that is not in accordance with all applicable statutes, regulations, or administrative procedures, including TSP procedures provided to employing agencies by the Board or TSP record-keeper;

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

FERS employee or *FERS participant* means any employee, member, or participant covered by FERS or an equivalent Federal 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);

Interfund transfer means the movement of all or a portion of a participant's existing account balance among the three TSP investment funds;

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

Loan allotment means TSP loan payments that are deducted from a participant's paycheck to be deposited to that participant's TSP account;

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings and to determine the investment fund in which money would be invested had an error not occurred;

Negative adjustment record means a data record submitted by an employing agency indicating money to be removed from a participant's account;

Open season means the period during which participants may choose to begin making contributions to the Thrift Savings Plan, to change or discontinue (without losing the right to recommence contributions the next open season) the amount currently being contributed to the Thrift Savings Plan, or to allocate prospective contributions to the Thrift Savings Plan among the investment funds;

Participant means any person with an account in the Thrift Savings Fund, or who would have an account in the Thrift Savings Fund but for an employing agency error;

Payment record means a data record submitted by an employing agency indicating contributions to be deposited to a participant's account;

Payroll submission means an entire submission of one or more TSP payment records (whether submitted on magnetic tape, diskette, or paper forms such as Form TSP-5, Employee Data/Payment/Adjustment Record Input Form), accompanied by a Form TSP-2,

Certification of Transfer of Funds and Journal Voucher;

Received, with respect to TSP records or information provided by an employing agency, means receipt by the TSP recordkeeper of records or information that can be accepted and processed. For purposes of this definition, TSP records that are received by the TSP recordkeeper, but subsequently are deleted by the TSP recordkeeper because an error in the data prevented the record from processing, will not be deemed to have been received by the TSP recordkeeper;

Source of contributions means either Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions;

Submission or *submitted* means a transfer of data which has been received by the TSP recordkeeper;

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

Thrift Savings Plan, *TSP*, 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 *et seq.*;

Timely, with respect to loan allotments or TSP contributions other than those made pursuant to 5 U.S.C. 8432(c)(1) (B) or (C), means receipt of TSP payment records or loan allotments by the TSP recordkeeper no later than 12 days after the end of the pay period for which the contribution should have been made. With respect to TSP contributions made pursuant to 5 U.S.C. 8432(c)(1)(B) and (C), timely means receipt of TSP payment records by the TSP recordkeeper on or before April 16, 1987;

TSP Recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. As of the date of publication of this part 1606, the TSP recordkeeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

§ 1606.3 General rule.

Except as otherwise provided, employing agencies shall pay to the Thrift Savings Fund any amount, computed

by the TSP recordkeeper in a manner consistent with this part 1606, that is required to restore to the TSP account of the participant or participants involved earnings lost as a result of an employing agency error. Where lost earnings are required, the employing agency must, in accordance with this part 1606 and any instructions provided by the Board or the TSP recordkeeper, submit to the TSP recordkeeper all information and certification that is required to enable the TSP recordkeeper to compute the amount of lost earnings payable by the employing agency, and to charge that amount to the appropriate employing agency.

§ 1606.4 Applicability.

(a) *In general.* Except as otherwise provided, the provisions of this part 1606 apply in any case where, due to employing agency error, the Thrift Savings Fund has not invested or had the use of money that would have been invested in the Thrift Savings Fund had the employing agency error not occurred, or where the money would have been invested in a different investment fund had the error not occurred.

(b) *Back pay awards and other retroactive pay adjustments.* The application of this part 1606, as described in paragraph (a) of this section, includes TSP contributions derived from payments associated with back pay awards or other retroactive pay adjustments that are based on a determination that the employing agency paid a participant less than the full amount of basic pay to which the participant was entitled.

(c) *Timing of errors.* This part 1606 applies regardless of whether the employing agency error that caused the effects described in paragraph (a) of this section occurred prior to, at, or after the inception of the TSP.

(d) *De minimis rules.* Notwithstanding paragraphs (a) through (c) of this section or any other provision of this part 1606:

(1) Lost earnings shall not be payable where the amount of money for a source of contributions in a participant's account that is not invested in the Thrift Savings Fund due to an employing agency error, or that is invested in the wrong investment fund due to an employing agency error, is

less than one dollar (\$1.00) for that source of contributions. Where the employing agency error caused delayed or erroneous contributions for more than one pay period, this paragraph shall apply separately to each pay period involved.

(2) Where the employing agency error caused delay in submission of TSP payment records or loan allotments, lost earnings shall not be payable unless the belated contributions or loan allotments were received by the TSP recordkeeper more than 30 days after the pay date associated with the pay period for which the contributions or loan allotments would have been submitted had the employing agency error not occurred.

(3) For employing agency errors not covered by paragraph (d)(2) of this section, lost earnings shall not be payable unless, as the result of an employing agency error, money was not invested in the Thrift Savings Fund for a period extending more than 30 days after the date it would have been invested had the error not occurred.

(4) The 30-day requirements contained in paragraphs (d)(2) and (d)(3) of this section do not apply where, due to employing agency error, money in a participant's account has been invested in an incorrect investment fund.

(e) *Contributions for pre-1987 service.* This part does not apply to errors involving employing agency delay in submitting contributions required by 5 U.S.C. 8432(c)(3).

(f) *Contributions for service in January through March 1987.* Notwithstanding any other provision of this section, lost earnings shall be payable with respect to contributions made pursuant to 5 U.S.C. 8432(c)(1) (B) or (C) if the payment records containing those contributions were received by the TSP recordkeeper after April 30, 1987.

Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions

§ 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.

(a) If a participant receives pay, but as the result of an employing agency error all or any part of the Agency

Automatic (1%) Contributions associated with that pay to which the participant is entitled are not timely received by the TSP recordkeeper, then the belated contributions shall be subject to lost earnings. In such cases:

(1) The employing agency must, for each pay period involved, submit to the TSP recordkeeper a lost earnings record indicating the pay date for which the belated contribution would have been made had the error not occurred, the investment fund to which the belated contribution would have been deposited had the error not occurred, the amount of the belated contribution, and the pay date for which the belated contribution was actually made. If the belated contribution was actually deposited to an investment fund different from the investment fund to which it would have been deposited had the contribution been timely submitted, then the employing agency must submit an additional lost earnings record indicating the amount of the belated contribution, the pay date for which it was actually made, the investment fund to which it would have been deposited had the error not occurred, and the investment fund to which it was actually deposited;

(2) The TSP recordkeeper shall compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency pursuant to paragraph (a)(1) of this section, and shall also determine the investment fund or funds in which the belated contributions and associated earnings would currently be invested had the error not occurred. In performing the computation of lost earnings and determining the appropriate investment fund or funds, the TSP recordkeeper must take into consideration any interfund transfers made effective on or after the pay date for which the belated contribution would have been made if the error had not occurred, and which were made effective prior to the end of the month preceding the month during which the lost earnings record is processed. With respect to the period prior to December 31, 1990, the TSP recordkeeper shall also take into account the investment restrictions that were effective under 5

U.S.C. 8438 prior to the effective date of section 3 of the TSPTAA.

(3) Where the lost earnings computed in accordance with paragraph (a)(2) of this section are positive, the TSP recordkeeper shall charge the amount of lost earnings computed to the appropriate employing agency and shall credit that amount to the TSP account of the participant involved. If the lost earnings computed are negative, the amount computed will be removed from the participant's account and used to offset TSP administrative expenses;

(4) The TSP recordkeeper shall adjust the participant's account to reflect the investment funds in which the belated contributions and associated earnings would currently be invested if the error had not occurred, as determined in accordance with paragraph (a)(2) of this section.

(b) If a participant receives pay from which Employee Contributions were properly deducted, but as the result of an employing agency error all or any part of the associated Agency Matching Contributions to which the participant is entitled were not timely received by the TSP recordkeeper, then the belated contributions will be subject to lost earnings. In such cases, the procedures described in paragraphs (a)(1) through (a)(4) of this section will apply to the belated Agency Matching Contributions.

(c) If a participant receives pay from which Employee Contributions were properly deducted, but as the result of an employing agency error all or any part of those Employee Contributions were not timely received by the TSP recordkeeper, the belated contributions will be subject to lost earnings. In such cases, the procedures described in paragraphs (a)(1) through (a)(4) of this section will apply to the belated Employee Contributions.

(d) If a participant receives pay from which Employee Contributions should have been deducted, but as the result of employing agency error all or any part of those deductions were not made, then even if the participant makes up those Employee Contributions pursuant to part 1605, the belated Employee Contributions shall not be subject to

lost earnings. However, where the participant does make up the Employee Contributions pursuant to part 1605, the Agency Matching Contributions associated with those belated Employee Contributions (which must be made in accordance with part 1605) will be subject to lost earnings. With respect to such belated Agency Matching Contributions the procedures described in paragraphs (a)(1) through (a)(4) of this section shall apply.

§ 1606.6 Agency delay in paying employee.

Where, as the result of an employing agency error, a participant does not timely receive all or any part of the basic pay to which he or she is entitled, and as a result of that delay in receiving pay all or any part of the Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions are not submitted when they would have been had the employing agency error not occurred, all such belated Employee Contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions shall be subject to lost earnings. The procedures described in paragraphs (a)(1) through (a)(4) of § 1606.5 shall apply to all such belated contributions.

§ 1606.7 Contributions to incorrect investment fund.

(a) Where, as the result of an employing agency error, money was deposited to a participant's TSP account in an incorrect investment fund(s), the erroneous contribution shall be subject to lost earnings. In such cases:

(1) The employing agency must submit a lost earnings record indicating the amount of the contributions submitted to the incorrect investment fund(s), the pay date for which it was submitted, the investment fund(s) to which it would have been deposited had the employing agency error not occurred, and the investment fund(s) to which it was actually deposited. If the employing agency has, prior to January 1, 1991 or in contravention of paragraph (b) of this section, removed the contribution from the incorrect investment fund(s) using a negative adjustment record and redeposited the money to the investment fund(s) in which it

would have been invested had the error not occurred, the employing agency must also indicate on the lost earnings record when these actions were taken.

(2) The TSP recordkeeper shall compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency pursuant to paragraph (a)(1) of this section, and shall also determine the investment fund or funds in which erroneously invested contributions and associated earnings would currently be invested had the error not occurred. In computing lost earnings and determining the appropriate investment fund or funds, the TSP recordkeeper shall take into consideration any interfund transfers that were made effective on or subsequent to the date erroneous contribution was made, and that were made effective prior to the end of the month preceding the month during which the lost earnings record is processed. With respect to the period prior to December 31, 1990, the TSP recordkeeper shall also take into account the investment restrictions that were effective under 5 U.S.C. 8438 prior to the effective date of section 3 of the TSPTAA;

(3) Where the lost earnings computed in accordance with paragraph (a)(2) of this section are positive, the TSP recordkeeper shall charge the amount of lost earnings computed to the appropriate employing agency and shall credit that amount to the account of the participant involved. If the lost earnings computed are negative, the amount computed shall be removed from the participant's account and used to offset TSP administrative expenses;

(4) The TSP recordkeeper shall adjust the participant's account to reflect the investment funds in which the erroneous contributions and associated earnings would currently be invested had the error not occurred, as determined in accordance with paragraph (a)(2) of this section.

(b) The provisions of part 1605 notwithstanding, effective January 1, 1991, where employing agency error had caused money to be deposited to a TSP account in an incorrect investment fund, the employing agency may not remove the erroneously invested money from the incorrect investment

fund(s) using a negative adjustment record and redeposit the money in the investment fund(s) in which it would have been invested had the error not occurred. Rather, the correction must be accomplished solely through the procedures described in paragraph (a) of this section.

§ 1606.8 Late payroll submissions.

(a) *Payroll submissions received on or after January 1, 1991.* All contributions on payment records contained in a payroll submission received from an employing agency by the TSP Recordkeeper on or after January 1, 1991 and more than 30 days after the pay date associated with the payroll submission (as reported on Form TSP-2, Certification of Transfer of Funds and Journal Voucher), shall be subject to lost earnings, as follows:

(1) The TSP Recordkeeper shall generate a lost earnings record for each payment record contained in the late payroll submission. The lost earnings records generated by the TSP Recordkeeper shall reflect that the contributions on the payment records should have been made on the pay date associated with the payroll submission, that the contributions should have been deposited to the investment funds(s) indicated on the payment records, and that the contributions were actually made on the date the late payroll submission was processed.

(2) The procedures applicable to lost earnings records submitted by employing agencies set forth in paragraphs (a)(2) through (a)(4) of § 1606.5, shall be applied to lost earnings records generated by the TSP Recordkeeper pursuant to paragraph (a)(1) of this section.

(b) *Payroll submissions received before January 1, 1991.* All contributions on payment records contained in a payroll submission received from an employing agency by the TSP Recordkeeper before January 1, 1991 but more than 30 days after the pay date associated with the payroll submission (as reported on Form TSP-2, Certification of Transfer of Funds and Journal Voucher), shall be subject to lost earnings, as follows:

(1) The employing agency shall, pursuant to instructions provided to em-

ploying agencies by the Board, submit to the TSP recordkeeper authorization for lost earnings to be computed on all contributions on the payment records contained in the payroll submission;

(2) The procedures set forth in paragraphs (a)(1) and (a)(2) of this section shall apply.

Subpart C—Lost Earnings Not Attributable to Delayed or Erroneous Contributions

§ 1606.9 Loan allotments.

(a) Loan allotments deducted from a participant's pay but not timely received by the TSP recordkeeper due to employing agency error shall be subject to lost earnings. In such cases:

(1) The employing agency must submit a lost earnings record indicating the amount of the loan allotment, the pay date for which the loan allotment was actually submitted, and the pay date for which the loan allotment should have been submitted;

(2) The TSP recordkeeper shall compute lost earnings on the belated loan allotment using the G Fund rates of return for each month of the calculation;

(3) The amount of lost earnings calculated shall be deposited in the participant's account pro rata among the three investment funds on the basis of the balances of the three investment funds in the participant's account as of the end of the second month preceding the month during which the lost earnings record is processed.

(b) Loan allotments not deducted from a participant's pay due to employing agency error will not be subject to lost earnings.

§ 1606.10 Miscellaneous lost earnings.

Where lost earnings result from employing agency errors not specifically covered by this subpart or subpart B, the employing agency must consult with the Board or TSP Recordkeeper to determine the manner in which the employing agency shall submit lost earnings records or other data necessary to facilitate the payment of lost earnings.

Subpart D—Lost Earnings Records**§ 1606.11 Agency submission of lost earnings records.**

(a) All lost earnings records required to be submitted pursuant to this part must be submitted to the TSP Recordkeeper in the manner and format prescribed in instructions provided to employing agencies by the Board or TSP recordkeeper.

(b) Where this part requires submission of lost earnings records, the employing agency must submit a separate lost earnings record for each pay period affected by the error. A lost earnings record may include all three sources of contributions, or it may include loan allotments, but may not include both loan allotments and contributions.

(c) Where this part requires the employing agency to indicate on a lost earnings record the investment fund to which a contribution would have been deposited had an employing agency error not occurred, that determination must be made solely on the basis of a properly completed allocation election on a Form TSP-1 that was accepted by the employing agency *before* the date the contribution should have been made, and that was still in effect as of that date. Where no such allocation election was in effect as of the date the contribution would have been made had the error not occurred, the lost earnings record submitted by the employing agency must indicate that the contributions should have been made to the G Fund. Under no circumstances may a participant or employing agency choose, after the date a contribution should have been made or the date that it was made to an erroneous investment fund, the investment fund to which the contribution would have been made had the employing error not occurred.

(d) With respect to employing agency errors that cause money not to be invested in the Thrift Savings Fund, lost earnings records may not be submitted until the money to which the lost earnings relate has been invested in the Thrift Savings Fund. Where the employing agency error involved delayed TSP contributions, not lost earnings shall be payable unless and until the associated payment records are sub-

mitted in accordance with the provisions of 5 CFR part 1605. Lost earnings records and the delayed payment records to which they relate may be submitted simultaneously;

(e) Where an employing agency erroneously submits a lost earnings record that is processed by the TSP recordkeeper, the employing agency must subsequently submit a lost earnings record indicating that the previous lost earnings transaction should be reversed.

§ 1606.12 Agency responsibility.

(a) The employing agency whose error caused the delayed or erroneous investment of money in the Thrift Savings Fund shall, in a manner consistent with paragraph (b) of this section, be ultimately responsible for payment of any lost earnings resulting from that error.

(b) The employing agency that submitted payment records or loan allotments that are subject to lost earnings shall be responsible for submitting lost earnings records relating to those submissions, and any lost earnings calculated shall be charged to that employing agency. Where another employing agency committed the error that caused the delayed or erroneous submission by the first employing agency, the employing agency that was charged for the lost earnings may seek reimbursement from the other employing agency.

Subpart E—Processing Lost Earnings Records**§ 1606.13 Calculation and crediting of lost earnings.**

(a) Lost earnings records submitted or generated pursuant to this part shall be processed by the TSP recordkeeper during a mid-month processing cycle;

(b) Lost earnings records received, edited, and accepted by the TSP recordkeeper by the next-to-last business day of a month shall be processed in the next month's mid-month processing cycle. Lost earnings records that are received, edited, and accepted on the last business day of a month shall be processed in the second mid-month processing cycle following acceptance;

(c) In calculating lost earnings for a participant's account attributable to any lost earnings record, investment gains and losses calculated in different investment funds but within one source of contributions shall be offset against each other to obtain a net investment gain or loss for that source of contributions. Gains and losses for different sources of contributions shall not be offset against each other;

(d) Where the *de minimis* rule of paragraph (d)(1) of §1606.3 of this part is met with regard to delayed contributions or loan allotments, the calculation of lost earnings shall commence with the pay date for the pay period for which the contributions would have been made had the employing agency error not occurred. With regard to lost earnings not related to delayed contributions or loan allotments, lost earnings shall commence with the month during which the employing agency error caused the failure to invest in the Thrift Savings Fund money that would have been invested had the employing agency error not occurred, or with the month that the money was invested in an incorrect investment fund. Lost earnings calculations shall conclude as of the end of the month prior to the month during which the lost earnings records are processed;

(e) *Negative lost earnings.* Notwithstanding any other provision of this part, where the net lost earnings computed in accordance with this part on any lost earnings record are less than zero within a source of contributions, the employing agency account shall not be charged or credited with respect to that source of contributions. The amount of the negative lost earnings shall be removed from the participant's account and applied against TSP administrative expenses;

(f) With respect to the period prior to December 31, 1990, in calculating lost earnings or determining the investment fund in which money would have been invested had an employing agency error not occurred, the TSP recordkeeper shall take into account the investment restrictions that were effective under 5 U.S.C. 8438 prior to the effective date of section 3 of the TSPTAA.

(g) In calculating lost earnings or determining the investment fund in which money would have been invested had an employing agency error not occurred, the TSP recordkeeper shall take into account interfund transfers processed on or subsequent to the date the error affected the participant's account, and which were effective prior to the end of the month preceding the month during which the lost earnings record is processed.

Subpart F—Participant Claims For Lost Earnings

§1606.14 Employing agency procedures.

(a) Each employing agency must provide procedures for participants to file claims for lost earnings under this part. The employing agency procedures must include the following provisions:

(1) The employing agency shall review each claim and provide the participant with a decision within 30 days of its receipt of the participant's written claim. The employing agency's decision to deny a claim in whole or in part shall be in writing and shall contain the following information—

(i) The employing agency's determination on the claim and the reasons for it, including any appropriate references to applicable statutes or regulations;

(ii) A description of any additional material or information which, if provided to the employing agency, would enable the employing agency to grant the participant's claim; and

(iii) A description of the steps the participant must take if he or she wishes to appeal and initial denial of the claim, including the name and title 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;

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(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 contributions 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.

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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 record-keeper; 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 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

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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 bal-

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ance 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 1990, 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

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-

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

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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

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- 1630.3 Publication of systems of records maintained.
- 1630.4 Request for notification and access.

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- 1630.10 Denials of access.
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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

assigned to the individual, such as a finger or voice print or a photograph;

(f) *Routine use* means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected;

(g) *System manager* means the official of the Board who is responsible for the maintenance, collection, use, distribution, or disposal of information contained in a system of records;

(h) *System of records* means a group of any records under the control of the Board from which information is retrieved by the name of the individual or other identifying particular assigned to the individual;

(i) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(j) *Subject individual* means the individual by whose name or other identifying particular a record is maintained or retrieved;

(k) *TSP* means the Thrift Savings Plan which is administered by the Board pursuant to 5 U.S.C. 8351 and chapter 84 (subchapters III and VII);

(l) *TSP records* means those records maintained by the Thrift Savings Plan Service Office;

(m) *VRS* (Voice Response System) means the fully automated telephone information system for TSP account records;

(n) *Work days* as used in calculating the date when a response is due, includes those days when the Board is open for the conduct of Government business and does not include Saturdays, Sundays and Federal holidays.

§1630.3 Publication of systems of records maintained.

(a) Prior to the establishment or revision of a system of records, the Board will publish in the FEDERAL REGISTER notice of any new or intended use of the information in a system or proposed system and provide interested persons with a period within which to comment on the new or revised system. Technical or typographical corrections

are not considered to be revisions of a system.

(b) When a system of records is established or revised, the Board will publish in the FEDERAL REGISTER a notice about the system. The notice shall include:

- (1) The system name,
- (2) The system location,
- (3) The categories of individuals covered by the system,
- (4) The categories of records in the system,
- (5) The Board's authority to maintain the system,
- (6) The routine uses of the system,
- (7) The Board's policies and practices for maintenance of the system,
- (8) The system manager,
- (9) The procedures for notification, access to and correction of records in the system, and
- (10) The sources of information for the system.

§1630.4 Request for notification and access.

(a) *TSP records.* (1) A participant in the Thrift Savings Plan is a subject of System of Records FRTIB-1. A participant shall make his or her inquiry in accordance with the chart set forth below. The address of the Thrift Savings Plan Service Office is: National Finance Center, P.O. Box 61500, New Orleans, LA, 70161-1500. (Telephone No. 504-255-6000). Telephone inquiries are subject to the verification procedures set forth in §1630.7. A written inquiry shall include the participant's name, Social Security number, and date of birth.

If you want:	If you are a former employee:	If you are a current employee:
To make inquiry as to whether you are a subject of this system of records.	Call or write TSP Service Office.	Call or write your employing agency in accordance with agency system of records on personnel or payroll records.
Access	Call or write TSP Service Office.	Call or write your employing agency regarding personnel and payroll records (agency's and participant's contributions, earnings, loan repayments and adjustments to contributions).

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If you want:	If you are a former employee:	If you are a current employee:
Disclosure history of your TSP account (disclosures to entities other than your employing agency or the Board or auditors see § 1630.4 (a)(3)).	Write TSP Service Office.	Call or write to the TSP Service Office regarding loan status and interfund transfers. Write TSP Service Office.

(2) A Privacy Act request which is incorrectly submitted to the Board will not be considered received until received by the TSP Service Office. The Board will submit such a Privacy Act request to the TSP Service Office within three workdays. A Privacy Act request which is incorrectly submitted to the TSP Service Office will not be considered received until received by the employing agency. The TSP Service Office will submit such a Privacy Act request to the employing agency within three workdays.

(3) No disclosure history will be made when the Board contracts for an audit of TSP financial statements (which includes the review and sampling of TSP account balances).

(4) No disclosure history will be made when the Department of Labor or the General Accounting Office audits TSP financial statements (which includes the review and sampling of TSP account balances) in accordance with their responsibilities under chapter 84 of title 5 of the U.S. Code. Rather, a requester will be advised that these agencies have statutory obligations to audit TSP activities and that in the course of such audits they randomly sample individual TSP accounts to test for account accuracy.

(b) *Non-TSP Board records.* An individual who wishes to know if a specific system of records maintained by the Board contains a record pertaining to him or her, or who wishes access to such records, shall address a written request to the Privacy Act Officer, Federal Retirement Thrift Investment

Board, 1250 H Street, NW., Washington, DC 20005. The request letter should contain the complete name and identifying number of the pertinent system as published in the annual FEDERAL REGISTER notice describing the Board's Systems of Records; the full name and address of the subject individual; the subject's Social Security number if a Board employee; a brief description of the nature, time, place, and circumstances of the individual's prior association with the Board; and any other information the individual believes would help the Privacy Act Officer determine whether the information about the individual is included in the system of records. In instances where the information is insufficient to ensure disclosure to the subject individual to whom the record pertains, the Board reserves the right to ask the requester for additional identifying information. The words "PRIVACY ACT REQUEST" should be printed on both the letter and the envelope.

[55 FR 18852, May 7, 1990, as amended at 59 FR 55331, Nov. 7, 1994]

§ 1630.5 Granting access to a designated individual.

(a) An individual who wishes to have a person of his or her choosing review a record or obtain a copy of a record from the Board shall submit a signed statement authorizing the disclosure of his or her record before the record will be disclosed. The authorization shall be maintained with the record.

(b) The Board will honor any Privacy Act request (e.g., a request to have access or to amend a record) which is accompanied by a valid power of attorney from the subject of the record.

[55 FR 18852, May 7, 1990, as amended at 59 FR 26409, May 20, 1994]

§ 1630.6 Action on request.

(a) For TSP records, the Head, TSP Service Office, or designee, and for non-TSP records, the Privacy Act Officer will answer or acknowledge the inquiry within 10 work days of the date it is received by the Board. When the answer cannot be made within 10 work days, the Head, TSP Service Office or Privacy Act Officer will provide the requester with the date when a response

may be expected and, whenever possible, the specific reasons for the delay.

(b) At a minimum, the acknowledgment to a request for access shall include:

(1) When and where the records will be available;

(2) Name, title and telephone number of the official who will make the records available;

(3) Whether access will be granted only by providing a copy of the record through the mail, or only by examination of the record in person if the Privacy Act Officer after consulting with the appropriate system manager has determined the requester's access would not be unduly impeded;

(4) Fee, if any, charged for copies (See § 1630.16); and

(5) If necessary, documentation required to verify the identity of the requester (See § 1630.7).

§ 1630.7 Identification requirements.

(a) *In person.* An individual should be prepared to identify himself or herself by signature, i.e., to note by signature the date of access, Social Security number, and to produce one photographic form of identification (driver's license, employee identification, annuitant card, passport, etc.). If an individual is unable to produce adequate identification, the individual must sign a statement asserting his or her identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to \$5,000 (see § 1630.18). In addition, depending upon the sensitivity of the records, the Privacy Act Officer after consulting with the appropriate system manager may require further reasonable assurances, such as statements of other individuals who can attest to the identity of the requester.

(b) *In writing.* An individual shall provide his or her name, date of birth, and Social Security number and shall sign the request. If a request for access is granted by mail and, in the opinion of the Privacy Act Officer after consulting with the appropriate system manager, the disclosure of the records through the mail may result in harm or embarrassment (if a person other than the subject individual were to re-

ceive the records), a notarized statement of identity or some other similar assurance of identity will be required.

(c) *By telephone.* (1) Telephone identification procedures apply only to requests from participants for information in system of records FRTIB-1, Thrift Savings Plan Records.

(2) A participant shall identify himself or herself by providing to the Head, TSP Service Office, or designee, the following: Name, Social Security number and Personal Identification Number (PIN). If the PIN has been lost or is unavailable, the participant must provide his or her date of birth and current or former employing agency. If the Head, TSP Service Office, or designee, determines that any of the particulars provided by telephone are incorrect, the requester will be required to submit a request in writing.

(3) A participant calling the automated TSP Voice Response System must provide Social Security number and PIN.

§ 1630.8 Access of others to records about an individual.

(a) The Privacy Act provides for access to records in systems of records in those situations enumerated in 5 U.S.C. 552a(b) and are set forth in paragraph (b) of this section. Access by executors, administrators, personal representatives, beneficiaries and former spouses to TSP records may be authorized if there is compliance with a routine use under paragraph (b)(3) of this section.

(b) No official or employee of the Board, or any contractor of the Board or other Federal agency operating a Board system of records under an interagency agreement, shall disclose any record to any person or to another agency without the express written consent of the subject individual, unless the disclosure is:

(1) To officers or employees (including contract employees) of the Board who need the information to perform their official duties;

(2) Pursuant to the requirements of the Freedom of Information Act, 5 U.S.C. 552;

(3) For a routine use that has been published in a notice in the FEDERAL REGISTER (routine uses for the Board's

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systems of records are published separately in the FEDERAL REGISTER and are available from the Board's Privacy Act Officer);

(4) To the Bureau of the Census for uses under title 13 of the United States Code;

(5) To a person or agency which has given the Board advance written notice of the purpose of the request and certification that the record will be used only for statistical purposes. (In addition to deleting personal identifying information from records released for statistical purposes, the Privacy Act Officer shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records);

(6) To the National Archives of the United States if a record has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) In response to a written request that identifies the record and the purpose of the request made by another agency or instrumentality of any Government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if that activity is authorized by law;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure a notification is transmitted to the last known address of the subject individual;

(9) To either House of Congress, or to a Congressional committee or subcommittee if the subject matter is within its jurisdiction;

(10) To the Comptroller General, or an authorized representative, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

§ 1630.9 Access to the history (accounting) of disclosures from records.

Rules governing access to the accounting of disclosures are the same as those for granting access to the records as set forth in § 1630.4.

§ 1630.10 Denials of access.

(a) The Privacy Act Officer or the Head, TSP Service Office, or designee, for records covered by system FRTIB-1, may deny an individual access to his or her record if:

(1) In the opinion of the Privacy Act Officer or the Head, TSP Service Office, or designee, the individual seeking access has not provided proper identification to permit access; or

(2) The Board has published rules in the FEDERAL REGISTER exempting the pertinent system of records from the access requirement.

(b) If access is denied, the requester shall be informed of the reasons for denial and the procedures for obtaining a review of the denial.

§ 1630.11 Requirements for requests to amend records.

(a) *TSP records.* (1) A participant in the TSP who wants to correct or amend a TSP record pertaining to him or her shall submit a written request in accordance with the following chart:

If you want to request amendment of a TSP record and		
The type of record is:	You are a former employee, write to:	You are a current employee, write to:
Personnel or personal records (e.g., age, address or Social Security number).	TSP Service Office.	Your employing agency.
Agency's and participant's contributions, loan repayments and adjustments to contributions.	Your former employing agency.	Your employing agency.
Earnings, interfund transfers and loan prepayments.	TSP Service Office.	TSP Service Office.

(2) The address of the TSP Service Office is listed in § 1630.4(a).

(3) Requests for amendments which are claims for money because of administrative error will be processed in accordance with the procedures set forth for agencies and the Board (including the TSP Service Office which is the Board's recordkeeper) in the Board's Error Correction regulations found at 5

CFR part 1605. Sections 1630.12(b)–1630.14 of this part do not apply to such money claim amendments to TSP records as the Error Correction regulations are an equivalent substitute. Non-money claim TSP record appeals are covered by §§1630.12–1630.14, or if covered by the above chart the employing, or former employing, agency's Privacy Act procedures.

(4) Corrections to TSP account records which are made by the Board, its recordkeeper or the employing agency or the former employing agency on its own motion because of a detected administrative error will be effected without reference to Privacy Act procedures.

(5) A participant in the TSP who is currently employed by a Federal agency should be aware that the employing agency provides to the Board personal and payroll records on the participant, such as his or her date of birth, Social Security number, retirement code, address, loan repayments, the amount of participant's contribution, amount of the Government's contribution, if the participant is covered by the Federal Employees' Retirement System Act (FERSA, 5 U.S.C. Chapter 84), and adjustments to contributions. Requests submitted to the Board, or its recordkeeper, to correct information provided by the employing Federal agency will be referred to the employing agency. The reason for this referral is that the Board receives information periodically for the TSP accounts; if the employing agency does not resolve the alleged error, the Board will continue to receive the uncorrected information periodically regardless of a one-time Board correction. The employing agency also has custody of the election and beneficiary forms (which are maintained in the Official Personnel Folder). Hence, requests for correction of records described herein shall be made to the employing agency.

(b) *Non-TSP records.* (1) Any other individual who wants to correct or amend a record pertaining to him or her shall submit a written request to the Board's Privacy Act Officer whose address is listed in §1630.4. The words "Privacy Act—Request to Amend Record" should be written on the letter and the envelope.

(2) The request for amendment or correction of the record should, if possible, state the exact name of the system of records as published in the FEDERAL REGISTER; a precise description of the record proposed for amendment; a brief statement describing the information the requester believes to be inaccurate or incomplete, and why; and the amendment or correction desired. If the request to amend the record is the result of the individual's having gained access to the record in accordance with §§1630.4, 1630.5, 1630.6 or §1630.7, copies of previous correspondence between the requester and the Board should be attached, if possible.

(3) If the individual's identity has not been previously verified, the Board may require documentation of identification as described in §1630.7.

§ 1630.12 Action on request to amend a record.

(a) For TSP records, the Head, TSP Service Office, will acknowledge a request for amendment of a record, which is to be decided by that office in accordance with the chart in §1630.11, within 10 work days. Requests received by the TSP Service Office which are to be decided by the current or former employing agency will be sent to that agency by the Head, TSP Service Office, within 3 work days of the date of receipt. A copy of the transmittal letter will be sent to the requester.

(b) For non-TSP records, the Privacy Act Officer will acknowledge a request for amendment of a record within 10 work days of the date the Board receives it. If a decision cannot be made within this time, the requester will be informed by mail of the reasons for the delay and the date when a reply can be expected, normally within 30 work days from receipt of the request.

(c) The final response will include the decision whether to grant or deny the request. If the request is denied, the response will include:

- (1) The reasons for the decision;
- (2) The name and address of the official to whom an appeal should be directed;
- (3) The name and address of the official designated to assist the individual in preparing the appeal;

(4) A description of the appeal process with the Board; and

(5) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 1630.13 Procedures for review of determination to deny access to or amendment of records.

(a) Individuals who disagree with the refusal to grant them access to or to amend a record about them should submit a written request for review to the Executive Director, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The words “PRIVACY ACT—APPEAL” should be written on the letter and the envelope. Individuals who need assistance preparing their appeal should contact the Board’s Privacy Act Officer.

(b) The appeal letter must be received by the Board within 30 calendar days from the date the requester received the notice of denial. At a minimum, the appeal letter should identify:

- (1) The records involved;
- (2) The date of the initial request for access to or amendment of the record;
- (3) The date of the Board’s denial of that request; and
- (4) The reasons supporting the request for reversal of the Board’s decision.

Copies of previous correspondence from the Board denying the request to access or amend the record should also be attached, if possible.

(c) The Board reserves the right to dispose of correspondence concerning the request to access or amend a record if no request for review of the Board’s decision is received within 180 days of the decision date. Therefore, a request for review received after 180 days may, at the discretion of the Privacy Act Officer, be treated as an initial request to access or amend a record.

[55 FR 18852, May 7, 1990, as amended at 59 FR 55331, Nov. 7, 1994]

§ 1630.14 Appeals process.

(a) Within 20 work days of receiving the request for review, the Executive Director, after consultation with the General Counsel, will make a final determination on the appeal. If a final decision cannot be made in 20 work days, the Privacy Act Officer will inform the

requester of the reasons for the delay and the date on which a final decision can be expected. Such extensions are unusual, and should not exceed an additional 30 work days.

(b) If the original request was for access and the initial determination is reversed, the procedures in § 1630.7 will be followed. If the initial determination is upheld, the requester will be so informed and advised of the right to judicial review pursuant to 5 U.S.C. 552a(g).

(c) If the initial denial of a request to amend a record is reversed, the Board will correct the record as requested and inform the individual of the correction. If the original decision is upheld, the requester will be informed and notified in writing of the right to judicial review pursuant to 5 U.S.C. 552a(g) and the right to file a concise statement of disagreement with the Executive Director. The statement of disagreement should include an explanation of why the requester believes the record is inaccurate, irrelevant, untimely, or incomplete. The Executive Director shall maintain the statement of disagreement with the disputed record, and shall include a copy of the statement of disagreement to any person or agency to whom the record has been disclosed, if the disclosure was made pursuant to § 1630.9.

§ 1630.15 Exemptions.

(a) Pursuant to subsection (k) of the Privacy Act, 5 U.S.C. 552a, the Board may exempt certain portions of records within designated systems of records from the requirements of the Privacy Act, (including access to and review of such records pursuant to this part) if such portions are:

(1) Subject to the provisions of section 552(b)(1) of the Freedom of Information Act, 5 U.S.C. 552;

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, 5 U.S.C. 552a: Provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be

provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the United States Code;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosures of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence;

(6) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence.

(b) Those designated systems of records which are exempt from the requirements of this part or any other requirements of the Privacy Act, 5 U.S.C. 552a, will be indicated in the notice of designated systems of records published by the Board.

(c) Nothing in this part will allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1630.16 Fees.

(a) Individuals will not be charged for:

(1) The search and review of the record; and

(2) Copies of ten (10) or fewer pages of a requested record.

(b) Records of more than 10 pages will be photocopied for 15 cents a page. If the record is larger than 8½ × 14 inches, the fee will be the cost of reproducing the record through Government or commercial sources.

(c) Fees must be paid in full before requested records are disclosed. Payment shall be by personal check or money order payable to the Federal Retirement Thrift Investment Board, and mailed or delivered to the Head, TSP Service Office or to the Privacy Act Officer, depending upon the nature of the request, at the address listed in § 1630.4.

(d) The Head, TSP Service Office or the Privacy Act Officer may waive the fee if:

(1) The cost of collecting the fee exceeds the amount collected; or

(2) The production of the copies at no charge is in the best interest of the Board.

(e) A receipt will be furnished on request.

§ 1630.17 Federal agency requests.

Employing agencies needing automated data processing services from the Board in order to reconcile agency TSP records for TSP purposes may be charged rates based upon the factors of:

(a) Fair market value;

(b) Cost to the TSP; and

(c) Interests of the participants and beneficiaries.

§ 1630.18 Penalties.

(a) Title 18, U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than five years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or

representation in any matter within the jurisdiction of any agency of the United States. Section (i)(3) of the Privacy Act, 5 U.S.C. 552a(i)(3), makes it a misdemeanor, subject to a maximum fine of \$5,000 to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i) (1) and (2) of 5 U.S.C. 552a provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

(b) [Reserved]

PART 1631—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 55 FR 41052, Oct. 9, 1990, unless otherwise noted.

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

§ 1631.1 Definitions.

(a) *Board* means the Federal Retirement Thrift Investment Board.

(b) *Agency* means agency as defined in 5 U.S.C. 552(e).

(c) *Executive Director* means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

(d) *FOIA* means Freedom of Information Act, 5 U.S.C. 552, as amended.

(e) *FOIA Officer* means the Board's Director of Administration or his or her designee.

(f) *General Counsel* means the General Counsel of the Federal Retirement Thrift Investment Board.

(g) *Working days* or *workdays* means those days when the Board is open for the conduct of Government business, and does not include Saturdays, Sundays, and Federal holidays.

(h) *Requester* means a person making a FOIA request.

(i) *Submitter* means any person or entity which provides confidential commercial information to the Board. The term includes, but is not limited to, corporations, state governments, and foreign governments.

§ 1631.2 Purpose and scope.

This subpart contains the regulations of the Federal Retirement Thrift Investment Board, implementing 5 U.S.C. 552. The regulations of this subpart describe the procedures by which records may be obtained from all organizational units within the Board and from its recordkeeper. Official records of the Board, except those already published in bulk by the Board, available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. To the extent that it is not prohibited by other laws the Board also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the interest of the Thrift Savings Plan.

§ 1631.3 Organization and functions.

(a) The Federal Retirement Thrift Investment Board was established by the Federal Employees' Retirement System Act of 1986 (Pub. L. 99-335, 5 U.S.C. 8401 *et seq.*). Its primary function is to manage and invest the Thrift Savings Fund for the exclusive benefit of its participants (*e.g.*, participating Federal employees, Federal judges, and Members of Congress). The Board is responsible for investment of the assets of the Thrift Savings Fund and the management of the Thrift Savings Plan. The Board consists of:

- (1) The five part-time members who serve on the Board;
- (2) The Office of the Executive Director;
- (3) The Office of Investments;
- (4) The Office of the General Counsel;
- (5) The Office of Benefits and Program Analysis;
- (6) The Office of Accounting;
- (7) The Office of Administration;
- (8) The Office of External Affairs;
- (9) The Office of Automated Systems; and
- (10) The Office of Communications.

(b) The Board has no field organization; however, it provides for its recordkeeping responsibility by contract or interagency agreement. The recordkeeper may be located outside of the Washington, DC area. Thrift Savings Plan records maintained for the Board by its recordkeeper are Board records subject to these regulations. Board offices are presently located at 1250 H Street, NW., Washington, DC 20005.

[55 FR 41052, Oct. 9, 1990, as amended at 59 FR 55331, Nov. 7, 1994]

§ 1631.4 Public reference facilities and current index.

(a) The Board maintains a public reading area located in room 4308 at 1250 H Street, NW., Washington, DC. Reading area hours are from 9:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of Federal holidays. Electronic reading room documents are available through <http://www.frtib.gov>. In the reading area and through the Web site, the Board makes available for public inspection, copying, and downloading materials required by 5 U.S.C. 552(a)(2), including documents

published by the Board in the FEDERAL REGISTER which are currently in effect.

(b) The FOIA Officer shall maintain an index of Board regulations, directives, bulletins, and published materials.

(c) The FOIA officer shall also maintain a file open to the public, which shall contain copies of all grants or denials of FOIA requests, appeals, and appeal decisions by the General Counsel. The materials shall be filed by chronological number of request within each calendar year, indexed according to the exceptions asserted, and, to the extent feasible, indexed according to the type of records requested.

[55 FR 41052, Oct. 9, 1990, as amended at 59 FR 55331, 55332, Nov. 7, 1994; 63 FR 41708, Aug. 5, 1998]

§ 1631.5 Records of other agencies.

Requests for records that originated in another agency and that are in the custody of the Board may, in appropriate circumstances, be referred to that agency for consultation or processing, and the person submitting the request shall be so notified.

§ 1631.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The words "FOIA Request" should be clearly marked on both the letter and the envelope.

(b) Each request must reasonably describe the record(s) sought, including, when known: Entity/individual originating the record, date, subject matter, type of document, location, and any other pertinent information which would assist in promptly locating the record(s). Each request should also describe the type of entity the requester is for fee purposes. See § 1631.11.

(c) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on the Board, seriously interfering with its normal functioning to the detriment of the Thrift Savings Plan, the Board may require the person or agent making the FOIA request to confer with a

Board representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(d) Upon initial receipt of the FOIA request, the FOIA Officer will determine which official or officials within the Board shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

(e) Any Board employee or official who receives a FOIA request shall promptly forward it to the FOIA Officer, at the above address. Any Board employee or official who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this subpart requiring a written request according to the procedures set out herein.

(f) When a person requesting expedited access to records has demonstrated a compelling need, or when the Board has determined that it is appropriate to expedite its response, the Board will process the request ahead of other requests.

(g) To demonstrate compelling need in accordance with paragraph (f) of this section, the requester must submit a written statement that contains a certification that the information provided therein is true and accurate to the best of the requester's knowledge and belief. The statement must demonstrate that:

(1) The failure to obtain the record on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is a person primarily engaged in the dissemination of information, and there is an urgent need to inform the public concerning an actual or alleged Federal Government activity that is the subject of the request.

[55 FR 41052, Oct. 9, 1990, as amended at 59 FR 55331, Nov. 7, 1994; 63 FR 41708, Aug. 5, 1998]

§ 1631.7 Initial determination.

The FOIA Officer shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the FOIA Officer shall be final, subject only to administrative review as provided in § 1631.10.

§ 1631.8 Prompt response.

(a)(1) When the FOIA Officer receives a request for expedited processing, he or she will determine within 10 work days whether to process the request on an expedited basis.

(2) When the FOIA Officer receives a request for records which he or she, in good faith, believes is not reasonably descriptive, he or she will so advise the requester within 5 work days. The time limit for processing such a request will not begin until receipt of a request that reasonably describes the records being sought.

(b) The FOIA Officer will either approve or deny a reasonably descriptive request for records within 20 work days after receipt of the request, unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from other establishments that are separate from the office processing the request (e.g., the record keeper);

(2) It is necessary to search for, collect, and examine a voluminous amount of records which are demanded in a single request;

(3) It is necessary to consult with another agency which has a substantial interest in the determination of the request or to consult with two or more offices of the Board which have a substantial subject matter interest in the records; or

(4) It is necessary to devote resources to the processing of an expedited request under § 1631.6(f).

(c) When additional time is required for one of the reasons stated in paragraph (b) of this section, the FOIA Officer will extend this time period for an additional 10 work days by written notice to the requester. If the Board will be unable to process the request within this additional time period, the requester will be notified and given the opportunity to—

(1) Limit the scope of the request; or

(2) Arrange with the FOIA Officer an alternative time frame for processing the request.

[63 FR 41708, Aug. 5, 1998]

§ 1631.9 Responses—form and content.

(a) When a requested record has been identified and is available, the FOIA officer shall notify the person making the request as to where and when the record is available for inspection or that copies will be made available. The notification shall also advise the person making the request of any fees assessed under § 1631.13 of this part.

(b) A denial or partial denial of a request for a record shall be in writing signed by the FOIA Officer and shall include:

(1) The name and title of the person making the determination;

(2) A statement of fees assessed, if any; and

(3) A reference to the specific exemption under the FOIA authorizing the withholding of the record, and a brief explanation of how the exemption applies to the record withheld; or

(4) If appropriate, a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 1631.8, and that the denial will be reconsidered as soon as the search or examination is complete; and

(5) A statement that the denial may be appealed to the General Counsel within 30 calendar days of receipt of the denial or partial denial.

(c) If, after diligent effort, existing requested records have not been found, or are known to have been destroyed or otherwise disposed of, the FOIA Officer shall so notify the requester.

§ 1631.10 Appeals to the General Counsel from initial denials.

(a) When the FOIA Officer has denied a request for expedited processing or a request for records, in whole or in part, the person making the request may, within 30 calendar days of receipt of the response of the FOIA Officer, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, and be clearly labeled as a "Freedom of Information Act Appeal."

(b)(1) The General Counsel will act upon the appeal of a denial of a request

for expedited processing within 5 work days of its receipt.

(2) The General Counsel will act upon the appeal of a denial of a request for records within 20 work days of its receipt.

(c) The General Counsel will decide the appeal in writing and mail the decision to the requester.

(d) If the appeal concerns an expedited processing request and the decision is in favor of the person making the request, the General Counsel will order that the request be processed on an expedited basis. If the decision concerning a request for records is in favor of the requester, the General Counsel will order that the subject records be promptly made available to the person making the request.

(e) If the appeal of a request for expedited processing of records is denied, in whole or in part, the General Counsel's decision will set forth the basis for the decision. If the appeal of a request for records is denied, in whole or in part, the General Counsel's decision will set forth the exemption relied on and a brief explanation of how the exemption applies to the records withheld and the reasons for asserting it, if different from the reasons described by the FOIA Officer under § 1631.9. The denial of a request for records will state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in Federal court. (A Federal court does not have jurisdiction to review a denial of a request for expedited processing after the Board has provided a complete response to the request.)

(f) No personal appearance, oral argument, or hearing will ordinarily be permitted in connection with an appeal of a request for expedited processing or an appeal for records.

(g) On appeal of a request concerning records, the General Counsel may reduce any fees previously assessed.

[63 FR 41708, Aug. 5, 1998]

§ 1631.11 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters; commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters.

The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of the Board is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents, nor waiver or reduction of fees, based on an assertion that disclosure would be in the public interest. The full allowable direct cost of searching for, and reviewing, records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, the Board will look to the use to which a requester will put the documents requested.

(2) When records are being requested by representatives of the news media, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The phrase “representatives of the news media” refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization,

even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The term “educational institution” refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. The term “noncommercial scientific institution” refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(4) For any other request which does not meet the criteria contained in paragraphs (a) (1) through (3) of this section, the fee policy of the Board is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. If computer search time is required, the first two hours of computer search time will be based on the hourly cost of operating the central processing unit and the operator’s hourly salary plus 23.5 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process

the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, the Board shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in the Board's systems of records shall continue to be treated under the provisions of the Privacy Act of 1974, which permit fees only for reproduction. The Board's fee schedule is set out in § 1631.14 of this part.

(b) Except for requests that are for a commercial use, the Board may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requestor may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30 calendar day period had been made to avoid fees. For requests made over a long period, however, the Board must have a reasonable basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, the Board must have a reasonable basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may the Board aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, the Board shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed \$25,

the Board shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and non-commercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed \$25, the Board shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed \$25, the Board shall not charge the requester any costs.

[55 FR 41052, Oct. 9, 1990, as amended at 63 FR 41708, Aug. 5, 1998]

§ 1631.12 Waiver or reduction of fees.

(a) The Board may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Board or Federal Government and is not primarily in the commercial interest of the requester. In making its decision on waiving or reducing fees, the Board will consider the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the Board or the Government,

(2) Whether the disclosure is likely to contribute to an understanding of Government operations or activities (including those of the Board),

(3) Whether the disclosure is likely to contribute significantly to public understanding of TSP or Government operations or activities,

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and

(5) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in

the commercial interest of the requester.

(b) A fee waiver request must indicate the existence and magnitude of any commercial interest that the requester has in the records that are the subject of the request.

§ 1631.13 Prepayment of fees over \$250.

(a) When the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the Board may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 calendar days of the date of the billing), the Board may require the requester to pay the full amount owed plus any applicable interest as provided in § 1631.14(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When the Board acts under paragraph (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 20 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Board has received fee payments under paragraph (a) or (b) of this section.

[55 FR 41052, Oct. 9, 1990, as amended at 63 FR 41709, Aug. 5, 1998]

§ 1631.14 Fee schedule.

(a) *Manual searches for records.* The Board will charge at the salary rate(s) plus 23.5 percent (to cover benefits) of the employee(s) conducting the search. The Board may assess charges for time spent searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer searches for records.* The Board will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly

attributable to searching for records responsive to a FOIA request and operator/programmer salary, plus 23.5 percent, apportionable to the search. The Board may assess charges for time spent searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ × 14 inches, the charge will be \$.15 per page.

(2) The fee for reproducing copies of records over 8½ × 14 inches, or whose physical characteristics do not permit reproduction by routine electrostatic copying, shall be the direct cost of reproducing the records through Government or commercial sources. If the Board estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester had indicated in advance his/her willingness to pay fees as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, the Board shall charge the actual cost, including operator time, of producing the tape or printout. If the Board estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, the Board shall charge the actual direct costs of producing the document(s). If the Board estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester

the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. The Board may begin assessing interest charges on the amount billed starting on the 31st calendar day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code, and it will accrue from the date of the billing.

(e) The Board shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Board may choose to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, the Board will inform requesters of the steps necessary to obtain records from those sources.

[55 FR 41052, Oct. 9, 1990, as amended at 63 FR 41709, Aug. 5, 1998]

§ 1631.15 Information to be disclosed.

(a) In general, all records of the Board are available to the public, as required by the Freedom of Information Act. However, the Board claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from non-U.S. Government source.* (1) Board personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source.

Exemption 4 permits withholding of "trade secrets and commercial or financial information obtained from a person as privileged or confidential." Exemption 6 permits withholding certain information, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy."

(2)(i) *Exemption 4.* Commencing January 1, 1988, the submitter of confidential commercial information must, at the time the information is submitted to the Board or within 30 calendar days of such submission, designate any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. The submitter as part of its submission, must explain the rationale for the designation of the information as commercial and confidential.

(ii) Confidential commercial information means records provided to the Board by a submitter that arguably contains material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(iii) After January 1, 1988, a submitter who does not designate portions of a submission as confidential commercial information waives that basis for nondisclosure unless the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial harm to the competitive position of the submitter.

(3) When the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial competitive harm to the submitter, and has no designation from the submitter, it shall notify the submitter of the following:

(i) That a FOIA request has been received seeking the record,

(ii) That disclosure of the record may be required,

(iii) That disclosure of the record could result in competitive harm to the submitter,

(iv) That the submitter has a period of seven workdays from date of notice within which it or a designee may object to the disclosure its records, and

(v) That a detailed explanation should be submitted setting forth all grounds as to why the disclosure would result in substantial competitive harm, such as, the general custom or usage in the business of the information in the record, the number and situation of the persons who have access to the record, the type and degree of risk of financial injury that release would cause, and

the length of time the record needs to be kept confidential.

(4) In exceptional circumstances, the Board may extend by seven workdays the time for a submitter's response for good cause.

(5) The Board shall give careful consideration to all specified grounds for nondisclosure prior to making an administrative determination on the issue of competitive harm.

(6) Should the Board determine to disclose the requested records, it shall provide written notice to the submitter, explaining briefly why the submitter's objections were not sustained and setting forth the date for disclosure, which date may be less than 10 calendar days after the date of the letter to the submitter.

(7) A submitter who provided records to the Board prior to January 1, 1988, and did not designate which records contain confidential commercial information, shall be notified as provided in § 1631.15(b)(3). After making such notification, the Board will follow the procedures set forth in § 1631.15(b)(4)–(6).

(8) The Board will, as a general rule, look favorably upon recommendations for withholding information about ideas, methods, and processes that are unique; about equipment, materials, or systems that are potentially patentable; or about a unique use of equipment which is specifically outlined.

(9) The Board will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(10) The Board will withhold all cost data submitted, except the total estimated costs from each year of a contract. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes that some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(11) *Exemption 6.* This exemption is not a blanket exemption for all per-

sonal information submitted by a non-U.S. Government source. The Board will balance the need to keep a person's private affairs from unnecessary public scrutiny with the public's right to information on Board records. As a general practice, the Board will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Depending upon the circumstances, the Board may release most information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal, such as the names of staff persons, which might, if released, constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper consideration.

§ 1631.16 Exemptions.

The Freedom of Information Act exempts from all of its publication and disclosure requirements nine categories of records which are described in 5 U.S.C. 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence and matters involving personal privacy.

§ 1631.17 Deletion of exempted information.

Where requested records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are reasonably segregable from the remainder of the records, they shall be disclosed by the Board with deletions. To each such record, the Board shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

§ 1631.18 Annual report.

The Executive Director will submit annually, on or before February 1, a

Freedom of Information report covering the preceding fiscal year to the Attorney General of the United States. The report will include matters required by 5 U.S.C. 552(e).

[63 FR 41709, Aug. 5, 1998]

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

§ 1631.30 Purpose and scope.

This subpart contains the regulations of the Board concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a “demand”) of a court or other authority is issued for the production or disclosure of:

(a) Any material contained in the files of the Board;

(b) Any information relating to materials contained in the files of the Board; or

(c) Any information or material acquired by an employee of the Board as a part of the performance of his or her official duties or because of his or her official status.

§ 1631.31 Production prohibited unless approved by the Executive Director.

No employee or former employee of the Board shall, in response to a demand of a court or other authority, produce any material contained in the files of the Board or disclose any information or produce any material acquired as part of the performance of his or her official status without the prior approval of the Executive Director or his or her designee.

§ 1631.32 Procedure in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Board for the production of material or the disclosure of information described in § 1631.31, he or she shall immediately notify the Executive Director or his or her designee. If possible, the Executive Director or his or her designee shall be notified before the employee or former employee concerned replies to or ap-

pears before the court or other authority.

(b) If response to the demand is required before instructions from the Executive Director or his or her designee are received, an attorney designated for that purpose by the Board shall appear with the employee or former employee upon whom the demand has been made and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Executive Director or his or her designee. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Executive Director.

§ 1631.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 1631.32(b) pending receipt of instructions from the Executive Director, or his or her designee, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Executive Director not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. [*United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951)].

PART 1632—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

Sec.

- 1632.1 Purpose and scope.
- 1632.2 Definitions.
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- 1632.4 Meetings open to public observation.
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§ 1632.1

5 CFR Ch. VI (1–1–99 Edition)

1632.11 Procedures for inspection and obtaining copies of transcriptions and minutes.

AUTHORITY: 5 U.S.C. 552b and 5 U.S.C. 8474.

SOURCE: 53 FR 36777, Sept. 22, 1988, unless otherwise noted.

§ 1632.1 Purpose and scope.

This part is issued by the Federal Retirement Thrift Investment Board (Board) under section 552b of title 5 of the United States Code, the Government in the Sunshine Act, to carry out the policy of the Act that the public is entitled to the fullest practicable information regarding the decision making processes of the Board while at the same time preserving the rights of individuals and the ability of the Board to carry out its responsibilities. These regulations fulfill the requirement of subsection (g) of the Act that each agency subject to the provisions of the Act shall promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of the Act.

§ 1632.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) The term *Act* means the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) The term *Board* means the Federal Retirement Thrift Investment Board and subdivisions thereof.

(c) The term *meeting* means the deliberations of at least the number of individual agency members required to take action on behalf of the Board where such deliberations determine or result in the joint conduct or disposition of official Board business. However, this term does not include—

(1) Deliberations required or permitted by subsection (d) or (e) of the Act (relating to decisions to close all or a portion of a meeting, or to decisions on the timing or content of an announcement of a meeting), or

(2) The conduct or disposition of official agency business by circulating written material to individual members.

(d) The term *number of individual agency members required to take action on behalf of the agency* means three members.

(e) The term *member* means a member of the Board appointed under section 101 of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8472.

(f) The term *public observation* means that the public shall have the right to listen and observe but not the right to participate in the meeting or to record any of the meeting by means of cameras or electronic or other recording devices unless approval in advance is obtained from the Secretary of the Board.

§ 1632.3 Conduct of agency business.

Members shall not jointly conduct or dispose of official Board business other than in accordance with this part.

§ 1632.4 Meetings open to public observation.

(a) Except as provided in § 1632.5 of this part, every portion of every meeting of the agency shall be open to public observation.

(b) The Freedom of Information Act, 5 U.S.C. 552, and the Board's implementing regulations, 5 CFR part 1611, shall govern the availability to the public of copies of documents considered in connection with the Board's discussion of agenda items for a meeting that is open to public observation.

(c) The Board will maintain mailing lists of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation. Requests for announcements may be made by telephoning or by writing to the Office of External Affairs, Federal Retirement Thrift Investment Board, 1250 H Street NW., Washington, DC 20005.

[53 FR 36777, Sept. 22, 1988, as amended at 59 FR 55331, Nov. 7, 1994]

§ 1632.5 Exemptions.

(a) Except in a case where the Board finds that the public interest requires otherwise, the Board may close a meeting or a portion or portions of a meeting under the procedures specified in § 1632.7 or § 1632.8 of this part, and withhold information under the provisions of §§ 1632.6, 1632.7, 1632.8, or 1632.11 of this part, where the Board properly determines that such meeting or portion of its meeting or the disclosure of such information is likely to:

Federal Retirement Thrift Investment Board

§ 1632.6

- (1) Disclose matters that are:
 - (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy, and
 - (ii) In fact properly classified pursuant to such Executive Order;
- (2) Relate solely to internal personnel rules and practices;
- (3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of title 5 of the United States Code), provided that such statute:
 - (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - (ii) Established particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) Involve accusing any person of a crime, or formally censuring any person;
- (6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:
 - (i) Interfere with enforcement proceedings,
 - (ii) Deprive a person of a right to a fair trial or an impartial adjudication,
 - (iii) Constitute an unwarranted invasion of personal privacy,
 - (iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,
 - (v) Disclose investigative techniques and procedures, or
 - (vi) Endanger the life or physical safety of law enforcement personnel;
- (8) Disclose information contained in or related to examination, operating,

or condition reports prepared by or on behalf of, or for the use of the Board or other Federal agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would:

(i) Be likely to (A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action except that paragraph (a)(9)(ii) of this section shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

(b) [Reserved]

§ 1632.6 Public announcement of meetings.

(a) Except as otherwise provided by the Act, public announcement of meetings open to public observation and meetings to be partially or completely closed to public observation pursuant to § 1632.7 of this part will be made at least one week in advance of the meeting. Except to the extent such information is determined to be exempt from disclosure under § 1632.5 of this part, each such public announcement will state the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated to respond to requests for information about the meeting.

(b) If a majority of the members of the Board determines by a recorded vote that Board business requires that

a meeting covered by paragraph (a) of this section be called at a date earlier than that specified in paragraph (a) of this section, the Board shall make a public announcement of the information specified in paragraph (a) of this section at the earliest practicable time.

(c) Changes in the subject matter of a publicly announced meeting, or in the determination to open or close a publicly announced meeting or any portion of a publicly announced meeting to public observation, or in the time or place of a publicly announced meeting made in accordance with the procedures specified in §1632.9 of this part, will be publicly announced at the earliest practicable time.

(d) Public announcements required by this section will be posted at the Board's External Affairs Office and may be made available by other means or at other locations as may be desirable.

(e) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding announcements and the name and telephone number of the official designated by the Board to respond to requests about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

§1632.7 Meetings closed to public observation.

(a) A meeting or a portion of a meeting will be closed to public observation, or information as to such meeting or portion of a meeting will be withheld, only by recorded vote of a majority of the Members of the Board when it is determined that the meeting or the portion of the meeting or the withholding of information qualifies for exemption under §1632.5. Votes by proxy are not allowed.

(b) Except as provided in paragraph (c) of this section, a separate vote of the Members of the Board will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which informa-

tion is proposed to be withheld pursuant to this section.

(c) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting or portion thereof in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(d) Whenever any person's interests may be directly affected by a portion of the meeting for any of the reasons referred to in exemption (a)(5), (a)(6) or (a)(7) of §1632.5 of this part, such person may request in writing to the Secretary of the Board that such portion of the meeting be closed to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, shall transmit the request to the members and upon the request of any one of them a recorded vote shall be taken whether to close such meeting to public observation.

(e) Within one day of any vote taken pursuant to paragraphs (a) through (d) of this section, the agency will make publicly available at the Board's External Affairs Office a written copy of such vote reflecting the vote of each member on the question. If a meeting or a portion of a meeting is to be closed to public observation, the Board, within one day of the vote taken pursuant to paragraphs (a) through (d) of this section, will make publicly available at the Board's External Affairs Office a full written explanation of its action closing the meeting or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under subsection (c) of the Act and §1632.5 of this part.

(f) Any person may request in writing to the Secretary of the Board that an announced closed meeting, or portion of the meeting, be held open to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, will transmit the request to the members of the Board and upon the

request of any member a recorded vote will be taken whether to open such meeting to public observation.

§ 1632.8 Changes with respect to publicly announced meetings.

The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to public observation may be changed following public announcement under § 1632.6 only if a majority of the Members of the Board determines by a recorded vote that that agency business so requires and that no earlier announcement of the change was possible. Public announcement of such change and the vote of each member upon such change will be made pursuant to § 1632.6(c). Changes in time, including postponements and cancellations of a publicly announced meeting or portion of a meeting or changes in the place of a publicly announced meeting will be publicly announced pursuant to § 1632.6(c) by the Secretary of the Board or, in the Secretary's absence, the Acting Secretary of the Board.

§ 1632.9 Certification of General Counsel.

Before every meeting or portion of a meeting closed to public observation under § 1632.7 of this part, the General Counsel, or in the General Counsel's absence, the Acting General Counsel, shall publicly certify whether or not in his or her opinion the meeting may be closed to public observation and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, will be retained for the time prescribed in § 1632.10(d).

§ 1632.10 Transcripts, recordings, and minutes.

(a) The Board will maintain a complete transcript or electronic recording or transcription thereof adequate to record fully the proceedings of each meeting or portion of a meeting closed to public observation pursuant to exemption (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (a)(7), or (a)(9)(ii) of § 1632.5 of

this part. Transcriptions of recordings will disclose the identity of each speaker.

(b) The Board will maintain either such a transcript, recording or transcription thereof, or a set of minutes that will fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question), for meetings or portions of meetings closed to public observation pursuant to exemptions (a)(8), (a)(9)(i)(A) or (a)(10) of § 1632.5 of this part. The minutes will identify all documents considered in connection with any action taken.

(c) Transcripts, recordings or transcriptions thereof, or minutes will promptly be made available to the public in the External Affairs Office except for such item or items of such discussion or testimony as may be determined to contain information that may be withheld under subsection (c) of the Act and § 1632.5 of this part. These documents, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording or verbatim copy of a transcription thereof of each meeting or portion of a meeting closed to public observation will be maintained for a period of at least two years, or one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 1632.11 Procedures for inspection and obtaining copies of transcripts and minutes.

(a) Any person may inspect or copy a transcript, a recording or transcription, or minutes described in § 1632.10(c) of this part.

(b) Requests for copies of transcripts, recordings or transcriptions of recordings, or minutes described in § 1632.10(c) of this part shall specify the meeting or the portion of meeting desired and

shall be submitted in writing to the Secretary of the Board, Federal Retirement Thrift Investment Board, 1250 H Street NW., Washington, DC 20005. Copies of documents identified in minutes may be made available to the public upon request under the provisions of 5 CFR part 1630 (the Board's Freedom of Information Act regulations).

[53 FR 36777, Sept. 22, 1988, as amended at 59 FR 55331, Nov. 7, 1994]

PART 1633—STANDARDS OF CONDUCT

AUTHORITY: 5 U.S.C. 7301.

§ 1633.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Federal Retirement Thrift Investment Board (Board) are subject to the executive branch-wide Standards of Ethical conduct at 5 CFR part 2635, the Board regulations at 5 CFR part 8601 which supplement the executive branch-wide standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[59 FR 50817, Oct. 6, 1994]

PART 1636—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 58 FR 57696, 57699, Oct. 26, 1993, unless otherwise noted.

§ 1636.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1636.102 Application.

This part (§§ 1636.101–1636.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 1636.103 Definitions.

For purposes of this part, the term—*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TTD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by

someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, HIV disease (whether symptomatic or asymptomatic), and drug addiction and alcoholism.

(2) *Major life activities* include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1614.203(a)(6), which is made applicable to this part by §1636.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended. As used in this part, section

504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 1636.104—1636.109 [Reserved]

§ 1636.110 Self-evaluation.

(a) The agency shall, by November 28, 1994, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A description of areas examined and any problems identified; and
- (2) A description of any modifications made.

§ 1636.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 1636.112—1636.129 [Reserved]

§ 1636.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in,

be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in according equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are no separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1636.131—1636.139 [Reserved]

§ 1636.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The defini-

tions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 1636.141—1636.148 [Reserved]

§ 1636.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1636.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1636.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1636.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources

available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 1636.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 1636.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by January 24, 1994, except that where structural changes in facilities are undertaken, such changes shall be made by November 26, 1996, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by May 26, 1994, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1636.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements,

and standards of the Architectural Barriers Act (42 U.S.C. 4151—4157), as established in 41 CFR 101—19.600 to 101—19.607, apply to buildings covered by this section.

§§ 1636.152—1636.159 [Reserved]

§ 1636.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program

or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1636.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1636.161—1636.169 [Reserved]

§ 1636.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Assistant General Counsel (Administration) shall be responsible for coordinating implementation of this section. Complaints may be sent to the Executive Director.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1636.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[58 FR 57696, 57699, Oct. 26, 1993, as amended at 58 FR 57697, Oct. 26, 1993]

§§ 1636.171—1636.999 [Reserved]

PART 1639—CLAIMS COLLECTION

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Federal Retirement Thrift Investment Board

§ 1639.4

1639.55 Requests for offset from Federal agencies.

1639.56 Expedited procedure.

AUTHORITY: 5 U.S.C. 8474; 31 U.S.C. 3711, 3716, 3720A.

SOURCE: 62 FR 49417, Sept. 22, 1997, unless otherwise noted.

Subpart A—Administrative Collection, Compromise, Termination, and Referral of Claims

§ 1639.1 Authority.

The regulations of this part are issued under 5 U.S.C. 8474 and 31 U.S.C. 3711, 3716, and 3720A, and in conformity with the Federal Claims Collection Standards, 4 CFR chapter II, prescribing standards for administrative collection, compromise, termination of agency collection action, and referral to the Department of Justice for litigation of civil claims by the Government for money or property, 4 CFR chapter II.

§ 1639.2 Application of other regulations; scope.

All provisions of the Federal Claims Collection Standards, 4 CFR chapter II, apply to the regulations of this part. This part supplements 4 CFR chapter II by the prescription of procedures and directives necessary and appropriate for operations of the Federal Retirement Thrift Investment Board. The Federal Claims Collection Standards and this part do not apply to any claim as to which there is an indication of fraud or misrepresentation, as described in 4 CFR 101.3, unless returned by the Department of Justice to the Board for handling.

§ 1639.3 Application to other statutes.

(a) The Executive Director may exercise his or her compromise authority for those debts not exceeding \$100,000, excluding interest, in conformity with the Federal Claims Collection Act of 1966, the Federal Claims Collection Standards issued thereunder, and this part, except where standards are established by other statutes or authorized regulations issued pursuant to them.

(b) The authority of the Executive Director of the Board to remit or mitigate a fine, penalty, or forfeiture will

be exercised in accordance with the standards for remission or mitigation established in the governing statute. In the absence of such standards, the Federal Claims Collection Standards will be followed to the extent applicable.

§ 1639.4 Definitions.

As used in this part:

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable to the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt owed to the United States.

Agency means executive departments and agencies, the United States Postal Service, the Postal Rate Commission, the United States Senate, the United States House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and Government corporations.

Board means the Federal Retirement Thrift Investment Board, which administers the Thrift Savings Plan and the Thrift Savings Fund.

Certification means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

Creditor agency means an agency of the Federal Government to which the debt is owed.

Debt means money owed by an individual to the United States including a debt owed to the Thrift Savings Fund or to a Federal agency, but does not include a Thrift Savings Plan loan.

Delinquent debt means a debt that has not been paid within the time limit prescribed by the Board.

Disposable pay means that part of current basic pay, special pay, incentive pay, retirement pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld, excluding any garnishment under 5 CFR parts 581, 582. The Board will include the following deductions in determining disposable pay subject to salary offset:

(1) Federal Social Security and Medicare taxes;

(2) Federal, state, or local income taxes, but no more than would be the case if the employee claimed all dependents to which he or she is entitled and any additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(3) Health insurance premiums;

(4) Normal retirement contributions as explained in 5 CFR 581.105(e);

(5) Normal life insurance premiums, excluding optional life insurance premiums; and

(6) Levies pursuant to the Internal Revenue Code, as defined in 5 U.S.C. 5514(d).

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board, or his or her designee.

Federal Claims Collection Standards means the standards published at 4 CFR chapter II.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of the hearing.

Net Assets Available for Thrift Savings Plan Benefits means all funds owed to Thrift Savings Plan participants and beneficiaries.

Notice of intent to offset or *notice of intent* means a written notice from a creditor agency to an employee which alleges that the employee owes a debt to the creditor agency and which apprises the employee of certain administrative rights.

Notice of salary offset means a written notice from the paying agency to an employee informing the employee that it has received a certification from a creditor agency and intends to begin salary offset.

Participant means any person with an account in the Thrift Savings Plan, or who would have an account but for an employing agency error.

Paying agency means the agency of the Federal Government which em-

plloys the individual who owes a debt to the United States. In some cases, the Federal Retirement Thrift Investment Board may be both the creditor agency and the paying agency.

Payroll office means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, State and local governments, or other entity that is capable of owing a debt to the United States Government; however, agencies of the United States, are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means an offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Board or a Federal agency.

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

Thrift Savings 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 *et seq.*

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by a person to the Board or a Federal agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 1639.5 Use of credit reporting agencies.

(a) The Board may report delinquent debts to appropriate credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and is overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Board will:

(1) Take reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notify the debtor by certified mail, return receipt requested:

(i) That a designated Board official has reviewed the claim and has determined that the claim is valid and overdue;

(ii) That within 60 days the Board intends to disclose to a credit reporting agency the information authorized for disclosure by this section; and

(iii) That the debtor can request an explanation of the claim, can dispute the information in the Board's records concerning the claim, and can file for an administrative review, waiver, or reconsideration of the claim, where applicable.

(c) At the time debt information is submitted to a credit reporting agency, the Board will provide a written statement to the reporting agency that all required actions have been taken. In addition, the Board will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate Board official. The credit reporting agency will exclude the debt from its reports until the Board certifies in writing that the debt is valid.

§ 1639.6 Contracting for collection services.

The Board will use the services of a private collection contractor where it determines that such use is in the best interest of the Board. When the Board determines that there is a need to contract for collection services, it will—

(a) Retain sole authority to:

(1) Resolve any dispute by the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the Department of Justice for litigation; and

(5) Take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (e.g., the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)), and with applicable regulations of the Board;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to the Board, upon request, all data and reports contained in its files relating to its collection actions on a debt.

§ 1639.7 Initial notice to debtor.

(a) When the Executive Director determines that a debt is owed the Board, he will send a written notice to the debtor. The notice will inform the debtor of the following:

(1) The amount, nature, and basis of the debt;

(2) That payment is due immediately after receipt of the notice;

(3) That the debt is considered delinquent if it is not paid within 30 days of the date the notice is mailed or hand-delivered;

(4) That interest charges (except for State and local governments and Indian tribes), penalty charges, and administrative costs may be assessed against a delinquent debt;

(5) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt); and

(6) The address, telephone number, and name of the Board official available to discuss the debt.

(b) The Board will respond promptly to communications from the debtor.

(c) Subsequent demand letters also will notify the debtor of any interest, penalty, or administrative costs which have been assessed and will advise the debtor that the debt may be referred to a credit reporting agency (see § 1639.5), a collection agency (see § 1639.6), the Department of Justice (see § 1639.10), or the Department of the Treasury (see § 1639.11), if it is not paid.

§ 1639.8 Interest, penalty, and administrative costs.

(a) *Interest.* The Board will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(1) Interest begins to accrue on all debts from the date the initial notice is mailed or hand-delivered to the debtor. The Board will not recover interest if the debt is paid within 30 days of the date of the initial notice. The Board will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Fiscal Requirements Manual Bulletins, unless a different rate is necessary to protect the interests of the Board. The Board will notify the debtor of the basis for its finding when a different rate is necessary to protect the Board's interests.

(2) The Executive Director may extend the 30-day period for payment where he determines that such action is in the best interest of the Board. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Board will assess a penalty charge, not to exceed six percent a year, on any portion of a debt that is not paid within 90 days of the initial notice.

(c) *Administrative costs.* The Board will assess charges to cover administrative costs incurred as the result of the debtor's failure to pay a debt within 30 days of the date of the initial notice. Administrative costs include the additional costs incurred in processing

and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report, or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Board.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest, and then to the outstanding debt principal.

(e) *Waiver.* (1) The Executive Director may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty, or administrative costs, if he determines that collection of these charges would be against equity and good conscience or not in the best interest of the Board.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, where these charges have been collected before the waiver decision, they will not be refunded. The Executive Director's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 1639.9 Charges pending waiver or review.

Interest, penalty charges, and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Board, unless specifically prohibited by a statute or a regulation.

§ 1639.10 Referrals to the Department of Justice.

The Executive Director will refer to the Department of Justice for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive Board collection action, and within the period for bringing a timely suit against the debtor.

§ 1639.11 Cross-servicing agreement with the Department of the Treasury.

The Board will enter into a cross-servicing agreement with the Department of the Treasury which will authorize Treasury to take all of the debt collection actions described in this part. These debt collection services will be provided to the Board in accordance with 31 U.S.C. 3701 *et seq.*

§ 1639.12 Deposit of funds collected.

All funds owed to the Board and collected under this part will be deposited in the Thrift Savings Fund. Funds owed to other agencies and collected under this part will be credited to the account designated by the creditor agency for the receipt of the funds.

§ 1639.13 Antialienation of funds in Thrift Savings Plan participant accounts.

In accordance with 5 U.S.C. 8437, net assets available for Thrift Savings Plan benefits will not be used to satisfy a debt owed by a participant to an agency under the regulations of this part or under the debt collection regulations of any agency.

Subpart B—Salary Offset**§ 1639.20 Applicability and scope.**

(a) The regulations in this subpart provide Board procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to the Board or to Federal agencies.

(b) The regulations in this subpart apply to collections by the Executive Director, from:

(1) Federal employees who owe debts to the Board; and

(2) Employees of the Board who owe debts to Federal agencies.

(c) The regulations in this subpart do not apply to debts arising under the Internal Revenue Code of 1986, as amended (title 26, United States Code); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5

U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR Parts 101-105, 38 CFR 1.900-1.994).

(e) A levy pursuant to the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

(f) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 1639.21 Waiver requests.

The regulations in this subpart do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or under other statutory provisions pertaining to the particular debts being collected.

§ 1639.22 Notice requirements before offset.

Deductions under the authority of 5 U.S.C. 5514 may be made if, a minimum of 30 calendar days before salary offset is initiated, the Board provides the employee with written notice that he or she owes a debt to the Board. This notice of intent to offset an employee's salary will be hand-delivered or sent by certified mail to the most current address that is available to the Board. The notice provided under this section will state:

(a) That the Board has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Board's intention to collect the debt by deducting money from the employee's current disposable pay account until the debt, and all accumulated interest, penalties, and administrative costs, is paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Board's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards, 4 CFR chapter II;

(e) The employee's right to inspect and copy all records pertaining to the debt claimed or to receive copies of those records if personal inspection is impractical;

(f) The right to a hearing conducted by an administrative law judge or other impartial hearing official (*i.e.*, a hearing official not under the supervision or control of the Executive Director), with respect to the existence and amount of the debt claimed or the repayment schedule (*i.e.*, the percentage of disposable pay to be deducted each pay period), so long as a request is filed by the employee as prescribed in § 1639.23;

(g) If not previously provided, the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing and signed by both the employee and the Executive Director;

(h) The name, address, and telephone number of an officer or employee of the Board who may be contacted concerning procedures for requesting a hearing;

(i) The method and time period for requesting a hearing;

(j) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the notice of intent will stay the commencement of collection proceedings;

(k) The name and address of the officer or employee of the Board to whom the request for a hearing should be sent;

(l) That the Board will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date the employee receives the notice of debt, unless the employee files a timely request for a hearing;

(m) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(n) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3733, or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 102, or any other applicable statutory authority;

(o) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(p) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed will be promptly refunded to the employee; and

(q) That proceedings with respect to the debt are governed by 5 U.S.C. 5514.

§ 1639.23 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the Board office designated in the notice of intent. See § 1639.22(k).

(1) The request for hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that support his or her position.

(2) The request for hearing must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. Timely filing will stay the commencement of collection procedures.

(3) The employee must also specify whether an oral or written hearing is

requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to timely submit.* (1) If the employee files a request for a hearing after the expiration of the 15th calendar day period provided for in paragraph (a) of this section, the Board will accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or because of a failure to receive notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Board's offset schedule, if the employee:

(i) Fails to file a request for a hearing and the failure is not excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified and the hearing official does not determine that failure to appear was due to circumstances beyond the employee's control.

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her own expense.

(d) *Review of Board records related to the debt.* (1) In accordance with § 1639.22(e), an employee who intends to inspect or copy Board records related to the debt must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee's receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements will be made to send copies of those records to the employee.

(e) *Hearing official.* The Board may request an administrative law judge to conduct the hearing or the Board may obtain a hearing official who is not

under the supervision or control of the Executive Director.

(f) *Procedure.* (1) *General.* After the employee requests a hearing, the hearing official will notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice will set forth the date, time, and location of the hearing. If the hearing will be written, the employee will be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record will be closed. This date will give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing will be provided an oral hearing, if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.*, when an issue of credibility is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Witnesses who testify in oral hearings will do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Record determination.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart.

(g) *Date of decision.* The hearing official will issue a written decision, based upon documentary evidence and information developed at the hearing, as soon as practical after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In that case, the 60 day decision period

will be extended by the number of days by which the hearing was postponed.

(h) *Content of decision.* The written decision will include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(i) *Failure to appear.* (1) In the absence of good cause shown (*e.g.*, excused illness), an employee who fails to appear at a hearing will be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent.

(2) If the representative of the creditor agency fails to appear, the hearing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented by the representative(s) of the employee and the documentary documentation submitted by both parties.

(3) At the request of both parties, the hearing official will schedule a new hearing date. Both parties will be given reasonable notice of the time and place of this new hearing.

§ 1639.24 Certification.

(a) The Board will provide a certification to the paying agency in all cases in which:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a hearing; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must include:

(1) A statement that the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Board's right to collect the debt first accrued;

(4) A statement that the Board's regulations have been approved by the Office of Personnel Management under 5 CFR part 550, subpart K;

(5) The amount and date of the collection, if only a one-time offset is required;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date other than the next officially established pay period is required; and

(7) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the dates of notices and hearings provided to the employee, or, if applicable, the employee's signed consent to salary offset or a signed statement acknowledging receipt of required procedures.

§ 1639.25 Voluntary repayment agreements as alternative to salary offset.

(a) In response to a notice of intent to offset against an employee's salary to recover a debt owed to the Board, an employee may propose to the Board that he or she be allowed to repay the debt through direct payments as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset must submit in writing a proposed agreement to repay the debt. The proposal must admit the existence of the debt and set forth a proposed repayment schedule. The employee's proposal must be received by the official designated in the notice of intent within 15 calendar days after the employee received the notice.

(b) In response to a timely proposal by the debtor, the Executive Director will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Executive Director's discretion to accept a repayment agreement instead of proceeding by salary offset.

(c) If the Executive Director decides that the proposed repayment agreement is unacceptable, the employee will have 15 days from the date he or she received notice of the decision to file a petition for a hearing.

(d) If the Executive Director decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and the Executive Director.

§ 1639.26 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement in connection with a debt owed to the Board may, at any time, request that the Board conduct a special review of the amount of the salary offset or voluntary payment, based on materially changed circumstances, such as catastrophic illness, divorce, death, or disability.

(b) To assist the Board in determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee will submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents, indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Expenses for food, housing, clothing, and transportation;
- (6) Medical expenses; and
- (7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee must file an alternative proposed salary offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Executive Director will evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Executive Director will notify the employee in writing of his determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the Board will provide a new certification to the paying agency.

§ 1639.27 Procedures for salary offset.

(a) The Board will coordinate salary deductions under this subpart.

(b) The Board's payroll office will determine the amount of an employee's

disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Board's payroll office of certification for the creditor agency.

(d) Types of collection—

(1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Deductions from final check.* A deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, 4 CFR chapter II, in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Board, and the balance of the debt cannot be liquidated by offset of the final salary check, the Board may offset any later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards, 4 CFR chapter II.

(e) Multiple debts. In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Board's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) Precedence of debts owed to the Board. For Board employees, debts owed to the Board generally take precedence over debts owed to other agencies. In the event that a debt to the Board is certified while an employee is

subject to a salary offset to repay another agency, the Board may decide whether to have the first debt repaid in full before collecting the claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Board can be collected in one pay period, the Board payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the debt to the Board. When an employee owes two or more debts, the best interests of the Board will be the primary consideration in the payroll office's determination of the order in which the debts should be collected.

§ 1639.28 Coordinating salary offset with other agencies.

(a) *Responsibility of the Board as the creditor agency.* (1) The Board will coordinate debt collections with other agencies and will, as appropriate:

(i) Arrange for a hearing or special review upon proper petitioning by the debtor; and

(ii) Prescribe, upon consultation with the General Counsel, the additional practices and procedures that may be necessary to carry out the intent of this subpart.

(2) The Board will ensure:

(i) That each notice of intent to offset is consistent with the requirements of § 1639.22;

(ii) That each certification of debt that is sent to a paying agency is consistent with the requirements of § 1639.24; and

(iii) That hearings are properly scheduled.

(3) Requesting recovery from current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Board will provide the paying agency with a certification as provided in § 1639.24.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Board must submit a debt claim to the paying agency for collection under 31 U.S.C. 3716. The paying agency must certify the total amount of its collection on the debt and notify the employee and the Board. If the paying

agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal Government sources, the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Board must submit a properly certified claim to the agency responsible for making the payments before the collection can be made.

(5) Separated employee. If the employee is already separated and all payments due from his or her former paying agency have been paid, the Board may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR part 831, subpart R, or 5 CFR part 845, subpart D) or other similar funds, be administratively offset to collect the debt.

(6) Employee transfer. When an employee transfers from one paying agency to another paying agency, the Board will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Board will submit a properly certified claim to the new paying agency and will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) *Responsibility of the Board as the paying agency.* (1) *Complete claim.* When the Board receives a certified claim from a creditor agency, deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the employee will receive a written notice from the Board including:

(i) A statement that the Board has received a certified debt claim from the creditor agency;

(ii) The amount of the debt claim;

(iii) The date salary offset deductions will begin, and

(iv) The amount of such deductions.

(2) *Incomplete claim.* When the Board receives an incomplete certification of debt from a creditor agency, the Board will return the debt claim with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Board is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Board, the employee transfers from the Board to a different paying agency before the debt is collected in full, the Board will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

§ 1639.29 Refunds.

(a) If the Board is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed; or

(2) An administrative or judicial order directs the Board to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 1639.30 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law, unless there are statutory or contractual provisions to the contrary.

Subpart C—Tax Refund Offset

§ 1639.40 Applicability and scope.

(a) The regulations in this subpart implement 31 U.S.C. 3720A which authorizes the Department of the Treasury to reduce a tax refund by the amount of a past-due legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due legally enforceable debt referable to the Department of the Treasury is a debt that is owed to the Board; and:

(1) Is at least \$25.00 dollars;

(2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(3) Cannot be currently collected under the salary offset provisions of 5 U.S.C. 5514;

(4) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Board against amounts payable to the debtor by the Board;

(5) With respect to which the Board has given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence presented by the debtor, and has determined that an amount of the debt is past due and legally enforceable;

(6) Which has been disclosed by the Board to a credit reporting agency as authorized by 31 U.S.C. 3711(e), unless the credit reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c;

(7) With respect to which the Board has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days thereafter, the debt will be referred to the Department of the Treasury for offset against any overpayment of tax; and

(8) All other requirements of 31 U.S.C. 3720A and the Department of Treasury regulations relating to the

eligibility of a debt for tax return offset have been satisfied.

§ 1639.41 Procedures for tax refund offset.

(a) The Board will be the point of contact with the Department of the Treasury for administrative matters regarding the offset program.

(b) The Board will ensure that the procedures prescribed by the Department of the Treasury are followed in developing information about past-due debts and submitting the debts to the IRS.

(c) The Board will submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Department of the Treasury which will contain:

(1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code, 26 U.S.C. 6109) of the person who is responsible for the debt;

(2) The dollar amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. See § 1639.40(b).

(d) The Board shall promptly notify the Department of the Treasury to correct Board data submitted when it:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(e) When advising debtors of an intent to refer a debt to the Department of the Treasury for offset, the Board will also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 1639.42 Notice requirements before tax refund offset.

(a) The Board must notify, or make a reasonable attempt to notify, the person:

(1) The amount of the debt and that the debt is past due; and

(2) Unless repaid within 60 days, the debt will be referred to the Department of the Treasury for offset against any refund of overpayment of tax.

(b) The Board will provide a mailing address for forwarding any written correspondence and a contact name and telephone number for any questions concerning the offset.

(c) The Board will give the individual debtor at least 60 days from the date of the notice to present evidence that all or part of the debt is not past due or legally enforceable. The Board will consider the evidence presented by the individual and will make a determination whether any amount of the debt is past due and legally enforceable. For purposes of this section, evidence that collection of the debt is affected by a bankruptcy proceeding involving the individual will bar referral of the debt to the Department of the Treasury.

(d) Notice given to a debtor under paragraphs (a), (b), and (c) of this section shall advise the debtor of how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable. Such evidence may not be referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c) of this section. Unless such evidence is directly considered by an official or employee of the Board, and the determination required under paragraph (c) of this section has been made by an official or employee of the Board, any unresolved dispute with the debtor regarding whether all or part of the debt is past due or legally enforceable must be referred to the Board for ultimate administrative disposition, and the Board must directly notify the debtor of its determination.

Subpart D—Administrative Offset

§ 1639.50 Applicability and scope.

(a) The regulations in this subpart apply to the collection of debts owed to the Board, or from a request for an offset received by the Board from a Federal agency. Administrative offset is

authorized under section 5 of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). The regulations in this subpart are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

(b) The Executive Director, after attempting to collect a debt owed to the Board under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset, subject to the following:

(1) The debt is certain in amount; and
 (2) It is in the best interest of the Board to collect the debt by administrative offset because of the decreased costs of collection and acceleration in the payment of the debt.

(c) The Executive Director may initiate administrative offset with regard to debts owed by a person to a Federal agency, so long as the funds to be offset are not payable from net assets available for Thrift Savings Plan benefits. The head of the creditor agency, or his or her designee, must submit a written request for the offset with a certification that the debt exists and that the person has been afforded the necessary due process rights.

(d) The Executive Director may request another agency that holds funds payable to a Fund debtor to pay the funds to the Board in settlement of the debt. The Board will provide certification that:

(1) The debt exists; and
 (2) The person has been afforded the necessary due process rights.

(e) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such an action are likely to be less than the amount of the debt.

(f) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years unless facts material to the Board or a Federal agency's right to collect the debt were not known, and reasonably could not have been known,

by the official or officials responsible for discovering and collecting the debt.

(g) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed to the Board by Federal agencies or by any State or local government.

§ 1639.51 Notice procedures.

Before collecting any debt through administrative offset, the Board will send a notice of intent to offset to the debtor by certified mail, return receipt requested, at the most current address that is available to the Board. The notice will provide:

(a) A description of the nature and amount of the debt and the intention of the Board to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of the Board with respect to the debt;

(c) An opportunity for review within the Board of the determination of the Board with respect to the debt; and

(d) An opportunity to enter into a written agreement for repaying the amount of the debt.

§ 1639.52 Board review.

(a) A debtor may dispute the existence of the debt, the amount of debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Board official who provided the notice of intent to offset within 30 calendar days of the debtor's receipt of the written notice described in § 1639.51.

(b) If the debtor requests an opportunity to inspect or copy the Board's records concerning the disputed claim, the Board will grant 10 business days for the review. The time period will be measured from the time the request for inspection is granted or from the time the debtor receives a copy of the records.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's account(s) maintained in the Board may be temporarily suspended to the extent of the debt that is owed. Depending on the type of transaction, the suspension could preclude

its payment, removal, or transfer, as well as prevent the payment of interest or discount due on the transaction. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized by law will continue to accrue.

(e) If the debtor does not exercise the right to request a review within the time specified in this section or if, as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset will be ordered in accordance with the regulations in this subpart without further notice.

§ 1639.53 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for repaying the debt. If the financial condition of the debtor does not support the ability to pay in one lump sum, the Board may consider reasonable installments. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Board's request for the statement. At the Board's option, a confess-judgment note or bond of indemnity with surety may be required for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 31 U.S.C. 3711.

§ 1639.54 Requests for offset to Federal agencies.

The Executive Director may request that funds due and payable to a debtor by another Federal agency be paid to the Board in payment of a debt owed to the Board by that debtor. In requesting administrative offset, the Board, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(a) That the debtor owes the debt;

(b) The amount and basis of the debt; and

(c) That the Board has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

§ 1639.55 Requests for offset from Federal agencies.

Any Federal agency may request that funds due and payable to its debtor by the Board be administratively offset in order to collect a debt owed to that agency by the debtor, so long as the funds are not payable from net assets available for Thrift Savings Plan benefits. The Board will initiate the requested offset only:

(a) Upon receipt of written certification from the creditor agency stating:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt;

(3) That the agency has prescribed regulations for the exercise of administrative offset; and

(4) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review; and

(b) Upon a determination by the Board that collection by offset against funds payable by the Board would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

§ 1639.56 Expedited procedure.

The Board may effect an administrative offset against a payment to be made to the debtor before completion of the procedures required by §§ 1639.51 and 1639.52 if failure to take the offset would substantially jeopardize the Board's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be promptly followed by the completion of those procedures. Amounts recovered by offset,

but later found not to be owed to the Board, will be promptly refunded.

PART 1640—PERIODIC PARTICIPANT STATEMENTS

Sec.

- 1640.1 Definitions.
- 1640.2 Duty to provide information.
- 1640.3 Statement of individual account.
- 1640.4 Account transactions.
- 1640.5 Investment fund information.
- 1640.6 Method of providing information.

AUTHORITY: 5 U.S.C. 8439 (c)(1) and (c)(2), 5 U.S.C. 8474 (b)(5) and (c)(1).

SOURCE: 52 FR 20371, June 1, 1987, unless otherwise noted.

§ 1640.1 Definitions.

As used in this Subpart:

Board means the Federal Retirement Thrift Investment Board, established pursuant to 5 U.S.C. 8472;

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

Executive Director means the Executive Director of the Board described in 5 U.S.C. 8474;

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);

Individual account means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a);

Investment fund means either the G Fund, the F Fund, or the C Fund, or any other Thrift Savings Plan investment fund created after June 24, 1997;

Open season means the period during which participants may choose to begin making contributions to the Thrift Savings Plan, to change or discontinue the amount they are currently contributing to the Thrift Savings Plan (without losing the right to recommence contributions the next open season), or to allocate prospective contributions to the Thrift Savings Plan among the investment funds;

Participant means any person with an individual account in the Thrift Savings Plan, or who would have an account in the Thrift Savings Plan but for an employing agency error;

Record keeper means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. As of June 24, 1997, the record keeper is the National Finance Center, Office of the Chief Financial Officer, United States Department of Agriculture, located in New Orleans, Louisiana.

Source of contributions means either agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3), agency matching contributions under 5 U.S.C. 8432(c)(2), or employee contributions under 5 U.S.C. 8351, or 8440(a) through 8440d;

Thrift Savings Plan means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8401-8479.

[52 FR 20371, June 1, 1987, as amended at 62 FR 34154, June 24, 1997]

§ 1640.2 Duty to provide information.

The Executive Director will provide the information prescribed in §§ 1640.3 and 1640.5 at least once every six months, and not later than thirty (30) days before the last month of an open season.

[62 FR 34155, June 24, 1997]

§ 1640.3 Statement of individual account.

The Executive Director will furnish each participant with the following information concerning that participant's individual account:

- (a) Name and social security number under which the account is established;
- (b) Beginning and ending dates of the period covered by the statement;
- (c) As of the opening of business on the beginning date and the close of business on the ending date of the period covered by the statement:
 - (1) The balance of the account;
 - (2) The amounts of contributions and earnings in the C Fund, the F Fund, and the G Fund, by source of contribution;
 - (d) All transactions made in accordance with § 1640.4 and affecting the individual account which occurred during the period covered by the statement;

§ 1640.4

(e) Any other information that the Executive Director determines should be in the statement.

[52 FR 20371, June 1, 1987, as amended at 62 FR 34155, June 24, 1997]

§ 1640.4 Account transactions.

(a) Where relevant, the following transactions will be reported in each individual account statement:

- (1) Contributions;
- (2) Earnings posted;
- (3) Withdrawals;
- (4) Forfeitures;
- (5) Loan Activity;
- (6) Transfers among investment funds;
- (7) Adjustments to prior transactions; and
- (8) Any other transaction that the Executive Director deems will affect the status of the individual account.

(b) Where relevant, the statement will contain the following information concerning each transaction identified in paragraph (a) of this section:

- (1) Type of transaction;
- (2) Pay date of the pay period in which the transaction was reflected in the participant's salary payment;
- (3) Investment funds affected;
- (4) Date the transaction was processed;
- (5) Source of the contribution;
- (6) Amount of the transaction; and
- (7) Any other information the Executive Director deems relevant.

[62 FR 34155, June 24, 1997]

§ 1640.5 Investment fund information.

For each open season, the Executive Director will furnish each participant with a statement concerning each of the investment funds. This statement will contain the following information concerning each investment fund:

- (a) A summary description of the type of investments to be made by the fund, written in a manner that will allow the participant to make an informed decision; and
- (b) The performance history of the type of investments to be made by the fund, covering the five-year period preceding the date of the evaluation.

[62 FR 34155, June 24, 1997]

§ 1640.6 Method of providing information.

(a) *Individual account statement.* The information concerning each participant's individual account described in §§ 1640.3 and 1640.4 will be sent to the participant at the participant's last known address, by first class mail. It is the participant's responsibility to provide his or her current address to his or her agency or, in the case of a separated employee, to the record keeper.

(b) *Investment information.* The investment information described in § 1640.5 will be furnished to each participant either:

(1) By mailing the information to the participant by the method described in paragraph (a) of this section; or

(2) By including that information in material published by the Board and distributed in a manner reasonably designed to reach the participant. This includes distributing the material through the participant's agency or, in the case of a separated employee, through the record keeper.

[62 FR 34155, June 24, 1997]

PART 1645—ALLOCATION OF EARNINGS

Sec.

- 1645.1 Definitions.
- 1645.2 Posting of receipts.
- 1645.3 Calculation of net earnings for each investment fund.
- 1645.4 Administrative expenses attributable to each investment fund.
- 1645.5 Basis for allocation of earnings.
- 1645.6 Earnings allocation for individual accounts.
- 1645.7 Posting of earnings to individual accounts.

AUTHORITY: 5 U.S.C. 8439(a)(3) and 5 U.S.C. 8474.

SOURCE: 53 FR 15621, May 2, 1988, unless otherwise noted.

§ 1645.1 Definitions.

As used in this part, the following terms have the following meanings:

Accrued means accounted for during a valuation period, whether or not actually paid or received during that period.

Administrative expenses means the expenses authorized by 5 U.S.C. 8437(c)(3).

Agency automatic (1%) contributions means contributions made pursuant to 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3).

Agency matching contributions means contributions made pursuant to 5 U.S.C. 8432(c)(2).

Allocation means any *pro rata* distribution of amounts.

Allocation date means the last day of each calendar month.

Basis means the portion of an account or Investment Fund upon which the allocation of earnings is based.

Board means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

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

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

Employer contributions means agency automatic (1%) contributions and agency matching contributions.

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

Forfeitures means amounts forfeited pursuant to 5 U.S.C. 8432(g)(2) and other nonstatutory forfeited amounts, net of restored forfeited amounts.

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

Individual account means the account established for a participant in the Thrift Savings Fund pursuant to 5 U.S.C. 8439(a)(2).

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

Month-end account balance means the value, as of the allocation date, of the funds for each source of contributions in each investment fund, including all earnings, and any forfeiture, restored forfeited amount, adjustment, earnings correction, loan, withdrawal, or interfund transfer transactions posted as of the allocation date.

Posting means the process of crediting or debiting amounts to an individual account.

Recordkeeper means the organization designated by the Board as the Thrift Savings Plan's recordkeeper.

Source means the origin of any one of the three types of contributions that are made to the Fund on behalf of par-

ticipants—employee contributions, agency automatic (1%) contributions, or agency matching contributions.

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

Valuation period means the calendar month during which earnings accrue.

[53 FR 15621, May 2, 1988, as amended at 61 FR 58973, Nov. 20, 1996]

§ 1645.2 Posting of receipts.

Agency and employee contributions and loan repayments will be posted by source and by investment fund to the appropriate individual account on the day they are processed by the recordkeeper.

[61 FR 58974, Nov. 20, 1996]

§ 1645.3 Calculation of net earnings for each investment fund.

(a) For each valuation period, net earnings will be calculated separately for each investment fund.

(b) Net earnings for each investment fund will equal:

(1) The sum of the following items, if any, accrued during the current valuation period:

(i) Interest on money of that investment fund which is invested with the G Fund;

(ii) Interest on other short-term investments of the investment fund;

(iii) Income (such as dividends and interest) on other investments of the investment fund; and

(iv) Capital gain or loss on investments of the investment fund, net of transaction costs.

(2) Minus the accrued administrative expenses of the investment fund, determined in accordance with § 1645.4.

(c) The net earnings for each investment fund resulting from paragraph (b) of this section will be adjusted by residual net earnings from the previous valuation period for that investment fund, as described in § 1645.6(b), to produce the earnings available for allocation to the participant accounts in the respective investment fund for the current valuation period.

[53 FR 15621, May 2, 1988, as amended at 61 FR 58974, Nov. 20, 1996]

§ 1645.4 Administrative expenses attributable to each investment fund.

A portion of administrative expenses accrued during each valuation period will be charged to each investment fund. The investment funds' respective portions will be determined as follows:

(a) Investment managers' fees and other accrued administrative expenses attributable only to the C or F Fund will be charged to the C or F Fund, respectively;

(b) All other accrued administrative expenses will be reduced by forfeitures and earnings on forfeitures accrued during the valuation period;

(c) The amount of accrued administrative expenses not covered by forfeitures under paragraph (b) of this section will be charged on a *pro rata* basis to the investment funds, based on the respective investment fund balances on the last day of the prior valuation period.

[61 FR 58974, Nov. 20, 1996]

§ 1645.5 Basis for allocation of earnings.

(a) *Individual account basis.* Except for the amounts described in paragraph (b) of this section, the individual account basis on the earnings allocation date for each source of contributions in each investment fund equals:

(1) The month-end account balance as of the previous allocation date; plus

(2) One-half of contributions posted to the individual account during the current valuation period (except for contributions referred to in paragraph (b) of this section); plus

(3) One-half of all loan repayments posted to the individual account during the current valuation period.

(b) *Inclusion of retroactive contributions.* The individual account basis for agency automatic (1%) contributions will also include all amounts attributable to retroactive contributions that are made to the individual account pursuant to 5 U.S.C. 8432(c)(3) and that are processed by the record-keeper during the current valuation period.

(c) *Computation of fund basis.* For each valuation period, the total fund basis for each investment fund will be the sum of all individual account bases

for all sources of contributions in that investment fund, calculated as described in paragraphs (a) and (b) of this section.

[61 FR 58974, Nov. 20, 1996]

§ 1645.6 Earnings allocation for individual accounts.

(a) *Computation of earnings for each individual account.* Earnings for each source of contributions for each investment fund will be allocated to each individual account separately. The total net earnings for each investment fund (as computed under § 1645.3) will be divided by the total fund basis for that investment fund (as computed under § 1645.5(c)). The resulting number (the "allocation factor") will be multiplied by the individual account basis for the respective source of contributions in that investment fund (as computed under § 1645.5(a)), to determine the individual account earnings for the valuation period attributable to that source of contributions in that investment fund. The earnings of the individual account for each source of contributions in each investment fund, when added together, will constitute the earnings for that individual account during the valuation period.

(b) *Residual net earnings.* Amounts allocated to individual accounts may not exceed the total amount of earnings available to be allocated. To avoid allocating excessive amounts, computation of earnings for individual accounts described in paragraph (a) of this section will not include fractions of a cent. Residual net earnings attributable to unallocated fractions of a cent will be allocated with the earnings for the following valuation period.

[61 FR 58974, Nov. 20, 1996]

§ 1645.7 Posting of earnings to individual accounts.

For each source of contributions for each investment fund, the amount of earnings computed for each individual account in a valuation period, as described in § 1645.6, will be posted to the individual account as of the allocation date.

[61 FR 58974, Nov. 20, 1996]

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

SOURCE: 62 FR 49113, Sept. 18, 1997, unless otherwise noted.

Subpart A—General

Sec.

- 1650.1 Definitions.
- 1650.2 Eligibility for a TSP withdrawal.
- 1650.3 Frozen accounts.

Subpart B—Post-Employment Withdrawals

- 1650.10 Single payment.
- 1650.11 Monthly payments.
- 1650.12 Annuities.
- 1650.13 Transfer of withdrawal payments.
- 1650.14 Deferred withdrawal elections.
- 1650.15 Required withdrawal date.
- 1650.16 Changes and cancellation of withdrawal election.

Subpart C—Procedures for Post-Employment Withdrawals

- 1650.20 Information to be provided by agency.
- 1650.21 Accounts of more than \$3,500.
- 1650.22 Accounts of \$3,500 or less.

Subpart D—In-Service Withdrawals

- 1650.30 Age-based withdrawals.
- 1650.31 Financial hardship withdrawals.
- 1650.32 Contributing to the TSP after an in-service withdrawal.
- 1650.33 Uniqueness of loans and withdrawals.

Subpart E—Procedures for In-Service Withdrawals

- 1650.40 How to obtain an age-based in-service withdrawal.
- 1650.41 How to obtain a financial hardship in-service withdrawal.
- 1650.42 Taxes related to in-service withdrawals.

Subpart F—[Reserved]

Subpart G—Spousal Rights

- 1650.60 Spousal rights pertaining to post-employment withdrawals.
- 1650.61 Spousal rights when a separated participant changes post-employment withdrawal election.
- 1650.62 Spousal rights pertaining to in-service withdrawals.
- 1650.63 Executive Director's exception to the spousal notification requirement.
- 1650.64 Executive Director's exception to requirement to obtain the spouse's signature.

AUTHORITY: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

Subpart A—General

§ 1650.1 Definitions.

As used in this part:

Account balance means, unless otherwise specified, the nonforfeitable valued account balance of a TSP participant as of the most recent month-end before the date a withdrawal occurs.

Board means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent retirement system.

In-service withdrawal means an age-based or financial hardship withdrawal from the TSP obtained by a participant who is still employed by the Government.

Monthly processing cycle means the process, beginning on the evening of the fourth business day of the month, by which the record keeper allocates the amount of earnings to be credited to participant accounts in the Plan and authorizes disbursements from the Plan.

Participant means any person with an account in the Thrift Savings Plan.

Post-employment withdrawal means a withdrawal from the TSP obtained by a participant who has separated from Government employment, as defined in this section.

Reimbursement means a payment made to or on behalf of a participant by any person or entity (including an insurance company) to cover the cost of an extraordinary expense described in § 1650.31(a)(2).

Separation from Government employment means the cessation of employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for at least 31 full calendar days.

Spouse means the person to whom a TSP participant is married on the date he or she signs forms on which the TSP requests spouse information including a spouse from whom the participant is legally separated, and including a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live.

Thrift Savings Plan, TSP, or Plan means the Federal Retirement Thrift Savings Plan, established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan (TSP) contribution 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.

Thrift Savings Plan Service Office means the office established by the Board to service participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

Valuation date means, for purposes of a required minimum distribution, the last day of the calendar year immediately preceding the year for which a distribution is made.

§ 1650.2 Eligibility for a TSP withdrawal.

(a) A participant who separates from Government employment, as defined in § 1650.1, can withdraw his or her account by one of the withdrawal methods described in subpart B of this part using the procedures set out in subpart C of this part.

(b) A separated participant who is reemployed in a position in which he or she is eligible to participate in the TSP is subject to the following withdrawal eligibility rules:

(1) A participant who is reemployed in a TSP-eligible position on or before the 31st full calendar day after separation cannot withdraw his or her TSP account (except for an in-service withdrawal described in subpart D of this

subpart). If the participant is scheduled for an automatic cashout, as described in § 1650.22, the cashout will be canceled if the participant informs the TSP that he or she has been reemployed or expects to be reemployed within 31 full calendar days of separation.

(2) A participant who is reemployed in a TSP-eligible position more than 31 full calendar days after separation may withdraw the portion of his or her account balance which is attributable to the earlier period of employment. If the amount attributable to the earlier period of employment is greater than \$3,500, the participant must submit a properly completed withdrawal request (Form TSP-70) selecting a withdrawal option that results in an immediate withdrawal. However, a Form TSP-70 will not be accepted unless the TSP records indicate that the former employing agency reported the participant as separated from Government employment. If a participant has elected to receive monthly payments under § 1650.11, upon report by the agency that the participant is not separated, payments will not be made and, if already started, will stop.

(c) A participant who has not separated from Government employment can elect a withdrawal option described in subpart D of this part by following the procedures set out in subpart E of this part.

(d) A participant cannot make a post-employment withdrawal until any outstanding TSP loan has been either repaid in full or declared to be a taxable distribution. An outstanding TSP loan does not affect a participant's eligibility for an in-service withdrawal.

(e) All withdrawals are subject to the rules relating to spouse's rights (found in subpart G of this part), domestic relations orders, alimony and child support legal process, and child abuse enforcement orders (5 CFR part 1653). Post-employment withdrawals are also subject to the Internal Revenue Code's required minimum distribution rules.

§ 1650.3 Frozen accounts.

A participant may not withdraw any portion of his or her account balance if the account is frozen as a result of a pending retirement benefits court

order, an alimony or child support enforcement order, a child abuse enforcement order, or as a result of a freeze placed on the account by the Board for another reason.

Subpart B—Post-Employment Withdrawals

§ 1650.10 Single payment.

A participant can withdraw his or her entire account in a single payment.

§ 1650.11 Monthly payments.

(a) A participant can withdraw his or her account balance in two or more substantially equal monthly payments, to be calculated under one of the following methods:

(1) *A fixed monthly payment amount.* The amount must be at least \$25 per month and must satisfy any minimum distribution requirements. Payments will be made each month until the account is expended. If the last scheduled payment would be less than the chosen amount, it will be combined and paid with the previous payment;

(2) *A fixed number of monthly payments.* The participant's month-end account balance for the month preceding the month of the first payment will be divided by the number of payments chosen in order to determine the monthly amount. The amount must be at least \$25 per month and must satisfy any minimum distribution requirements. In January of each subsequent year, the TSP will divide the December 31 account balance from the prior year by the remaining number of payments in order to determine that year's monthly payments. If the monthly payment amount is less than \$25, it will be increased to \$25. This process will be repeated each year until the account is expended; or

(3) *A monthly payment amount calculated using the factors set forth in Internal Revenue Service expected return multiply table V, 26 CFR 1.72-9.* There is no \$25 minimum monthly payment under this method. In the year payments begin, the monthly payment amount is calculated by dividing the month-end account balance for the month preceding the month of the first payment by the factor from table V based upon the participant's age as of

his or her birthday in that year. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the December 31 account balance from the previous year by the factor from Table V based upon the participant's age as of his or her birthday in the year payments will be made. That amount is divided by 12 to yield the monthly payment amount.

(b) A participant who chooses to receive monthly payments calculated using one of the three methods set forth in paragraph (a) of this section cannot change the method after payments begin. Also, except as provided in paragraph (c) of this section, the participant cannot change the number of payments or the payment amount after payments begin.

(c) A participant receiving monthly payments can choose to receive the remainder of his or her account balance in a final single payment.

(d) A participant receiving monthly payments may invest his or her account balance as provided in 5 CFR part 1601.

§ 1650.12 Annuities.

(a) A participant can withdraw his or her entire account balance in the form of a life annuity. The participant's account balance must be \$3,500 or more in order for the TSP to purchase an annuity. The TSP will send forms to a participant who chooses this method which ask him or her to choose an annuity method, name a beneficiary (if required), and provide any necessary spousal waiver or spousal information. Upon receipt of the required information, the TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance, except for any amount necessary to satisfy minimum distribution requirements. The first annuity payment will be made approximately 30 calendar days after the purchase of the annuity. The annuity will provide a payment for life to the participant and, if applicable, the participant's survivor, in accordance with the type of annuity chosen.

(b) The following types of annuities are available to participants:

(1) *A single life annuity with level payments.* This annuity is based upon the life expectancy of the participant at the time of purchase and provides monthly payments to the participant as long as the participant lives.

(2) *A joint life annuity for the participant and his or her spouse with level payments.* This annuity is based upon the combined life expectancies of the participant and the spouse and provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as he or she is alive.

(3) *Either a single life or joint life annuity (as described in paragraph (b)(1) or (b)(2) of this section) where the amount of the monthly payment can increase each year on the anniversary date of the first annuity payment.* The amount of the increase is based on the average annual change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as measured between the period of July through September in the second calendar year preceding the anniversary date and July through September in the calendar year preceding the anniversary date. For example, if the anniversary of an increasing annuity occurs in November of 1995, the amount of the increase will be calculated based upon the change in the index between the July-September period in 1993 and the July-September period in 1994. Monthly payments cannot decrease, nor can they increase more than 3 percent each year. If this option is chosen in conjunction with a joint life annuity with the spouse, the annual increase continues to apply to benefits received by the survivor.

(4) *A joint life annuity, with level payments, for the participant and another person who either is a former spouse or has an insurable interest in the participant.* This annuity is based upon the combined life expectancies of the participant and the other person. It provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as he or she is alive. Increasing payments cannot be chosen for a joint annuity with a person other than the spouse.

(i) A person has an “insurable interest” in a participant if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant’s continued life.

(ii) A relative (whether blood or adopted, but not by marriage) who is closer than a first cousin will be presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (b)(4)(ii) of this section has an insurable interest in him or her by submitting with the annuity request an affidavit from a person other than the participant or the joint annuitant demonstrating that the designated joint annuitant has an insurable interest (as defined in paragraph (b)(4)(i) of this section) in the participant.

(c) Participants who choose a joint life annuity (with either a spouse or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the payment made when both the participant and the joint annuitant are alive. A 100 percent survivor benefit provides a monthly payment to the survivor which is the same amount as the payment made when both the participant and the survivor are alive. Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option, except that the 100 percent survivor benefit can be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court order) only if the joint annuitant is not more than 10 years younger than the participant.

(d) The following mutually exclusive features can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, if applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of monthly payments already made will be paid to the named beneficiaries. The participant (or the joint

annuitant, if the participant is deceased) may name or change the beneficiaries. This feature can be combined with any other annuity option.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will continue to be made to the beneficiaries selected by the participant until 120 payments have been made. This feature can be combined with any single life annuity option, but cannot be selected in conjunction with any joint life annuity option.

(e) The Board can, from time to time, establish other types of annuities, other levels of survivor benefits, and other annuity features.

(f) The Board can, from time to time, eliminate a type of annuity (except for those annuities described in paragraph (b) of this section), a survivor benefit level, or an annuity feature. However, if the Board does so, it must continue to allow participants to purchase annuities of the eliminated type or containing the eliminated feature for five years after the date the decision to eliminate the annuity type or feature is published in the FEDERAL REGISTER.

(g) Once an annuity has been purchased, the type of annuity, any annuity features, and the identity of the annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.13 Transfer of withdrawal payments.

(a) At the participant's request, the TSP will transfer directly to an eligible retirement plan all or part of any withdrawal that is an "eligible rollover distribution," as defined in 26 U.S.C. 402(c)(4). A withdrawal method that is not an eligible rollover distribution cannot be transferred.

(b) The following TSP withdrawal methods are considered eligible rollover distributions:

(1) A single payment, as described in § 1650.10;

(2) Monthly payments, as described in § 1650.11, where payments are expected to last less than 10 years at the time they begin, according to the following rules:

(i) If the participant elects a number of monthly payments, the number of payments must be fewer than 120;

(ii) If the participant elects a monthly payment amount, the amount, when divided into the participant's account balance as of the end of the month prior to the first payment, must yield a number less than 85;

(3) A final single payment, as described in § 1650.11(c).

(c) The following withdrawal methods are not eligible rollover distributions:

(1) Any annuity purchased by the TSP.

(2) Any monthly payment that does not meet the rules set forth in paragraph (b)(2) of this section, including any monthly payment computed based on the Internal Revenue Service expected return multiple table V (see § 1650.11(a)(3)).

(3) Any minimum distribution payment or any portion of another payment which represents a minimum distribution payment.

(d) An eligible retirement plan is a plan defined in 26 U.S.C. 402(c)(8). There are three types of eligible retirement plans: an Individual Retirement Arrangement (IRA) (which can be either an individual retirement account or an individual retirement annuity), a plan qualified under 26 U.S.C. 401(a), and a plan described in 26 U.S.C. 403(a). An IRA or other eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

§ 1650.14 Deferred withdrawal elections.

(a) Subject to paragraph (b) of this section, a participant who separates from Government employment and elects to withdraw his or her account under one of the methods provided in §§ 1650.10, 1650.11 or 1650.12 may specify a future date (which shall be a month and year) for payment of the withdrawal.

(b) The future date chosen under this section cannot be later than March of the year following the year in which the participant becomes age 70½. If that date has already passed when the participant makes an election, the participant cannot choose a future date.

(c) If the withdrawal method chosen for future payment is a single payment or monthly payments (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen that such payments are scheduled to begin. If the payments are eligible roll-over distributions, the participant may choose to transfer all or part of the payments to an Individual Retirement Arrangement (IRA) or another eligible retirement plan.

(d) If the withdrawal method chosen for future payment is an annuity (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen. At that time, the participant will be sent information asking him or her to choose an annuity method, name a beneficiary (if the cash refund or 10-year certain feature is chosen), and provide any necessary spousal waiver or spousal information.

§ 1650.15 Required withdrawal date.

(a)(1) A participant must withdraw his or her account under § 1650.10 or begin receiving payments under §§ 1650.11 or 1650.12 by April 1 of the year following the later of the year in which:

- (i) The participant turns 70½; or
- (ii) The participant separates from Government employment.

(2) However, in no event will a withdrawal be required under paragraph (a)(1) of this section until 1998.

(b) A separated participant may elect to withdraw his or her account or begin receiving payments before the date described in paragraph (a) of this section, but is not required to do so.

§ 1650.16 Changes and cancellation of withdrawal election.

Subject to the rules relating to spouses' rights in subpart G of this part, a participant who has separated from Government employment can change his or her withdrawal election to any other withdrawal election or can cancel his or her withdrawal election if the change or cancellation can be processed before the withdrawal is disbursed.

Subpart C—Procedures for Post-Employment Withdrawals

§ 1650.20 Information to be provided by agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government employment, his or her employing agency must report the separation (including the date of separation) to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency, it cannot process a post-employment withdrawal for the participant. A post-employment withdrawal cannot occur until at least 30 full calendar days have elapsed after the date of separation except when the § 1650.22(a) procedures apply.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government employment, his or her employing agency must furnish the participant with the most recent copies of the TSP withdrawal booklet, withdrawal forms, and tax notice. The employing agency is also responsible for counseling participants concerning TSP withdrawals.

§ 1650.21 Accounts of more than \$3,500.

A participant whose account balance is more than \$3,500 must submit a properly completed withdrawal election on Form TSP-70, Withdrawal Request, and any other form required by the TSP, in order to elect a post-employment withdrawal of his or her account balance.

§ 1650.22 Accounts of \$3,500 or less.

(a) Unless he or she has already submitted a complete withdrawal election and can be scheduled for payment, a participant whose account balance is \$3,500 or less as of the month end following receipt of separation information from the employing agency will be sent a notice informing him or her that the account balance will be paid directly to the participant automatically in the third monthly processing cycle following the date of the notice if the account is still \$3,500 or less on the date of payment. The notice will inform the participant that he or she can:

(1) Choose to transfer all or part of the payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan;

(2) Choose another withdrawal method (as described in subpart B of this part);

(3) Choose to have the payment made directly to him or her as soon as possible; or

(4) Choose to leave his or her money in the Plan.

(b) If the participant does not take one of the actions described in paragraph (a) of this section, payment will be made as scheduled.

(c) No spousal rights attach to any post-employment withdrawals made to a participant whose account balance is \$3,500 or less.

(d) If a participant's account balance is \$3,500 or less after separation but later increases to more than \$3,500, this section will cease to apply to that participant.

(e) This section does not apply to accounts containing a balance of less than \$5.00.

Subpart D—In-Service Withdrawals

§ 1650.30 Age-based withdrawals.

(a) A participant who reached age 59½ and who has not separated from Government employment is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. The amount of an age-based in-service withdrawal request must be at least \$1,000.

(b) The participant may request that the TSP transfer all or a portion of the withdrawal to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. If a participant chooses to receive directly all or a portion of the withdrawal, the TSP will withhold for Federal income tax purposes 20 percent of all amounts paid directly to the participant.

(c) A participant is permitted only one age-based in-service withdrawal.

§ 1650.31 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who demonstrates financial hardship is eligible to withdraw all or a por-

tion of his or her own contributions to the TSP and their attributable earnings in a single payment to meet certain specified financial obligations. The amount of a financial hardship in-service withdrawal request must be at least \$1,000. A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) The participant's monthly cash flow is negative, *i.e.*, net income is less than ordinary monthly household expenses based on TSP calculations; and/or

(2) The participant has incurred or will incur within the next six months an extraordinary expense which he or she has not paid, for which there has not been and will not be reimbursement (as defined in §1650.1), and which cannot be met by his or her monthly cash flow over a period of six months. Extraordinary expenses are limited to the following four types:

(i) Medical expenses payable by the participant and related to the treatment of the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductions. However, the following IRS allowable expenses are excluded from TSP unreimbursed medical expenses: health insurance premiums and expenses associated with household improvements required as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. These items are already taken into account elsewhere in the financial hardship determination;

(ii) The cost of household improvements required as a result of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents, which is eligible for deduction as a medical expense for Federal income tax purposes, but without regard to the IRS income limitations on deductions or the fair market value of the property. Household improvements are changes to the participant's living quarters or the installation of special equipment that is

necessary to accommodate the circumstances of the incapacitated person;

(iii) The cost of repairs or replacement resulting from casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductions, fair market value of the property, or number of events. This is sudden property loss resulting from damage or destruction by fire, storm, or other casualty, or due to theft of property; and

(iv) Legal costs, which are defined as attorney fees and court costs, associated with separation or divorce. Unpaid legal costs do not include alimony or child support payments or settlements a participant must pay a spouse or former spouse.

(b) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested;

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings; or

(3) The gross amount which would, subject to a request made under § 1650.42(b), result in a net disbursement to the participant (after the mandatory Federal income tax with holding) of enough funds to both:

(i) Make up the participant's negative cash flow for a period of six months in the case of a financial hardship withdrawal based on ordinary monthly household expenses; and

(ii) Pay the extraordinary expense upon which the participant's financial hardship withdrawal is based. If the participant has a negative cash flow, the amount of the net disbursement based on extraordinary expense is equal to the amount of the extraordinary expense. If there is a positive cash flow, the amount is equal to the amount of the expense minus six times the amount of the calculated monthly positive cash flow.

§ 1650.32 Contributing to the TSP after an in-service withdrawal.

(a) A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore,

his or her TSP contributions will continue without interruption.

(b) A participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for any pay date falling within a period of six months, beginning on the 46th day after the date of the withdrawal and ending 180 days after this beginning date; therefore, his or her TSP contributions (and any applicable matching contributions) will be discontinued by his or her agency upon notification by the TSP. A participant whose TSP contributions were discontinued by his or her agency because of a hardship withdrawal can resume contributions any time after expiration of the six month period by submitting a new TSP Election Form (TSP-1). If a participant voluntarily terminated TSP contributions, he or she can resume contributions at the expiration of the six-month period, or in the next open season during which the participant would be eligible to submit a new Form TSP-1, whichever is later.

§ 1650.33 Uniqueness of loans and withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal, and *vice versa*; nor can an in-service withdrawal be returned or repaid.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.40 How to obtain an age-based in-service withdrawal.

To request an age-based in-service withdrawal, a participant must submit to the TSP Service Office a properly completed withdrawal election on Form TSP-75, Age-Based In-Service Withdrawal Request.

§ 1650.41 How to obtain a financial hardship in-service withdrawal.

To request a financial hardship in-service withdrawal, a participant must submit to the TSP Service Office a properly completed request for withdrawal on Form TSP-76, Financial Hardship In-Service Withdrawal Request, a current earnings and leave

statement, and supporting documentation for any extraordinary expenses listed on the application.

§ 1650.42 Taxes related to in-service withdrawals.

(a) An in-service withdrawal is an eligible rollover distribution under the Internal Revenue Code (IRC), and the IRC requires that the Board withhold at least 20 percent for Federal income tax purposes from any portion of the withdrawal that is not directly transferred to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. A participant who wants the TSP to transfer all or a portion of an in-service withdrawal to an IRA or other eligible retirement plan must submit to the TSP Service Office a properly completed Form TSP-75-T, Transfer of In-Service Withdrawal. If the participant does not make a transfer election, the withdrawal will be disbursed in the form of a single payment minus the mandatory tax withholding. The mandatory withholding cannot be waived, although a participant can elect to have additional taxes withheld by submitting Form W-4P, Withholding Certificate for Pension or Annuity Payments, to the TSP Service Office.

(b) If a participant applies for a financial hardship in-service withdrawal and does not make a transfer election, he or she can request the TSP to remove additional amounts from his or her TSP account so that the amount received after the mandatory 20 percent tax withholding is the amount requested (or for which the participant qualifies, if that amount is less than the amount requested). This option may be limited by the amount of employee contributions and attributable earnings available for withdrawal.

Subpart F—[Reserved]

Subpart G—Spousal Rights

§ 1650.60 Spousal rights pertaining to post-employment withdrawals.

(a) The spousal rights described in this section only apply to post-employment withdrawals when the participant's vested TSP account balance exceeds \$3,500.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment withdrawal, unless the participant was granted an exception under § 1650.63 to the spouse notification requirement within one year of the date the withdrawal form is processed by the TSP. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(c) The spouse of a FERS participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund when the participant elects a post-employment withdrawal. The participant may make a different withdrawal election only if his or her spouse waives the right to this annuity. To show that the spouse has waived the right to this annuity, the participant must submit to the TSP record keeper Form TSP-70, Withdrawal Election, or Form TSP-11-C, Spouse Information and Waiver, signed by his or her spouse. Once a form containing the spouse's waiver has been submitted to the TSP record keeper, the spouse's waiver is irrevocable for purposes of that form.

§ 1650.61 Spousal rights when a separated participant changes post-employment withdrawal election.

(a) The spousal rights described in this section only apply to post-employment withdrawals when the participant's vested TSP account balance exceeds \$3,500.

(b) The spouse of a CSRS participant is entitled to notice if the participant changes his or her post-employment withdrawal election, unless the participant was granted an exception under § 1650.63 to the spouse notification requirement within one year of the date the form requesting the change is processed by the TSP. The participant must provide the TSP record keeper with the spouse's current address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(c)(1) A married FERS participant who has made a post-employment withdrawal election and who wants to elect another withdrawal method (other than the annuity required in § 1650.60(c)) must obtain a waiver from the spouse to whom he or she is married on the date the new withdrawal form is signed, unless:

(i) That spouse previously signed a waiver of the required annuity in connection with an earlier post-employment withdrawal election made by the participant; or

(ii) The participant was granted within one year of the date on which the new withdrawal form is received by the TSP an exception under § 1650.64 to the requirement to obtain that spouse's signature for an in-service or post-employment withdrawal election.

(2) Once a form containing the spouse's waiver has been submitted to the TSP record keeper, the spouse's consent is irrevocable for purposes of that form.

§ 1650.62 Spousal rights pertaining to in-service withdrawals.

(a) The spousal rights described in this section apply to all in-service withdrawals and do not depend on the amount of the participant's vested account balance or the amount requested to be withdrawn.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal, unless the participant was granted within one year of the date on which the withdrawal form is received by the TSP an exception to the notice requirement under § 1650.63. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(c) A participant covered by FERS must obtain the consent of his or her spouse before obtaining an in-service withdrawal unless the participant was granted, within one year of the date on which the new withdrawal form is received by the TSP, an exception to a signature requirement under § 1650.64. To show spousal consent, a participant must submit to the TSP record keeper

Form TSP-75, Age-Based In-Service Withdrawal Request, or Form TSP-76, Financial Hardship In-Service Withdrawal Request, signed by his or her spouse. Once a form containing the spouse's consent has been submitted to the TSP record keeper, the spouse's consent is irrevocable for purposes of that form.

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) Whenever this subpart requires the Executive Director to give notice of an action to the spouse of a participant, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception to a notification requirement based on unknown whereabouts must be submitted to the Executive Director on Form TSP-16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A judicial determination (court order) stating that the spouse's whereabouts cannot be determined;

(2) A police or governmental agency determination signed by the appropriate department or division head which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons that meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, and state the efforts the participant has made to locate the spouse. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories or directory assistance for the city of the spouse's last known address. Negative statements such as "I have not seen nor heard from him" or "I have not had contact with her" are not sufficient.

(ii) The statements from two other persons must support the participant's statement that the participant does not know the whereabouts of his or her spouse.

(iii) Each statement must be signed and dated and must state the following:

I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

§ 1650.64 Executive Director's exception to requirement to obtain the spouse's signature.

(a) Wherever this subpart requires a spouse's consent to a loan or withdrawal or a waiver of the right to a survivor annuity, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.63; or

(2) Due to exceptional circumstances, requiring the spouse's signature would be otherwise inappropriate.

(i) An exception to the spousal signature requirement may be granted based on exceptional circumstances only when the participant presents a judicial determination (court order) or a governmental agency determination signed by the appropriate department or division head. A court order or a governmental agency determination must contain a finding or a recitation of such exceptional circumstances regarding the spouse as would warrant an exception to the signature requirement.

(ii) Exceptional circumstances are narrowly construed and include circumstances such as when a court order:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her Thrift Savings Plan account or with-

draw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A withdrawal election by a separated participant or an in-service withdrawal request by a participant in the Federal service received within one year of an approved exception will be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal by a separated participant or an in-service withdrawal by a participant in the Federal service and the one-year period of validity of an approved exception also apply to exceptions for loans under 5 CFR 1655.18.

PART 1651—DEATH BENEFITS

Sec.

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AUTHORITY: 5 U.S.C. 8424(d), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

SOURCE: 62 FR 32429, June 13, 1997, unless otherwise noted.

§ 1651.1 Definitions.

Terms used in this part shall have the following meanings:

Beneficiary means the person or legal entity who is entitled to receive a death benefit from a deceased participant's TSP account;

Board means the Federal Retirement Thrift Investment Board;

Death benefit means all or a share of the deceased participant's TSP account at the time of payment;

Domicile means the participant's place of residence for purposes of state income tax liability;

Order of precedence means the order in which a death benefit will be paid, as specified in 5 U.S.C. 8424(d);

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

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

Thrift Savings Plan or *TSP* 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 *et seq.*;

TSP record keeper means the entity that is engaged by the Board to perform record keeping service for the Thrift Savings Plan. As of June 13, 1997, the TSP record keeper is the National Finance Center, United States Department of Agriculture, whose mailing address is National Finance Center, TSP Service Office, P.O. Box 61135, New Orleans, Louisiana 70161-1135;

Withdrawal election means a request for the payment of a participant's vested account balance filed under 5 CFR 1650, subpart B.

§ 1651.2 Entitlement to benefits.

(a) *Death benefit payments made before the participant has completed a withdrawal election.* If a participant dies before completing a withdrawal election, the account will be paid to the individual or individuals surviving the participant in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant on a properly completed and filed Form TSP-3, Designation of Beneficiary, in accordance with § 1651.3;

(2) If there is no designated beneficiary, to the widow or widower of the participant in accordance with § 1651.5;

(3) If none of the above in paragraphs (a)(1) and (a)(2) of this section, to the child or children of the participant and descendants of deceased children by representation in accordance with § 1651.6;

(4) If none of the above in paragraphs (a)(1) through (a)(3) of this section, to the parents of the participant or the

surviving one of them in accordance with § 1651.7;

(5) If none of the above in paragraphs (a)(1) through (a)(4) of this section, to the duly appointed executor or administrator of the estate of the participant in accordance with § 1651.8;

(6) If none of the above in paragraphs (a)(1) through (a)(5) of this section, to the next of kin of the participant who are entitled under the laws of the state of the participant's domicile at the date of the participant's death in accordance with § 1651.9.

(b) *Death benefit payments made after the participant has completed a withdrawal election.* (1) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a single payment or monthly payments (whether or not the participant has requested that all or part of such payments be transferred to an eligible retirement plan), but the account balance has not yet been paid out in accordance with such election.

(2) The death benefit will be paid as a single payment to the joint life annuitant if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a joint life annuity, but the annuity has not yet been purchased.

(3) The death benefit will be paid pro rata as a single payment to the beneficiary(ies) designated on Form TSP-11-B, Beneficiary Designation for a TSP Annuity, if both the participant and the joint annuitant die after the participant has completed an election to withdraw his or her TSP account balance in the form of a joint life annuity that includes a cash refund, but before the annuity has been purchased.

(4) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section, if the Board learns that—

(i) Both the participant and the joint annuitant have died after the participant has completed an election to withdraw his or her TSP account balance in the form of a joint life annuity

that does not include a cash refund, but the annuity has not yet been purchased; or

(ii) Both the beneficiary(ies) named under a cash refund election and the joint annuitant have died after the participant has completed an election to withdraw, but the annuity has not yet been purchased.

(5) The death benefit will be paid *pro rata* to the beneficiary(ies) designated on the Form TSP-11-B if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a single life annuity that includes either a cash refund or 10-year certain feature, but the annuity has not yet been purchased.

(6) The death benefit will be paid in accordance with the order of precedence set forth in paragraph (a) of this section if the Board learns that the participant and all beneficiaries designated on a Form TSP-11-B have died after the participant has completed an election to withdraw his or her TSP account balance in the form of a single life annuity that includes either a cash refund or a 10-year certain feature, but the annuity has not yet been purchased.

(7) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section if a participant dies after having completed an election to withdraw his or her TSP account balance in the form of a single life annuity that does not include either a cash refund or 10-year certain feature, but before the annuity has been purchased.

(8) If a participant dies after the annuity purchase has been completed, benefit payments will be provided in accordance with the annuity method selected.

§ 1651.3 Designation of beneficiary.

(a) *Filing requirements.* In order to designate a beneficiary of a TSP account, the participant must complete and file Form TSP-3, Designation of Beneficiary, unless Form TSP-11-B is used for this purpose. All Forms TSP-3 and TSP-11-B signed on or after January 1, 1995, must be received by the TSP record keeper on or before the participant's date of death. If the Form

TSP-3 was received and accepted by the participant's employing agency before January 1, 1995, the TSP record keeper will process it and determine its validity when it is received from the employing agency. A valid Form TSP-3 remains in effect until it is properly canceled or changed as described in § 1651.4.

(b) *Eligible beneficiaries.* Any individual, firm, corporation, or legal entity, including the U.S. Government, may be designated as a beneficiary. Any number of beneficiaries can be named to share the death benefit. A beneficiary may be designated without the knowledge or consent of the beneficiary or the knowledge or consent of the participant's spouse.

(c) *Validity requirements.* In order to be valid, a Form TSP-3 must be signed by the participant in the presence of two witnesses, or the participant must acknowledge his or her signature on the Form TSP-3 in the presence of two witnesses. A witness must be age 21 or older, and a witness designated as a beneficiary on the Form TSP-3 will not be entitled to receive a death benefit payment. If a witness is the only named beneficiary, the Form TSP-3 is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries *pro rata*.

(d) *Will.* A will, or any document other than Form TSP-3 or Form TSP-11-B, may not be used to designate a beneficiary(ies) of a TSP account.

§ 1651.4 Change or cancellation of a designation of beneficiary.

(a) *Change.* In order to change a designation of beneficiary, the participant must properly complete a new Form TSP-3, which must be received by the TSP record keeper on or before the date of death of the participant under the same rules as set forth in § 1651.3(a). The TSP record keeper will honor the Form TSP-3 with the latest date signed by the participant which is otherwise valid under the rules set forth in § 1651.3. A change of beneficiary may be made at any time and without the knowledge or consent of the participant's spouse or any current or prior designated beneficiaries.

(b) *Cancellation.* A participant may cancel all prior designations of beneficiaries by sending the TSP record keeper either a new valid Form TSP-3 or a letter, signed and dated by the participant and witnessed in the same manner as a Form TSP-3, stating that all prior designations are canceled. In order to be effective, either of these documents must be received by the TSP record keeper on or before the date of death of the participant in accordance with the rules set forth in § 1651.3(a). The filing of either of these documents will cancel all earlier designations.

(c) *Will.* A will, or any document other than Form TSP-3 or Form TSP-11-B, may not be used to change or cancel a beneficiary(ies) of a TSP account.

§ 1651.5 Widow or widower.

For purposes of payment under § 1651.2(a)(2), the widow or widower of the participant is the person to whom the participant is married on the date of death. A person is considered to be married even if the parties are separated, unless a court decree of divorce or annulment has been entered. State law of the participant's domicile will be used to determine whether the participant was married at the time of death.

§ 1651.6 Child or children.

If the account is to be paid to the child or children, or to descendants of deceased children by representation, as provided in § 1651.2(a)(3), the following rules apply:

(a) *Child.* A child includes a natural or adopted child of the deceased participant.

(b) *Descendants of deceased children.* “By representation” means that, if a child of the participant dies before the participant, all descendants of the deceased child at the same level will equally divide the deceased child's share of the participant's account.

(c) *Adoption by another.* A natural child of a TSP participant who has been adopted by someone other than the participant during the participant's lifetime will not be considered the child of the participant, unless the

adopting parent is the spouse of the TSP participant.

§ 1651.7 Parent or parents.

If the account is to be paid to the participant's parent or parents under § 1651.2(a)(4), the following rules apply:

(a) *Amount.* If both parents are alive at the time of the participant's death, each parent will be separately paid fifty percent of the account. If only one parent is alive at the time of the participant's death, he or she will receive the entire account balance.

(b) *Step-parent.* A step-parent is not considered a parent unless the step-parent adopted the participant.

§ 1651.8 Participant's estate.

If the account is to be paid to the duly appointed executor or administrator of the participant's estate under § 1651.2(a)(5), the following rules apply:

(a) *Appointment by court.* The executor or administrator must provide documentation of court appointment.

(b) *Appointment by operation of law.* If state law provides procedures for handling small estates, the Board will accept the person authorized to dispose of the assets of the deceased participant under those procedures as a duly appointed executor or administrator. Documentation which demonstrates that the person is properly authorized under state law must be submitted to the TSP record keeper.

§ 1651.9 Participant's next of kin.

If the account is to be paid to the participant's next of kin under § 1651.2(a)(6), the next of kin of the participant will be determined in accordance with the state law of the participant's domicile at the time of death.

§ 1651.10 Deceased and non-existent beneficiaries.

(a) *Designated beneficiary dies before participant.* The share of any beneficiary designated on a Form TSP-3 or Form TSP-11-B who predeceases the participant will be paid *pro rata* to other designated beneficiary(ies). If there are no designated beneficiaries who survive the participant, the account will be paid to the person(s) determined to be the beneficiary(ies)

under the order of precedence set forth in § 1651.2(a).

(b) *Trust designated as beneficiary but not in existence.* If a trust or other entity that has been designated as a beneficiary does not exist on the date of death of the participant, or if it is not created by will or other document that is effective upon the participant's death, the amount will be paid in accordance with the rules of paragraph (a) of this section, as if the trust were a beneficiary that predeceased the participant.

(c) *Non-designated beneficiary dies before participant.* If a beneficiary other than a beneficiary designated on a Form TSP-3 or a Form TSP-11-B (*i.e.*, a beneficiary by virtue of the order of precedence) dies before the participant, the beneficiary's share will be paid equally to other living beneficiary(ies) bearing the same relationship to the participant as the deceased beneficiary. However, if the deceased beneficiary is a child of the participant, payment will be made to the deceased child's descendants, if any. If there are no other beneficiaries bearing the same relationship or, in the case of children, there are no descendants of deceased children, the deceased beneficiary's share will be paid to the person(s) next in line according to the order of precedence.

(d) *Beneficiary dies after participant but before payment.* If a beneficiary dies after the participant, the beneficiary's share will be paid to the beneficiary's estate.

(e) *Death certificate.* A copy of a beneficiary's certified death certificate is required in order to establish that the beneficiary has died.

§ 1651.11 Simultaneous death.

If a beneficiary dies at the same time as the participant, the beneficiary will be treated as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10. The same time is considered to be the same hour and minute as indicated on a death certificate. If the participant and beneficiary are killed in the same event, death is presumed to be simultaneous, unless evidence is presented to the contrary.

§ 1651.12 Homicide.

If the participant's death is the result of a homicide, a beneficiary will not be paid as long as the beneficiary is under investigation by local, state or Federal law enforcement authorities as a suspect. If the beneficiary is convicted of, or pleads guilty to, a crime in connection with the participant's death which would preclude the beneficiary from inheriting under state law, the beneficiary will not be entitled to receive any portion of the participant's account. The Board will follow the state law of the participant's domicile as that law is set forth in a civil court judgment (that, under the law of the state, would protect the Board from double liability or payment) or, in the absence of such a judgment, will apply state law to the facts after all criminal appeals are exhausted. The Board will treat the beneficiary as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10.

§ 1651.13 How to apply for a death benefit.

In order for a deceased participant's account to be disbursed, the TSP record keeper must receive Form TSP-17, Application for Account Balance of Deceased Participant. Any potential beneficiary or other individual can file Form TSP-17 with the TSP record keeper. The individual submitting Form TSP-17 must attach a copy of a certified death certificate of the participant to the application. The acceptance of an application by the TSP record keeper does not entitle the applicant to benefits.

§ 1651.14 How payment is made.

(a) *Notice.* The TSP record keeper will send notice of pending payment to each beneficiary.

(b) *Payment.* Payment is made separately to each entitled beneficiary. It will be sent to the address that is provided on Form TSP-3, unless a more recent address is provided on Form TSP-17, or is otherwise provided to the TSP record keeper in writing by the beneficiary. All beneficiaries must provide the TSP record keeper with a taxpayer

identification number; *i.e.*, Social Security number (SSN), employee identification number (EIN), or individual taxpayer identification number (ITIN), as appropriate.

(c) *Payment to widow or widower.* The widow or widower of the participant may request that the TSP transfer all or a portion of the payment to an Individual Retirement Arrangement (IRA). In order to request such a transfer, a spouse must file with the TSP record keeper Form TSP-13-S, Spouse Election to Transfer to IRA and Other Eligible Retirement Plan.

(d) *Payment to minor child or incompetent beneficiary.* Payment will be made in the name of a minor child or incompetent beneficiary. A parent or other guardian may direct where the payment should be sent and may make any permitted tax withholding election. A guardian of a minor child or incompetent beneficiary must submit court documentation showing his or her appointment as guardian.

(e) *Payment to executor or administrator.* If payment is to the executor or administrator of an estate, the check will be made payable to the estate of the deceased participant, not to the executor or administrator. A TIN must be provided for all estates.

(f) *Payment to trust.* If payment is to a trust, the check will be made payable to the trustee. A TIN must be provided for the trust.

§ 1651.15 Claims referred to the Board.

(a) *Contested claims.* Any challenge to a proposed death benefit payment must be filed in writing with the TSP record keeper before payment. All contested claims will be referred to the Board. The Board may also consider issues on its own.

(b) *Payment deferred.* No payment will be made until the Board has resolved the claim.

§ 1651.16 Missing and unknown beneficiaries.

(a) *Locate and identify beneficiaries.* (1) The TSP record keeper will attempt to identify and locate all potential beneficiaries.

(2) If a beneficiary is not identified and located, and at least one year has passed since the date of the partici-

part's death, the beneficiary will be treated as having predeceased the participant and the beneficiary's share will be paid in accordance with § 1651.10

(b) *Payment to known beneficiaries.* If all potential beneficiaries are known but one or more beneficiaries (and not all) appear to be missing, payment of part of the participant's account may be made to the known beneficiaries. The lost or unidentified beneficiary's share may be paid in accordance with paragraph (a) of this section at a later date.

(c) *Abandoned account.* If no beneficiaries of the account are located, the account will be considered abandoned and the funds will revert to the TSP. If there are multiple beneficiaries and one or more of them refuses to cooperate in the Board's search for the missing beneficiary, the missing beneficiary's share will be considered abandoned. In such circumstances, the account can be reclaimed if the missing beneficiary is found at a later date. However, earnings will not be credited from the date the fund is abandoned. The beneficiary will be required to submit Form TSP-17 and may be required to submit proof of his or her identity and relationship to the participant.

§ 1651.17 Disclaimer of benefits.

(a) *Disclaimer criteria.* The beneficiary of a TSP account may disclaim his or her right to receive the account. In order to be effective, the following criteria must be met:

(1) The disclaimer must be in writing. The writing must state specifically that the beneficiary is disclaiming his or her right to receive a death benefit payment from the TSP account of the participant.

(2) The disclaimer must be irrevocable.

(3) The disclaimer must be received by the TSP record keeper before payment is made.

(4) The disclaimant cannot direct to whom the disclaimant's portion of the participant's account should be paid.

(5) The disclaimant must disclaim the entire benefit, not a portion.

(b) *Treatment of disclaimed share.* The disclaimant will be treated as having predeceased the participant and his or

her share will be paid in accordance with § 1651.10.

§ 1651.18 Payment to one bars payment to another.

Payment made to a beneficiary(ies) in accordance with this part, based upon information received before payment, bars any claim by any other person.

PART 1653—DOMESTIC RELATIONS ORDERS AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

Subpart A—Retirement Benefits Court Orders

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AUTHORITY: 5 U.S.C. 8435, 8436(b), 8437(e)(3), 8467, 8474(b)(5) and 8474(c)(1).

SOURCE: 60 FR 13609, Mar. 13, 1995, unless otherwise noted.

Subpart A—Retirement Benefits Court Orders

§ 1653.1 Purpose.

This subpart contains regulations prescribing the Board's procedures for processing retirement benefits court orders.

§ 1653.2 Qualifying retirement benefits court orders.

(a) The TSP will only honor the terms of a retirement benefits court

order that is qualifying under paragraph (b) of this section.

(b) A retirement benefits court order must meet each of the following requirements to be considered qualifying:

(1) The court order must be a court decree of divorce, of annulment, or of legal separation, or any court order or court-approved property settlement agreement incident to a decree of divorce, of annulment, or of legal separation. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding. Orders issued prior to a final decree, such as orders for the purpose of preserving the *status quo* pending the final resolution of the proceeding, are referred to as "preliminary" court orders, and will be considered "incident to" a final decree, notwithstanding that a final decree has not yet been, and may not be, issued. Orders issued subsequent to a final decree, such as orders for the purpose of amending such decree, are referred to as "subsequent" court orders, and will also be considered "incident to" such decree. However, any subsequent court order that requires the return of money properly paid pursuant to an earlier court order will not constitute a qualifying order.

(2) The court order must "expressly relate" to the Thrift Savings Plan account of a current TSP participant. This means that:

(i) The order must on its face specifically describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits; and

(ii) The order must be written in terms appropriate to a defined contribution plan rather than a defined benefit plan. For example, it should generally refer to the individual participant's "account" or "account balance" rather than a "benefit formula" or the participant's "eventual benefits."

(3) If the court order awards an amount to be paid from the participant's TSP account, the award must be for:

(i) A specific dollar amount;

(ii) A stated percentage or stated fraction of the account;

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(iii) A portion of the account to be calculated by applying a formula that yields a mathematically possible result. Any variables in the formula must have values that are readily ascertainable from the face of the order or from Government employment records; or

(iv) A survivor annuity as provided in 5 U.S.C. 8435(e).

(4) Court orders that make awards from the TSP may only provide for payments:

(i) To spouses or former spouses of the participant;

(ii) As fees for attorneys for spouses or former spouses of the participant;

(iii) To dependent children or other dependents of the participant;

(iv) As fees for attorneys for dependent children or other dependents of the participant;

(c) The following retirement benefits court orders will be considered non-qualifying:

(1) Orders relating to a TSP account that contains only nonvested money, unless the money will become vested within 90 days of the date of receipt of the order if the participant remains in Federal service;

(2)(i) Orders that award an amount to be paid at a future specified date or upon the occurrence of a future specified event, unless:

(A) The amount of the entitlement can be currently calculated; and

(B) The award provides for the payment of interest or earnings from the date of calculation to the specified date or event for payment.

(ii) If an order meets the requirements of paragraphs (c)(2)(i) (A) and (B), a current payment will be made in accordance with the procedures set forth in §1653.5, rather than a payment at the future date stated in the order.

(d) For purposes of paragraph (c)(2) of this section, orders that require only that the amount of the award be calculated on the date of payment, without stating a future date or event for payment, will not be considered as awarding an amount to be paid at a future date or upon the occurrence of a future event. In such cases, the date of payment will be determined in accordance with the procedures set forth in §1653.5, and the amount of the entitle-

ment will be determined in accordance with §1653.4 using that date of payment.

(e) *Definition.* For purposes of this Part, the term “former spouse” shall have the same meaning as set forth in 5 U.S.C. 8401(12).

§ 1653.3 Processing retirement benefits court orders.

(a) Board’s review of retirement benefits court orders is governed solely by the Federal Employees’ Retirement System Act (FERSA), 5 U.S.C. Chapter 84, and by the terms of this part. The Board will honor retirement benefits court orders properly issued by a court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3). However, those courts have no jurisdiction over the Board and the Board cannot be made a party to the underlying domestic relations proceedings.

(b) Retirement benefits court orders should be submitted to the Board’s recordkeeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161-1500. Receipt by the recordkeeper will be considered receipt by the Board.

(c) Upon receipt of a document that purports to be a qualifying retirement benefits court order, including preliminary and subsequent court orders, the participant’s account will be frozen. After the account is frozen, no withdrawals or loans will be allowed until the account is unfrozen. All other account activity, including contributions, adjustments, and interfund transfers, will be permitted.

(d) The following documents will not be treated as purporting to be qualifying retirement benefits court orders. Therefore accounts of participants to whom such orders relate will not be frozen and these documents will not be reviewed by the Board:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued or approved by a court;

(2) A court order relating to a TSP account that has been closed;

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(3) A court order dated prior to June 6, 1986;

(4) A court order that fails to award all or any part of the TSP account to anyone other than the participant;

(5) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the document will be reviewed initially to determine if it is a complete original or copy of a retirement benefits court order.

(f) If it is determined that the document is not complete, a complete document will be requested. If it is not received within 30 days of the date of such request, the account will be unfrozen and no further action will be taken with respect to the document.

(g) Upon receipt of a complete order that is either an original or a copy of a retirement benefits court order, the Board will review the order and will determine whether it is a qualifying order as described in §1653.2 and, if it awards an amount to be paid from a participant's TSP account, the amount of the entitlement. The Board will advise all parties in writing of its decision.

(h) The Board's decision will contain the following information:

(1) The Board's determination regarding whether the court order is qualifying;

(2) A statement of the applicable statute or regulations;

(3) If the order is determined to be qualifying, a statement regarding the effect that compliance with the court order will have on the participant's TSP account; and

(4) If the order requires payment, a description of the method by which the entitlement under the court order was calculated and the circumstances under which payment will be made.

(i) The Board's decision will be final. There is no administrative appeal from the decision.

(j) An account frozen under this section will be unfrozen as follows:

(1) If a complete document has not been received within 30 days from the date of a request described in paragraph (f) of this section, upon expiration of the 30-day period;

(2) If the order is a preliminary order or other order precluding payment

from the account, as soon as practicable after receipt of a certified copy or original court order vacating or superseding such order (unless the order vacating or superseding the preliminary order itself warrants placing a freeze on the account);

(3) If the order is valid to award a payment from the TSP account of a participant under this part, upon payment; and

(4) If the Board determines that the order is not a qualifying order under this part, 45 days after issuance of the Board's decision. The 45-day period will be terminated if both parties submit a written request for such a termination to the Board.

(k)(1) the Board will hold in abeyance the processing of a court order payment pursuant to a previously approved qualifying court order if the Board is advised by one of the parties that the underlying court order is on appeal in the state court system and that the effect of the filing of such an appeal under state law or procedures is to stay the effect of the order.

(i) Proper documentation of the appeal and citations to legal authority which address the effect of the filing of such an appeal must be provided.

(ii) The parties will be notified that the processing of the court order is being held in abeyance and the account will remain frozen for loans and withdrawal.

(iii) In the absence of proper documentation and appropriate legal authority, the Board will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The Board must be notified in writing by one of the parties of the disposition of the appeal in order for the freeze to be removed from the account or for a payment to be made. The notification must include a statement regarding the effect of the disposition on the provisions of the original order relating to the TSP and a copy of the resulting document from the court must be provided.

(l) Multiple court orders pending before the Board will be processed in accordance with the procedures set forth in this part in the following order:

(1) As between conflicting qualifying court orders relating to the same spouse or former spouse, the Board will process only the court order bearing the latest date entered by the clerk of the court. If any order does not have a date entered, then the date the order was filed by the clerk shall be used; if there is no date entered or date filed, then the date the order was signed by the judge shall be used.

(2) As between conflicting qualifying court orders relating to two or more former spouses, the Board will process the orders in the order of the dates entered by the clerk of the court, starting with the order bearing the earliest date, and continuing until the account is exhausted. If any order does not have a date entered, then the date the order was filed by the clerk shall be used; if there is no date entered or date filed, then the date the order was signed by the judge shall be used.

§ 1653.4 Calculating entitlement under a retirement benefits court order.

(a) If the court order awards a percentage or fraction of the account as of a specific date or event, the amount of the entitlement will be calculated based upon the balance of the account as of the end of the month on or immediately preceding the date or event, plus any transactions posted after the date or event, but before payment, that are effective on or before the month-end date used for calculating the entitlement. For purposes of computing the amount of an entitlement, any loan amount outstanding as of the month-end date used for calculating the entitlement shall be treated as included in the account balance, unless the court order provides otherwise.

(b) If the court order awards a percentage or fraction of an account but does not contain a specific date as of which to apply the percentage or fraction to the account, the amount of the entitlement will be calculated as described in paragraph (a) of this section, using the account balance as of the end of the month on or immediately prior to the date the order was entered by the clerk of the court or, if the order does not show a date entered, the date the order was filed by the clerk of the court or, if the order does not contain

a date entered or a date filed, the date signed by the judge.

(c) If the court order awards a specific dollar amount, the amount of the entitlement will be the lesser of:

(1) The amount the order awards; or

(2) The amount in the account as of the end of the month on or before the date specified in the order (or, if no date is specified, the date the order was entered by the clerk of the court or, if the order does not show a date entered, the date the order was filed by the clerk of the court, or, if the order does not contain a date entered or a date filed, the date signed by the judge) plus any transactions posted after the date or event, but before payment, that are effective on or before the month-end date used for calculating the entitlement. For purposes of computing the amount of entitlement, any loan amount outstanding as of the month-end date used for calculating the entitlement shall be treated as included in the account balance, unless the court order provides otherwise.

(d) Unless the court order specifically provides otherwise, the entitlement calculated under this section will not be credited with interest or earnings. If interest or earnings are awarded, the Board will use the monthly rates of return credited to the account unless the court order specifies a different rate. The TSP monthly rates of return may be either positive or negative. Interest or earnings will be calculated beginning with the month following the month-end valuation date used for calculating the entitlement and ending with the month prior to the month of payment.

(e) All entitlement will be calculated initially under this section including both vested and nonvested amounts in the participant's account. If at the time of payment the non-vested portion of the account has not become vested or has been forfeited, the entitlement will be recalculated using only the participant's vested account balance.

§ 1653.5 Procedures for payment pursuant to retirement benefits court orders.

(a) If a qualifying court order creates an entitlement to a portion of a TSP

account under this part, payment will be made after the Board's decision has been issued and the 30-day tax withholding notification period has ended. The taxpayer may receive the payment sooner by waiving the tax notification period.

(b) A payment made pursuant to a qualifying court order will be made only to the person(s) specified in the court order. If payment is to be made to the spouse or former spouse of the participant, he or she may request that the TSP transfer all or a portion of his or her payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. Such a request must be made by filing the TSP form "Spouse Election to Transfer to IRA or Other Eligible Retirement Plan", which must be received before payment.

(c) In no case may a payment made pursuant to a qualifying court order exceed the participant's vested account balance, excluding any outstanding loan amount as of the end of the month preceding the date of payment. If the entitlement calculated pursuant to this subpart exceeds the participant's vested account balance (excluding any outstanding loan amount), then only the vested amount in the account (excluding the outstanding loan balance) will be paid.

(d) The entire amount of an entitlement created by a qualifying court order must be disbursed at one time. A series of payments will not be made even if the court order provides for such a method of payment. A payment pursuant to a court order extinguishes all further rights to any payment under that order even if the entire amount of the entitlement could not be paid. Any further award must be contained in a separate court order.

(e) Payment cannot be made jointly to more than one person. If payment is to be made to more than one person, the order must separately indicate the amount to be paid to each.

(f) In order to make a payment pursuant to a retirement benefits court order, the Board's recordkeeper must be provided with the full name, mailing address, and Social Security number of the payee, even if the payment is being mailed to another address.

(g) If the payee dies before a payment is made pursuant to a qualifying retirement benefits court order, payment will be made to the estate of the payee, unless otherwise specified by the court order. If the participant dies before payment is made pursuant to a qualifying retirement benefits order entered before the participant's death, the order will be honored as long as it is submitted to the Board before payment of the account, regardless of whether the order was received by the Board before the participant's death.

(h) If the parties to a divorce or annulment are remarried, or a legal separation is terminated, a new court order will be required to prevent payment pursuant to a previously submitted qualifying retirement benefits court order.

(i) Payment to a person (including the estate of the payee) pursuant to a qualifying retirement benefits court order made in accordance with this subpart bars recovery by any other person pursuant to that order.

(j) Payments pursuant to qualifying court orders will be paid *pro rata* from the TSP investment funds, based on the balance in each fund on the date as of which the payment is made. The Board will not honor provisions of court orders that require payment to be made from specific investment funds.

[60 FR 13609, Mar. 13, 1995, as amended at 61 FR 18912, Apr. 29, 1996]

Subpart B—Legal Process for the Enforcement of a Participant's Legal Obligations to Provide Child Support or Make Alimony Payments

SOURCE: 60 FR 45624, Aug. 31, 1995, unless otherwise noted.

§ 1653.20 Purpose and scope.

This subpart contains regulations prescribing the Board's procedures for responding to legal process for the enforcement of a participant's legal obligations to make alimony or child support payments, as required by 5 U.S.C. 8437(e)(3).

§ 1653.21 Definitions.

As used in this subpart:

Alimony means the payment of funds for the support and maintenance of a spouse or former spouse. Alimony includes separate maintenance, alimony *pendente lite*, maintenance, and spousal support. Alimony also can include attorney’s fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process as described in § 1653.23.

Child support means payment of funds for the support and maintenance of a child or children. Child support includes payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children. Child support also can include attorney’s fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process as described in § 1653.23.

Legal obligation means an obligation to pay alimony or child support, or both, that is currently enforceable under appropriate State or local law. A “legal obligation” may include currently payable, as well as past due, alimony or child support. However, “legal obligation” does not mean any future obligation to make alimony or child support payments.

§ 1653.22 Service of legal process.

The Thrift Savings Plan will only review legal process for the enforcement of a participant’s legal obligations to provide child support or make alimony payments upon receipt of that process. Receipt by an employing agency or any other office of the government shall not constitute receipt by the Thrift Savings Plan. Legal process should be submitted to the Thrift Savings Plan Recordkeeper at the following address: TSP Service Office, National Finance Center, P.O. Box 61500, New Orleans, LA 70161-1500. Receipt by the recordkeeper will be considered receipt by the Thrift Savings Plan.

§ 1653.23 Requirements for “qualifying” legal process.

(a) The TSP will only honor legal process if it meets each requirement of paragraph (b) of this section and one of

the requirements of paragraph (c) of this section.

(b) Legal process must meet each of the following requirements in order to be qualifying:

(1) The legal process must be a writ, order, summons, or other similar process in the nature of a garnishment that is issued by:

(i) a court or competent jurisdiction within any State, the District of Columbia, territory, or possession of the United States, or an Indian court; or

(ii) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process; or

(iii) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law; or

(iv) A State agency authorized to issue income withholding notices pursuant to State or local law or pursuant to the requirements of 42 U.S.C. 666(b).

(2) The legal process must “expressly relate” to the Thrift Savings Plan account of a current participant. This means that it must express a clear intent to deal with the TSP as distinct from other Federal Government retirement benefits or non-Federal retirement benefits.

(3) The legal process must demonstrate that its purpose is to enforce a current legal obligation of the participant to provide child support or make alimony payments.

(c) In addition to the requirements of paragraph (b) of this section, legal process also must meet one of the following requirements:

(1) The legal process must require the Board to pay a stated dollar amount from a participant’s TSP account; or

(2) The legal process must require the Board to freeze the participant’s account in anticipation of an order to pay over the account.

(d) The TSP will presume the competence or authority of any of the entities described in paragraph (b)(1) of this section if presented with a document from that entity that appears regular on its face.

(e) Notwithstanding paragraphs (a), (b), (c) and (d) of this section, the following legal process will be considered nonqualifying:

(1) Legal process relating to a TSP account that contains only non-vested money, unless the money will become vested within 90 days of the date of receipt of the order if the participant were to remain in Federal service;

(2) Legal process that requires an amount to be paid at the future date; or

(3) Legal process that requires a series of payments.

§ 1653.24 Processing legal process.

(a) Upon receipt of a document which purports to be qualifying legal process, the participant's account will be frozen. After an account is frozen, no withdrawal or loans will be allowed until the account is unfrozen. All other account activity, including contributions, adjustments, and interfund transfers, will be permitted.

(b) The following documents will not be treated as purporting to be qualifying legal process. Therefore, accounts of participants to whom such orders relate will not be frozen and these documents will not be reviewed by the Board:

(1) A document that pertains to a TSP account that has been closed.

(2) A document that does not indicate that it relates either to the TSP or to the participant's retirement benefits.

(3) A document that does not appear to have been issued by a proper authority as described in § 1653.23(b)(1).

(c) The Board will review a document that purports to be qualifying legal process to determine whether it is complete.

(d) If the Board determines that the document is incomplete, it will request a complete copy of the document from the party that submitted the document. If a complete copy is not received by the Board within 30 days of the Board's request, the participant's account will be unfrozen and no further action will be taken by the Board with respect to the document.

(e) Upon receipt of a complete document, the Board will review it to determine whether it is qualifying legal process.

(f) The Board will advise the submitting party and the TSP participant of the determination. The Board's decision letter will contain the following information:

(1) A statement of the applicable statute and regulations.

(2) A decision regarding whether the document is qualifying legal process, as defined in § 1653.23 (b) and (c).

(3) If the document is determined to be qualifying legal process, the effect that compliance with the terms of the document will have on the participant's account.

(4) If the order requires payment, the amount that will be paid pursuant to the qualifying legal process; and to whom the payment will be made.

(5) If the order requires payment, tax reporting and withholding information will be sent to the party as to whom the payment will be reported to the Internal Revenue Service as income.

(g) The Board's decision constitutes the final administrative action by the Board. There is no appeal right within the Board.

(h) An account frozen under this section will be unfrozen:

(1) If a complete document has not been received within 30 days from the date of a request described in paragraph (d) of this section, upon the expiration of the 30-day period;

(2) If the account was frozen pursuant to legal process requiring the Board to Freeze the participant's account in anticipation of an order to pay over the account, the account will be unfrozen upon the occurrence of any one of the following events:

(i) As soon as practicable after receipt of a complete copy of an order vacating or superseding such order (unless the order vacating or superseding the preliminary order itself warrants placing a freeze on the account); or

(ii) Upon payment pursuant to the order to pay over the account, if the Board determines that the order is qualifying; or

(iii) As soon as practicable after the Board issues a decision letter informing the parties that the order to pay over the account is not qualifying legal process requiring payment from the participant's account; or

(3) If the account was frozen upon receipt of a document that purports to be legal process requiring payment from the participant's account, the account will be unfrozen upon the occurrence of any one of the following events:

(i) Upon payment pursuant to the document, if the Board determines that the document is qualifying legal process requiring payment from the participant's account; or

(ii) As soon as practicable after the Board issues its decision letter informing the parties that the document is not qualifying legal process requiring payment from the participant's account.

§ 1653.25 Payment pursuant to qualifying legal process.

(a) Payment will be made pursuant to qualifying legal process after the Board's decision has been issued and the 30-day tax withholding notification period has ended. The taxpayer may receive the payment sooner by waiving the tax notification period.

(b) A payment made pursuant to qualifying legal process will be made only to the persons or entities specified in the process. If payment is to be made to the spouse or former spouse of the participant, he or she may request that the TSP transfer all or a portion of his or her payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. Such a request must be made by filing Form TSP-13-S, "Spouse Election to Transfer to IRA or Other Eligible Retirement Plan", which must be received before payment.

(c) In no case may a payment made pursuant to qualifying legal process exceed the participant's vested account balance, excluding any outstanding loan amount as of the end of the month preceding the date of payment. If the amount to be paid exceeds the participant's vested account balance (excluding any outstanding loan amount), then only the vested amount in the account (excluding the outstanding loan balance) will be paid.

(d) The entire amount to be paid pursuant to qualifying legal process must be disbursed at one time. A series of payments will not be made even if the process provides for such a method of

payment. A payment made pursuant to qualifying legal process extinguishes all further rights to any payment under that legal process even if the entire amount specified could not be paid. Any further payment must be made pursuant to separate legal process.

(e) Multiple legal processes pending before the Board will be honored as follows:

(1) As between conflicting legal processes relating to the same spouse, same former spouse, or same children of the participant, the Board will pay only the legal process bearing the latest date of issuance.

(2) As between conflicting legal processes relating to two or more former spouses or to different children of the participant, the Board will pay the legal processes in the order of their dates of issuance starting with the legal process bearing the earliest date and continuing until the account is exhausted.

(f) Payment cannot be made jointly to more than one person. If payment is to be made to more than one person, the legal process must separately indicate the amount to be paid to each.

(g) In order to make payment pursuant to a qualifying legal process, the TSP recordkeeper must be provided with the full name and mailing address of the payee, even if the payment is being mailed to another address. In addition, if the payee is a spouse or former spouse of the participant, the payee must provide his or her Social Security number.

(h) If the payee dies before a payment is made pursuant to a qualifying legal process, payment will be made to the estate of the payee, unless otherwise specified by the legal process. If the participant dies before payment is made pursuant to qualifying legal process, the process will be honored as long as it is received by the TSP before payment of the account, regardless of whether the order was received before the participant's death.

(i) A payment made pursuant to qualifying legal process in accordance with this subpart bars recovery by any other person or entity pursuant to that qualifying legal process.

(j) Payments made pursuant to qualifying legal process will be paid *pro rata*

from the TSP investment funds in which the participant is invested, on the date as of which the payment is made. The TSP will not honor provisions of legal process that require payment to be made from specific investment funds.

(k) Unless the qualifying legal process specifically provides, interest or earnings will not be paid on the amount paid to a party or parties pursuant to the qualifying legal process.

[60 FR 45624, Aug. 31, 1995, as amended at 61 FR 18912, Apr. 29, 1996]

PART 1655—LOAN PROGRAM

Sec.

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AUTHORITY: 5 U.S.C. 8433(g) and 8474.

SOURCE: 55 FR 979, Jan. 10, 1990, unless otherwise noted.

§ 1655.1 Definitions.

Account or *Individual Account* means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

Agency means the entity employing a participant with an account in the Thrift Savings Plan.

Amortization means the reduction in a loan by periodic payments of principal and interest according to a schedule of payments.

Board means the Federal Retirement Thrift Investment Board.

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, United States Code or any equivalent retirement system.

Date of Application means the date on which the recordkeeper receives the loan application.

Days means calendar days except when otherwise stated.

Employee Contributions means any contributions made under 5 U.S.C. 8432(a), 5 U.S.C. 8351(a), 5 U.S.C. 8440a or the second 5 U.S.C. 8440a.

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

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).

G Fund Rate means the interest rate computed under 5 U.S.C. 8438(f)(2).

Interim Account Balance means the unvalued account balance of a participant's account on the last business day of the month.

Loan Issue Date means the date on which the recordkeeper authorizes a check for the loan principal amount to be issued.

Loan Process Date means the date the loan application is processed by the recordkeeper. This is the date that is printed on the Loan Agreement/Promissory Note.

Loan Repayment Period means the number of scheduled payments required to repay a loan in full.

Monthly Processing Cycle means the process, beginning on the evening of the fourth business day of the month, by which the recordkeeper allocates the amount of earnings to be credited to participant accounts in the Plan and authorizes disbursements from the Plan.

Participant means a person with an individual account in the Thrift Savings Fund.

Principal or *Principal Amount* means the amount borrowed by a participant from his or her individual account, or, after reamortization, the amount financed.

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Recordkeeper means the organization designated by the Board as the Thrift Savings Plan's recordkeeper.

Required Reamortization means the mandatory recalculation of periodic payments of principal and interest, made to reduce a loan, at the demand of the Plan.

Taxable Distribution means the reporting to the Internal Revenue Service as taxable income the amount of outstanding principal and interest on a loan upon failure by the participant to repay the loan in full according to the terms of the Loan Agreement/Promissory Note.

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 under subchapter III of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8431, *et seq.*

Valuation Date means the date as of which earnings are allocated to individual accounts. For any month, this date is the last day of the month.

Vested Account Balance means that portion of the individual account which is not subject to forfeiture under 5 U.S.C. 8432(g).

Voluntary Reamortization means the recalculation of periodic payments of principal and interest, made to reduce a loan, at the request of a participant.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58755, Nov. 18, 1996]

§ 1655.2 Eligibility for loans.

Only a participant who is in pay status with his or her agency and who has at least \$1,000 in employee contributions and attributable earnings in his or her account may receive a loan, subject to the other terms and conditions set forth in this part. A participant who is separated from Government service may not receive a loan. Persons who are eligible to contribute to the Thrift Savings Plan under 5 CFR part 1620 are also eligible to apply for a loan.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58755, Nov. 18, 1996]

§ 1655.3 Information concerning the cost of the loan.

Before a loan is issued, the recordkeeper will provide the participant written information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in earnings rates between the funds offered by the Thrift Savings Fund and any other effect of the loan on the participant's final account balance.

[61 FR 58755, Nov. 18, 1996]

§ 1655.4 Number of loans.

A participant may have no more than two loans outstanding at any time. Only one of the two loans may be a loan for the purchase of a primary residence.

[61 FR 58755, Nov. 18, 1996]

§ 1655.5 Loan repayment period.

(a) *Minimum.* The minimum loan repayment period of any loan is one year of scheduled payments.

(b) *Maximum.* The maximum loan repayment period of a loan for the purchase of a primary residence is 15 years of scheduled payments. The maximum loan repayment period of any other loan is 4 years of scheduled payments.

§ 1655.6 Amount of loan.

(a) *Minimum amount.* The initial principal amount of any loan may not be less than \$1,000.

(b) *Maximum amount.* The principal amount of a new or reamortized loan, when added to any outstanding loan principal, may not exceed any of the following:

(1) The portion of the participant's individual account balance that is attributable to employee contributions and earnings (including any outstanding loan principal).

(2) \$50,000 minus the excess of the highest outstanding loan principal of the participant during the preceding year over the current outstanding loan principal.

(3) The greater of $\frac{1}{2}$ of the participant's vested account balance (including any outstanding loan principal), or \$10,000.

(c) Subject to the requirement of paragraph (a), a participant may request a loan for the maximum allowable amount as calculated in paragraph (b).

§ 1655.7 Interest rate.

(a) Except as provided in paragraph (b) of this section, loans will bear interest at the G Fund rate in effect on the date the application is received by the recordkeeper (date of application). The interest rate per payment is calculated by dividing this G Fund rate by the number of loan payments/pay periods scheduled in a period of 12 consecutive months.

(b) If the date of application occurs before the G Fund rate has been determined for that month, the loan will bear interest at the G Fund rate in effect during the month preceding the date of application.

(c) The interest rate calculated under this section remains fixed until the loan is repaid.

§ 1655.8 Quarterly loan statements.

Each participant with an outstanding loan or loans will receive quarterly loan statements that will describe the activity relating to each of his or her outstanding loans during the period covered.

§ 1655.9 Effect of loans on individual account.

(a) For purposes of earnings allocation, the amount borrowed will be removed from the participant's account as of the last valuation date prior to the loan issue date. As provided in part 1645, the account will receive no earnings on the amount borrowed for the month in which the loan issue date occurs.

(b) The removal of the principal for earnings allocation purposes described in paragraph (a) of this section will be prorated according to the investment of the portion of the account represented by employee contributions and attributable earnings in the G Fund, the C Fund, and in the F Fund as of the most recent valuation date.

(c) Loan payments, including both principal and interest, will be credited to the individual account of the participant repaying the loan for the month in which the loan payment is processed by the recordkeeper. The loan payments (principal and interest) will be credited *pro rata* to the G Fund, the C Fund, and the F Fund based upon the proportions of the interim account balances of the G Fund, the C Fund, and the F Fund balances in the borrower's account on the last day of the month prior to the month in which the loan payment is processed. Earnings on loan payments will be credited as described in 5 CFR part 1645.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58755, Nov. 18, 1996]

§ 1655.10 Loan application.

(a) A participant may apply for a loan by sending a completed and signed application to the recordkeeper.

(b) The participant must sign and date the application. By signing the application, the participant swears that the statements made in the application are true. An unsigned application will not be processed by the recordkeeper.

(c) The application must contain the following information:

(1) The participant's name, Social Security number, date of birth, current address, and pay cycle;

(2) A statement as to whether the loan is for the purchase of a primary residence as described in § 1655.20;

(3) The amount requested and the loan repayment period;

(4) Marital status of the participant and, if married, the name and address of the participant's spouse; and

(5) Any other information that the Executive Director may from time to time prescribe.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58755, Nov. 18, 1996]

§ 1655.11 Loan Agreement/Promissory Note.

(a) Upon determining that the application meets the requirements of this part, the recordkeeper will send the participant a Loan Agreement/Promissory Note which will reflect the terms and conditions of the loan and the date it was prepared (loan process date).

(b) By signing the Loan Agreement/Promissory Note, the participant is bound to follow all of its terms and conditions and certifies, to the best of his or her knowledge, under penalty of perjury, to the truth of all statements made and documentation given with the Loan Agreement/Promissory Note.

(c) The recordkeeper must receive the completed Loan Agreement/Promissory Note (including any required supporting documentation) within 45 calendar days of the loan process date or the loan agreement will be cancelled. If the 45th day falls on a Saturday, Sunday, or Federal holiday, the deadline will be the next business day.

(d) The signed Loan Agreement/Promissory Note must be accompanied by:

(1) A completed and signed discretionary payroll allotment form authorizing deductions of all amounts due under the Loan Agreement/Promissory Note, which deduction the participant agrees to maintain through his or her employing agency;

(2) In the case of a loan for the purchase of a primary residence, supporting materials that document the purchase of the residence and the amount requested. This information is described in § 1655.20; and

(3) Any other information that the Executive Director shall from time to time require.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58755, Nov. 18, 1996]

§ 1655.12 Loan approval.

(a) The application will be reviewed by the recordkeeper and will be accepted only if it conforms with the requirements of this part. Upon receipt of the application, the recordkeeper will determine whether:

(1) The participant is qualified to apply for a loan under § 1655.2 and has provided all required information;

(2) The participant already has the maximum number of loans outstanding, or if the application is for a residential loan, the participant already has a residential loan outstanding;

(3) The participant already has a pending loan application;

(4) The requested loan exceeds the maximum amounts set forth in § 1655.6(b), or is less than the minimum

amount set forth in § 1655.6(a). If the loan application process date occurs during a month before the monthly processing cycle, the maximum and minimum amounts will be determined using the interim account balance at the end of the prior month. If the loan application process date occurs after the monthly processing cycle but before the end of the month, the maximum and minimum amounts will be determined using the most recent valued account balance;

(5) The applicant is covered by a retirement system that is eligible to participate in the Thrift Savings Plan;

(6) A CSRS participant who is married but does not know the whereabouts of his or her spouse has been granted an exception to the spousal requirement as described in § 1655.18; and

(7) The participant has received a taxable loan distribution (as described in § 1655.13) from the Thrift Savings Plan within the 12 consecutive month period preceding the date of application, except as a result of a failure to repay the loan upon the participant's separation from service or confirmed non-pay status for a period exceeding one year.

(b) Failure by the applicant to comply with any of the requirements of this part will result in rejection of the loan application.

(c) If the recordkeeper accepts the loan application, a Loan Agreement/Promissory Note will be sent to the applicant, as provided in § 1655.11. When the completed Loan Agreement/Promissory Note is returned by the applicant, along with documentation, if required to be submitted under §§ 1655.11(d) and 1655.20, the loan will be initially approved or denied by the recordkeeper based upon the requirements of this part, including the following conditions:

(1) The participant has signed a promise to pay the loan and a statement that the information provided to the recordkeeper is true and complete to the best of the participant's knowledge;

(2) Processing of the loan would not be prohibited by § 1655.19 relating to court orders;

(3) A FERS participant's spouse has consented to the loan or, if the spouse's

whereabouts are unknown or exceptional circumstances make it inappropriate to secure the spouse's consent, an exception to the spousal requirement described in §1655.18 has been granted;

(4) The completed Loan Agreement/Promissory Note was received by the recordkeeper within 45 days of the date it was prepared;

(5) The participant has completed and signed a loan payment allotment form; and

(6) Any other conditions that the Executive Director may from time to time prescribe.

(d) The loan issue date will occur within 60 days of the date the loan is initially approved unless the recordkeeper determines that:

(1) A court order would prohibit the loan for the reasons described in §1655.19;

(2) The participant's employing agency has reported the death, retirement, or separation of the participant;

(3) The participant's account balance on the loan issue date does not contain sufficient employee contributions and related earnings to make the loan;

(4) The loan exceeds the maximum loan amount set forth in §1655.6(b) as of the most recent valuation date; or

(5) The loan does not comply with any other criteria that the Executive Director may from time to time prescribe.

(e) Loans will be issued once a month. After the loan issue date, the recordkeeper will provide information to the United States Treasury which will permit the Treasury to mail a check for the principal amount of the approved loan to the participant.

(f) A loan is considered to have been made to a participant on the loan issue date.

[61 FR 58755, Nov. 18, 1996]

§1655.13 Distributions.

(a) The Board will declare the unpaid loan principal, plus unpaid interest, to be a taxable distribution from the Plan if:

(1) A participant is in confirmed non-pay status for a period of one year or more and the participant has not prepaid the loan as provided in §1655.17;

(2) A participant separates from Government service and does not repay the outstanding loan principal and interest in full within a date which is the earlier of:

(i) 90 calendar days after the date of the notice from the recordkeeper to the participant explaining his or her prepayment options that are available upon separation from Government service; or

(ii) 90 calendar days after the date of the notice from the recordkeeper to the participant that, because his or her payments were incorrect or missing for 90 calendar days (pursuant to §1655.15(a)), his or her loan must be reamortized or prepaid in full or a taxable distribution will be declared;

(3) There are incorrect or missing payments (as described in §1655.15) and the participant fails to or is ineligible to exercise one of the reamortization or repayment in full options set forth in §1655.15;

(4) Any material information provided in accordance with §§1655.10 or 1655.11 is found to be false;

(5) The loan is not repaid in full (including interest due) within five years, in the case of any loan other than a loan for purchase of a primary residence, or 18 years, in the case of a loan for purchase of a primary residence, of the loan issue date;

(6) The participant dies.

(b) If a distribution occurs in accordance with paragraph (a) of this section, the Board will notify the participant or, in the case of death, the estate of the amount and date of the distribution. The Board will report the distribution to the Internal Revenue Service as income for the year in which it occurs.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58756, Nov. 18, 1996]

§1655.14 Loan payments.

(a) Loan payments (except for prepayments) may only be made through a discretionary payroll allotment. The allotment must remain in effect for the life of the loan.

(b) The initial payment on a loan is due on or before the 60th day following the loan issue date. The date when the initial payment is due may be adjusted

by the Executive Director from time to time.

(c) Subsequent payments are due at regular intervals according to the participant's pay cycle as prescribed in the Loan Agreement/Promissory Note.

§ 1655.15 Incorrect payments.

(a) If correct payments are not processed by the recordkeeper for a period in excess of 90 calendar days from the applicable one of the following dates:

(1) The date of the last correct payment;

(2) The date of the first incorrect payment, if there have been no prior correct payments; or

(3) The date the first payment was due (as calculated under § 1655.14(b)), if there have been no payments;

the procedures stated in paragraph (b) of this section will apply.

(b)(1) Interest from the beginning of the 90-day period described in paragraph (a) of this section will be added to the outstanding loan principal and the participant will be required to reamortize the loan. Generally, a reamortization schedule will be calculated to maintain the remaining number of payments scheduled for the loan. The recordkeeper will prepare and send a Rider to the Loan Agreement/Promissory Note and a new payroll allotment form to the participant. The recordkeeper must receive from the participant a signed Rider to the Loan Agreement/Promissory Note and a newly signed payroll allotment form within 45 calendar days of the date the Rider is prepared. If the 45th day falls on a Saturday, Sunday, or a Federal holiday, the deadline will be the next business day.

(2) If the remaining number of payments would cause the loan term to extend beyond 18 years less 120 days from the loan issue date for a loan for the purchase of a primary residence, or five years less 120 days from the loan issue date for any other loan, the recordkeeper will reamortize the loan to enable the entire amount of principal and interest to be repaid within those limits. The recordkeeper will prepare and send to the participant a Rider to the Loan Agreement/Promissory Note and a new payroll allotment form. The recordkeeper must receive from the par-

ticipant, within 45 calendar days of the date the Rider is prepared, the signed Rider to the Loan Agreement/Promissory Note and a newly signed payroll allotment form. If the 45th day falls on a Saturday, Sunday, or a Federal holiday, the deadline will be the next business day.

(3) If no reamortized payments can be calculated under this section to allow the loan to be repaid within the time limit described in paragraph (b)(2) of this section, and the participant does not prepay the loan in full, a taxable distribution will be declared.

(4) If the reamortized loan principal would exceed the maximum loan amount as calculated under § 1655.6(b), the loan will not be reamortized. The participant must prepay the loan in full or a taxable distribution will be declared.

(5) If a participant does not sign and return the Rider to the Loan Agreement/Promissory Note, and the participant does not prepay the loan in full, a taxable distribution will be declared.

(6) A reamortization will be calculated based on the assumption that the reamortization will be completed 50 days after the Rider to the Loan Agreement/Promissory Note is prepared.

(c) If a period of incorrect payments does not exceed the 90-day period described in paragraph (a) of this section, no reamortization is required under paragraph (b) of this section. Any unpaid principal will be paid by additional payments in the same amount as the existing payments added to the term of the loan. Any overpaid principal will cause the loan repayment period to be shortened. If the additional payments would extend the term of the loan beyond five years from the loan issue date (or 18 years from the loan issue date in the case of a loan for the purchase of a primary residence), the participant must either reamortize the loan so as to establish scheduled payments that will repay the loan within those time periods or prepay in full the remaining unpaid amounts. If the participant does neither, a taxable distribution will be declared.

(d) For purposes of this section, incorrect payments include insufficient, excessive, and missing payments.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58756, Nov. 18, 1996]

§ 1655.16 Reamortization.

(a) Reamortization of a loan will occur in the following situations:

(1) Under the rules stated in § 1655.15;

(2) Where a participant transfers between agencies and changes pay schedules, the loan will be required to be reamortized to reflect the changed schedule. A new payroll allotment form must be completed and signed by the participant to reflect this changed schedule;

(3) Where a participant has had his or her loan established on the basis of a particular pay schedule (e.g., bi-weekly), but actual loan payments are made on a different pay schedule (e.g., monthly), the loan will be reamortized to reflect the correct pay schedule. A new payroll allotment form must be completed and signed to reflect the correct pay schedule;

(4) A participant may voluntarily reamortize a loan, subject to the following conditions:

(i) A voluntary reamortization may occur only if the participant is not currently required to reamortize the loan under the rules stated in this part;

(ii) An outstanding loan may be voluntarily reamortized only once;

(iii) Under a voluntary reamortization, the participant can shorten or extend the loan repayment period, provided that the new loan repayment period, when added to the original loan repayment period, is not shorter than one year of scheduled payments and does not exceed 15 years of scheduled payments, in the case of a loan for the purchase of a primary residence, or four years of scheduled payments, in the case of all other loans.

(b) Before a loan can be reamortized, the recordkeeper must receive from the participant, within 45 days of the date a Rider to the participant's Loan Agreement/Promissory Note was prepared, a signed Rider to his or her Loan Agreement/Promissory Note which describes the estimated terms and conditions of the reamortized loan and a newly signed payroll allotment form. If

the 45th day falls on a Saturday, Sunday, or Federal holiday, the deadline will be the next business day.

(c) Upon reamortization, the new principal balance of the loan will equal the unpaid principal on the date of reamortization, plus any interest due on the unpaid principal.

(d) [Reserved]

(e) A loan may only be reamortized if the new principal (as described in paragraph (c) of this section) does not exceed the maximum loan amount calculated under § 1655.6(b).

(f) The interest rate on a reamortized loan will be the same as the interest rate on the original loan.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58757, Nov. 18, 1996]

§ 1655.17 Prepayment.

(a) A participant may prepay a loan in full at any time before the declaration of a distribution under § 1655.13 unless a separated participant has signed a statement that he or she does not intend to prepay. Partial prepayments are not permitted. Prepayment in full means receipt by the recordkeeper of payment of all principal and interest due in the form of a certified or cashier's check, a certified or treasurer's draft from a credit union, or a money order.

(b) If a participant returns a loan check to the recordkeeper in order to repay his or her loan, it will be treated as a prepayment in full. However, additional interest may be owed.

[55 FR 979, Jan. 10, 1990, as amended at 61 FR 58757, Nov. 18, 1996]

§ 1655.18 Spousal rights.

(a) Within seven calendar days of a CSRS participant's loan application process date, the recordkeeper will send a notice to the participant's current spouse that the participant has applied for a loan.

(b) As a condition for approval of the Loan Agreement/Promissory Note for a FERS participant, the participant must provide the recordkeeper with any evidence the Board requires to demonstrate that the current spouse has consented to the loan for which the participant has applied.

(c) A CSRS participant may obtain a waiver of the spousal requirement described in paragraph (a) of this section if the participant establishes, to the satisfaction of the Executive Director, that the spouse's whereabouts are unknown.

(d) A FERS participant may obtain a waiver of the spousal requirement described in paragraph (b) of this section if the participant establishes, to the satisfaction of the Executive Director that:

(1) The spouse's whereabouts are unknown; or

(2) Exceptional circumstances prevent the obtaining of consent.

(e) The procedures for obtaining an exception to the spousal requirements (including the definition of exceptional circumstances) described in paragraphs (c) and (d) of this section will be the same as the procedures described in 5 CFR part 1650.

(f)(1) By signing the Loan Application and the Loan Agreement/Promissory Note, the participant represents that all information provided to the TSP during the loan process is true and correct, including statements concerning the participant's marital status and spouse's address at the time the application is filed and documentation that the current spouse has consented to the loan.

(2) If the Board receives a written allegation from the spouse that the participant may have misrepresented his/her marital status or the spouse's address (in the case of a CSRS participant), or that the signature of the spouse of a FERS participant was forged, the Board will submit the questioned document to the spouse and request that he or she state in writing that the information is false or that the spouse's signature has been forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three signature samples.

(3) If the spouse affirms the allegation in accordance with the procedure set forth in paragraph (f)(2) of this section and the loan has been disbursed, the Board will give the participant an opportunity to repay, within 60 days, the unpaid loan principal, plus unpaid interest. If the loan is repaid, the

Board will not investigate the spouse's allegation.

(4) Paragraph (f)(3) of this section will not apply where the participant has received a final divorce decree before the funds are received by the Thrift Savings Plan.

(5) If the unpaid loan principal, plus unpaid interest, is not repaid to the Plan in full within the time period provided in paragraph (f)(3) of this section, the Board will conduct an investigation into the allegation. If the participant has received a final divorce decree before the funds are received by the Thrift Savings Plan, the Board will begin its investigation immediately.

(6) If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his/her marital status or spouse's address (in the case of a CSRS participant), or submitted the Loan Agreement/Promissory Note with a forged signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

(7) Upon receipt of an allegation described in paragraph (f)(2) of this section, the participant's account will be frozen and no withdrawal or loan will be permitted until after:

(i) 30 days have elapsed since the participant's spouse was sent a copy of the questioned document and no written affirmation of the alleged false information or forgery (together with signature samples in the case of an alleged forgery) has been received by the Board;

(ii) The loan is repaid pursuant to paragraph (f)(3) of this section;

(iii) The Executive Director concludes that the Board's investigation did not yield persuasive evidence that supports the spouse's allegation;

(iv) The Executive Director has been assured in writing by the spouse that any future request for a loan or withdrawal comports with the applicable requirement of notice or consent; or

(v) The participant is divorced.

[61 FR 58757, Nov. 18, 1996, as amended at 63 FR 45391, Aug. 26, 1998]

§ 1655.19 Court orders.

Upon receipt of a document that purports to be a qualifying retirement benefits court order or qualifying legal process relating to a participant's legal obligations to provide child support or make alimony payments, the participant's TSP account will be frozen. After the account is frozen, no loan will be allowed until the account is unfrozen. The Board's procedures for processing retirement benefits court orders and legal processes are explained in 5 CFR part 1653.

[61 FR 58757, Nov. 18, 1996]

§ 1655.20 Loans for the purchase of a primary residence.

(a) A loan for the purchase of a primary residence will be made only for the purchase of the primary residence of the participant or the participant and his or her spouse and for related purchase costs. The participant must actually bear all or part of the cost of the purchase of the primary residence. If the participant purchases a primary residence with someone other than his or her spouse, only the portion of the purchase costs that are borne by the participant will be considered in making the loan. A loan for the purchase of a primary residence will not be made for the purpose of paying off an existing mortgage or otherwise providing financing for an existing primary residence purchased more than 2 years earlier.

(b) A primary residence must be used by the participant as his or her principal residence. A primary residence does not include a second home or vacation home. A participant cannot have more than one primary residence. A primary residence may include a houseboat, a house trailer, a condominium, or stock held in a cooperative housing corporation.

(c) Purchase of a primary residence means acquisition of the residence through the exchange of cash or other property or through the total construc-

tion of the new residence. Construction of an addition to or the renovation of a residence does not constitute "purchase" of a primary residence.

(d) Related purchase costs are any costs that are incurred directly as a result of the purchase or construction of a residence and which can be added to the basis of the residence for Federal tax purposes. However, "points" or loan origination fees charged for a loan, whether or not treated as part of the basis, will not be considered a purchase cost.

(e) The documentation required for a loan under this section is as follows:

(1) For all purchases except for construction, a copy of a home purchase contract or a settlement sheet or estimated settlement sheet;

(2) For construction, a home construction contract. If a single home construction contract is unavailable, additional contracts, building permits, receipts, assessments, or other documentation that demonstrates the construction of an entire primary residence and expenses in the amount of the loan may be accepted.

(f) The documentation provided under this subparagraph must bear a date that is no more than 24 months preceding the date of application.

PART 1690—MISCELLANEOUS REGULATIONS

AUTHORITY: 5 U.S.C. 8474.

§ 1690.1 Plan year.

The Thrift Savings Plan's plan year will be established on a calendar-year basis for all purposes, except where another applicable provision of law requires that a fiscal year or other basis be used. As used in this section, the term "calendar-year basis" means a twelve month period beginning on January 1 and ending on December 31 of the same year.

[52 FR 43315, Nov. 12, 1987]