

## § 1606.15

that the employee deems relevant to the claim;

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

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

### § 1606.15 Time limits on participant claims.

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

(1) January 1, 1991, or

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

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

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able with respect to those contributions.

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## Federal Retirement Thrift Investment Board

## § 1620.2

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

Subpart C also issued under 5 U.S.C. 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8).

Subpart D also issued under sec. 1043(b), Pub. L. 104-106, 110 Stat. 186, 434-435; and sec. 7202(m)(2), Pub. L. 101-508, 104 Stat. 1388.

Subpart E also issued under 5 U.S.C. 8432b(i).

SOURCE: 64 FR 31057, June 9, 1999, unless otherwise noted.

### Subpart A—General

#### § 1620.1 Application.

The Federal Employees' Retirement System Act of 1986 (codified as amended largely at 5 U.S.C. 8351 and 8401 through 8479) originally limited TSP eligibility to specifically named groups of employees. On various occasions, Congress has since expanded TSP eligibility to other groups. Depending on the circumstances, that subsequent legislation requires retroactive contributions, waives open season rules, or provides other special features. Where necessary, this part describes those special features. The employees and employing agencies covered by this part are also governed by the other regulations in 5 CFR chapter VI to the extent that they do not conflict with the regulations of this part.

#### § 1620.2 Definitions.

As used in this part:

*Account balance* means the nonforfeitable valued account balance of a TSP participant as of the most recent month-end.

*Basic pay* means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, 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.

*Board* means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

*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 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

*CSRS employee* or *CSRS participant* means any employee or participant covered by CSRS or an equivalent retirement system, including employees authorized to contribute to the TSP under 5 U.S.C. 8351.

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

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

*Employer contributions* means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3), and agency matching contributions under 5 U.S.C. 8432(c)(2).

*Employing agency* means the organization that employs an individual described at §1620.1 as being eligible to contribute to the TSP and that has authority to make personnel compensation decisions for such employee.

*Executive Director* means the Executive Director of the Federal Retirement Thrift Investment 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 5 U.S.C. chapter 84, and any equivalent Federal Government retirement system.

*FERS employee* or *FERS participant* means any employee or participant covered by FERS.

*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).

*In-service withdrawal* means an age-based or financial hardship withdrawal from the TSP obtained by a participant before separation from Government employment.

*Investment fund* means either the G Fund, the F Fund, or the C Fund, and any other TSP investment funds created after December 27, 1986.

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*Monthly processing cycle* means the process, beginning on the evening of the fourth business day of the month, by which the TSP record keeper allocates the amount of earnings to be credited to participant accounts in the TSP, implements interfund transfer requests, and authorizes disbursements from the TSP.

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

*Plan participant or 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.

*Post-employment withdrawal* means a withdrawal from the TSP obtained by a participant who has separated from Government employment.

*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 31 or more 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 includes 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 Fund* means the Fund described in 5 U.S.C. 8437.

*Thrift Savings Plan, TSP, or Plan* means the 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 con-

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tributions 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 Computation Date* means the date, actual or constructed, that includes all "service" as defined at 5 CFR 1603.1.

*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.

#### § 1620.3 Contributions.

The employing agency is responsible for transmitting to the Board's record keeper, in accordance with Board procedures, any employee and employer contributions that are required by this part.

#### § 1620.4 Notices.

An employing agency must notify affected employees of the application of this part as soon as practicable.

### Subpart B—Cooperative Extension Service, Union, and Intergovernmental Personnel Act Employees

#### § 1620.10 Definition.

As used in this subpart, *employing authority* means the entity that employs an individual described in § 1620.11 and which has the authority to make personnel compensation decisions for such employee.

#### § 1620.11 Scope.

This subpart applies to any individual participating in CSRS or FERS who:

(a) Has been appointed or otherwise assigned to one of the cooperative extension services, as defined in 7 U.S.C. 3103(5);

(b) 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 5 U.S.C. 8331(1) and 8401(11); or

(c) Has been assigned, on an approved leave-without-pay basis, from a Federal agency to a state or local government under 5 U.S.C. chapter 33, subchapter VI.

**§ 1620.12 Employing authority contributions.**

The employing authority, at its sole discretion, may choose to make employer contributions under 5 U.S.C. 8432(c) for employees who are covered under FERS. Such contributions may be made for any period of eligible service after January 1, 1984, provided that the employing agency must treat all its employees who are eligible to receive employer contributions in the same manner. The employing authority can only commence or terminate employer contributions during an open season and must provide all affected employees with notice of a decision to commence or terminate such contributions at least 45 days before the beginning of the applicable election period. The employing authority may not contribute to the TSP on behalf of CSRS employees.

**§ 1620.13 Retroactive contributions.**

(a) An employing authority can make retroactive employer contributions on behalf of FERS employees described in this subpart, but cannot duplicate employer contributions already made to the TSP.

(b) An employing authority making retroactive employing agency contributions on behalf of a FERS employee described in § 1620.12 must continue those contributions (but only to the extent they relate to service with the employing authority) if the employee returns to his or her agency of record or is transferred to another Federal agency without a break in service.

(c) CSRS and FERS employees covered by this subpart can make retroactive employee contributions relating to periods of service described in § 1620.12, unless they already have been given the opportunity to make contributions for these periods of service.

**§ 1620.14 Payment to the record keeper.**

(a) The employing authority of a cooperative extension service employee

(described at § 1620.11(a)) is responsible for transmitting employer and employee contributions to the TSP record keeper.

(b) The employing authority of a union employee or an Intergovernmental Personnel Act employee (described at § 1620.11(b) and (c), respectively) 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's contributions to the TSP record keeper in accordance with Board procedures. The employee's election form (TSP-1) will be filed in the employee's official personnel folder or other similar file maintained by the employing authority.

**Subpart C—Article III Justices and Judges; Bankruptcy Judges and U.S. Magistrates; and Judges of the Courts of Federal Claims and Veterans Appeals**

**§ 1620.20 Scope.**

(a) This subpart applies to:

(1) A justice or judge of the United States as defined in 28 U.S.C. 451;

(2) A bankruptcy judge appointed under 28 U.S.C. 152 or a United States magistrate appointed under 28 U.S.C. 631 who has chosen to receive a judges' annuity described at 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, 102 Stat. 3910-3921;

(3) A judge of the United States Court of Federal Claims appointed under 28 U.S.C. 171 whose retirement is covered by 28 U.S.C. 178; and

(4) A judge of the Court of Veterans Appeals appointed under 38 U.S.C. 7253.

(b) This subpart does not apply to a bankruptcy judge or a United States magistrate who has not chosen a judges' annuity, or to a judge of the United States Court of Federal Claims who is not covered by 28 U.S.C. 178. Those individuals may participate in the TSP only if they are otherwise covered by CSRS or FERS.

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### § 1620.21 Contributions.

(a) An individual covered under this subpart can contribute up to 5 percent of basic pay per pay period to the TSP, and, unless stated otherwise in this subpart, he or she is covered by the same rules and regulations that apply to a CSRS participant in the TSP.

(b) The following amounts are not basic pay and no TSP contributions can be made from them:

(1) An annuity or salary received by a justice or judge of the United States (as defined in 28 U.S.C. 451) who is retired under 28 U.S.C. 371(a) or (b), or 372(a);

(2) Amounts received by a bankruptcy judge or a United States magistrate under a judges' annuity described at 28 U.S.C. 377;

(3) An annuity or salary received by a judge of the United States Court of Federal Claims under 28 U.S.C. 178; and

(4) Retired pay received by a judge of the United States Court of Veterans Appeals under 38 U.S.C. 7296.

### § 1620.22 Withdrawals.

(a) *Post-employment withdrawal.* An individual covered under this subpart can make a post-employment withdrawal election described at 5 U.S.C. 8433(b):

(1) Upon separation from Government employment.

(2) In addition to the circumstance described in paragraph (a)(1) of this section, a post-employment withdrawal election can be made by:

(i) A justice or judge of the United States (as defined in 28 U.S.C. 451) who retires under 28 U.S.C. 317(a) or (b) or 372(a);

(ii) A bankruptcy judge or a United States magistrate receiving a judges' annuity under 28 U.S.C. 377;

(iii) A judge of the United States Court of Federal Claims receiving an annuity or salary under 28 U.S.C. 178; and

(iv) A judge of the United States Court of Veterans Appeals receiving retired pay under 38 U.S.C. 7296.

(b) *In-service withdrawals.* An individual covered under this subpart can request an in-service withdrawal described at 5 U.S.C. 8433(h) if he or she:

(1) Has not separated from Government employment; and

(2) Is not receiving retired pay as described in paragraph (a)(2) of this section.

### § 1620.23 Spousal rights.

(a) The current spouse of a justice or judge of the United States (as defined in 28 U.S.C. 451), or of a Court of Veterans Appeals judge, possesses the rights described at 5 U.S.C. 8351(b)(5).

(b) A current or former spouse of a bankruptcy judge, a United States magistrate, or a judge of the United States Court of Federal Claims, possesses the rights described at 5 U.S.C. 8435 and 8467 if the judge or magistrate is covered under this subpart.

## Subpart D—Nonappropriated Fund Employees

### § 1620.30 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 CSRS or 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, Public Law 101-508, 104 Stat. 1388, 1388-335 to 1388-341, as amended (codified largely at 5 U.S.C. 8347(q) and 8461(n)).

### § 1620.31 Definition.

As used in this subpart, *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 one year.

### § 1620.32 Employees who move to a NAF instrumentality on or after August 10, 1996.

Any employee who moves from a CSRS- or FERS-covered position to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS, will be eligible to contribute to the TSP as determined in accordance with 5 CFR part 1600.

**§ 1620.33 Employees who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965.**

(a) *Future TSP contributions.*—(1) *Employee contributions.* An employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of that 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 will begin being deducted from the employee's pay no later than the pay period following the election to contribute to the TSP. Any TSP contribution election which may have been in effect at the time of the employee's move will not be effective for any future contributions.

(2) *Employer contributions.* If an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, elects to be covered by FERS:

(i) The NAF instrumentality must contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that 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; and

(ii) If the employee 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 that employee any amounts that 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) *Retrospective TSP contributions.* (1) Without regard to any election to contribute to the TSP under paragraph (a)(1) of this section, the NAF instrumentality will take the following actions with respect to an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be cov-

ered by CSRS or FERS as of the date of the move:

(i) *Agency automatic (1%) makeup contributions.* The NAF instrumentality must, 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 makeup contributions.* (A) Within 60 days of the election to be covered by FERS, an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by FERS, may make an election regarding employee makeup 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 before 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 that 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

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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, must be made according to a schedule that meets the requirements of 5 CFR 1505.2(c). The payment schedule must begin no later than the pay period following the date the employee elects the schedule.

(iii) *Agency matching makeup 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 which the NAF instrumentality would have been required to make under 5 U.S.C. 8432(c), at the same time that those employee contributions are contributed to the Fund.

(2) Makeup contributions must 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 must be invested according to an election form (TSP-1-NAF) filed specifically for that purpose.

(c) *Noneligible employees.* An employee who is 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 system coverage must be removed from the TSP as required by the regulations at 5 CFR part 1605.

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

### § 1620.34 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

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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 must 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 determined in accordance with 5 CFR part 1600.

### § 1620.35 Loan payments.

NAF instrumentalities must deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the record keeper 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 the TSP will declare the loan to be a taxable distribution.

### § 1620.36 Transmission of information.

Any employee who moves to a NAF instrumentality must be reported by the losing Federal Government agency to the TSP record keeper 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.

## Subpart E—Uniformed Services Employment and Reemployment Rights Act (USERRA)—Covered Military Service

### § 1620.40 Scope.

To be covered by this subpart, an employee must have:

(a) Separated from Federal civilian service or entered leave-without-pay

status in order to perform military service; and

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

(c) Been reemployed in, or restored to, a position covered by CSRS or FERS pursuant to the provisions of 38 U.S.C. chapter 43.

#### § 1620.41 Definitions.

As used in this subpart:

*Basic pay* means basic pay as defined in § 1620.2, except for the portion of the retroactive period when an employee did not receive a Federal salary. In that case, basic pay is the rate of pay that would have been payable to the employee had he or she remained continuously employed in the position last held before separating (or entering leave-without-pay status) to perform military service.

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

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

*Reemployed or reemployment* means reemployed in (or restored from a nonpay status 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 TSP pursuant to 5 U.S.C. 8351.

*Retroactive period* means the period for which an employee is entitled to make up missed employee contributions and to receive retroactive agency contributions.

*Retroactive period beginning date* means, for an employee who was eligible to contribute to the TSP when military service began, the date following the effective date of separation or, in the case of LWOP, the date the employee enters LWOP status. For an employee who was not eligible to make TSP 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.

*Retroactive period ending date* means 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.

*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.

#### § 1620.42 Processing TSP contribution elections.

(a) *Current TSP contribution elections.* Immediately upon reemployment, an employee's agency will give an eligible employee the opportunity to submit a TSP 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.

(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.

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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.

### **§ 1620.43 Agency payments to record keeper; agency ultimately responsible.**

(a) *Agency making payments to record keeper.* The current employing agency always will 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 for that expense, the agency that made the payments to the record keeper may, but is not required to, obtain reimbursement from the agency ultimately chargeable with the expense.

### **§ 1620.44 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

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notify the employing agency that a forfeiture occurred. The employing agency will follow the procedure described in § 1620.47(d) to have those funds restored.

### **§ 1620.45 Restoring post-employment withdrawals and reversing taxable distributions.**

(a) *Post-employment withdrawals.* Employees who received automatic cashouts because their account balances were \$3,500 or less, or who were required to withdraw their TSP accounts before March 1995 because they were not eligible for retirement benefits when they separated, may elect to have the separation for military service treated as if it never occurred. These employees will be permitted to return amounts to the TSP that represent the full amount of the post-employment withdrawal.

(b) *Reversing taxable distributions.* An employee who separated or who entered into nonpay status to perform military service, and whose TSP loan was therefore declared a taxable distribution, may be eligible to have that distribution reversed.

(1) If the employee received a post-employment withdrawal when he or she separated to perform military service, he or she can have a taxable distribution reversed only if that withdrawal is returned under the procedures described in paragraph (a) of this section. If the employee is not eligible to or does not return the withdrawal, he or she cannot have the taxable distribution reversed.

(2) The taxable distribution can be reversed either by reinstating the TSP loan or by repaying the loan in full. TSP loan repayments can be reinstated only if the loan can be repaid within five years of its disbursement for non-residential loans and 15 years for residential loans; and if the employee will have no more than two loans outstanding, one of which can be a residential loan.

(c) *Process.* Eligible employees must notify the TSP record keeper of their intent to return the withdrawn funds and/or reverse a taxable distribution. This notification must be given within one year of reemployment and the employee must provide the TSP record

keeper with a copy of the SF-50, Notification of Personnel Action, indicating reemployment or reinstatement was made pursuant to 38 U.S.C. chapter 43, or a letter from his or her agency indicating reemployment or restoration pursuant to 38 U.S.C. chapter 43. If the participant is eligible to return a withdrawal and/or reverse a distribution, the TSP record keeper will:

(1) In the case of a request to return withdrawn funds, notify the employee of the amount of funds to be returned.

(2) In the case of a request to reverse a taxable distribution, reinstate the loan if permitted, or if not, inform the employee of the repayment amount for the loan.

(3) In the case of returned withdrawal and a repaid loan, inform the employee that both actions must be accomplished in the same transaction (i.e., one payment for both amounts).

(4) In all cases inform the employee that he or she must provide the funds in a single payment to the TSP record keeper within 90 days after the record keeper sends the employee the notice advising of the amount and procedures for repaying the loan or withdrawal. Repayment must be submitted in the form of a certified or cashier's check, a certified or treasurer's draft from a credit union, or a money order.

(d) *Earnings.* Employees will not receive retroactive earnings on any amounts returned to their accounts under this section.

#### § 1620.46 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 eligible employees and notify them of their options under these regulations and the time period within which these options must be exercised.

(b) *Agency records; procedure for reimbursement.* The agency that is making the payments to the record keeper for all contributions (both employee and agency) and lost earnings will obtain from prior employing agencies whatever information is necessary to make accurate payments. If a prior employing agency is ultimately chargeable under § 1620.43(b) for all or part of the

expense of agency contributions and lost earnings, the agency making the payments to the record keeper 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 which will be consistent with the procedures established at 5 CFR part 1605 for the correction of employing agency errors.

(d) *Agency automatic (1%) contributions.* Employing agencies must calculate the agency automatic (1%) contributions for all reemployed (or restored) FERS employees, report those contributions to the record keeper, and submit lost earnings records to cover the retroactive period within 60 days of reemployment.

(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 to the record keeper Form TSP-5-R, Request to Restore Forfeited Funds, to have those funds restored.

(f) *Thrift Savings Plan Service Computation Date.* The agencies must include the period of military service in the Thrift Savings Plan Service Computation Date (TSP-SCD) of all reemployed FERS employees. If the period of military service has not been credited, the agencies must submit an employee data record to the TSP record keeper containing the correct TSP Service Computation Date.

## PART 1630—PRIVACY ACT REGULATIONS

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