

**§ 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: 66 FR 22089, May 2, 2001, unless otherwise noted.

### Subpart A—General

#### § 1600.1 Definitions.

Terms used in this part have the following meanings:

*Account* or *individual account* means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

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

*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). 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 of 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.

*Contribution allocation* means the apportionment of a participant's future contributions and loan payments among the TSP investment funds.

*Contribution election* means a request by an employee to start contributing to the TSP, to change the amount of contributions made to the TSP each pay period, or to terminate contributions to the TSP.

*CSRS* means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent Federal retirement system.

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

*Date of appointment* means the effective date of an employee's accession by the current employing agency.

*Election period* means the last calendar month of a TSP open season. It is the earliest period during which 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 8440e.

*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 eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

*Executive Director* means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

*FERS* means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84 or any equivalent Federal retirement system.

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

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*Open season* means the period during which employees may elect to make contributions to the TSP, change the amount of contributions, or terminate contributions (without losing the right to resume contributions during the next open season).

*Separation from Government service* means the cessation of employment with the Federal Government, 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.

*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 Service Office (TSPSO)* means the office of the TSP recordkeeper which provides service to participants. The TSPSO's address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161-1500.

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

### Subpart B—Elections

#### § 1600.11 Types of elections.

(a) *Contribution elections.* A contribution election can be made on a Form TSP-1, Thrift Savings Plan Election Form, and includes any one of the following elections:

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

(b) *Contribution allocation.* A participant may make or change the manner in which future deposits to his or her account are allocated among the TSP's investment funds only in accordance with 5 CFR part 1601.

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#### § 1600.12 Period for making contribution elections.

(a) *Participation upon initial appointment or reappointment.* An employee may make a contribution election as follows:

(1) *Appointments made during the period January 1 through June 30, 2001.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS during the period January 1 through June 30, 2001, may make a TSP contribution election during the May 15 through July 31, 2001, open season.

(2) *Appointments made on or after July 1, 2001.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS may make a TSP contribution election within 60 days after the effective date of the appointment.

(b) *Open season elections.* Any employee may make a contribution election during an open season. Each year an open season will begin on May 15 and will end on July 31; a second open season will begin on November 15 and will end on January 31 of the following year. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season will be extended through the end of the next business day.

(c) *Election to terminate contributions.* An employee may elect to terminate employee contributions to the TSP at any time. If an employee's election to terminate contributions is received by the employing agency 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 received by the employing agency outside an open season, the employee may not make an election to resume contributions until the second open season beginning after the election to terminate.

(d) *Forced termination of employee contributions due to in-service hardship withdrawal restrictions under 5 CFR part 1650.* If an employee is reappointed to a position covered by FERS or CSRS following a separation from Government service and, at the time of separation,

he or she had been previously ineligible to make employee contributions or receive agency matching contributions because of the restrictions on participants' ability to make contributions after having received an in-service hardship distribution, described in 5 CFR part 1650, the employee continues to be ineligible to make employee contributions or have agency matching contributions made on the employee's behalf during the six-month period described at 5 CFR 1650.32.

**§ 1600.13 Effective dates of contribution elections.**

(a) *Participation upon initial appointment or reappointment.* (1) TSP contribution elections made pursuant to § 1600.12(a)(1) that are received by the employing agency between May 15, 2001, and June 30, 2001, will become effective the first full pay period in July 2001. TSP contribution elections made pursuant to § 1600.12(a)(1) that are received by the employing agency during July 2001 will become effective no later than the first full pay period after the date the employing agency receives the election.

(2) TSP contribution elections made pursuant to § 1600.12(a)(2) will become effective no later than the first full pay period after the election is received by the employing agency.

(b) *Open season elections.* TSP contribution elections made pursuant to § 1600.12(b) that are received by an employing agency during a portion of an open season which precedes the election period, except for an election to terminate contributions, will become effective the first full pay period of the election period. TSP contribution elections made pursuant to § 1600.12(b) that are received by an employing agency during the election period will become effective no later than the first full pay period after the date the employing agency receives the election.

(c) *Election to terminate contributions.* An election to terminate contributions, whenever it is made, will become effective no later than the first full pay period after the date the employing agency receives the election.

(d) *Elections resulting from transfer to FERS.* Elections made pursuant to

§ 1600.18 will become effective no later than the first full pay period after the date the employing agency receives the election. If the employee submits a contribution election at the same time that he or she submits the FERS transfer election, both elections will become effective the same pay period.

**§ 1600.14 Method of election.**

(a) A participant must submit a contribution election to his or her employing agency. Employees may use either the paper TSP election form, Form TSP-1, or, if provided by their employing agency, electronic media to make an election. If an electronic medium is used, all relevant elements contained on the paper Form TSP-1 must be included in the electronic medium.

(b) A contribution election must:

(1) Be completed in accordance with the instructions on Form TSP-1, if a paper form is used;

(2) Be made in accordance with the employing agency's instructions, if the submission is made electronically; and

(3) Not exceed the maximum contribution limitations described in § 1600.22.

**§ 1600.15 Number of elections.**

Once a contribution election made during an open season becomes effective, no further contribution elections may be made during the same open season, except an election to terminate contributions.

**§ 1600.16 Belated elections.**

When an employing agency determines that an employee was unable, for reasons that were beyond the employee's control (other than agency administrative error, as provided in 5 CFR part 1605), to make a contribution election within the time limits prescribed by this part, the agency may accept the employee's election within 30 calendar days after it advises the employee of its determination. The election will become effective no later than the first full pay period after the date the employing agency receives the election.

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### § 1600.17 Timing of agency contributions.

(a) *Employees not previously eligible to receive agency contributions.* An employee appointed or reappointed to a position covered by FERS who had not been previously eligible to receive agency contributions is eligible to receive agency contributions the full second election period following the effective date of the appointment. If an employee is appointed during an election period, that election period is not counted as the first election period.

(b) *Employees previously eligible to receive agency contributions.* An employee reappointed to a position covered by FERS who was previously eligible to receive agency contributions is immediately eligible to receive agency contributions.

(c) Agency matching contributions that are attributable to the employee contributions made to the account of a FERS participant must change or terminate, as applicable, when the employee's contribution election becomes effective.

### § 1600.18 Effect of transfer to FERS.

(a) If an employee appointed to a position covered by CSRS elects to transfer to FERS, the employee may make a contribution election simultaneously with the election to transfer to FERS, or within 30 calendar days after the effective date of his or her transfer.

(b) Eligibility to make employee contributions, and therefore to have agency matching contributions made on the employee's behalf, is subject to the restrictions on making employee contributions after receipt of a financial hardship in-service withdrawal described at 5 CFR part 1650.

(c) If the employee had elected to make TSP contributions while covered by CSRS, the election continues to be valid until the employee makes a new valid election.

(d) Agency automatic (1%) contributions for all employees covered under this section and, if applicable, agency matching contributions attributable to employee contributions must begin the same pay period that the transfer to FERS becomes effective.

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### Subpart C—Program of Contributions

#### § 1600.21 Contributions in whole numbers.

Employees may elect to contribute a percentage of basic pay or a dollar amount, subject to the limits described in § 1600.22. The election must be expressed in whole percentages or whole dollar amounts.

#### § 1600.22 Maximum contributions.

(a) *Percentage of basic pay.* (1) Subject to paragraphs (b) and (c) of this section, the maximum FERS employee contribution for 2001 is 11 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(2) Subject to paragraphs (b) and (c) of this section, the maximum CSRS employee contribution for 2001 is 6 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(b) *Internal Revenue Code (I.R.C.) limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Employee contributions to the TSP will be restricted to the I.R.C. limit; the TSP will not accept any contribution that exceeds the I.R.C. section 402(g) limit. If a participant contributes to the TSP and another plan, and the combined contributions exceed the I.R.C. section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform with the limit.

(c) *I.R.C. limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Employee contributions, described in this section, and employer contributions, described in § 1600.17,

made to the TSP will be restricted to the I.R.C. section 415(c) limit. No employee contribution may be made to the TSP for any year to the extent that the sum of the employee contributions and the employer contributions for that year would exceed the I.R.C. section 415(c) limit.

**§ 1600.23 Required reduction of contribution rates.**

(a) The employing agency will reduce the contribution of any FERS or CSRS employee who has elected a whole dollar amount but whose elected contribution for any pay period exceeds any of the applicable maximum percentages set forth in § 1600.22. The employing agency will reduce the whole dollar amount to the highest whole dollar amount that does not exceed the applicable maximum percentage.

(b) An employing agency will not contribute to a participant's TSP account any amounts in excess of the limits referred to in § 1600.22(b) or (c).

**Subpart D—Transfers From Other Qualified Retirement Plans**

**§ 1600.31 Accounts eligible for transfer.**

Effective July 1, 2001, participants may transfer funds in the following types of accounts into their existing TSP accounts. This option is not available to participants who have already made a full withdrawal of their account or who are receiving monthly payments.

(a) *Qualified retirement plan.* For the purposes of this part, a qualified retirement plan is a qualified trust, described in section 401(a) of the I.R.C. (26 U.S.C. 401(a)), which is exempt from taxation under I.R.C. section 501(a) (26 U.S.C. 501(a)), or an annuity plan, described in section 403(a) of the I.R.C. (26 U.S.C. 403(a)).

(b) *Conduit individual retirement account (conduit IRA).* For the purposes of this part, a conduit IRA is an individual retirement account, described in I.R.C. section 408(a) (26 U.S.C. 408(a)), or an individual retirement annuity, described in I.R.C. section 408(b) (26 U.S.C. 408(b)), that contains only funds transferred or rolled over from a quali-

fied retirement plan (and earnings on those amounts).

(c) *Eligible rollover distribution.* In order to be eligible for transfer to the TSP, distributions from accounts that qualify under either paragraph (a) or (b) of this section must also be eligible rollover distributions pursuant to I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)).

**§ 1600.32 Methods for transferring account from qualified retirement plan or conduit IRA to TSP.**

(a) *Trustee to trustee transfer.* Participants may request that the administrator of their qualified retirement plan or the custodian of their conduit IRA transfer any or all of their account directly to the TSP by completing and submitting a Form TSP-60, Request for a Rollover into the TSP, to the administrator or custodian and requesting that the transaction be completed.

(b) *Rollover by participant.* Participants who have already received a distribution from their plan or conduit IRA may roll over all or part of the distribution into the TSP in accordance with the following requirements:

(1) The participant must complete a Form TSP-60, Request for a Rollover into the TSP.

(2) The administrator of the qualified retirement plan or the custodian of the conduit IRA must certify on the TSP transfer form the amount and date of the distribution, and that the distribution is an eligible rollover distribution in accordance with I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)).

(3) The participant must submit the completed Form TSP-60, together with a certified check, cashier's check, cashier's draft, money order, or treasurer's check from a credit union, made out to the Thrift Savings Plan for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from the retirement plan or conduit IRA. The transaction is not complete until the TSP recordkeeper receives the

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Form TSP-60, executed by both the participant and plan administrator or IRA custodian, together with the guaranteed funds for the amount to be rolled over.

### § 1600.33 Treatment accorded transferred funds.

(a) All funds transferred to the TSP pursuant to §§1600.31 and 1600.32 will be treated as employee contributions.

(b) All funds transferred to the TSP pursuant to §§1600.31 and 1600.32 will be invested in accordance with the participant's contribution allocation on file at the time the transfer is completed.

(c) Funds transferred to the TSP pursuant to §§1600.31 and 1600.32 are not subject to the limits on contributions described in § 1600.22.

## PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

### Subpart A—General

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AUTHORITY: 5 U.S.C. 8351, 8438, 7474(b)(5) and (c)(1).

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### Subpart A—General

#### § 1601.1 Definitions.

As used in this part:

*Account balance* means the sum of the dollar balances for each source of contributions in each investment fund for an individual account.

*Acknowledgment of risk* means an acknowledgment that any investment in the F Fund, C Fund, S Fund, or I 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.

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

*Contribution allocation* means the apportionment of a participant's future contributions and loan payments among the TSP investment funds.

*Day* means calendar day, unless otherwise stated.

*Employing agency* means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

*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).

*I Fund* means the International Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(E).

*Interfund transfer* means the reapportionment, under this part, of a participant's existing account balance among the various TSP investment funds.

*Investment fund* means any investment fund authorized under 5 U.S.C. 8438.

*S Fund* means the Small Capitalization Stock Index Fund established under 5 U.S.C. 8438(b)(1)(D).

*Source of contributions* means employee contributions, agency automatic (1%) contributions, or agency matching contributions.

*ThriftLine* means the automated voice response system by which TSP participants may, among other things,

access their accounts by telephone. The ThriftLine can be reached at (504) 255-8777.

*TSP recordkeeper* means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. The TSP recordkeeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

*TSP Web site* means the Internet location maintained by the Board, which contains information about the TSP and by which TSP participants may, among other things, access their accounts by computer. The TSP Web site address is <http://www.tsp.gov>.

### Subpart B—Investing Future Contributions and Loan Payments

#### § 1601.11 Applicability.

This subpart applies only to the investment of future contributions and loan payments in the TSP's investment funds; it does not apply to redistributing participants' existing account balances among the investment funds, which is covered in subpart C of this part.

#### § 1601.12 Investing future contributions and loan payments in the TSP investment funds.

(a) *Transition rule.* Effective May 1, 2001, contributions and loan payments will be allocated among the investment funds based on the allocation of the most recent contribution posted to the account between March 15, 2001, and April 30, 2001. If no contributions have been posted to an account between March 15, 2001, and April 30, 2001, the allocation will be based on the allocation shown on an interfund transfer request pending for April 30, 2001. If there is no interfund transfer pending for April 30, 2001, the allocation will be based on the allocation of the account as of the March 31, 2001, account balance. If the March 31, 2001, account balance is zero, the contributions and loan payments will be allocated 100% to the G Fund. The allocation derived under this section will be applied to all contributions and loan payments posted as of a date after April 30, 2001, until a

new contribution allocation is made by the participant pursuant to § 1600.12.

(b) *Investment fund availability.* Effective May 1, 2001, all participants may elect to invest all or any portion of their future contributions and loan payments in any of the TSP's five investment funds.

#### § 1601.13 Elections.

(a) *Contribution allocation.* Effective May 1, 2001, each participant may indicate his or her choice of investment funds for the allocation of future contributions and loan payments by using the TSP Web site or the ThriftLine, or completing Form TSP-50, Investment Allocation. The following rules apply to contribution allocations:

(1) Contribution allocations must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100%;

(2) The percentage elected by a participant for investment of future contributions in an investment fund will be applied to all sources of contributions and loan payments. A participant may not make different percentage elections for different sources of contributions or for loan payments;

(3) A participant who elects for the first time to invest contributions and loan payments in the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk in accordance with § 1601.33;

(4) All contributions and loan payments made on behalf of a participant who does not have a contribution allocation in effect will be invested in the G Fund;

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation. If a separated participant is rehired, his or her last contribution allocation before separation from service will be given effect until a new allocation is made.

(b) *Effect of rejection of form.* If a Form TSP-50 is rejected, the purported contribution allocation made on the form will have no effect. The TSP will provide the participant with a written statement of the reason the form was rejected.

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(c) *Contribution elections.* A participant may designate the amount of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

## Subpart C—Redistributing Participants' Existing Account Balances

### § 1601.21 Applicability.

This subpart applies only to redistributing participants' existing account balances among the TSP's investment funds; it does not apply to the investment of future contributions and loan payments, which is covered in subpart B of this part.

### § 1601.22 Methods of requesting an interfund transfer.

(a) Effective May 1, 2001, participants may make an interfund transfer using the TSP Web site or the ThriftLine, or by completing a Form TSP-50, Investment Allocation. The following rules apply to an interfund transfer request:

(1) Interfund transfer requests must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100%;

(2) The percentages elected by the participant will be applied to the balances from each source of contributions that make up the participant's total account balance on the effective date of the interfund transfer;

(3) Any participant who elects to invest in the F Fund, C Fund, S Fund, or I Fund for the first time must execute an acknowledgment of risk in accordance with § 1601.33.

(b) An interfund transfer request has no effect on contributions and loan payments made after the effective date of the interfund transfer request; subsequent contributions and loan payments will continue to be allocated among the investment funds in accordance with the participant's contribution allocation made under subpart B of this part.

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## Subpart D—Contribution Allocations and Interfund Transfer Requests

### § 1601.31 Applicability.

This subpart applies both to contribution allocations made under subpart B of this part and interfund transfers made under subpart C of this part.

### § 1601.32 Timing and posting dates.

(a) *Posting dates.* (1) A contribution allocation will ordinarily be posted within 2 business days after it is received.

(2) An interfund transfer request received by midnight (central time) on the 15th of the month will be posted to a participant's account as of the last day of the month. (If the 15th of the month falls on a weekend, holiday, or other nonbusiness day, the deadline will be the next business day.) Requests received after the deadline will be posted to a participant's account as of the last day of the following month.

(b) *Limit.* There is no limit on the number of contribution allocations or interfund transfer requests that may be made by a participant; however, only one interfund transfer will be processed per month.

(c) *Multiple contribution allocations or interfund transfer requests.* (1) If two or more contribution allocations or two or more interfund transfer requests with different dates are received for a participant and would be posted on the same day under the rules set forth in paragraph (a) of this section, only the last contribution allocation or interfund transfer request with the latest date will be posted.

(2) If two or more contribution allocations or two or more interfund transfer requests with the same date are received for a participant and would be posted on the same day, the following rules will apply:

(i) If one or more of the contribution allocations or interfund transfer requests are submitted through the TSP Web site or the ThriftLine and one or more are made on a Form TSP-50 and would be posted on the same day, only the latest contribution allocation or interfund transfer request made

through the TSP Web site or the ThriftLine will be posted;

(ii) If one or more of the contribution allocations or interfund transfer requests are made through the TSP Web site or the ThriftLine, only the contribution allocation or interfund transfer request entered at the latest time will be posted; and

(iii) If the contribution allocations or interfund transfer requests are submitted using Form TSP-50, all of the forms will be rejected unless the percentage allocations among the investment funds are identical, in which case one will be accepted.

(3) For purposes of determining the date and time of a contribution allocation or an interfund transfer request, the following rules apply:

(i) The date of a contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine, is the date the participant enters the investment percentages;

(ii) The date of a contribution allocation or interfund transfer request made on Form TSP-50 is the date the form is signed by the participant; and

(iii) Central time is used for determining the date and time on which a transaction is entered and confirmed through the TSP Web site or the ThriftLine.

(d) *Cancellation of contribution allocation or interfund transfer request.* (1) A contribution allocation or an interfund transfer request may be canceled only through the TSP Web site, the ThriftLine, or through written correspondence.

(2) *Cancellation on the TSP Web site or ThriftLine.* A contribution allocation or an interfund transfer request may be canceled by entering the cancellation on the TSP Web site or the ThriftLine only up to the deadline, described in paragraph (a) of this section, that is applicable to the original request. If a change or cancellation is received after the deadline, the original request will be processed as scheduled. The second request will then be processed in turn.

(3) *Cancellation by correspondence.* A participant may also cancel a contribution allocation or 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 must be received by the deadline described in paragraph (a) of this section. Unless the letter states unambiguously the specific contribution allocation or interfund transfer request it seeks to cancel, the written cancellation will apply to any contribution allocation or 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 a contribution allocation or an interfund transfer request and the request was made on Form TSP-50, the form will be canceled. If the request was made on the TSP Web site or ThriftLine, it will only be canceled if the written cancellation specifies the date of the TSP Web site or ThriftLine request to be canceled.

#### § 1601.33 Acknowledgment of risk.

(a) A participant who wants to invest in any investment fund other than the G Fund must execute an acknowledgment of risk for that fund. If a required acknowledgment of risk has not been executed, no transactions involving the fund(s) for which the acknowledgment is required will be accepted.

(b) The acknowledgment of risk may be executed in association with a contribution allocation or an interfund transfer using the TSP Web site, the ThriftLine, or Form TSP-50.

#### § 1601.34 Effectiveness of Form TSP-50.

(a) A Form TSP-50 will not be effective if:

(1) It is not signed and dated;

(2) It is missing a Social Security number or date of birth;

(3) The contribution allocation or interfund transfer percentages do not total 100%; or

(4) The form is otherwise not properly completed in accordance with the instructions on the form.

(b) If a Form TSP-50 is rejected, the TSP will provide the participant with a written statement of the reason the form was rejected.

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### § 1601.35 Posting of transaction requests.

The Board fully expects to meet the standards of § 1601.32. However, the Board cannot and does not guarantee that the TSP Web site or the ThriftLine will always be available to accept and process transaction requests.

### § 1601.36 Error correction.

Errors in processing contribution allocations and interfund transfer requests, or errors that otherwise cause money to be invested in the wrong investment fund, 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 re-deposit 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 1604—UNIFORMED SERVICES ACCOUNTS

Sec.

1604.1 Applicability.

1604.2 Definitions.

1604.3 Contribution elections.

1604.4 Contributions.

1604.5 Separate service member and civilian accounts.

1604.6 Error correction.

1604.7 Withdrawals.

1604.8 Death benefits.

1604.9 Court orders and legal processes.

1604.10 Loans.

AUTHORITY: 5 U.S.C. 8474(b)(5) and (c)(1); sec. 661(b), Pub. L. 106-65, 113 Stat. 512, 672 (5 U.S.C. 8440e).

SOURCE: 66 FR 50713, Oct. 4, 2001, unless otherwise noted.

### § 1604.1 Applicability.

This part describes the special features of TSP participation applicable to members of the uniformed services. Uniformed services members are also covered by the other regulations of 5 CFR chapter VI to the extent they do not conflict with the regulations of this part.

### § 1604.2 Definitions.

As used in this part:

*Basic pay* means basic pay payable under 37 U.S.C. 204 and compensation received under 37 U.S.C. 206.

*Bonus contributions* means contributions made by participants from a bonus as defined in 37 U.S.C. chapter 5.

*Civilian account* means the TSP account to which contributions have been made by or on behalf of a civilian employee.

*Civilian employee* means a TSP participant covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or equivalent retirement plans.

*Combat zone compensation* means compensation received for active service during a month in which a member of the uniformed services serves in a combat zone.

*Combat zone contributions* means employee contributions that are made

from compensation subject to the Federal income tax exclusion at 26 U.S.C. 112 for combat zone compensation.

*Eligible retirement plan* means a plan defined at 26 U.S.C. 402(c)(8). Generally, an eligible retirement plan is an individual retirement account (IRA) or an individual retirement annuity (other than an endowment contract); a qualified pension, profit sharing, or stock bonus plan; an annuity plan described in 26 U.S.C. 403(a); an annuity contract described in 26 U.S.C. 403(b); or an eligible deferred compensation plan described in 26 U.S.C. 457(b). The IRA or other eligible retirement plan to which a payment from the TSP can be transferred must be a trust established inside the United States (*i.e.*, the 50 states and the District of Columbia).

*Employee contributions* means contributions made by participants from basic pay, incentive pay, and special pay (including bonuses).

*Employing agency* means the organization that employs an individual who is eligible to contribute to the TSP and that has authority to make compensation decisions for that employee.

*Federal civilian retirement system* means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent Federal civilian retirement system.

*Periodic contributions* means employee contributions made from recurring incentive pay and special pay (including bonuses) as defined in 37 U.S.C. chapter 5.

*Ready Reserve* means those members of the uniformed services described at 10 U.S.C. 10142.

*Regular contributions* means employee contributions made from basic pay.

*Separation from service* means discharge of a member from active duty or the Ready Reserve or transfer of a member to inactive status or to a retired list pursuant to any provision of title 10, U.S.C. The discharge or transfer may not be followed, before the end of the 31-day period beginning on the day following the effective date of the discharge, by resumption of active duty, an appointment to a civilian position covered by the Federal Employees' Retirement System, the Civil

Service Retirement System, or an equivalent retirement system, or continued service in or affiliation with the Ready Reserve. Reserve component members serving on full-time active duty who terminate their active duty status and subsequently participate in the drilling reserve are said to continue in the Ready Reserve. Active component members who are released from active duty and subsequently participate in the drilling reserve are said to affiliate with the Ready Reserve.

*Service member* means a member of the uniformed services on active duty or a member of the Ready Reserve in any pay status.

*Service member account* means the account to which contributions have been made by or on behalf of a member of the uniformed services.

*Special and incentive pay* means pay payable as special or incentive pay under 37 U.S.C. chapter 5.

*TSP record keeper* means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. The TSP record keeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

*Uniformed services* means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

### § 1604.3 Contribution elections.

A service member may make contribution elections as described in 5 CFR part 1600, with the following exceptions:

(a) *Initial uniformed services open season.* A service member may make a contribution election during an initial uniformed services TSP open season beginning October 9, 2001, and ending January 31, 2002. Contributions based on an election made on or before December 31, 2001, will be deducted from pay the first full pay period of January 2002; elections made in January 2002 will be effective during the first full pay period after the election is received.

(b) *New service members.* An individual who is appointed as a service member may make a TSP contribution election

within 60 days after the effective date of the appointment; contributions based on such an election will be made during the first full pay period after the election is received.

(c) *Conversion between active duty and Ready Reserve status.* A service member who converts from Ready Reserve status to active duty status (for more than 30 days), or who converts from active duty to Ready Reserve status, may make a TSP contribution election within 60 days after the effective date of the conversion; contributions based on such an election will be made during the first full pay period after it is received.

(d) *TSP open season elections.* In addition to being able to make a contribution election during the periods described in paragraphs (a) through (c) of this section, as applicable, a service member may make a contribution election during any TSP open season thereafter (as described at 5 CFR part 1600, subpart B).

(e) *Source of contributions.* A service member may elect to contribute sums to the TSP from basic pay, incentive pay, and special pay (including bonuses). However, the service member must be contributing to the TSP from basic pay in order to contribute to the TSP from incentive pay and special pay (including bonuses). Except for an election to contribute from bonuses, all contribution elections must be made during one of the periods described in paragraphs (a) through (d) of this section. A service member may elect to contribute from special pay or incentive pay (including bonuses) in anticipation of receiving such pay (that is, he or she does not have to be receiving the special pay or incentive pay when the contribution election is made); those elections will take effect when the service member receives the special or incentive pay.

#### § 1604.4 Contributions.

(a) *Employee contributions.* Subject to the regulations at 5 CFR part 1600 and the following limitations, a service member may make regular contributions to the TSP from basic pay. If the service member makes regular contributions, he or she also may contribute all or a portion of incentive pay

and special pay (including bonuses) to the TSP:

(1) *Temporary percentage limitations.* Subject to paragraph (a)(2) of this section, the maximum service member TSP regular employee contribution (including combat zone contributions) for 2002 is 7 percent of basic pay per pay period. The maximum contribution will increase one percentage point each year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraph (a)(2) of this section.

(2) *Internal Revenue Code limitations.* The dollar amount of TSP employee contributions is limited by two different provisions of the Internal Revenue Code (I.R.C.). If a service member's employee contributions exceed either of these limitations, the service member may request a refund of employee contributions (and associated earnings) from the TSP on the form titled "Request for Return of Excess Employee Contributions to Participant," which can be obtained from the TSP record keeper. The completed form must be returned to the TSP record keeper by February 20 of the year after the excess contributions were made.

(i) *Limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a dollar limit on the amount a person may save on a tax-deferred basis through retirement savings plans. (For 2002, the limit is \$11,000. The limit will increase each year by \$1,000 until it reaches \$15,000 in 2006; thereafter, it will be periodically adjusted by the Internal Revenue Service (IRS).) The TSP will not accept any employee contributions that exceed the I.R.C. section 402(g) limit. If a service member contributes to a civilian TSP account or to another qualified employer plan described at I.R.C. sections 401(k), 403(b), or 408(k) (26 U.S.C. 401(k), 403(b), or 408(k)), and the total employee contributions from taxable income made to all plans exceed the I.R.C. section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform with the limit. (Combat zone contributions are not taken into consideration when determining the application of the I.R.C. section 402(g) limit.)

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(ii) *Limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places an annual limit on the combined amount that can be contributed to the TSP and to other Federal civilian retirement systems (as defined in §1604.2). (The limit is periodically adjusted by the IRS; it is the lesser of 100 percent of compensation or \$40,000 in 2002.) For purposes of applying this limit, compensation includes combat zone compensation. In implementation of this law, no employee contribution may be made to the TSP for any year to the extent that the sum of the employee's contributions to the TSP and to a Federal civilian retirement system, when added to the employer's contributions to the TSP for that year, would exceed the I.R.C. section 415(c) limit. (If a service member contributes to a civilian TSP account and to a service member TSP account in a single calendar year, the annual limit on contributions will be derived from the participant's combined service member and civilian compensation.) Combat zone contributions are taken into consideration when determining the application of the I.R.C. section 415(c) limit.

(b) *Matching contributions.* When matching contributions are authorized for a service member, that service member's regular contributions will be matched dollar-for-dollar on the first three percent of basic pay contributed to the TSP, and 50 cents on the dollar on the next two percent of basic pay contributed. Matching contributions only apply to regular contributions. Matching contributions are not taken into consideration when determining the application of the contribution limit found at I.R.C. section 402(g)(described in paragraph (a)(2)(i) of this section), but they are taken into consideration when determining the application of the contribution limit found at I.R.C. section 415 (described in paragraph (a)(2)(ii) of this section).

(c) *Deduction and transmittal of contributions.* A service member's employing agency will deduct regular contributions from the service member's basic pay each pay period based on his or her contribution election and will transmit the contributions to the TSP. If a service member also elects to make

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periodic contributions to the TSP, the employing agency must deduct (and transmit to the TSP) these contributions from the service member's incentive pay or special pay (including bonuses), as applicable.

### § 1604.5 Separate service member and civilian accounts.

(a) *Separate accounts.* Service member accounts are maintained separately from civilian accounts. Therefore, service members making both civilian and uniformed services TSP contributions will have two TSP accounts. For those participants, the accounts are treated separately except in the following circumstances:

(1) If a participant contributes to a service member account and a civilian account, the contributions to both accounts together cannot exceed the Internal Revenue Code contribution limits described in §1604.4(a)(2).

(2) A member of the uniformed services may obtain a loan from his or her account, as described at §1604.10, and the loan will be disbursed from the uniformed services account. If the TSP maintains a service member account and a civilian account for an individual, the TSP will calculate the Internal Revenue Code maximum loan amount using both account balances, as described in §1604.10(a)(3).

(b) *Transfers between TSP accounts.* Service member and civilian TSP account balances may be combined through a transfer (thus producing one account), and the transferred funds will be treated as employee contributions and otherwise invested as described at 5 CFR part 1600. Transfers under this section are subject to the following rules:

(1) An account balance can be transferred once the TSP is informed (by the participant's employing agency) that the participant has separated from either civilian or uniformed services employment.

(2) Combat zone contributions may not be transferred from a uniformed services TSP account to a civilian TSP account.

(3) Transferred funds will be allocated among the TSP's investment

funds according to the contribution allocation in effect for the gaining account.

(4) A service member must obtain the consent of his or her spouse before transferring a uniformed services TSP account balance into a civilian account that is subject to Civil Service Retirement System spousal rights. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(5) Before the transfer can be accomplished, any outstanding loans from the account to be transferred must be closed as described in 5 CFR part 1655.

#### § 1604.6 Error correction.

(a) *General rule.* A service member's employing agency must correct the service member's account if, as the result of employing agency error, a service member does not receive the TSP contributions to which he or she is entitled. Except as provided in paragraph (b) of this section, those corrections must be made in accordance with 5 CFR part 1605.

(b) *Missed bonus contributions.* This paragraph (b) applies when an employing agency fails to implement a contribution election that was properly submitted by a service member requesting that a TSP contribution be deducted from bonus pay. Within 30 days of receiving the employing agency's acknowledgment of the error, a service member may establish a schedule of makeup contributions with his or her employing agency to replace the missed contribution through future payroll deductions. These makeup contributions can be made in addition to any TSP contributions that the service member is otherwise entitled to make.

(1) The schedule of makeup contributions may not exceed four times the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution. For example, a service member who earns \$29,000 yearly in basic pay and who missed a \$2,500 bonus contribution to the TSP can establish a schedule of makeup contributions with a maximum duration of 8 months. This is because it takes the service member 2 months to earn \$2,500 in basic pay (at \$2,416.67 per month).

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions. The ceiling may not, however, be less than twice the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution.

#### § 1604.7 Withdrawals.

A service member may withdraw all or a portion of his or her account under the rules in 5 CFR part 1650, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual, a separate withdrawal request must be made for each account.

(b) *Spousal rights.* The spouse of a service member participant has the same TSP spousal rights as the spouse of a civilian participant covered under the Federal Employees' Retirement System; those spousal rights in the context of a withdrawal (and the process by which a service member may obtain an exception to them) are explained at 5 CFR part 1650.

(c) *Combat zone contributions.* If a service member account contains combat zone contributions, the withdrawal will be distributed *pro rata* from all sources. If a participant requests the TSP to transfer all, or a portion, of a withdrawal to an Individual Retirement Account (IRA) or other eligible retirement plan, the share of the withdrawal attributable to combat zone contributions (if any) can be transferred only if the IRA or retirement plan accepts such funds.

(d) *Separation.* The definition of separation from service at §1604.2 applies when determining a service member's eligibility for a withdrawal.

#### § 1604.8 Death benefits.

The account balance of a deceased service member will be paid as described at 5 CFR part 1651, with the following exceptions:

(a) *Separate accounts.* To designate a beneficiary for a TSP death benefit, a service member must file a valid beneficiary designation form. If the TSP maintains a service member account

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and a civilian account for an individual, a separate beneficiary designation form must be filed for each account.

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the death benefit payment will be made *pro rata* from all sources.

(c) *Trustee-to-trustee transfers.* The surviving spouse of a TSP participant can request the TSP to transfer a death benefit payment to an Individual Retirement Account (IRA) or other eligible retirement plan. The share of the death benefit payment that is attributable to combat zone contributions (if any) can be transferred only if the IRA or retirement plan accepts such funds.

(d) *Transfer to a TSP account.* If the TSP maintains an account for a death benefit beneficiary who is the surviving spouse of the participant, the spouse can request the TSP to transfer the death benefit payment to his or her TSP account; the share attributable to combat zone contributions (if any) cannot be transferred into a civilian account.

### § 1604.9 Court orders and legal processes.

A TSP account can be divided in an action for divorce, annulment, or legal separation, and is subject to legal process relating to child support, alimony, or child abuse. The TSP will make a payment from a service member's account under such orders or processes as described at 5 CFR part 1653, with the following exceptions:

(a) *Separate accounts.* To qualify for enforcement against the TSP, a court order or legal process must expressly relate to the TSP. Therefore, if the TSP maintains a service member account and a civilian account for an individual, a qualifying court order or legal process must expressly state from which account payment is to be made.

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the payment will be made *pro rata* from all sources, unless the court order or legal process directs otherwise.

(c) *Trustee-to-trustee transfers.* The current or former spouse of a TSP participant can request the TSP to trans-

fer a court-ordered payment to an Individual Retirement Account (IRA) or other eligible retirement plan. If the payee requests the TSP to transfer all or a portion of the court-ordered payment to an IRA or other eligible retirement plan, the share of the payment attributable to combat zone contributions (if any) can be transferred only if the IRA or plan accepts such funds.

(d) *Transfer to a TSP account.* If the TSP maintains an account for a court order payee who is the current or former spouse of the participant, the payee can request the TSP to transfer the court-ordered payment to the payee's TSP account; the *pro rata* share attributable to combat zone contributions (if any) cannot be transferred.

### § 1604.10 Loans.

A service member may be eligible for a TSP loan as described at 5 CFR part 1655, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual:

(1) A separate loan application must be made for each account;

(2) A participant may have no more than two loans outstanding from each account at any time; one loan from each account may be a loan for the purchase of a primary residence;

(3) The Internal Revenue Code maximum loan amount test, which is described in 5 CFR part 1655, will be applied using the combined balances in both TSP accounts; and

(4) Separate TSP loan statements will be issued for each account.

(b) *Spousal rights.* Before a loan agreement is approved for a service member account, the participant's spouse must consent to the loan by signing the loan agreement. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(c) *Combat zone contributions.* The portion of a loan that is attributable to combat zone contributions (if any) will be determined when the loan is declared a taxable distribution, and that portion will not be reported as taxable income to the participant as a result of the declaration.

## PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

### Subpart A—General

Sec.

1605.1 Definitions.

#### Subpart B—Employing Agency Errors

1605.11 Makeup of missed or insufficient contributions.

1605.12 Removal of erroneous contributions.

1605.13 Back pay awards and other retroactive pay adjustments.

1605.14 Misclassified retirement coverage.

1605.15 [Reserved]

1605.16 Claims for correction of employing agency errors; time limitations.

#### Subpart C—Board or TSP Record Keeper Errors

1605.21 Plan-paid lost earnings and other corrections.

1605.22 Claims for correction of Board or TSP record keeper errors; time limitations.

#### Subpart D—Miscellaneous Provisions

1605.31 Contributions missed as a result of military service.

SOURCE: 66 FR 44277, Aug. 22, 2001, unless otherwise noted.

AUTHORITY: 5 U.S.C. 8351 and 8474. Section 1605.14 also issued under Title II, Pub. L. 106-265, 114 Stat. 770.

### Subpart A—General

#### § 1605.1 Definitions.

As used in this part:

“*As of*” *date* means the date on which a TSP contribution or other transaction should have taken place.

*Attributable pay date* ordinarily means the pay date of an erroneous contribution with respect to which a negative adjustment is being made. If, however, the erroneous contribution was a makeup or late contribution, the attributable pay date is the “as of” date associated with the erroneous makeup or late contribution.

*Board error* means any act or omission by the Board which is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants.

*Contribution allocation of record* means the last contribution allocation on file for the participant’s account, which either will have been derived pursuant to §1601.12 of this chapter or will result from the participant’s filing of an election pursuant to §1601.13 of this chapter.

*Employing agency* means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

*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.

*FERCCA correction* means the correction of a retirement coverage error pursuant to the Federal Erroneous Retirement Coverage Corrections Act, title II, Public Law 106-265, 114 Stat. 770.

*Late contributions* means: Employee contributions that were timely deducted from a participant’s basic pay but were not timely reported to the TSP record keeper for investment; employee contributions that were timely reported to the TSP but were not posted to the participant’s account by the TSP because the payment record on which they were submitted contained errors; and attributable agency matching contributions and agency automatic (1%) contributions that were not timely reported.

*Lost earnings record* means a data record containing information enabling the TSP system to compute lost earnings.

*Makeup contributions* are employee contributions that should have been deducted from a participant’s basic pay, or employer contributions that should have been charged to an employing agency, on an earlier date but were not deducted or charged and, consequently, are being deducted or charged currently.

*Negative adjustment* means the removal of money from a participant’s TSP account by an employing agency.

*Negative adjustment record* means a data record submitted by an employing agency to remove from a participant's TSP account money which was previously submitted in error.

*Pay date* means the date established by an employing agency for payment of its employees.

*Payment record* means a data record submitted by an employing agency to report contributions or loan payments to a participant's TSP account.

*Record keeper error* means any act or omission by the TSP record keeper that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants.

*Source of contributions* means employee contributions, agency automatic (1%) contributions, or agency matching contributions.

*TSP record keeper* means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. The TSP record keeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

### Subpart B—Employing Agency Errors

#### § 1605.11 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 TSP contributions to which he or she is entitled. This includes situations in which an employing agency error prevents a participant from making an election to contribute to his or her TSP account, in which an employing agency fails to implement a contribution election properly submitted by a participant, in which an employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or in which an employing agency otherwise erroneously contributes less to the TSP for a participant's account than it should have. The corrections required by this section must be made in accordance with this part and the proce-

dures provided to employing agencies by the Board 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 error correction under this section.

(b) *Employer makeup contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required under section 8432(c)(2), or conversion contributions that are required under section 8432(c)(3), the following rules apply:

(1) The employing agency must promptly submit all missed contributions to the TSP record keeper on behalf of the affected participant. For each pay date involved, the employing agency must submit a separate payment record showing the "as of" date for the contributions. Employer makeup contributions will be invested in accordance with the participant's contribution allocation of record at the time the makeup contributions are posted to the account.

(2) If the participant is entitled to lost earnings on employer makeup contributions pursuant to 5 CFR part 1606, the employing agency must also submit lost earnings records.

(c) *Employee makeup contributions.* Within 30 days of receiving information from his or her employing agency indicating that the employing agency acknowledges that an error has occurred which has caused less in employee contributions to be made to the participant's account than should have been made, a participant may elect to establish a schedule of makeup contributions to replace the missed contributions through future payroll deductions. Employee makeup contributions can be made in addition to any TSP contributions that the participant is otherwise entitled to make. The following rules apply to employee makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the dollar amount of the 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 must be established when the schedule is created. The schedule may not exceed four times the number of pay periods over which the error occurred.

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions which is less than four times the number of pay periods over which the error occurred. The ceiling may not, however, be less than twice the number of pay periods over which the error occurred.

(3) The employing agency must implement the participant's schedule of makeup contributions as soon as practicable.

(4) For each pay date involved, the employing agency must submit a separate payment record showing the "as of" date for the employee makeup contribution. An employee is not eligible to make up contributions with an "as of" date occurring within six months after a financial hardship in-service withdrawal, as provided in §1650.33 of this chapter.

(5) Employee makeup contributions will be invested in accordance with the participant's contribution allocation of record at the time the makeup contributions are posted to the account. If no contribution allocation is on file, the contributions will be invested in the G Fund.

(6) Employee makeup contributions will not be considered in applying the maximum amount per pay period that a participant is permitted to contribute to the TSP, but will be included for purposes of applying the annual limits contained in sections 402(g) and 415(c) of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415(c)). For purposes of applying the annual limits of sections 402(g) and 415(c) of the I.R.C., employee makeup contributions will be applied against the limit for the year in which the contributions should have been made (i.e., the year of the "as of" date).

(i) Before establishing a schedule of employee 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 de-

termine whether the makeup contributions, when combined with prior contributions for the same year, would exceed the annual contribution limit(s) contained in sections 402(g) and 415(c) of the I.R.C. for the year(s) with respect to which the contributions are being made.

(ii) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limits contained in sections 402(g) and 415(c) of the I.R.C.

(7) A schedule of employee 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.

(8) A participant may elect to terminate a schedule of employee makeup contributions at any time, but a termination is irrevocable. If a participant separates from Government service, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck.

(9) At the same time that a participant makes up missed employee contributions, the employing agency must make any agency matching contributions that would have been made had the error not occurred. Agency matching contributions must be submitted pursuant to the rules set forth in paragraph (b) of this section. A participant may not receive matching contributions associated with any employee contributions that are not actually made up. If employee makeup contributions are suspended in accordance with paragraph (c)(7) of this section, the payment of agency matching contributions must also be suspended.

(10) If a participant transfers to an employing agency different 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 employing agency error was 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.

(11) Employee makeup contributions may be made only by payroll deduction from 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.

(12) If the participant is entitled to lost earnings on the makeup contributions pursuant to 5 CFR part 1606, the employing agency must also submit lost earnings records.

(d) *Late contributions.* If, as a result of agency error, the TSP posts a late contribution to a participant's account more than 30 calendar days after the "as of" date that is reported by the employing agency on the payment record, the employing agency must submit any lost earnings records pursuant to 5 CFR part 1606. Late contributions will be invested in accordance with the participant's contribution allocation of record on the posting date.

#### § 1605.12 Removal of erroneous contributions.

(a) *Applicability.* This section applies to negative adjustments. These include situations in which, because of an employing agency error, employee contributions in excess of the amount elected by a participant are contributed to a participant's account, employee contributions (and any attributable agency matching contributions) are made on behalf of a participant who did not elect to make contributions, or excess employer contributions are made to a participant's account. Negative adjustments resulting from a FERCCA correction are addressed in § 1605.14.

(b) *Method of correction.* Negative adjustment records must be submitted by employing agencies in accordance with this part and with any other procedures provided by the Board.

(1) To remove money from a participant's account, the employing agency

must submit, for each attributable pay date involved, a negative adjustment record stating the amount of the erroneous contribution being removed, the attributable pay date with respect to which the erroneous contribution was made, and the source(s) of the contributions. The TSP record keeper will derive the investment of the negative adjustment from the allocation of any contribution which was reported for the attributable pay date. If no contribution was submitted for the attributable pay date, the negative adjustment will not be processed.

(2) A negative adjustment record may be for all or a part of the contributions made for the attributable pay date and source of contributions; however, for each source of contributions, the negative adjustment may not exceed the amount of contributions made for that date, less any prior negative adjustments for the same date.

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

(1) Negative adjustment records received and accepted by the TSP record keeper 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 record keeper after the second-to-last business day of a month will be processed effective as of the end of the following month; and

(2) For each negative adjustment record, the TSP record keeper will determine attributable earnings on the amount of the adjustment by source of contribution and investment fund. Thus, earnings and losses from different sources will not be netted against each other, and earnings and losses from different investment funds will not be netted against each other. Further, interfund transfers occurring between the attributable pay date of the negative adjustment and the date the adjustment is processed by the TSP record keeper will not be considered.

(d) *Employee contributions.* The following rules apply to negative adjustments involving employee contributions:

(1) If, on the posting date, the amount calculated under paragraph (c) of this section is greater than the

amount of the proposed negative adjustment, the full amount of the adjustment will be returned to the employing agency. Subject to paragraph (d)(4) of this section, the earnings on the erroneous contribution will remain in the participant's account;

(2) If, on the posting date, the amount calculated under paragraph (c) of this section is less than the amount of the proposed negative adjustment, the amount of the adjustment, reduced by the investment loss, will be returned to the employing agency. However, an investment loss will 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 attributable agency matching contributions; and

(4) If all employee contributions are removed from a participant's account under the rules set forth in this section, the participant may choose to leave any earnings in the account unless he or she was not eligible to have an account in the TSP at the time earnings were credited to the account, and remains ineligible. If the participant was ineligible for a TSP account (and remains ineligible), the earnings will be paid to the participant. If earnings remain in the account, upon the participant's separation from Government service, they will be subject to the same withdrawal rules as apply to any other funds in a participant's account.

(e) *Employer contributions.* The following rules apply to negative adjustments involving erroneous employer contributions:

(1) Erroneous employer contributions will be returned to the employing agency only if the negative adjustment record is posted by the TSP record keeper within one year of the date the erroneous contribution was posted. If one year or more has elapsed when the negative adjustment record is posted, the amount computed under paragraph (c) of this section will be removed from the participant's account and used to offset TSP administrative expenses;

(2) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted and the amount computed under paragraph (c) of this section is greater than the amount of the adjustment, the employing agency will receive the full amount of the erroneous contribution. Any earnings attributable to the erroneous contribution will be removed from the participant's account and used to offset TSP administrative expenses;

(3) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted and the amount computed under paragraph (c) of this section is less than the amount of the adjustment, the employing agency will receive the amount of the erroneous contribution reduced by the investment loss; and

(4) An employing agency's obligation to submit negative adjustment records to remove erroneous contributions from a participant's account is not affected by the length of time the contributions have been in the account.

(f) *Each negative adjustment to be processed separately.* For purposes of paragraphs (d) and (e) of this section—

(1) If multiple negative adjustments for a participant are posted on the same business day, the amount removed from the participant's account and/or returned to the employing agency will be determined separately for each adjustment, for each source of contributions, and for each investment fund. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. Instead, each source of contributions and each fund will be treated as separate for purposes of these calculations;

(2) The amount computed by application of the rules in this section will be removed from the participant's account pro rata from all investment funds, by source, based on the allocation of the participant's most recent month-end valued account balance; and

(3) If there is insufficient money in the same source of contributions to cover the amount to be removed, the negative adjustment record will be rejected.

**§ 1605.13 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, immediately upon reinstatement the employing agency must give the participant the opportunity to submit a contribution election to make current contributions. The contribution election will be effective as soon as administratively feasible, but no later than the first day of the first full pay period after it is received;

(2) The employing agency must give the participant the following options for electing makeup contributions:

(i) If the participant had a contribution election on file when he or she separated, upon the participant's reinstatement to Government employment, that election will be reinstated for purposes of the makeup contributions; or

(ii) Instead of making contributions for the period of separation in accordance with the reinstated contribution election, the participant may submit a new contribution election for any open season(s) that occurred during the period of separation;

(3) All makeup contributions under this section will be invested based on the participant's contribution allocation of record at the time the makeup contributions are posted to the account; and

(4) The employing agency must submit lost earnings records pursuant to 5 CFR part 1606. Lost earnings will be calculated and credited to a participant's account in accordance with 5 CFR part 1606 using the rates of return for the G Fund unless otherwise requested by the agency (with the concurrence of the participant), or as ordered by a court or other tribunal with jurisdiction over the participant's back pay case.

(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 be entitled to make up contributions for the period covered by the back pay award or retroactive pay adjustment only if for that period—

(i) The participant had designated a percentage of basic pay to be contributed to the TSP; or

(ii) The participant had designated a dollar amount of contributions each pay period which equaled the applicable ceiling (FERS or CSRS) on contributions per pay period, and which, therefore, was limited 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, agency matching contributions, and agency automatic (1%) contributions that would have been contributed to the participant's account had the reduction in pay leading to the back pay award or other retroactive pay adjustment not occurred; and

(3) If the participant is entitled to lost earnings pursuant to 5 CFR part 1606, the employing agency must also submit lost earnings records.

(c) *Contributions to be deducted before payment or other retroactive pay adjustment.* Employee makeup contributions required under paragraphs (a) and (b) of this section:

(1) Must be computed before the back pay award or other retroactive pay adjustment is paid, deducted from the back pay or other retroactive pay adjustment, and submitted to the TSP record keeper;

(2) Must not cause the participant to exceed the annual contribution limit(s) contained in sections 402(g) and 415(c) of the I.R.C. (26 U.S.C. 402(g) and 415(c)) for the 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; and

(3) Must be accompanied by attributable agency matching contributions. In any event, regardless of whether a participant elects to make up employee contributions, the employing agency must make all appropriate

agency automatic (1%) contributions associated with the back pay award or other retroactive pay adjustment.

(d) *Prior withdrawal of TSP account.* 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, the participant will have the option to restore the amount withdrawn to his or her TSP account. The right to restore the withdrawn funds will expire if notice is not provided by the participant to the Board within 90 days of reinstatement. If the participant returns the funds that were withdrawn, they will be posted to the participant's account based on his or her contribution allocation of record at the time of separation. If no contribution allocation is on file, the contributions will be invested in the G Fund. No lost earnings will be paid on any restored funds.

(e) Participants who are covered by paragraph (d) of this section and who elect to return funds that were withdrawn may also elect to reinstate a loan which was previously declared to be a taxable distribution.

**§ 1605.14 Misclassified retirement coverage.**

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

(1) Employee contributions that exceed the applicable contribution percentage for the pay period(s) involved may remain in the participant's account. However, the participant may choose to have such employee contributions or all of the employee contributions made during the period of misclassification removed from his or her account and refunded to the participant. If the participant requests a refund of employee contributions, the employing agency must submit negative adjustment records, under the procedures of § 1605.12, to request removal of these funds;

(2) The employing agency must, under the procedures of § 1605.12, remove all employer contributions made to the participant's account during the

period of misclassification. Employer contributions that have been in the account for less than one year will be returned to the employing agency; employer contributions that have been in the participant's account for one year or more will be removed from the account and used to offset TSP administrative expenses; and

(3) If the employing agency fails to submit a negative adjustment record under the procedures of § 1605.12(b) to remove employer contributions, after all such contributions have been in the participant's account for more than one year the TSP recordkeeper will remove them from the account and use such amounts to offset TSP administrative expenses.

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

(1) The participant may not elect to have the contributions made while classified as CSRS removed from his or her account;

(2) The participant may, under the rules of § 1605.11, elect to make up contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification;

(3) The employing agency must, under the rules of § 1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified;

(4) The employing agency must submit lost earnings records for makeup employer contributions pursuant to 5 CFR part 1606; and

(5) If the retirement coverage correction is a FERCCA correction, the participant is entitled to lost earnings on makeup employee contributions and the employing agency must submit lost earnings records pursuant to 5 CFR part 1606. However, if employee contributions were made up before the Office of Personnel Management implements its regulations on FERCCA corrections, the amount of lost earnings will be calculated by the Office of Personnel Management, pursuant to its

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regulations, and provided to the employing agency for transmission to the TSP record keeper.

(c) If a participant was misclassified as either FERS or CSRS and the retirement coverage is corrected to FICA only, the participant is no longer eligible to participate in the TSP.

(1) Employee contributions in the account are subject to the rules in paragraph (a)(1) of this section.

(2) Employer contributions in the account are subject to the rules in paragraphs (a)(2) and (a)(3) of this section.

(3) The participant will be deemed to be separated from Federal service for all TSP purposes. If the participant has an outstanding loan, it will be subject to the provisions of 5 CFR 1655.13. The participant may make a TSP post-employment withdrawal election pursuant to 5 CFR part 1650, subpart B, and the withdrawal will be subject to the provisions of 5 CFR 1650.60(b).

(d) If a FERS or CSRS participant is misclassified by an employing agency as FICA only, when the misclassification is corrected the participant may, pursuant to §1605.11 of this part, elect to make up contributions that he or she would have been eligible to make as a FERS or CSRS participant during the period of misclassification. If the participant makes up employee contributions, the rules in paragraph (b)(5) of this section apply. If the participant is corrected to FERS, the rules in paragraphs (b)(3) and (b)(4) of this section also apply.

## § 1605.15 [Reserved]

### § 1605.16 Claims for correction of employing agency errors; time limitations.

(a) *Agency's discovery of error.* (1) Upon discovery of an error made within the past six months involving the correct or timely remittance of payments to the TSP (other than a contribution allocation error as covered in paragraph (a)(2) of this section or a retirement system misclassification error, as covered in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the agency may exercise sound discretion in deciding whether to correct it,

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but, in any event, the agency must act promptly in doing so.

(2) An employing agency must promptly correct a contribution allocation error that occurred before May 1, 2001, on its own initiative if it is discovered within 30 days of its first occurrence. No contribution allocation error that occurred before May 1, 2001, may be corrected if it is not the subject of a timely discovery.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of a payment to the TSP (other than a contribution allocation error as covered by paragraph (b)(2) of this section, or a retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim for correction of the error with his or her employing agency without a time limit. The agency must promptly correct any such error for which the participant files a claim within six months of its occurrence; the correction of any such error for which the participant files a claim after that time is in the agency's sound discretion.

(2) A participant may file a claim for correction of a contribution allocation error made before May 1, 2001, with his or her employing agency no later than 30 days after the participant receives a TSP participant statement first reflecting the error. The agency must promptly correct such errors.

(3) If a participant fails to file a claim for correction of an error described in paragraph (b)(2) of this section in a timely manner, the error will not be corrected.

(c) *Retirement system misclassification error.* Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

(d) *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 must provide the participant with a decision on any claim within 30 days of its receipt,

unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. A decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial, citations to any applicable statutes, regulations, or procedures, a description of any additional material that would enable the participant to perfect the claim, and a statement of the steps necessary 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 a claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial 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 appeal within 30 days of receipt of the appeal, unless the employing agency provides the participant with good cause for requiring 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; and

(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 remedies 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.

### Subpart C—Board or TSP Record Keeper Errors

#### § 1605.21 Plan-paid lost earnings and other corrections.

(a) *Plan-paid lost earnings.* (1) Subject to paragraph (a)(3) of this section, if, because of an error committed by the Board or the TSP record keeper, a participant's account is not credited or charged with the earnings or losses that he or she would have received had

the error not occurred, the participant's TSP account will be credited (or charged) with the difference between the earnings (or losses) it actually received and the earnings (or losses) it would have received had the error not occurred.

(2) Errors that warrant the crediting of earnings or charging of investment losses under paragraph (a)(1) of this section include, but are not limited to:

(i) 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 investment fund(s).

(3) A participant will not be entitled to 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 Board or record keeper error, the participant had the use of the money on which the earnings would have accrued.

(4) If the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP record keeper error, earnings or losses 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 participant did not have, and should not have had, an account in the TSP during this period, then the earnings will be computed using the G Fund rate of return for the relevant period and the monies returned to the participant.

(b) *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, including payment of lost earnings, if the Executive Director determines that the correction would serve the interests of justice and fairness and equity among all participants of the TSP.

**§ 1605.22 Claims for correction of Board or TSP record keeper errors; time limitations.**

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

(b) *Board's or TSP record keeper's discovery of error.* (1) Upon discovery of an error made within the past six months involving a receipt or a disbursement, the Board or TSP record keeper must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the Board or the TSP record keeper may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so.

(2) For errors concerning contribution allocations or interfund transfers, the Board or the TSP record keeper must promptly correct the error if it is discovered before 30 days after the issuance of the earlier of the most recent TSP participant (or loan) statement or transaction confirmation that reflected the error. If it is discovered after that time, the Board or TSP record keeper may use its sound discretion in deciding whether to correct it, but, in any event, must act promptly in doing so.

(c) *Participant's or beneficiary's discovery of error.* (1) If the Board or TSP record keeper fails to discover an error of which a participant or beneficiary has knowledge involving a receipt or a disbursement, the participant or beneficiary may file a claim for correction of the error with the Board or the TSP record keeper without time limit. The Board or the TSP record keeper must promptly correct any such error for which the participant or beneficiary filed a claim within six months of its occurrence; the correction of any such error for which the participant or beneficiary filed a claim after that time is in the sound discretion of the Board or TSP record keeper.

(2) For errors involving contribution allocations or interfund transfers of which a participant or beneficiary has knowledge, he or she may file a claim

for correction with the Board or TSP record keeper no later than 30 days after receipt of the earlier of a TSP participant (or loan) statement or transaction confirmation reflecting the error. The Board or TSP record keeper must promptly correct such errors.

(3) If a participant or beneficiary fails to file a claim for correction of contribution allocations or interfund transfers in a timely manner, the Board or TSP record keeper may nevertheless, in its sound discretion, correct any such error that is brought to its attention.

(d) *Processing claims.* (1) If the initial claim is submitted to the TSP record keeper, the TSP record keeper may either respond directly to the claimant, or may forward the claim to the Board for response. If the TSP record keeper responds to a claim, and all or any part of the claim is denied, the claimant may request review by the Board within 90 days of the date of the record keeper's response.

(2) If the Board denies all or any part of a claim (whether upon review of a TSP record keeper denial or upon an initial review by the Board), the claimant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the claimant does not submit a request to the Board for review of a claim denial by the TSP record keeper within the 90 days permitted under paragraph (d)(1) of this section, the claimant will be deemed to have accepted the TSP record keeper's decision.

**Subpart D—Miscellaneous Provisions**

**§ 1605.31 Contributions missed as a result of military service.**

(a) *Applicability.* This section applies to employees who meet the conditions specified at § 1620.40 of this chapter and who are eligible to receive or to make up contributions missed as a result of military service.

(1) *Missed employee contributions.* Eligibility for making up missed employee contributions will be determined in accordance with the rules specified at 5 CFR part 1620, subpart E. Missed employee contributions will be

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made up in accordance with the rules specified in §1605.20(c).

(2) *Missed employer contributions.* Missed agency automatic (1%) contributions will be determined in accordance with the rules specified at 5 CFR part 1620, subpart E.

(i) If an employee makes up missed employee contributions, attributable agency matching contributions must be made accordingly.

(ii) The employing agency must submit lost earnings records for missed employer contributions pursuant to 5 CFR part 1606. Lost earnings may be calculated using the rates of return based on the contribution allocation(s) on file for the participant during the period of military service or using the rates of return for the G Fund; the participant must make this election at the same time his or her makeup schedule is established pursuant to §1605.11(c).

(b) [Reserved]

### **PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS**

#### **Subpart A—General Provisions**

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- 1606.1 Purpose.
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#### **Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions**

- 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.
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- 1606.8 Late payroll submissions.

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

- 1606.9 Loan allotments.
- 1606.10 Miscellaneous lost earnings.

#### **Subpart D—Lost Earnings Records**

- 1606.11 Agency submission of lost earnings records.
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#### **Subpart E—Processing Lost Earnings Records**

- 1606.13 Calculation and crediting of lost earnings.

#### **Subpart F—Participant Claims for Lost Earnings**

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

*AUTHORITY:* 5 U.S.C. 8432a, 8474(b)(3), and (c)(1). Section 1606.5 also issued under Title II, Pub. L. 106-265, 114 Stat. 770.

*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.**

As used in this part:

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

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

*“As of” date* means the date on which TSP contributions or other transactions should have been made.

*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.

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

*Employer contributions* means agency automatic (1%) contributions under 5

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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 eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

*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.

*FERCCA correction* means the correction of a retirement coverage error pursuant to the Federal Erroneous Retirement Coverage Corrections Act, Public Law 106–265, 114 Stat. 770.

*Late contributions* means employee contributions that were timely deducted from a participant's basic pay but were not timely reported to the TSP record keeper for investment; employee contributions that were timely reported to the TSP but were not posted to the participant's account by the TSP because the payment record on which they were submitted contained errors; and attributable agency matching contributions and agency automatic (1%) contributions that were not timely reported.

*Lost earnings record* means a data record containing information enabling the TSP system to compute lost earnings.

*Makeup contributions* are employee contributions that should have been deducted from a participant's basic pay, or employer contributions that should have been charged to an employing agency, on an earlier date but were not deducted or charged and, consequently, are being deducted or charged currently.

*Negative adjustment* means the removal of money from a participant's TSP account by an employing agency.

*Negative adjustment record* means a data record submitted by an employing agency to remove money from a participant's TSP account previously submitted in error.

*Pay date* means the date established by an employing agency for payment of its employees.

*Payment record* means a data record submitted by an employing agency to report contributions or loan payments to a participant's TSP account.

*Record keeper error* means any act or omission by the TSP record keeper that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants.

*TSP record keeper* means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. The TSP record keeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

[66 FR 44283, Aug. 22, 2001]

#### § 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%) contribution associated with that pay to which the participant is entitled is not timely received by the TSP record keeper, then the makeup or late contributions will be subject to lost earnings. In such cases:

(1) The employing agency must, for each pay period involved, submit to the TSP record keeper a lost earnings record indicating the pay date for which the contributions would have been made had the error not occurred (i.e., the beginning date), the investment fund to which the contributions would have been deposited had the error not occurred if the beginning date on the record was before May 1, 2001, the amount of the contributions, and the pay date for which the contributions were actually made. If the beginning date on the record was on or after May 1, 2001, the TSP record keeper will use the contribution allocation of record for the beginning date and calculate lost earnings;

(2) The TSP record keeper will compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency

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pursuant to paragraph (a)(1) of this section. In performing the computation, the TSP record keeper will not take into consideration any interfund transfers;

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

(4) The lost earnings will be posted to the participant's account pro rata to all investment funds within the same source of contributions based on the most recent valued account balance.

(b) If a participant receives pay from which employee contributions were properly deducted, but as a 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 record keeper, then the makeup agency 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 makeup 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 record keeper, or if the employee contributions were received in connection with a FERCCA correction, the makeup employee contributions will be subject to the procedures described in paragraphs (a)(1) through (a)(4) of this section.

(d) Except for employee contributions received in connection with a FERCCA correction, 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, the makeup employee contributions will not be subject to lost earnings even if the participant makes up the employee contribu-

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tions pursuant to part 1605 of this chapter. However, where the participant makes up the employee contributions pursuant to part 1605 of this chapter, the agency matching contributions associated with the makeup employee contributions (which must be made in accordance with part 1605 of this chapter) will be subject to lost earnings. With respect to such makeup agency matching contributions the procedures described in paragraphs (a)(1) through (a)(4) of this section will apply.

[66 FR 44283, Aug. 22, 2001]

### § 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 made before May 1, 2001.

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 will be subject to lost earnings if a claim is submitted within the time limits set forth in § 1605.16(a)(2) of this chapter. In such cases:

(a) 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;

(b) The TSP record keeper will 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. The TSP record keeper will not take into consideration any interfund transfers;

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

(d) The lost earnings will be posted to the participant's account pro rata to all investment funds within the same source of contributions based on the most recent valued account balance.

[66 FR 44284, Aug. 22, 2001]

#### § 1606.8 Late payroll submissions.

All contributions on payment records contained in a payroll submission received from an employing agency and processed by the TSP record keeper 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) will be subject to lost earnings, as follows:

(a) The TSP record keeper will generate a lost earnings record for each payment record contained in the late payroll submission. The lost earnings records generated by the TSP record keeper will 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 fund(s) indicated on the payment records if the pay date was before May 1, 2001, or based on the participant's contribution allocation on file as of the pay date if the pay date was on or after May 1, 2001, and that the contributions were actually made on the date the late payroll submission was processed.

(b) The procedures applicable to lost earnings records submitted by employ-

ing agencies which are set forth in § 1606.5(a)(2) through (a)(4) will be applied to lost earnings records generated by the TSP record keeper pursuant to paragraph (a)(1) of this section.

[66 FR 44284, Aug. 22, 2001]

### 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 lost earnings will be posted to the participant's account pro rata to all investment funds within the same source of contributions based on the most recent month-end valued account balance.

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

[56 FR 606, Jan. 7, 1991, as amended at 66 FR 44284, Aug. 22, 2001]

#### § 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

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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 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.

(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, no lost earnings will be payable unless the associated payment records are submitted in accordance with the provisions of 5 CFR part 1605. Lost earnings records and the delayed payment records to which they relate should be submitted simultaneously.

(e) Where an employing agency erroneously submits a lost earnings record that is processed by the TSP record keeper, the employing agency must consult with the Board or TSP record keeper to determine the method to be used in removing the erroneous lost earnings.

(f) Lost earnings records that contain contributions for which lost earnings

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must be determined at the G Fund rate of return pursuant to §§ 1605.22(a)(4) or 1605.41(a)(3) of this chapter must be accompanied by the special Journal Voucher, Form TSP-2-EG.

[56 FR 606, Jan. 7, 1991, as amended at 66 FR 44284, Aug. 22, 2001]

### § 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 will be processed by the TSP record keeper monthly.

(b) Lost earnings records received, edited, and accepted by the TSP record keeper by the next-to-last business day of a month will be processed in the processing cycle for the month following acceptance. Lost earnings records received, edited, and accepted by the TSP record keeper on the last business day of a month will be processed in the processing cycle for the second month following acceptance.

(c) In calculating lost earnings attributable to a lost earnings record, earnings and losses for different sources of contributions or investment

funds within a source will 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.

[56 FR 606, Jan. 7, 1991, as amended at 66 FR 44285, Aug. 22, 2001]

### 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;

(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.

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(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 must be filed within six months of the participant's receipt of the earliest of a TSP participant statement, TSP loan statement, employing agency earnings and leave statement, or any other document that indicates that an 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.

[56 FR 606, Jan. 7, 1991, as amended at 66 FR 44285, Aug. 22, 2001]

## PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

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- 1620.46 Agency responsibilities.

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.

*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

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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 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 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

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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.

**§ 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;

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(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.

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### 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) *Retroactive 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 covered 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 instru-

mentality 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 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

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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 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

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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 em-

ployee 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. 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 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 bene-

fits 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

### Sec.

- 1630.1 Purpose and scope.
- 1630.2 Definitions.
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AUTHORITY: 5 U.S.C. 552a.

## § 1630.1

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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 or the record keeper, 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) *Record keeper* means the entity that is engaged by the Board to perform record keeping services for the TSP;

(g) *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;

(h) *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;

(i) *System of records* means a group of any records under the control of the Board from which information is re-

trieved by the name of the individual or other identifying particular assigned to the individual;

(j) *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;

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

(l) *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);

(m) *TSP participant* means any individual for whom a TSP account has been established. This includes former participants, *i.e.*, participants whose accounts have been closed;

(n) *TSP records* means those records maintained by the record keeper;

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

(p) *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.

[55 FR 18852, May 7, 1990, as amended at 64 FR 67693, 67695, Dec. 3, 1999]

### § 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,

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- (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) Records on TSP participants and the spouses, former spouses, and beneficiaries of TSP participants are maintained in the Governmentwide system of records, FRTIB-1, Thrift Savings Plan Records. A participant or a spouse, former spouse, or beneficiary of a participant must make his or her inquiry in accordance with the chart set forth in this paragraph. The mailing address of the Thrift Savings Plan Service Office is: National Finance Center, PO Box 61500, New Orleans, LA, 70161-1500. Telephone inquiries are subject to the verification procedures set forth in § 1630.7. A written inquiry must include the name and Social Security number of the participant or of the spouse, former spouse, or beneficiary of the participant, as appropriate.

To obtain information about or gain access to TSP records about you

If you want:	If you are a participant who is a current Federal employee:	If you are a participant who has separated from Federal employment or a spouse, former spouse, or beneficiary:
To make inquiry as to whether you are a subject of this system of records..	Call or write to your employing agency in accordance with agency procedures for personnel or payroll records.	Call or write to TSP record keeper.

If you want:	If you are a participant who is a current Federal employee:	If you are a participant who has separated from Federal employment or a spouse, former spouse, or beneficiary:
To gain access to a record about you.	Call or write to your employing agency to request access to personnel and payroll records regarding the agency's and the participant's contributions, and adjustments to contributions. Call or write to the TSP record keeper to gain access to loan status and repayments, earnings, contributions allocation elections, interfund transfers, and withdrawal records.	Call or write to TSP record keeper.
To learn the history of disclosures of records about you to entities other than the participant's employing agency or the Board or auditors see § 1630.4 (a)(4).	Write to TSP record keeper.	Write to TSP record keeper.

(2) Participants may also inquire whether this system contains records about them and access certain records through the account access section of the TSP Web site and the ThriftLine (the TSP's automated telephone system). The TSP Web site is located at *www.tsp.gov*. To use the TSP ThriftLine, the participant must have a touch-tone telephone and call the following number (504) 255-8777. The following information is available on the TSP Web site and the ThriftLine: account balance; available loan amount; the status of a monthly withdrawal payment; the current status of a loan or withdrawal application; and an interfund transfer request. To access these features the participant will need to provide his or her SSN and PIN.

(3) A Privacy Act request which is incorrectly submitted to the Board will not be considered received until received by the record keeper. The Board will submit such a Privacy Act request to the record keeper within three workdays. A Privacy Act request which

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is incorrectly submitted to the record keeper will not be considered received until received by the employing agency. The record keeper will submit such a Privacy Act request to the employing agency within three workdays.

(4) 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).

(5) 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

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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; 64 FR 67693, 67695, Dec. 3, 1999]

### § 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 or the TSP record keeper 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 or the TSP record keeper 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; 64 FR 67694, Dec. 3, 1999]

### § 1630.6 Action on request.

(a) For TSP records, the record keeper 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. When the answer cannot be made within 10 work days, the record keeper 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

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

[55 FR 18852, May 7, 1990, as amended at 67694, 67695, Dec. 3, 1999]

### § 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 or record keeper designee 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 or record keeper designee 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 receive 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 and spouses, former spouses, or beneficiaries of participants for information in FRTIB-1, Thrift Savings Plan Records, which is retrieved by their respective Social Security numbers.

(2) A participant or a spouse, former spouse, or beneficiary of a participant must identify himself or herself by providing to the record keeper designee his or her name, Social Security num-

ber, and any other information requested. If the record keeper designee determines that any of the information provided by telephone is incorrect, the requester will be required to submit a request in writing.

(3) A participant may also access the TSP Web site or call the TSP ThriftLine to obtain account information. These systems require the participant's Social Security number and PIN. Because a PIN is required to use these features, they are not available to former participants, whose PINs are canceled when their accounts are closed.

[55 FR 18852, May 7, 1990, as amended at 64 FR 67694, Dec. 3, 1999]

### § 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.

(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 or the record keeper 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 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 or the record keeper 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

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personal identifying information from records released for statistical purposes, the Privacy Act Officer or record keeper designee 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.

[55 FR 18852, May 7, 1990, as amended at 64 FR 67694, Dec. 3, 1999]

**§ 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 record keeper designee for records covered by system FRTIB-1, may deny an individual access to his or her record if:

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(1) In the opinion of the Privacy Act Officer or the record keeper 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.

[55 FR 18852, May 7, 1990, as amended at 64 FR 67695, Dec. 3, 1999]

**§ 1630.11 Requirements for requests to amend records.**

(a) *TSP records.* (1) A spouse, former spouse or beneficiary of a TSP participant who wants to correct or amend his or her record must write to the TSP record keeper. 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:

To correct or amend a TSP record		
If the type of record is:	If you are a participant who is a current Federal employee write to:	If you are a participant who has separated from Federal employment write to:
Personnel or personal records (e.g., age, address, Social Security number, date of birth)..	Write to your employing agency..	Write to TSP record keeper.
The agency's and the participant's contributions, and adjustments to contributions..	Write to your employing agency..	Write to your former employing agency.
Earnings, investment allocation, interfund transfers, loans, loan repayments, and withdrawals.	Write to TSP record keeper..	Write to TSP record keeper.

(2) The address of the record keeper 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 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 form (which is maintained in the Official Personnel Folder). Requests for amendment or correction of records described in this paragraph should 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 informa-

tion 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.

[55 FR 18852, May 7, 1990, as amended at 64 FR 67694, 67695, Dec. 3, 1999]

**§ 1630.12 Action on request to amend a record.**

(a) For TSP records, the record keeper 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 record keeper which are to be decided by the current or former employing agency will be sent to that agency by the record keeper 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

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

[55 FR 18852, May 7, 1990, as amended at 64 FR 67695, Dec. 3, 1999]

#### **§ 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 de-

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cision 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 or the record keeper 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.

[55 FR 18852, May 7, 1990, as amended at 64 FR 67695, Dec. 3, 1999]

#### **§ 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,

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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 re-

quirements 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  $8\frac{1}{2} \times 14$  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 record keeper 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 to be 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.

[55 FR 18852, May 7, 1990, as amended at 64 FR 67695, Dec. 3, 1999]

### § 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.

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### § 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

Sec.

- 1631.1 Definitions.
- 1631.2 Purpose and scope.
- 1631.3 Organization and functions.
- 1631.4 Public reference facilities and current index.
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- 1631.6 How to request records—form and content.
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- 1631.15 Information to be disclosed.
- 1631.16 Exemptions.
- 1631.17 Deletion of exempted information.
- 1631.18 Annual report.

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

- 1631.30 Purpose and scope.
- 1631.31 Production prohibited unless approved by the Executive Director.
- 1631.32 Procedure in the event of a demand for disclosure.

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1631.33 Procedure in the event of an adverse ruling.

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

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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.

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(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 telecommuni-

cations 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 non-commercial 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

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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 lo-

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cated 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 ex-

planatory 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 personal 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

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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 appears 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.
- 1632.3 Conduct of agency business.
- 1632.4 Meetings open to public observation.
- 1632.5 Exemptions.
- 1632.6 Public announcement of meetings.
- 1632.7 Meetings closed to public observation.
- 1632.8 Changes with respect to publicly announced meetings.
- 1632.9 Certification of General Counsel.
- 1632.10 Transcripts, recordings, and minutes.
- 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

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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:

(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]

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**§ 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 information 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.

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(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 transcriptions 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]

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## 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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- 1636.171—1636.999 [Reserved]

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 ana-

tomical 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. How-

ever, 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 definitions, 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—

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(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 ef-

fective 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 informa-

tion 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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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 employs 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

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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

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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

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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.

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### § 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:

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(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 no-

tice 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 with-

in 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

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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.

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(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;

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(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.

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(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

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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

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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.

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**§ 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 cur-

rently 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

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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;
- (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:

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(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.

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### § 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 participants—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

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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)

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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

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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

#### 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.
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- 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).

SOURCE: 62 FR 49113, Sept. 18, 1997, unless otherwise noted.

#### 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 pay-

ments 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

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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.

(c) In the event that a participant does not withdraw his or her account or begin receiving payments in accordance with paragraph (a) of this section, the Board will transfer all of the funds in the participant's account not already invested in the Government Securities Investment Fund (G Fund) to

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that Fund. A notice of this action will be sent to the participant with a warning that his or her account will be declared abandoned and forfeited unless the participant comes into compliance with paragraph (a) of this section within 90 days of the date of the notice.

(d) If the participant does not take the appropriate withdrawal action within the 90 day period provided in paragraph (c) of this section, the Board will purchase an annuity for the participant after the following steps have been taken:

(1) The account has been declared abandoned and the funds in the account have been forfeited;

(2) A notice of this action has been sent to the participant;

(3) The participant reclaims the account balance that was abandoned, but decides against a withdrawal pursuant to §§1650.10 or 1650.11; and

(4) The participant provides the information that the Board needs to purchase an annuity pursuant to §1650.12.

[62 FR 49113, Sept. 18, 1997, as amended at 64 FR 31062, June 9, 1999]

### § 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

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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 can demonstrate financial hardship is eligible to withdraw all or a portion 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 withdrawal must be at least \$1,000.

(b) A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) Based on TSP calculations, the participant's monthly cash flow is negative (*i.e.*, net income is less than ordinary monthly household expenses).

(2) The participant has incurred, or will incur within the next six months, extraordinary expenses which the participant has not paid, for which he or

she has not been and will not be reimbursed, and which cannot be met by his or her monthly cash flow over a period of six months. Documentation of the expenses must be dated within 45 days of the date of the withdrawal request. 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 as medical expenses for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductibility. However, the following expenses that are allowed by the IRS are not eligible TSP 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 TSP financial hardship calculations.

(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 deductibility or the fair market value of the property. Household improvements are structural improvements 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 repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(iv) Legal expenses for attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) 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)(i) The amount which would both:

(A) Make up the participant's negative cash flow, if any, for a period of six months; and

(B) Pay documented extraordinary expenses, if any.

(ii) If the TSP calculates that the participant has a negative cash flow and extraordinary expenses, the amount of the disbursement is equal to six times the amount of the negative monthly cash flow plus the amount of the extraordinary expenses. If the TSP calculates that the participant has a positive cash flow, the amount of the disbursement is equal to the amount of the documented extraordinary expenses minus six times the amount of the positive monthly cash flow.

(d) A participant is not eligible for an in-service hardship withdrawal during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code.

[66 FR 43462, Aug. 20, 2001]

**§ 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) When an in-service withdrawal is paid directly to a participant from the TSP, the money is taxable income in the year in which the payment is made. However, a participant does not pay

taxes on money that the TSP transfers directly to an IRA or other eligible retirement plan until the money is withdrawn from the IRA or plan.

(b) A financial hardship in-service withdrawal from the TSP is not an eligible rollover distribution, and a participant therefore may not request the TSP to transfer a financial hardship in-service withdrawal to an IRA or other eligible retirement plan. A financial hardship in-service withdrawal is subject to 10% withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting an IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments, to the TSP record keeper.

(c) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to an IRA or other eligible retirement plan, consistent with paragraph (d) of this section. If the withdrawal is not transferred, it is subject to mandatory 20% withholding. (The participant may increase the amount of withholding by submitting an IRS Form W-4P to the TSP record keeper.)

(d) A transfer or rollover may be requested by filing with the TSP record keeper a TSP Form 75-T. An eligible retirement plan is a plan defined in the Internal Revenue Code, 26 U.S.C. 402(c)(8). There are four types of eligible retirement plans: an individual retirement account (IRA), an individual retirement annuity (other than an endowment contract), a qualified pension, profit-sharing, or stock bonus plan, and an annuity plan described in 26 U.S.C. 403(a). An eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

[66 FR 43462, Aug. 20, 2001]

**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 withdraw 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;

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

*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;

*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);

*Investment fund* means the C Fund, the F Fund, the G Fund, or any other TSP investment fund created subsequent to December 27, 1986;

*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.

[62 FR 32429, June 13, 1997, as amended at 64 FR 31062, June 9, 1999]

### § 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,

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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

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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.

(c) If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the Board will transfer the entire account into the G Fund after receiving written notice of the participant's death. The account will continue to accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid in accordance with the order of precedence set forth in paragraph (a) of this section.

[62 FR 32429, June 13, 1997, as amended at 64 FR 31062, June 9, 1999]

### § 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

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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 adminis-

trator 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)

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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

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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 participant'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 ac-

count 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

Sec.

1653.1 Purpose.

1653.2 Qualifying retirement benefits court orders.

1653.3 Processing retirement benefits court orders.

1653.4 Calculating entitlement under a retirement benefits court order.

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1653.5 Procedures for payment pursuant to retirement benefits court orders.

### **Subpart B—Legal Process for the Enforcement of a Participant’s Legal Obligations To Provide Child Support or Make Alimony Payments**

- 1653.20 Purpose and scope.
- 1653.21 Definitions.
- 1653.22 Service of legal process.
- 1653.23 Requirements for “qualifying” legal process.
- 1653.24 Processing legal process.
- 1653.25 Payment pursuant to qualifying legal process.

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

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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;

(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 entitlement 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;

(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

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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.

(1) 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.

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### § 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

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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.

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(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

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- 1655.20 Loans for the purchase of a primary residence.

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.

*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.

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*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 pur-

chase 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 ½ 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

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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;

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(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;

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(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

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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 participant, 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:

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(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 cash-

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ier'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

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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 construction 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

Sec.

1690.1 Plan year.

1690.2 Power of attorney.

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]

### § 1690.2 Power of attorney.

This section applies to all regulations in this chapter that require a signature by the participant on a Thrift Savings Plan (TSP) form, where the participant desires to effect transactions through an agent (*i.e.*, an attorney-in-fact). Before an attorney-in-fact may sign a TSP form on behalf of a participant, the Board must have approved either a general power of attorney which authorizes the attorney-in-fact to act on behalf of the participant with respect to the principal's personal property or in Federal Government retirement, financial, or business transactions; or a special power of attorney which authorizes the attorney-in-fact to effect transactions in the TSP on behalf of the participant. For a power of attorney to be acceptable to effect transactions in the TSP, it must be authenticated, attested, acknowledged, or certified before a notary public or other official authorized by law to administer oaths or affirmations. The Board will advise the person submitting a power of attorney whether it is valid to effect transactions in the TSP.

[64 FR 31062, June 9, 1999]