

§ 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(a), 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

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

Subpart A—General

§ 1600.1 Definitions.

Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

[68 FR 35494, June 13, 2003]

Subpart B—Elections

§ 1600.11 Types of elections.

(a) *Contribution elections.* A contribution election must be made pursuant to § 1600.14 and includes the following types of 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.

[66 FR 22089, May 2, 2001, as amended at 68 FR 35494, June 13, 2003]

§ 1600.12 Period for making contribution elections.

(a) *Participation upon initial appointment or reappointment.* 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 April 15 and will end on June 30; a second open season will begin on October 15 and end on December 31. 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

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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.

[66 FR 22089, May 2, 2001, as amended at 68 FR 35494, June 13, 2003]

§ 1600.13 Effective dates of contribution elections.

(a) *Participation upon initial appointment or reappointment.* TSP contribution elections made pursuant to § 1600.12(a) will become effective no later than the first full pay period after the election is received by the employing agency or uniformed service.

(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.

[66 FR 22089, May 2, 2001, as amended at 68 FR 35494, June 13, 2003]

§ 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 (*i.e.*, Form

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TSP-1, TSP-1-C, TSP-U-1, or TSP-U-1-C) or, if available from their employing agency, electronic media to make an election. If an electronic medium is used, all relevant elements contained on the paper form must be included in the electronic medium.

(b) A contribution election must:

(1) Be completed in accordance with the instructions on the form, 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.

[66 FR 22089, May 2, 2001, as amended at 68 FR 35494, June 13, 2003]

§ 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.

§ 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.

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) *Regular employee contributions.* The amount a participant can contribute to

the TSP under this paragraph is subject to the Internal Revenue Code (I.R.C.) limitations described in paragraphs (a)(3) and (4) of this section.

(1) *FERS percentage limit.* The maximum employee contribution from basic pay for a FERS participant for December 2002 through November 2003 is 13 percent per pay period. The maximum contribution will increase one percentage point in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (a)(2) and (3) of this section.

(2) *CSRS and uniformed services percentage limit.* The maximum employee contribution from basic pay for a CSRS or uniformed services participant for December 2002 through November 2003 is 8 percent per pay period. The maximum contribution will increase one percent in December of each year until December 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.

(3) *I.R.C. 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 an employee may save on a tax-deferred basis through regular contributions to the TSP. The TSP will not accept any regular employee contributions that exceed this limit. If a participant contributes to the TSP and another plan, and the combined contributions exceed the section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform to the limit.

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

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(b) *Catch-up contributions.* (1) A participant may make tax-deferred catch-up contributions from basic pay at any time during the calendar year if he or she:

(i) Is at least age 50 by the end of the calendar year; and

(ii) Is making regular TSP contributions at either the maximum TSP contribution percentage or a dollar amount that will result in reaching the Internal Revenue Code elective deferral limit by the end of the year.

(2) Elections to make catch-up contributions shall be separate from the participant's regular contribution election.

(3) A participant who has both a civilian and a uniformed services account can make catch-up contributions to both accounts, as long as he or she does not exceed the limit for the year.

(4) Catch-up contributions are not eligible for matching contributions.

[68 FR 35494, June 13, 2003]

§ 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.

(a) A participant who is entitled to receive (or receives) an eligible rollover distribution, within the meaning of I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)), from an eligible employer plan or a rollover contribution, within the meaning of I.R.C. section 408(d)(3) (26 U.S.C. 408(d)(3)), from a traditional IRA may cause to be transferred (or

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transfer) that distribution into his or her existing TSP account. This option is not available to participants who have already made a full withdrawal of their TSP account after separation from service or who are receiving monthly payments.

(b) The only balances that the TSP will accept are balances that would otherwise be includible in gross income if the distribution were paid to the participant. The TSP will not accept any balances that have already been subjected to Federal income tax (after-tax monies) or balances from a uniformed services TSP account that will not be subject to Federal income tax (tax-exempt monies).

[67 FR 17604, Apr. 11, 2002]

§ 1600.32 Methods for transferring eligible rollover distribution to TSP.

(a) *Trustee-to-trustee transfer.* Participants may request that the administrator or trustee of their eligible retirement plan transfer any or all of their account directly to the TSP by executing and submitting a Form TSP-60 or TSP-U-60, Request for a Transfer Into the TSP, to the administrator or trustee. The administrator or trustee must complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper.

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

(1) The participant must complete Form TSP-60 or TSP-U-60, Request for a Transfer Into the TSP.

(2) The administrator or trustee of the eligible retirement plan must certify on the Form TSP-60 or TSP-U-60 the amount and date of the distribution.

(3) The participant must submit the completed Form TSP-60 or TSP-U-60, together with a certified check, cashier's check, cashier's draft, money order, treasurer's check from a credit union, or personal check, 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 his or her eligible retirement plan. The transaction is not complete until the TSP record keeper receives the Form TSP-60 or TSP-U-60, executed by both the participant and administrator, trustee, or custodian, together with the guaranteed funds for the amount to be rolled over.

(c) *Participant's certification.* When transferring a distribution to the TSP by either a trustee-to-trustee transfer or a rollover, the participant must certify that the distribution is eligible for transfer into the TSP, as follows:

(1) *Distribution from an eligible employer plan.* The participant must certify that the distribution:

(i) Is not one of a series of substantially equal periodic payments made over the life expectancy of the participant (or the joint lives of the participant and designated beneficiary, if applicable) or for a period of 10 years or more;

(ii) Is not a minimum distribution required by I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9));

(iii) Is not a hardship distribution;

(iv) Is not a plan loan that is deemed to be a taxable distribution because of default;

(v) Is not a return of excess elective deferrals; and

(vi) If not transferred or rolled over, would be includible in gross income for the tax year in which the distribution is paid.

(2) *Distribution from a traditional IRA.* The participant must certify that the distribution:

(i) Is not a minimum distribution required under I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9)); and

(ii) If not transferred or rolled over, would be includible in gross income for the tax year in which the distribution is paid.

[67 FR 17604, Apr. 11, 2002, as amended at 68 FR 35495, June 13, 2003]

§ 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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1601.1 Definitions.

Subpart B—Investing Future Deposits

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1601.12 Investing future deposits in the TSP investment funds.

1601.13 Elections.

Subpart C—Redistributing Participants' Existing Account Balances (Interfund Transfers)

1601.21 Applicability.

1601.22 Methods of requesting an interfund transfer.

Subpart D—Contribution Allocations and Interfund Transfer Requests

1601.31 Applicability.

1601.32 Timing and posting dates.

1601.33 Acknowledgment of risk.

1601.34 Effectiveness of Form TSP-50 or Form TSP-U-50.

1601.35 Posting of transaction requests.

1601.36 Error correction.

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

SOURCE: 66 FR 22093, May 2, 2001, unless otherwise noted.

Subpart A—General

§ 1601.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

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.

[68 FR 35495, June 13, 2003]

Subpart B—Investing Future Deposits

SOURCE: 68 FR 35495, June 13, 2003, unless otherwise noted.

§ 1601.11 Applicability.

This subpart applies only to the investment of future deposits to the TSP's investment funds, including contributions, loan payments, and transfers or rollovers from traditional IRAs and eligible employer plans; 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 deposits in the TSP investment funds.

(a) *Allocation.* Future deposits in the TSP, including contributions, loan payments, and transfers or rollovers from traditional IRAs and eligible employer plans, will be allocated among the investment funds based on the most recent contribution allocation on file for the participant.

(b) *Investment fund availability.* All participants may elect to invest all or any portion of their deposits in any of the TSP's five investment funds.

§ 1601.13 Elections.

(a) *Contribution allocation.* Each participant may indicate his or her choice of investment funds for the allocation of future deposits by using the TSP Web site or the ThriftLine, or by completing Form TSP-50 (for civilians) or Form TSP-U-50 (for uniformed services), 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 percent;

(2) The percentage elected by a participant for investment of future deposits in an investment fund will be applied to all sources of contributions and transfers (or rollovers) from traditional IRAs and eligible employer plans. A participant may not make different percentage elections for different sources of contributions;

(3) A participant who elects for the first time to invest in the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk in accordance with § 1601.33. In addition, a participant who, before June 2003, has only acknowledged the risk of investing in the F Fund or C Fund must execute an acknowledgment of risk in accordance with § 1601.33 before making any new election to invest in the F Fund, C Fund, S Fund, or I Fund;

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

(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 and had not withdrawn his or her entire TSP account, the participant's last contribution allocation before separation from service will be effective until a new allocation is made.

(b) *Effect of rejection of contribution allocation.* If a contribution allocation on a Form TSP-50 or Form TSP-U-50 is found to be ineffective pursuant to § 1601.34, the attempted allocation will have no effect. The TSP will provide the participant with a written statement of the reason the transaction was rejected.

(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 (Interfund Transfers)

SOURCE: 68 FR 35495, June 13, 2003, unless otherwise noted.

§ 1601.21 Applicability.

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

§ 1601.22 Methods of requesting an interfund transfer.

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

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

(2) The percentages elected by the participant will be applied to the balances in each source of contributions and to both tax-deferred and tax-exempt balances 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. In addition, a participant who, before June 2003, has only acknowledged the risk of investing in the F Fund or C Fund, must execute an acknowledgment of risk in accordance with § 1601.33 before making any new election to invest in the F Fund, C Fund, S Fund, or I Fund.

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

(c) If an interfund transfer on a Form TSP-50 or Form TSP-U-50 is found to

be invalid pursuant to § 1601.34, the purported transfer will not be made. The TSP will provide the participant with a written statement of the reason the transaction was rejected.

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 or an interfund transfer entered into the TSP record keeping system by a participant who uses the TSP Web site or the ThriftLine, or by a TSP Service Office participant service representative at the participant's request, at or before 11 a.m. central time of any business day, will ordinarily be posted that business day. A contribution allocation or an interfund transfer request made on the TSP Web site, the ThriftLine, or with a TSPSO participant service representative, after 11 a.m. central time of any business day will ordinarily be posted on the next business day.

(2) A contribution allocation or an interfund transfer request made on the TSP Web site or the ThriftLine on a non-business day will ordinarily be posted on the next business day.

(3) A contribution allocation or an interfund transfer request made on Form TSP-50 or Form TSP-U-50 will ordinarily be posted under the rules in paragraph (a)(1) of this section, based on when the form is entered into the TSP system by the TSP record keeper. The TSP record keeper ordinarily enters such forms into the system within 24 hours of their receipt.

(4) In most cases, the share price(s) applied to an interfund transfer request is the value of the shares on the date the relevant transaction is posted. In some circumstances, such as error correction, the share price(s) for an earlier date will be used.

(b) *Limit.* There is no limit on the number of contribution allocations or

interfund transfer requests that may be made by a participant.

(c) *Multiple contribution allocations or interfund transfer requests.* (1) If two or more contribution allocations or two or more interfund transfer requests 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 Web site or the ThriftLine and one or more are made on Form TSP-50 or Form TSP-U-50 and would be posted on the same day, only the latest contribution allocation or interfund transfer request made through the 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.

(iii) If the contribution allocations or interfund transfer requests are submitted using Form TSP-50 or Form TSP-U-50, the forms will be posted in the order the TSP record keeper receives them.

(2) For purposes of determining the date and time of a contribution allocation or an interfund transfer request in applying the rules of this paragraph (c), the following rules apply:

(i) The date and time of a contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine is the date and time the participant confirms the percentages.

(ii) 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 cancelled through the TSP Web site or the ThriftLine, through written correspondence, or by contacting a participant service representative.

(2) A contribution allocation or an interfund transfer request may be cancelled by entering the cancellation on

the TSP Web site or the ThriftLine only up to the deadline, described in paragraph (a) of this section, which applies to the original request. If a change or cancellation is received after the deadline, the original request will be processed as scheduled. Any subsequent request will then be processed in turn.

(3) A participant may also cancel a contribution allocation or an interfund transfer request by submitting a letter to the TSP record keeper that requests cancellation and meets the following requirements:

(i) The cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth.

(ii) The cancellation for the pending transaction must be received and entered into the system before the cutoff for the day the relevant transaction is submitted for processing in order to be effective to cancel the transaction.

(iii) The letter must state unambiguously the specific contribution allocation or interfund transfer request it seeks to cancel.

(A) If it does not identify the specific contribution allocation or interfund transfer request it seeks to cancel, the written cancellation will apply to any pending contribution allocation or interfund transfer request with a date (as determined under this paragraph (d)(3)) before the date of the cancellation letter.

(B) If the date of a cancellation letter is the same as the date of a pending contribution allocation or an interfund transfer request and the request was made on Form TSP-50 or Form TSP-U-50, the form will be cancelled.

(C) If the request was made on the TSP Web site or ThriftLine, it will only be cancelled if the written cancellation specifies the date of the TSP Web site or ThriftLine request to be cancelled.

(D) If there is no contribution allocation or interfund transfer pending when the written cancellation is processed by the TSP record keeper, the cancellation will have no effect. Cancellation letters will not be held until a contribution allocation or interfund transfer request is received.

[68 FR 35496, June 13, 2003]

§ 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 or Form TSP-U-50.

A Form TSP-50 or Form TSP-U-50 will not be effective if:

(a) It is not signed and dated or if it contains a future date, a date more than one year before the TSP's receipt of the form, or an invalid date.

(b) It is missing a Social Security number, date of birth, or the participant's first or last name.

(c) The participant's date of birth does not match the information in the TSP records.

(d) The contribution allocation or interfund transfer percentages do not total 100 percent, or the percentages are not entered as whole numbers. An error to one of the transactions under this paragraph (d) will not invalidate the other transaction, but only the transaction for which the error occurred.

(e) Any other reasons that may be determined by the Executive Director.

[68 FR 35497, June 13, 2003]

§ 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 ac-

cordance 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.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

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. However, that service is to be determined without regard to any time limitations, any deposit or redeposit requirements contained in those statutory provisions after performing the service involved, or any requirement that the individual give written notice of that individual's desire to become subject to the retirement system established by 5 U.S.C. chapters 83 or 84; or

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

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration, as well as members of the Ready Reserve including the National Guard.

Vested means those amounts in an individual account which are nonforfeitable.

Year of service means one full calendar year of service.

[68 FR 35497, June 13, 2003]

§ 1603.2 Basic vesting rules.

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

(b) Except as provided in paragraph (c) of this section, all amounts in a

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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; 68 FR 35497, June 13, 2003]

§ 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

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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.

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1604.10 Loans.

AUTHORITY: 5 U.S.C. 8440e, 8474(b)(5) and (c)(1).

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

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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 TSP regular employee contribution (including contributions from pay earned in a combat zone) a service member may make for January through November 2003 is 8 percent of basic pay per pay period. The maximum contribution will increase one percent in December of each year until December 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.)

(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 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.

[66 FR 50713, Oct. 4, 2001, as amended at 68 FR 35497, June 13, 2003]

§ 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

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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 con-

tribution. 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 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 transfer 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.

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Subpart B—Employing Agency Errors

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Subpart D—Miscellaneous Provisions

1605.31 Contributions missed as a result of military service.

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

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

Subpart A—General

§ 1605.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

“*As of*” date means the date on which a TSP contribution or other transaction entailing acquisition of invest-

ment fund shares should have taken place. Employing agencies use this date on payment records to report makeup or late contributions or late loan payments.

Attributable pay date ordinarily means the pay date of an erroneous contribution for which a negative adjustment is being made or, in the case of the uniformed services, the pay date of a contribution that is being recharacterized from tax-deferred to tax-exempt, or vice versa. However, if the erroneous contribution was a makeup or late contribution, the attributable pay date is the “as of” date of the erroneous makeup or late contribution.

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

Breakage means the loss incurred or the gain realized on makeup or late contributions. It is the difference between the value of the shares of the applicable investment fund(s) that would have been purchased had the contribution been made on the “as of” date and the value of the shares of the same investment fund(s) on the date the contribution is posted to the account.

Employing agency error means any act or omission by an employing agency, which 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:

(1) Employee contributions that were timely deducted from a participant’s basic pay but were not timely reported to the TSP record keeper for investment;

(2) Employee contributions that were timely reported to the TSP but were not timely posted to the participant’s

account by the TSP because the payment record on which they were submitted contained errors;

(3) Agency matching contributions attributable to employee contributions referred to in paragraphs (1) or (2) of this definition; and

(4) Delayed agency automatic (1%) contributions.

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 that the agency had previously submitted in error.

Pay date means the date established by an employing agency for paying its employees or service members.

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, which is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants.

[68 FR 35497, June 13, 2003]

§ 1605.2 Calculating, posting, and charging breakage.

(a) Breakage will be calculated on makeup agency contributions that are reported on current payment records, and on makeup and late contributions from all sources that are reported on late payment records.

(b) *Calculating breakage.* The TSP will calculate breakage as follows:

(1) *For contributions with "as of" dates on or after January 1, 2000,* the TSP will use three steps to calculate breakage:

(i) The TSP will use the participant's contribution allocation on file for the "as of" date to determine how the contributions would have been invested. If

there is no contribution allocation on file, or one cannot be derived based on the investment of contributions, the TSP will consider the contributions to have been invested in the G Fund;

(ii) The TSP will then determine the number of shares of the applicable investment funds the participant would have received had the contributions been made on time. If the "as of" date is before TSP account balances were converted to shares, this determination will be the number of shares the participant would have received on the conversion date, and will include the monthly earnings the participant would have received had the contributions been made on the "as of" date; and

(iii) The TSP will next determine the dollar value on the posting date of the number of shares the participant would have received had the contributions been made on time. The difference between the dollar value of the contribution on the posting date and the dollar value of the contribution on the "as of" date is the breakage.

(2) *For contributions with an "as of" date before January 1, 2000,* the TSP will use two steps to calculate breakage:

(i) The TSP will value the contributions from the "as of" date through the date TSP accounts were converted to shares, by using the greater of either the G Fund monthly rate of return or the average monthly rate of return for all TSP investment funds; and

(ii) The TSP will determine the dollar value of the contributions on the posting date by using the greater of either the G Fund share price or the average share price for all five TSP investment funds. The difference between the dollar value of the contribution on the posting date and the dollar value of the contribution on the "as of" date is the breakage.

(c) *Posting contributions.* Makeup and late contributions, as well as breakage, will be posted to the participant's account according to his or her contribution allocation on file for the posting date. If there is no contribution allocation on file for the posting date, they will be posted to the G Fund.

(d) *Charging breakage.* If the dollar amount posted to the participant's account is greater than the dollar

amount of the makeup or late contribution (*i.e.*, the value of the shares is higher on the posting date), the agency will be charged the additional amount. If the dollar amount posted to the participant's account is less than the dollar amount of the makeup or late contribution (*i.e.*, the value of the shares is lower on the posting date), the difference between the amount of the contribution and the amount posted will be forfeited to the TSP.

(e) *Posting of multiple contributions.* If the TSP posts multiple makeup or late contributions with different “as of” dates for a participant on the same business day, the amount of breakage charged to the employing agency or forfeited to the TSP will be determined separately for each contribution, without netting any gains or losses attributable to different “as of” dates. In addition, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, investment fund, and source of contributions.

[68 FR 35498, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

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 matching contributions that are authorized under 37 U.S.C. 211(d), 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.

(2) The TSP will calculate the breakage due to the participant and post both the contributions and the associated breakage to the participant's account in accordance with § 1605.2.

(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 a smaller amount of employee contributions to be made to the participant's account than should have been made, a participant may elect to establish a schedule to make up the deficient 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 total amount to be contributed must be established when the schedule is created. After the schedule is created, a participant may, with the agreement of his or her agency, elect to change his or her payment

amount (e.g., to accelerate payment). The length of 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 which the employee contribution should have been made. An employee is not eligible to make up contributions with an "as of" date occurring during a period of six months following a financial hardship in-service withdrawal, as provided in 5 CFR 1650.33. An employee may make up contributions during a period of ineligibility due to a hardship withdrawal as long as the "as of" date is for an earlier period.

(5) Employee makeup contributions will be invested in accordance with the participant's current contribution allocation. The number of shares of each investment fund that will be purchased will be determined by dividing the amount of the makeup contributions by the share price of the applicable investment fund(s) on the posting date.

(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 limit contained in section 402(g) of the Internal Revenue Code (26 U.S.C. 402(g)(1)). For purposes of applying the annual limit of section 402(g), employee makeup contributions will be applied against the limit for 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 determine whether the makeup contributions, when combined with prior contributions for the same year, would exceed the annual contribution limit(s) contained in section 402(g) 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 limit contained in section 402(g).

(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. A participant may not elect to make partial payments under the schedule. 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 by 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 or, for uniformed services participants, from basic pay, incentive pay, or special pay, including bonus 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.

[68 FR 35498, June 13, 2003]

§ 1605.12 Removal of erroneous contributions.

(a) *Applicability.* This section applies to the removal of funds erroneously contributed to the TSP. The TSP calls this action a negative adjustment, and it is only available to remove erroneous contributions made on or after January 1, 2000. Erroneous contributions made before January 1, 2000, will remain in the participant's account. Excess contributions addressed by this section include, for example, excess employee contributions that result from employing agency error and excess employer contributions. This section does not address excess contributions resulting from a FERCCA correction; those contributions 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.

(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.* A negative adjustment will be allocated among investment funds in the same manner as the original contribution. The current value of the contributions that the agency seeks to remove by the negative adjustment will be calculated in accordance with the following rules:

(1) If the attributable pay date for the erroneous contribution is on or before the date TSP accounts were converted to shares (and on or after January 1, 2000), the TSP will:

(i) For each source of contributions, determine the dollar value of the amount to be removed from each investment fund, as of the last monthly valuation date before TSP accounts were converted to shares, by crediting the contribution with TSP investment fund returns;

(ii) For each source of contributions and each investment fund, convert the dollar value determined in paragraph (c)(1)(i) of this section to shares; and

(iii) Multiply the price per share for the date the adjustment is posted by the number of shares calculated in paragraph (c)(1)(ii) of this section.

(2) If the attributable pay date of the negative adjustment is after the date TSP accounts were converted to shares, the TSP will:

(i) For each source and type of contributions and for each investment fund, determine the number of shares that represent the amount of the contribution to be removed from the investment fund based upon the share price on the attributable pay date; and

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section.

(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 the same attributable pay date for a participant are posted on the same business day, the amount removed from the participant's account and used to offset TSP administrative expenses or returned to the employing agency will be determined separately for each adjustment. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. In addition, for a negative adjustment for any attributable pay date, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, for each attributable pay date each source of contributions and each investment fund will be treated separately 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

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funds, by source, based on the allocation of the participant's most recent 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.

[66 FR 44277, Aug. 22, 2001, as amended at 68 FR 35499, June 13, 2003; 68 FR 74451, Dec. 23, 2003]

§ 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 paragraph (a) and associated breakage will be invested according to the participant's contribution allocation on the posting date. However, breakage will be calculated using the breakage rule described in § 1605.2 for the G Fund share prices and, if applicable, rates of return requested by the participant, unless the court or other tribunal with jurisdiction over the back pay case orders otherwise.

(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) All makeup contributions under this paragraph (b) and associated breakage will be posted to the participant's account based on the participant's contribution allocation on the posting date. Breakage will be calculated either of two ways:

(i) If the retroactive adjustment relates to an "as of" date on or after January 1, 2000, the TSP will use the participant's contribution allocation on the "as of" date; or

(ii) If the retroactive adjustment relates to an "as of" date before January 1, 2000, the rate of return will be either the G Fund rate or the average of the rates of return for all of the TSP investment funds, whichever rate is greater.

(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 the participant does not provide notice to the Board within 90 days of reinstatement. If the participant returns the funds that were withdrawn, the number of shares purchased will be determined by using the share price of the applicable investment fund on the posting date. No breakage will be incurred 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.

[66 FR 44277, Aug. 22, 2001, as amended at 68 FR 35500, June 13, 2003; 68 FR 74451, Dec. 23, 2003]

§ 1605.14 Misclassified retirement system 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. The participant may request the return of excess employee contributions made on or after January 1, 2000; those contributed before January 1, 2000, must remain in the participant's account. If the participant requests a refund of excess employee contributions, the employing agency must submit a negative adjustment records to remove these funds, under the procedure described in § 1605.12.

(2) The TSP will forfeit all agency contributions that were made to a CSRS participant's account. An employing agency may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

(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) If the retirement coverage correction is a FERCCA correction, the employing agency must submit makeup employee contributions on late payment records. The participant is entitled to breakage (or lost earnings) on contributions from all three sources. Breakage (or lost earnings) will be calculated pursuant to § 1605.2. If the retirement coverage correction is not a FERCCA correction, the employing agency must submit makeup employee contributions on current payroll

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records; in such cases, the employee is not entitled to breakage. Agency makeup contributions may be submitted on either current or late payment records; and

(5) If employee contributions were made up before the Office of Personnel Management implemented its regulations on FERCCA correction, and the correction is considered to be a FERCCA correction, an amount to replicate TSP lost earnings will be calculated by the Office of Personnel Management pursuant to its 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.

[66 FR 44277, Aug. 22, 2001, as amended at 68 FR 35500, June 13, 2003; 68 FR 74451, Dec. 23, 2003]

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§ 1605.15 Reporting and processing late contributions and late loan payments.

(a) The employing agency must promptly submit late contributions to the TSP record keeper on behalf of the affected participant on late payment records as soon as the error is discovered. For each pay date involved, the employing agency must submit a separate record showing the “as of” date for the contributions. Breakage for both employee and agency contributions will be calculated, posted, and charged to the agency or forfeited to the TSP in accordance with §1605.2.

(b) If an employing agency deducts loan payments from a participant’s pay, but fails to submit those payments to the TSP for the pay date for which they were deducted (or submits them in a manner that prevents them from being timely credited to the participant’s account), the employing agency will be responsible for paying breakage using the procedure described in §1605.2. The loan payment record must contain the “as of” date for which the loan payment was deducted.

(c) All contributions or loan payments on payment records contained in a payroll submission that was received from an employing agency more than 30 days after the pay date associated with the payroll submission (as reported on the appropriate journal voucher), will be subject to breakage calculated, posted, and charged to the employing agency (or forfeited to the TSP) in accordance with §1605.2. The employing agency will be apprised of the breakage due for each record reported on the late submission.

[68 FR 35501, June 13, 2003]

§ 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, 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,

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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 earn-

ings, 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 5 CFR 1620.40 and who are eligible to make up employee contributions or to receive employing agency contributions missed as a result of military service.

(b) *Missed employee contributions.* An employee who separates or enters nonpay status to perform military service may be eligible to make up TSP contributions when he or she is reemployed or restored to pay status in the civilian service. 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 must be made up in accordance with the rules set out in § 1605.11(c) and the following procedures:

(1) The employing agency will use the contribution election on file for the employee at the time he or she separated or was placed in nonpay status. If an employee terminated TSP contributions within two months before entry into military service, he or she may make a retroactive election to resume contributions for the first open season following the termination. The employee may also make retroactive contribution elections for any open season that occurred during the period of military service, as described at 5 CFR 1620.42.

(2) The pay used to determine the amount of contributions eligible for makeup is the pay the employee would have earned had he or she remained continuously employed in the position held immediately before the separation or placement in nonpay status.

(3) If the employee contributed to a uniformed services TSP account during the period of military service, the amount of employee contributions available for makeup will be reduced by the total amount of employee contributions made to the uniformed services TSP account. (This includes contributions from basic pay, incentive pay, and special pay, including bonus pay.)

(c) *Missed agency contributions.* This paragraph (c) applies only to an employee who would have been eligible to receive agency contributions had he or she remained in civilian service or pay status. A FERS employee who separates or enters nonpay status to perform military service is eligible to receive agency makeup contributions when he or she is reemployed or restored to pay status in the civilian service, as follows:

(1) The employee is entitled to receive the agency automatic (1%) contributions that he or she would have received had the employee remained in civilian service or pay status. Within 60 days of the employee's reemployment or restoration to pay status, the employing agency must calculate the agency automatic (1%) makeup contributions and report those contributions to the record keeper. After the contribution has been reported, the agency must submit lost earnings records for the contribution.

(2) An employee who contributed to a uniformed services TSP account during the period of military service is also immediately entitled to receive agency matching makeup contributions to his or her civilian account for the employee contributions to the uniformed services account that were deducted from his or her basic pay, subject to any reduction in matching contributions required by paragraph (c)(4) of this section. However, an employee is not entitled to receive agency matching makeup contributions on contributions that were deducted from his or her incentive pay or special pay, including bonus pay, while performing military service.

(3) An employee who makes up missed contributions is entitled to receive attributable agency matching makeup contributions (unless the employee has already received the maximum amount of matching contributions, as described in paragraphs (c)(2) and (c)(4) of this section).

(4) If the employee received uniformed services matching contributions, the agency matching makeup contributions will be reduced by the amount of the uniformed services matching contributions.

(d) *Lost earnings.* The employee is entitled to lost earnings on missed agency contributions made under paragraph (c) of this section. The employee will elect to have the lost earnings calculated using either the rates of return based on the contributions 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).

[67 FR 49525, July 30, 2002]

PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS

Subpart A—General Provisions

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

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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.

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 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) Definitions generally applicable to employing agency errors and their correction are set forth at 5 CFR 1605.1.

(c) As used in this part:

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

[68 FR 35501, June 13, 2003]

§ 1606.2 Purpose.

(a) With the implementation of the TSP's daily valued record keeping system, losses suffered by participants arising out of employing agency errors will be corrected by calculating and posting breakage to an affected participant's account. Breakage will be calculated as described in 5 CFR 1605.2. However, in some cases, an employing agency may have submitted contributions subject to lost earnings before implementation of the daily valued record keeping system, but did not submit the requisite lost earnings record. Therefore, until September 1, 2003, employing agencies may submit separate lost earnings records for makeup and late contributions submitted before implementation of the new record keeping system. All payments posted after implementation of the new record keeping system are covered under 5 CFR part 1605.

(b) After August 31, 2003, the use of lost earning records will be discontinued.

[68 FR 35501, June 13, 2003]

§ 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) As explained in §1606.2, this part applies to errors that occurred before September 1, 2003.

(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.

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(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.

[56 FR 606, Jan. 7, 1991, as amended at 68 FR 35501, June 13, 2003]

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 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 based on the contribution allocation in effect on the posting date.

(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 contributions 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, as amended at 68 FR 35501, June 13, 2003]

§ 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.

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

§ 1606.10 Miscellaneous lost earnings.

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

Subpart D—Lost Earnings Records

§ 1606.11 Agency submission of lost earnings records.

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

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

(c) Where this part requires the employing agency to indicate on a lost earnings record the investment fund to which a contribution would have been deposited had an employing agency error not occurred, that determination must be made solely on the basis of a properly completed allocation election 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 recordkeeper, the employing agency must

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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 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 pursuant to this part will be processed daily by the TSP record keeper.

(b) 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.

(c) 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

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contributions, the employing agency will not be credited with respect to that source of contributions. The amount of the negative lost earnings will be removed from the participant's account and applied against TSP administrative expenses.

[68 FR 35501, June 13, 2003]

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

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1620.43 Agency payments to record keeper; agency ultimately responsible.

1620.44 Restoring forfeited agency automatic (1%) contributions.

1620.45 Suspending TSP loans, restoring post-employment withdrawals, and reversing taxable distributions.

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) and 8440e.

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).

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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 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 estab-

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lished 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 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 retro-

active 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

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(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;

(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;

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

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

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

(1) Has not separated from Government employment; and

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

§ 1620.23 Spousal rights.

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

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

Subpart D—Nonappropriated Fund Employees

§ 1620.30 Scope.

This subpart applies to any employee of a Nonappropriated Fund (NAF) instrumentality of the Department of Defense (DOD) or the U.S. Coast Guard who elects to be covered by CSRS or FERS and to any employee in a CSRS- or FERS-covered position who elects to be covered by a retirement plan established for employees of a NAF instrumentality pursuant to the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, Public Law 101-508, 104 Stat. 1388, 1388-335 to 1388-341, as amended (codified largely at 5 U.S.C. 8347(q) and 8461(n)).

§ 1620.31 Definition.

As used in this subpart, *move* means moving from a position covered by CSRS or FERS to a NAF instrumentality of the DOD or Coast Guard, or *vice versa*, without a break in service of more than one year.

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

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

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

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

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

(i) The NAF instrumentality must contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that the employee is eligible to receive under 5 U.S.C. 8432(c)(1), beginning no later than the pay period following the employee's election to be covered by FERS; and

(ii) If the employee elects to make contributions to the TSP pursuant to paragraph (a)(1) of this section, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that the employee is eligible to receive under 5 U.S.C. 8432(c)(2), beginning at the same time

as the employee's contributions are made pursuant to paragraph (a)(1) of this section.

(b) *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 instrumentality within the time frames required by these regulations.

(ii) *Employee makeup contributions.* (A) Within 60 days of the election to be covered by FERS, an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by FERS, may make an election regarding employee makeup contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions which the employee would have been eligible to make under 5 U.S.C. 8432 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the date that agency automatic (1%) contributions begin under paragraph (a)(2) of this section.

(B) Within 60 days of the election to be covered under CSRS, an employee who moved to a NAF instrumentality

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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 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

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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 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:

Current contributions means contributions that must be made for the current pay date which is reported on the journal voucher that accompanies the payroll submission.

Nonpay status means an employer-approved temporary absence from duty.

Reemployed or returned to pay status means reemployed in or returned to a pay status, pursuant to 38 U.S.C. chapter 43, to a position that is subject to 5 U.S.C. 8351 or chapter 84.

Retroactive period means the period for which an employee can make up missed employee contributions and receive missed agency contributions. It begins the day after the employee separates or enters nonpay status to perform military service and ends when the employee is reemployed or returned to pay status.

Separate from civilian service means to cease employment with the Federal Government, the U.S. Postal Service, or with any other employer from a position that is deemed to be civilian Government employment for purposes of participating in the TSP, for 31 or more full calendar days.

[67 FR 49525, July 30, 2002]

§ 1620.42 Processing TSP contribution elections.

(a) *Time for filing election.* Upon reemployment or return to pay status, an employee has 60 days to submit contribution elections to make current contributions and to make up missed contributions. An employee's right to make a retroactive TSP contribution election will expire if the election is not made within 60 days of the participant's reemployment or return to pay status. After the 60-day contribution election period expires, the employee must wait for an open season to submit a contribution election to make current contributions.

(b) *Current contributions.* If the employee entered nonpay status with a valid contribution election on file, the agency must immediately reinstate that election for current contributions when the employee returns to pay status, unless the employee files a new contribution election as described in paragraph (a) of this section. If the employee separated to perform military service, the agency is not required to reinstate a prior contribution election. An election to make current contributions 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 by the employing agency.

(c) *Makeup contributions.* An election to make up contributions will be processed as follows:

(1) If the employee had a valid contribution election on file when he or she separated or entered nonpay status to perform military service, that election form will be reinstated for purposes of makeup contributions, unless the employee submits new contribution elections effective for any missed open season.

(2) An employee who terminated contributions within two months of entering military service will be eligible to make a retroactive contribution election 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 an open season.

[67 FR 49526, July 30, 2002]

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§ 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 § 1620.46(e) to have those funds restored.

[64 FR 31057, June 9, 1999, as amended at 67 FR 49526, July 30, 2002]

§ 1620.45 Suspending TSP loans, restoring post-employment withdrawals, and reversing taxable distributions.

(a) *Suspending TSP loans during nonpay status.* If the TSP is notified that an employee entered into a nonpay status to perform military service, any

outstanding TSP loan from a civilian TSP account will be suspended, that is, it will not be declared a taxable distribution while the employee is performing military service.

(1) Interest will accrue on the loan balance during the period of suspension. When the employee returns to civilian pay status, the employing agency will resume the deduction of loan payments from the participant's basic pay and the TSP will reamortize the loan (which will include interest accrued during the period of military service). The loan repayment term will be extended by the employee's period of military service. Consequently, when the employee returns to pay status, the TSP record keeper must receive documentation to show the beginning and ending dates of military service.

(2) If the TSP does not receive documentation that the employee entered into nonpay status to perform military service and the period of missed loan repayments extends beyond one year, the loan will be closed and the outstanding loan balance (including accrued interest) will be declared a taxable distribution. However, the taxable distribution can be reversed in accordance with paragraph (c) of this section.

(b) *Restoring post-employment withdrawals.* An employee who separates from civilian service to perform military service and who receives an automatic cashout of his or her account may return to the TSP an amount equal to the amount of the payment. The employee must notify the TSP record keeper of his or her intent to return the withdrawn funds within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to return a withdrawal, the TSP record keeper will then inform the employee of the actions that must be taken to return the funds.

(c) *Reversing taxable distributions.* An employee may request that a taxable loan distribution be reversed if the taxable distribution resulted from the employee's separation or placement in nonpay status to perform military service. The TSP will reverse the taxable distribution under the process described as follows:

(1) An employee who received a post-employment withdrawal when he or she separated to perform military service can have a taxable distribution reversed only if the withdrawn amount is returned as described in paragraph (b) of this section;

(2) A taxable loan distribution can be reversed either by reinstating the loan or by repaying it in full. The TSP loan can be reinstated only if the employee agrees to repay the loan within the original loan repayment term plus the length of military service, and if, after reinstatement of the loan, the employee will have no more than two outstanding loans, only one of which is a residential loan; and

(3) The employee must notify the TSP record keeper of his or her intent to reverse a taxable loan distribution within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to reverse a taxable loan distribution, the TSP record keeper will then inform the employee of the actions that must be taken to reverse the distribution.

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

[67 FR 49526, July 30, 2002]

§ 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.

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

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

§ 1630.1 Purpose and scope.

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

§ 1630.2 Definitions.

For the purposes of this part—

- (a) *Agency* means agency as defined in 5 USC 552(e);
- (b) *Board* means the Federal Retirement Thrift Investment Board;
- (c) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;
- (d) *Maintain* means to collect, use, or distribute;
- (e) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Board 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 com-

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patible 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 retrieved 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

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are not considered to be revisions of a system.

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

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

§ 1630.4 Request for notification and access.

(a) *TSP records.* (1) 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.
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.

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(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 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 en-

sure disclosure to the subject individual to whom the record pertains, the Board reserves the right to ask the requester for additional identifying information. The words "PRIVACY ACT REQUEST" should be printed on both the letter and the envelope.

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

(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 number, 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;

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(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 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:

(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 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 information the requester believes to be inaccurate or incomplete, and why; and the amendment or correction desired. If the request to amend the record is the result of the individual's having gained access to the record in accordance with §§ 1630.4, 1630.5, 1630.6 or § 1630.7, copies of previous correspondence between the requester and the Board should be attached, if possible.

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

[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;

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(3) The name and address of the official designated to assist the individual in preparing the appeal;

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

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

[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]

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§ 1630.14 Appeals process.

(a) Within 20 work days of receiving the request for review, the Executive Director, after consultation with the General Counsel, will make a final determination on the appeal. If a final decision cannot be made in 20 work days, the Privacy Act Officer will inform the requester of the reasons for the delay and the date on which a final decision can be expected. Such extensions are unusual, and should not exceed an additional 30 work days.

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

(c) If the initial denial of a request to amend a record is reversed, the Board 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;

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(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, 5 U.S.C. 552a: Provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence;

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

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

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

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

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material be held in confidence, or, prior to the effective date of the Privacy Act, 5

U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence.

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

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

§ 1630.16 Fees.

(a) Individuals will not be charged for:

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

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

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

(c) Fees must be paid in full before requested records are disclosed. Payment shall be by personal check or money order payable to the Federal Retirement Thrift Investment Board, and mailed or delivered to the 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

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(c) Interests of the participants and beneficiaries.

§ 1630.18 Penalties.

(a) Title 18, U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than five years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representation in any matter within the jurisdiction of any agency of the United States. Section (i)(3) of the Privacy Act, 5 U.S.C. 552a(i)(3), makes it a misdemeanor, subject to a maximum fine of \$5,000 to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i) (1) and (2) of 5 U.S.C. 552a provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

(b) [Reserved]

PART 1631—AVAILABILITY OF RECORDS

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

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1631.31 Production prohibited unless approved by the Executive Director.

1631.32 Procedure in the event of a demand for disclosure.

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

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shall be furnished to members of the public only as prescribed by this subpart. To the extent that it is not prohibited by other laws the Board also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the interest of the Thrift Savings Plan.

§ 1631.3 Organization and functions.

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

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

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

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

§ 1631.4 Public reference facilities and current index.

(a) The Board maintains a public reading area located in room 4308 at 1250 H Street, NW., Washington, DC. Reading area hours are from 9:00 A.M.

to 5:00 P.M., Monday through Friday, exclusive of Federal holidays. Electronic reading room documents are available through <http://www.frtib.gov>. In the reading area and through the Web site, the Board makes available for public inspection, copying, and downloading materials required by 5 U.S.C. 552(a)(2), including documents published by the Board in the FEDERAL REGISTER which are currently in effect.

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

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

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

§ 1631.5 Records of other agencies.

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

§ 1631.6 How to request records—form and content.

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

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

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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

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(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 noncommercial scientific institution) research.

(4) For any other request which does not meet the criteria contained in paragraphs (a) (1) through (3) of this section, the fee policy of the Board is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. If computer search

time is required, the first two hours of computer search time will be based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 23.5 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, the Board shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in the Board's systems of records shall continue to be treated under the provisions of the Privacy Act of 1974, which permit fees only for reproduction. The Board's fee schedule is set out in § 1631.14 of this part.

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

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, the Board shall not charge fees to any requester, including commercial use

requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed \$25, the Board shall not charge the requester any costs.

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

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

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

§ 1631.12 Waiver or reduction of fees.

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

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

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

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

(4) Whether the requester has a commercial interest that would be

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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-

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.
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- 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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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

Subpart A—Administrative Collection, Compromise, Termination, and Referral of Claims

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Subpart C—Tax Refund Offset

- 1639.40 Applicability and scope.
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- 1639.50 Applicability and scope.
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- 1639.55 Requests for offset from Federal agencies.
- 1639.56 Expedited procedure.

AUTHORITY: 5 U.S.C. 8474; 31 U.S.C. 3711, 3716, 3720A.

SOURCE: 62 FR 49417, Sept. 22, 1997, unless otherwise noted.

Subpart A—Administrative Collection, Compromise, Termination, and Referral of Claims

§ 1639.1 Authority.

The regulations of this part are issued under 5 U.S.C. 8474 and 31 U.S.C. 3711, 3716, and 3720A, and in conformity with the Federal Claims Collection Standards, 4 CFR chapter II, prescribing standards for administrative collection, compromise, termination of agency collection action, and referral to the Department of Justice for litigation of civil claims by the Government for money or property, 4 CFR chapter II.

§ 1639.2 Application of other regulations; scope.

All provisions of the Federal Claims Collection Standards, 4 CFR chapter II, apply to the regulations of this part. This part supplements 4 CFR chapter II by the prescription of procedures and directives necessary and appropriate for operations of the Federal Retirement Thrift Investment Board. The Federal Claims Collection Standards and this part do not apply to any claim as to which there is an indication of fraud or misrepresentation, as described in 4 CFR 101.3, unless returned by the Department of Justice to the Board for handling.

§ 1639.3 Application to other statutes.

(a) The Executive Director may exercise his or her compromise authority for those debts not exceeding \$100,000, excluding interest, in conformity with the Federal Claims Collection Act of 1966, the Federal Claims Collection Standards issued thereunder, and this part, except where standards are established by other statutes or authorized regulations issued pursuant to them.

(b) The authority of the Executive Director of the Board to remit or mitigate a fine, penalty, or forfeiture will be exercised in accordance with the standards for remission or mitigation established in the governing statute. In the absence of such standards, the Federal Claims Collection Standards will be followed to the extent applicable.

§ 1639.4 Definitions.

As used in this part:

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable to the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt owed to the United States.

Agency means executive departments and agencies, the United States Postal Service, the Postal Rate Commission, the United States Senate, the United States House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and Government corporations.

Board means the Federal Retirement Thrift Investment Board, which administers the Thrift Savings Plan and the Thrift Savings Fund.

Certification means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

Creditor agency means an agency of the Federal Government to which the debt is owed.

Debt means money owed by an individual to the United States including a debt owed to the Thrift Savings Fund or to a Federal agency, but does not include a Thrift Savings Plan loan.

Delinquent debt means a debt that has not been paid within the time limit prescribed by the Board.

Disposable pay means that part of current basic pay, special pay, incentive pay, retirement pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld, excluding any garnishment under 5 CFR parts 581, 582. The Board will include the following deductions in determining disposable pay subject to salary offset:

- (1) Federal Social Security and Medicare taxes;
- (2) Federal, state, or local income taxes, but no more than would be the case if the employee claimed all dependents to which he or she is entitled and any additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;
- (3) Health insurance premiums;
- (4) Normal retirement contributions as explained in 5 CFR 581.105(e);
- (5) Normal life insurance premiums, excluding optional life insurance premiums; and
- (6) Levies pursuant to the Internal Revenue Code, as defined in 5 U.S.C. 5514(d).

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board, or his or her designee.

Federal Claims Collection Standards means the standards published at 4 CFR chapter II.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of the hearing.

Net Assets Available for Thrift Savings Plan Benefits means all funds owed to Thrift Savings Plan participants and beneficiaries.

Notice of intent to offset or *notice of intent* means a written notice from a creditor agency to an employee which alleges that the employee owes a debt

to the creditor agency and which apprises the employee of certain administrative rights.

Notice of salary offset means a written notice from the paying agency to an employee informing the employee that it has received a certification from a creditor agency and intends to begin salary offset.

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

Paying agency means the agency of the Federal Government which 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 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-

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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

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 Information regarding account.
- 1640.3 Statement of individual account.
- 1640.4 Account transactions.
- 1640.5 Investment fund information.
- 1640.6 Methods 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: 68 FR 35501, June 13, 2003, unless otherwise noted.

§ 1640.1 Definitions.

Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

§ 1640.2 Information regarding account.

The Board will provide to each participant four (4) times each calendar year the information described in §§ 1640.3, 1640.4, and 1640.5. Plan participants can obtain account balance information on a more frequent basis from the TSP Web site and the ThriftLine.

§ 1640.3 Statement of individual account.

In the quarterly statements, the Board will furnish each participant with the following information concerning the participant's individual account:

- (a) Name, Social Security number, and date of birth under which the account is established;
- (b) Retirement system coverage and employment status of the participant, as provided by the employing agency;

(c) Statement whether the participant has a beneficiary designation on file with the TSP record keeper;

(d) Contribution allocation that is current at the end of the statement period;

(e) Beginning and ending dates of the period covered by the statement;

(f) The following information for and, as of the close of business on the ending date of, the period covered by the statement:

(1) The total account balance and tax-exempt balance, if applicable;

(2) The account balance and activity for each source of contributions;

(3) The account balance and activity in each of the investment funds, including the dollar amount of the transaction, the share price, and the number of shares; and

(4) Loan information and activity, if applicable;

(g) Any other information concerning the account that the Board determines should be included in the statement.

§ 1640.4 Account transactions.

(a) Where relevant, the following transactions will be reported in each individual account statement:

(1) Contributions;

(2) Withdrawals;

(3) Forfeitures;

(4) Loan disbursements and repayments;

(5) Transfers among investment funds;

(6) Adjustments to prior transactions;

(7) Transfers or rollovers from traditional individual retirement accounts (IRAs) and eligible employer plans; and

(8) Any other transaction that the Executive Director determines 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) Investment funds affected;

(3) Date the transaction was posted and, where relevant, any earlier dates on which the transaction should have been posted or from which the calculation of the amount of the transaction was derived;

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- (4) Source of the contributions affected by the transaction;
- (5) Amount of the transaction (in dollars and in shares);
- (6) The share price(s) at which the transaction was posted; and
- (7) Any other information the Executive Director deems relevant.

§ 1640.5 Investment fund information.

Each open season, the Board will furnish each participant a statement concerning each of the investment funds. This statement will contain the following information concerning each investment fund:

- (a) A summary description of the type of investments 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 made by the fund, covering the five-year period preceding the date of the evaluation.

§ 1640.6 Methods of providing information.

The TSP will furnish the information described in this part to participants by making it available on the TSP Web site. A participant can request paper copies of that information from the TSP by calling the ThriftLine, submitting a request through the TSP Web site, or by writing to the TSP record keeper.

[68 FR 74451, Dec. 23, 2003]

PART 1645—CALCULATION OF SHARE PRICES

Sec.

- 1645.1 Definitions.
- 1645.2 Posting of transactions.
- 1645.3 Calculation of total net earnings for each investment fund.
- 1645.4 Administrative expenses attributable to each investment fund.
- 1645.5 Calculation of share prices.
- 1645.6 Basis for calculation of share prices.

AUTHORITY: 5 U.S.C. 8439(a)(3) and 8474.

SOURCE: 68 FR 35502, June 13, 2003, unless otherwise noted.

§ 1645.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

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(b) As used in this part:

Accrued means that income is accounted for when earned and expenses are accounted for when incurred.

Administrative expenses means expenses described in 5 U.S.C. 8437(c)(3).

Basis means the number of shares of an investment fund upon which the calculation of a share price is based.

Business day means any calendar day for which share prices are calculated.

Forfeitures means amounts forfeited to the TSP pursuant to 5 U.S.C. 8432(g)(2) and other non-statutory forfeited amounts, net of restored forfeited amounts.

§ 1645.2 Posting of transactions.

Contributions, loan payments, loan disbursements, withdrawals, interfund transfers, and other transactions will be posted in dollars and in shares by source and by investment fund to the appropriate individual account by the TSP record keeper, using the share price for the date the transaction is posted.

§ 1645.3 Calculation of total net earnings for each investment fund.

(a) Each business day, 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 since the last business day:

(i) Interest on money of that investment fund which is invested in the Government Securities Investment Fund;

(ii) Interest on other short-term investments of the investment fund;

(iii) Other income (such as dividends, interest, or securities lending income) on investments of the investment fund; and

(iv) Capital gains or losses 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 determined in accordance with paragraph (b) of this section will be added to the residual net earnings

for that investment fund from the previous business day, as described in §1645.5(b), to produce the total net earnings. The total net earnings will be used to calculate the share price for that business day.

§1645.4 Administrative expenses attributable to each investment fund.

A portion of the administrative expenses accrued during each business day will be charged to each investment fund. An investment fund's respective portion of administrative expenses will be determined as follows:

(a) Accrued administrative expenses (other than those described in paragraph (b) of this section) will be reduced by accrued forfeitures and accrued earnings on forfeitures, abandoned accounts, and unapplied deposits;

(b) Investment management fees and other accrued administrative expenses attributable only to the F Fund, C Fund, S Fund, or I Fund will be charged solely to the F Fund, C Fund, S Fund, or I Fund, respectively;

(c) The amount of accrued administrative expenses not covered by forfeitures under paragraph (a) of this section, and not described in paragraph (b) of this section, will be charged on a *pro rata* basis to all investment funds, based on the respective investment fund balances on the last business day of the prior month end.

§1645.5 Calculation of share prices.

(a) *Calculation of share price.* The shares of each investment fund will have an initial value of \$10.00. The share price for each investment fund for each business day will apply to all sources of contributions for that investment fund. The total net earnings (as computed under §1645.3) for each investment fund will be divided by the total fund basis (as computed under §1645.6) for that investment fund. The resulting number, computed to ten decimal places, represents the incremental change for the current business day in the value of that investment fund from the last business day. The share price for that investment fund for the current business day is the sum of the incremental change in the share price for the current business day plus the share

price for the prior business day, truncated to two decimal places.

(b) *Residual net earnings.* When the total net earnings for each business day for each investment fund are divided by the total fund basis in that investment fund, there will be residual net earnings attributable to the truncation described in paragraph (a) of this section that will not be included in the incremental change in the share price of the investment fund for that business day. The residual net earnings that are not included in the incremental share price for the investment fund may be added to the earnings for that investment fund on the next business day.

§1645.6 Basis for calculation of share prices.

The total fund basis for each investment fund will be the sum of the number of shares in all individual accounts from all sources of contributions in that investment fund as of the opening of business on each business day.

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.
- 1650.4 Certification of truthfulness.
- 1650.5 Returned funds

Subpart B—Post-Employment Withdrawals

- 1650.11 Withdrawal elections.
- 1650.12 Single payment.
- 1650.13 Monthly payments.
- 1650.14 Annuities.
- 1650.15 Abandonment of inactive accounts.
- 1650.16 Required withdrawal date.
- 1650.17 Changes and cancellation of a withdrawal request.

Subpart C—Procedures for Post-Employment Withdrawals

- 1650.21 Information provided by employing agency.
- 1650.22 Accounts of \$200 or more.
- 1650.23 Accounts of less than \$200.
- 1650.24 How to obtain a post-employment withdrawal.
- 1650.25 Taxes related to post-employment withdrawals.

Subpart D—In-Service Withdrawals

- 1650.31 Age-based withdrawals.
- 1650.32 Financial hardship withdrawals.
- 1650.33 Contributing to the TSP after an in-service withdrawal.
- 1650.34 Uniqueness of loans and withdrawals.

Subpart E—Procedures for In-Service Withdrawals

- 1650.41 How to obtain an age-based withdrawal.
- 1650.42 How to obtain a financial hardship withdrawal.
- 1650.43 Taxes related to in-service withdrawals.

Subpart F [Reserved]

Subpart G—Spousal Rights

- 1650.61 Spousal rights applicable to post-employment withdrawals.
- 1650.62 Spousal rights applicable to in-service withdrawals.
- 1650.63 Executive Director's exception to the spousal notification requirement.
- 1650.64 Executive Director's exception to the spousal consent requirement.

AUTHORITY: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

SOURCE: 68 FR 35503, June 13, 2003, unless otherwise noted.

Subpart A—General

§ 1650.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Eligible employer plan means a plan qualified under I.R.C. section 401(a) (26 U.S.C. 401(a)), including a section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

In-service withdrawal means an age-based or financial hardship withdrawal from the TSP that may be available to

a participant who has not yet separated from Government service.

Post-employment withdrawal means a withdrawal from the TSP that is available to a participant who is separated from Government service.

Traditional IRA means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract). (It does not include a Roth IRA, a SIMPLE IRA, or a Coverdell Educational Savings Account (formerly known as an educational IRA).)

§ 1650.2 Eligibility for a TSP withdrawal.

(a) A participant who is separated from Government service can elect to withdraw a portion of his or her account balance in a single payment, or the entire account balance by one or a combination of the withdrawal methods described in subpart B of this part.

(b) A post-employment withdrawal will not be paid unless TSP records indicate that the participant is separated from Government service. The TSP will cancel a post-employment withdrawal election upon receiving information from an employing agency that a participant is no longer separated.

(c) A participant cannot make a post-employment withdrawal until any outstanding TSP loan has either been repaid in full or declared to be a taxable distribution. An outstanding TSP loan will not affect a participant's eligibility for an in-service withdrawal.

(d) 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 rules:

(1) A participant who is reemployed in a TSP-eligible position on or before the 31st full calendar day after separation is not eligible to withdraw his or her TSP account in accordance with subpart B of this part.

(2) A participant who is reemployed in a TSP-eligible position more than 31 full calendar days after separation and who made a post-employment withdrawal while separated may not withdraw any remaining portion of his or her account balance in accordance with subpart B of this part until he or she

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again separates from Government service.

(e) A participant who has not separated from Government service may be eligible to withdraw all or a portion of his or her account in accordance with subparts D and E of this part.

(f) A participant can elect to have any portion of a single or monthly payment that is not transferred to an eligible employer plan or traditional IRA deposited directly, by electronic funds transfer, into a savings or checking account at a financial institution in the United States.

(g) If a participant has a civilian TSP account and a uniformed services TSP account, the rules in this part apply to each account separately. For example, the participant is eligible to make one age-based in-service withdrawal from each account.

§ 1650.3 Frozen accounts.

(a) All withdrawals from the TSP are subject to the rules relating to spousal rights (found in subpart G of this part) and to domestic relations orders, alimony and child support legal process, and child abuse enforcement orders (found in 5 CFR part 1653).

(b) A participant may not withdraw any portion of his or her account balance if the account is frozen due to a pending retirement benefits court order, an alimony or child support enforcement order, or a child abuse enforcement order, or because a freeze has been placed on the account by the TSP for another reason.

§ 1650.4 Certification of truthfulness.

(a) By signing a TSP withdrawal form, electronically or on paper, the participant certifies, under penalty of perjury, that all information provided to the TSP during the withdrawal process is true and complete, including statements concerning the participant's marital status and, where applicable, the spouse's address at the time the application is filed or the current spouse's consent to the withdrawal.

(b) If the Board receives a written allegation from the spouse that the participant may have misrepresented his or her marital status (in the case of a CSRS participant), the spouse's address, or that the signature of the

spouse of a FERS participant or uniformed services member was forged, the Board will submit the information or document in question to the spouse and request that he or she state in writing that the information is false or that the spouse's signature was forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three samples of his or her signature.

(c) If the spouse affirms the allegation, the Board will conduct an investigation. If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his or her marital status or, in the case of a CSRS participant, his or her spouse's address, or submitted the withdrawal form with a forged spousal 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.

§ 1650.5 Returned funds.

If a withdrawal is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 60 days, the TSP will forfeit the returned funds to the Plan. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

Subpart B—Post-Employment Withdrawals

§ 1650.11 Withdrawal elections.

(a) Subject to the restrictions in this subpart, participants may elect to withdraw all or a portion of their TSP accounts in a single payment, a series of monthly payments, a life annuity, or any combination of these options.

(b) If a participant's account balance is less than \$5.00 when he or she separates from Government service, the balance will automatically be forfeited to the TSP. The participant can reclaim the money by writing to the TSP record keeper and requesting the amount that was forfeited; however, TSP investment earnings will not be

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credited to the account after the date of the forfeiture.

§ 1650.12 Single payment.

(a) *Partial withdrawal.* A participant can elect to withdraw a portion of his or her account balance in a single payment and leave the rest in the TSP until a later date, subject to § 1650.16 and the following requirements:

(1) The participant is eligible for a partial withdrawal only if he or she did not make an age-based in-service withdrawal from that account.

(2) The participant may not elect a partial withdrawal of less than \$1,000.

(3) Only one partial withdrawal from that account is permitted.

(b) *Full withdrawal.* A participant can elect to withdraw his or her entire account balance in a single payment.

§ 1650.13 Monthly payments.

(a) A participant electing a full post-employment withdrawal (*i.e.*, a withdrawal of his or her entire account) can elect to withdraw all or a portion of the account balance in a series of substantially equal monthly payments, to be paid in one of the following manners:

(1) *A specific dollar amount.* The amount elected must be at least \$25 per month; if the amount elected is less than \$25 per month, the request will be rejected. Payments will be made in the amount requested each month until the account balance is expended.

(2) *A monthly payment amount calculated based on life expectancy.* Payments based on life expectancy are determined using the factors set forth in the Internal Revenue Service life expectancy tables codified at 26 CFR 1.401(a)(9)-9, Q&A 1 and 2. The monthly payment amount is calculated by dividing the account balance by the factor from the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments are to begin. 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 prior December 31 account balance by the factor in the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year

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payments will be made. There is no minimum amount for a monthly payment calculated based on this method.

(b) A participant receiving monthly payments calculated based upon life expectancy can make one election, during a period to be determined by the Executive Director, to change to a fixed monthly payment. A participant can change the amount of his or her fixed payments annually. A participant who is receiving monthly payments based on a fixed dollar amount, however, cannot elect to change to an amount calculated based on life expectancy.

(c) A participant receiving monthly payments, regardless of the calculation method, can elect at any time to receive the remainder of his or her account balance in a final single payment.

(d) The TSP will ensure that the annual total monthly payments satisfy any applicable minimum distribution requirement of the Internal Revenue Code by making a supplemental payment no later than the last date required by the Internal Revenue Service.

(e) A participant receiving monthly payments may change the investment of his or her account balance among the TSP investment funds as provided in 5 CFR part 1601.

(f) Participants who elect to withdraw their account balances in a series of monthly payments cannot transfer or roll over money from a traditional IRA or eligible employer plan into their TSP accounts. Participants who have both a civilian TSP account and a uniformed services TSP account cannot combine the two accounts if they are already receiving monthly payments from one of the accounts.

§ 1650.14 Annuities.

(a) A participant electing a full post-employment withdrawal can use all or a portion of his or her account balance to purchase a life annuity. The portion of the participant's account balance elected and available for the annuity purchase must be at least \$3,500. The TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance or the portion specified, unless an amount

must be paid directly to the participant to satisfy any applicable minimum distribution requirement of the Internal Revenue Code. In the event that a minimum distribution is required before the date of the first annuity payment, the TSP will compute that amount and pay it directly to the participant.

(b) An annuity will provide a payment for life to the participant and, if applicable, to the participant's survivor, in accordance with the type of annuity chosen. The TSP annuity vendor will make the first annuity payment approximately 30 days after the TSP purchases the annuity.

(c) The amount of an annuity payment will depend on the type of annuity chosen, the participant's age when the annuity is purchased (and the age of the joint annuitant, if applicable), the amount used to purchase the annuity, and the interest rate available when the annuity is purchased.

(d) Participants may choose among the following types of annuities:

(1) *A single life annuity with level payments.* This annuity provides monthly payments to the participant as long as the participant lives. The amount of the monthly payment remains constant.

(2) *A joint life annuity for the participant and spouse with level payments.* This annuity 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 the survivor is alive. The amount of the monthly payment remains constant, although the amount received will depend on the type of survivor benefit elected.

(3) *A joint life annuity for the participant and another person with level payments.* This annuity 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 the survivor is alive. The amount of the monthly payment remains constant. The joint annuitant must be either a former spouse or a person who has an insurable interest in the participant.

(i) A person has an "insurable interest in the participant" if the person is financially dependent on the partici-

part and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) A relative (either blood or adopted, but not by marriage) who is closer than a first cousin is presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (d)(3)(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 that demonstrates that the designated joint annuitant has an insurable interest in the participant (as described in paragraph (d)(3)(i) of this section).

(4) *Either a single life or joint (with spouse) life annuity with increasing payments.* This annuity provides monthly payments to the participant only, or to the participant and spouse, as applicable. The monthly payments are adjusted once each year on the anniversary of the first payment, based on the Federal Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Each year, the percentage change in the monthly unadjusted CPI-W index for July, August, and September over the monthly unadjusted CPI-W index for July, August, and September of the prior year is calculated. The following calendar year, the amount of the monthly payment is adjusted by the lesser of 3 percent or the percentage increase in the CPI-W, if any. In no case will the amount of the monthly payment be decreased based on the CPI-W. If the participant chooses a joint life annuity, the annual increase also applies to benefits received by the survivor.

(e) A participant who chooses a joint life annuity (with a spouse, a former spouse, or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. The survivor benefit applies when either the participant or the joint annuitant dies.

(1) A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the amount of the payment that is made when both

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the participant and the joint annuitant are alive.

(2) A 100 percent survivor benefit provides a monthly payment to the survivor, which is equal to the amount of the payment that is made when both the participant and the joint annuitant are alive.

(3) Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option. However, the 100 percent survivor benefit can only 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) if the joint annuitant is not more than 10 years younger than the participant.

(f) The following features are mutually exclusive, but can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, where 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 beneficiary(ies) designated by the participant (or by the joint annuitant, where applicable). This feature can be combined with any type of annuity.

(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 be made to the beneficiary(ies) until 120 payments have been made. This feature can be combined with any single life annuity, but cannot be combined with a joint life annuity.

(g) Once an annuity has been purchased, the type of annuity, the annuity features, and the identity of the joint annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.15 Abandonment of inactive accounts.

A separated participant must select a full withdrawal option by the time he or she reaches age 70½. If the participant does not do so and the TSP is unable to locate the participant, the inac-

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tive account will be declared abandoned in accordance with § 1650.16.

§ 1650.16 Required withdrawal date.

(a) A participant must withdraw his or her account under § 1650.12, or begin receiving payments under §§ 1650.13 or 1650.14, by April 1 of the year following the year in which the participant reaches 70½ years of age or separates from Government service, whichever is later.

(b) For account balances of \$200 or more, a separated participant may elect to withdraw his or her account or to 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 (G) Fund to 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) by a date certain specified in the notice.

(d) If the participant does not take the appropriate withdrawal action described 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 §§ 1650.12 or 1650.13; and

(4) The participant provides the information that the Board needs to purchase an annuity pursuant to § 1650.14.

§ 1650.17 Changes and cancellation of a withdrawal request.

(a) *Before processing.* A pending withdrawal request can be cancelled if the cancellation is processed before the TSP processes the withdrawal request.

However, the TSP processes withdrawal requests each business day. Withdrawal requests that are entered into the record keeping system by 11:00 a.m. central time ordinarily will ordinarily be processed that night; those entered after 11:00 a.m. central time will be processed the next business day. Consequently, a cancellation request must be received and entered into the system before the cut-off for the day the withdrawal request is submitted for processing in order to be effective to cancel the withdrawal.

(b) *After processing.* A withdrawal election cannot be changed or cancelled after the withdrawal request has been processed. Consequently, funds disbursed cannot be returned to the TSP record keeper.

(c) *Change in monthly payments.* If a participant is receiving a series of monthly payments, the participant can change at any time: His or her withdrawal election to request a final single payment, the address to which the payments are mailed, whether or not a payment will be transferred (if permitted) and the portion to be transferred, the method by which direct payments to the participant are being sent (EFT or check), the identity of the financial institution to which payments are transferred or sent by EFT, or the identity of the EFT account. Once a year, during a period determined by the Executive Director, the participant may also elect to change the payment amount or to change from a monthly payment based on life expectancy to a final payment amount.

Subpart C—Procedures for Post-Employment Withdrawals

§ 1650.21 Information provided by employing agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government service, his or her employing agency must report the separation and the date of separation to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency, it will not pay a post-employment withdrawal.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government service, his

or her employing agency must furnish the participant with information regarding the participant's withdrawal options (e.g., the withdrawal booklet and information about the TSP Web site). The employing agency is also responsible for counseling participants concerning TSP withdrawal options.

§ 1650.22 Accounts of \$200 or more.

A participant whose account balance is \$200 or more must submit a properly completed withdrawal election to request a post-employment withdrawal of his or her account balance.

§ 1650.23 Accounts of less than \$200.

Upon receiving information from the employing agency that a participant has been separated for more than 31 days and that any outstanding loans have been closed, the TSP record keeper will send the participant a check for the entire amount of his or her account balance if the account balance is \$5.00 or more but less than \$200. The participant may not elect to leave this amount in the TSP, nor will the TSP transfer this amount to an eligible employer plan or traditional IRA, or pay it by EFT. However, the participant may elect to roll over this payment into an eligible employer plan or traditional IRA.

§ 1650.24 How to obtain a post-employment withdrawal.

To request a post-employment withdrawal under this subpart, a participant must submit to the TSP record keeper a properly completed post-employment withdrawal request Form TSP-70 or Form TSP-U-70, or request the withdrawal on the TSP Web site. (A participant's ability to complete a post-employment withdrawal on the Web will depend on his or her retirement system coverage, withdrawal election, account balance, marital status, and whether or not the withdrawal will be transferred to an eligible employer plan or traditional IRA.)

§ 1650.25 Taxes related to post-employment withdrawals.

(a) When a payment is made directly to a participant from the TSP after the participant has separated from Government service, the money is subject to

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Federal income tax withholding (except contributions from pay subject to the combat zone tax exclusion). However, a participant does not pay taxes on money that the TSP transfers directly to (or that the participant rolls over to) an eligible employer plan or traditional IRA until the money is withdrawn from the plan or IRA. In addition, any portion of a participant's TSP account that is used to purchase an annuity is not taxed at the time the annuity is purchased; monthly annuity payments are taxable income in the year in which they are paid.

(b) A participant may request that the TSP transfer directly to an eligible employer plan or traditional IRA all or part of any withdrawal that is an "eligible rollover distribution" under the Internal Revenue Code. A withdrawal that is not an eligible rollover distribution cannot be transferred to an eligible employer plan or traditional IRA. If an eligible rollover distribution is not transferred, it is subject to mandatory 20 percent withholding.

(c) A traditional IRA or an eligible employer plan that can accept a transfer must be an IRA or a plan maintained in the United States, which means one of the 50 States or the District of Columbia.

(d) The following TSP withdrawal methods are considered eligible rollover distributions under the Internal Revenue Code, 26 U.S.C. 402(c)(4):

(1) A single payment, as described in § 1650.12;

(2) Monthly payments, as described in § 1650.13, where payments are expected to last less than 10 years at the time they begin. This means that if the participant elects a monthly payment amount, that amount, when divided into the participant's account balance at the time of the first payment, must yield a number less than 120. If the participant elects to change the payment amount after payments begin, future payments may not continue to qualify as eligible rollover distributions if they do not also meet the requirements of this section; and

(3) A final single payment, as described in § 1650.13(c).

(e) The following withdrawal methods are not eligible rollover distributions:

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(1) An annuity purchased by the TSP;

(2) Monthly payments that do not meet the criteria set forth in paragraph (d)(2) of this section;

(3) A minimum distribution payment or any portion of a payment which represents a minimum distribution;

(4) A plan loan that is deemed to be a taxable distribution because of default; and

(5) A return of excess elective deferrals.

Subpart D—In-Service Withdrawals

§ 1650.31 Age-based withdrawals.

(a) A participant who has 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 withdrawal request must be at least \$1,000, unless the withdrawal request is for the entire vested account balance.

(b) An age-based withdrawal is an eligible rollover distribution, so a participant may request that the TSP transfer all or a portion of the withdrawal to a traditional IRA or an eligible employer plan.

(c) A participant is permitted only one age-based withdrawal for an account.

(d) A participant who makes an age-based withdrawal is not eligible to make a partial withdrawal after separating from Government service.

§ 1650.32 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who can certify that he or she has a 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 request must be at least \$1,000.

(b) To be eligible for a financial hardship withdrawal, a participant must have a financial need that results from at least one of the following four conditions:

(1) The participant's monthly cash flow is negative (*i.e.*, the participant's

income is less than his or her monthly expenses on a recurring basis);

(2) The participant has incurred medical expenses as a result of a medical condition, illness, or injury to 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. Eligible medical expenses include the cost of household improvements required as a result of a medical condition, illness or injury. 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.

(3) The participant must have paid 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.

(4) The participant must have paid 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) When determining financial hardship needs, a participant cannot use any expenses that are already paid or are reimbursable to the participant by insurance or otherwise.

(d) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested; or

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings.

(e) The participant must certify that he or she has a financial hardship as described on the hardship withdrawal form, and that the dollar amount of

the withdrawal request does not exceed the actual amount of the financial hardship.

(f) A participant is not eligible for an in-service hardship withdrawal based solely on monthly negative cash flow (as described in paragraph (b)(1) of this section) during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code (11 U.S.C. chapter 13).

[68 FR 35503, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

§ 1650.33 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 a period of six months after the withdrawal is processed. Therefore, the participant's employing agency will discontinue his or her contributions (and any applicable agency matching contributions) for six months after the agency is notified by the TSP; in the case of a FERS participant, agency automatic (1%) contributions will continue. A participant whose TSP contributions are discontinued by his or her agency after a financial hardship withdrawal can resume contributions any time after expiration of the six-month period by submitting a new TSP contribution election. Contributions will not resume automatically.

§ 1650.34 Uniqueness of loans and withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal or vice versa. Funds distributed as an in-service withdrawal cannot be returned or repaid.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based in-service withdrawal, a participant must submit to the TSP record keeper a properly

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completed age-based withdrawal request, Form TSP-75 or TSP-U-75, or use the TSP Web site to initiate a request. A participant's ability to complete an age-based withdrawal on the Web will depend on his or her retirement system coverage, marital status, and whether or not part or all of the withdrawal will be transferred to an eligible employer plan or traditional IRA.

§ 1650.42 How to obtain a financial hardship withdrawal.

(a) To request a financial hardship in-service withdrawal, a participant must submit to the TSP Service Office a properly completed financial hardship withdrawal form, Form TSP-76 or Form TSP-U-76, or use the TSP Web site to initiate a request. A participant's ability to complete a financial hardship withdrawal on the Web will depend on his or her retirement system coverage and marital status.

(b) There is no limit on the number of financial hardship withdrawals a participant can make; however, the TSP will not accept a financial hardship withdrawal request for a period of six months after a financial hardship disbursement is made.

§ 1650.43 Taxes related to in-service withdrawals.

(a) When an in-service withdrawal is paid directly from the TSP to a participant, the money is taxable income in the year in which the payment is made (except contributions from pay subject to the combat zone tax exclusion). However, a participant does not pay taxes on an age-based withdrawal that the TSP transfers directly or the participant rolls over to a traditional IRA or an eligible employer plan until the money is withdrawn.

(b) 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 a traditional IRA or an eligible employer plan, consistent with § 1650.25. If the withdrawal is not transferred, it is subject to mandatory 20 percent withholding. The participant may increase the amount of withholding by submitting IRS Form W-4P, Withholding Certificate for Pension or

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Annuity Payments, to the TSP with the withdrawal request.

(c) 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 a traditional IRA or an eligible employer plan. A financial hardship in-service withdrawal is subject to 10 percent withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments, to the TSP with the withdrawal request.

Subpart F [Reserved]

Subpart G—Spousal Rights

§ 1650.61 Spousal rights applicable to post-employment withdrawals.

(a) The spousal rights described in this section apply to full post-employment withdrawals when the married participant's vested TSP account balance exceeds \$3,500, and to partial post-employment withdrawals without regard to the amount of the participant's account balance.

(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 this subpart to the spousal notification requirement within 90 days of the date the withdrawal request 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 spouse at the most recent address provided by the participant.

(c) The spouse of a FERS or uniformed services participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund based on the participant's entire account balance when the participant elects a full post-employment withdrawal. The participant may make a different withdrawal election only if his or her spouse waives the right to this annuity.

(1) To show that the spouse has waived the right to this annuity, the participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary, unless the TSP granted the participant an exception under this subpart to the spousal notification requirement within 90 days of the date the withdrawal form is processed by the TSP. If the TSP granted the participant an exception to the signature requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form.

(2) Because a partial post-employment withdrawal will diminish the amount in the account which is available for a joint and survivor annuity, a spouse's consent is required before a partial withdrawal will be approved, regardless of the amount to be withdrawn.

(3) Both a spouse's waiver of a joint and survivor annuity and a spouse's consent to a partial withdrawal must be properly notarized.

(4) The spouse's waiver or consent is irrevocable for that withdrawal once the TSP record keeper has received it.

[68 FR 35503, June 13, 2003, as amended at 69 FR 29851, May 26, 2004]

§ 1650.62 Spousal rights applicable 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 for withdrawal.

(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 an exception under this subpart to the spousal notification requirement within 90 days of the date on which the withdrawal request is processed by the TSP. If the TSP granted the participant an exception to the notice requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form. 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 spouse at the most recent address provided by the participant.

(c) A participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse before obtaining an in-service withdrawal, unless the participant was granted an exception under this subpart to the signature requirement within 90 days of the date the withdrawal form is processed by the TSP. To show the spouse's consent, a participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary. Once a form containing the spouse's consent has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

[68 FR 35503, June 13, 2003, as amended at 69 FR 29851, May 26, 2004]

§ 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 CSRS 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 the notification requirement based on unknown whereabouts must be submitted to the Executive Director on Form TSP-16 or Form TSP-U-16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A 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, which 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, state the last time the spouse's location was known, explain why the spouse's location is not known

currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days before the request for an exception was received by the TSP. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and 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 he or she does not know the spouse's whereabouts, and substantiate the participant's description of the efforts he or she made to locate the spouse, including the dates the participant made those efforts.

(iii) All statements must be signed and dated and must include the following certification: "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 will be processed within 90 days of an approved exception so long as the spouse named on the form is the spouse for whom the exception has been approved. The spouse's SSN must be included on the withdrawal request.

(c) The TSP, in its discretion, may require a participant to provide additional information before granting a waiver. The TSP may use any of the information provided to conduct its own search for the spouse.

§ 1650.64 Executive Director's exception to the spousal consent requirement.

(a) Whenever this subpart requires the consent of a spouse of a FERS or uniformed services participant 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 this subpart; or

(2) Due to exceptional circumstances, requiring the spouse's signature would be inappropriate.

(i) An exception to the requirement for a spouse's signature may be granted based on exceptional circumstances only when the participant presents a court order or government agency determination that contains a finding or a recitation of exceptional circumstances regarding the spouse which would warrant an exception to the signature requirement.

(ii) Exceptional circumstances are narrowly construed, but are exemplified by a court order or government agency determination that:

(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 TSP account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A post-employment withdrawal election or an in-service withdrawal request processed within 90 days of an approved exception will be accepted by the TSP so long as the spouse named on the form is the spouse for whom the exception has been approved. The spouse's SSN must be included on the withdrawal request form.

[68 FR 35503, June 13, 2003, as amended at 69 FR 29851, May 26, 2004]

PART 1651—DEATH BENEFITS

Sec.

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- 1651.3 Designation of beneficiary.
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- 1651.12 Homicide.
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- 1651.14 How payment is made.
- 1651.15 Claims referred to the Board.
- 1651.16 Missing and unknown beneficiaries.
- 1651.17 Disclaimer of benefits.
- 1651.18 Payment to one bars payment to another.

AUTHORITY: 5 U.S.C. 8424(d), 8432(j), 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.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Death benefit means the portion of a deceased participant's account that is payable under FERSA's order of precedence.

Domicile means the participant's place of residence for purposes of state income tax liability.

Order of precedence means the priority of entitlement to a TSP death benefit specified in 5 U.S.C. 8424(d).

TIN means a taxpayer identification number. A TIN may be a Social Security number (SSN), an employer identification number (EIN), or an individual taxpayer identification number (ITIN).

[68 FR 35509, June 13, 2003]

§ 1651.2 Entitlement to funds in a deceased participant's account.

(a) *Death benefits.* Except as provided in paragraph (b) of this section, the account balance of a deceased participant will be paid as a death benefit 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 the TSP designation of beneficiary form that has been properly completed and filed in accordance with § 1651.3;

(2) If there is no designated beneficiary, to the spouse of the participant in accordance with § 1651.5;

(3) If there are no beneficiaries or persons as described 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 there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(3) of this section, to the parents of the participant in equal shares or entirely to the surviving parent in accordance with § 1651.7;

(5) If there are no beneficiaries or persons as described 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; or

(6) If there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(5) of this section, to the next of kin of the participant who is or are entitled under the laws of the state of the participant's domicile on the date of the participant's death in accordance with § 1651.9.

(b) *TSP withdrawals.* If the TSP processes a notice that a participant has died, it will cancel any pending request by the participant to withdraw his or her account. The TSP will also cancel an annuity purchase made on or after the participant's date of death but before annuity payments have begun, and the annuity vendor will return the funds to the TSP. The funds designated by the participant for the withdrawal will be paid as a death benefit in accordance with paragraph (a) of this section, unless the participant elected to withdraw his or her account in the form of an annuity, in which case the funds designated for the purchase of the annuity will be paid as described below:

(1) If the participant requested a single life annuity with no cash refund or 10-year certain feature, the TSP will pay the funds as a death benefit in accordance with paragraph (a) of this section.

(2) If the participant requested a single life annuity with a cash refund or 10-year certain feature, the TSP will pay the funds:

(i) As a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of a withdrawal request, Form TSP-70 or Form TSP-U-70; or

(ii) As a death benefit in accordance with paragraph (a) of this section if no beneficiary designated on the withdrawal request survives the participant.

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(3) If the participant requested a joint life annuity without additional features, the TSP will pay the funds:

(i) As a death benefit to the joint life annuitant if he or she survives the participant; or

(ii) As a death benefit in accordance with paragraph (a) of this section if the joint life annuitant does not survive the participant.

(4) If the participant requested a joint life annuity with a cash refund or 10-year certain feature, the TSP will pay the funds:

(i) As a death benefit to the joint life annuitant if he or she survives the participant;

(ii) As a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of Form TSP-70 or Form TSP-U-70, if the joint life annuitant does not survive the participant; or

(iii) As a death benefit in accordance with paragraph (a) of this section if neither the joint life annuitant nor any designated beneficiary survives the participant.

(5) If a participant dies after an annuity has been purchased, the annuity vendor will make or stop the payments in accordance with the annuity method selected.

(c) *TSP loans.* If the TSP processes a notice that a participant has died, any pending loan disbursement will be cancelled and the funds designated for the loan will be distributed as a death benefit in accordance with paragraph (a) of this section. If a TSP loan has been disbursed, but the check has not been negotiated (or an electronic funds transfer (EFT) has been returned), the loan proceeds will be used to pay off the loan. If the loan check has been negotiated (or the EFT has been processed), the funds cannot be returned to the TSP and the TSP will declare the loan balance as a taxable distribution in accordance with 5 CFR 1655.15.

(d) *Investment of a TSP account upon notice of death.* If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the TSP will transfer the entire account into the G Fund after it processes a notice that the participant has died, or a death code indicating the participant's death from the partici-

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ant's agency or service. The account will accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid under this part.

[68 FR 35509, June 13, 2003]

§ 1651.3 Designation of beneficiary.

(a) *Filing requirements.* In order to designate a beneficiary of a TSP account, the participant must complete and file Form TSP-3, Designation of Beneficiary, unless Form TSP-11-B is used for this purpose. All Forms TSP-3 and TSP-11-B signed on or after January 1, 1995, must be received by the TSP record keeper on or before the participant's date of death. If the Form TSP-3 was received and accepted by the participant's employing agency before January 1, 1995, the TSP record keeper will process it and determine its validity when it is received from the employing agency. A valid Form TSP-3 remains in effect until it is properly canceled or changed as described in § 1651.4.

(b) *Eligible beneficiaries.* Any individual, firm, corporation, or legal entity, including the U.S. Government, may be designated as a beneficiary. Any number of beneficiaries can be named to share the death benefit. A beneficiary may be designated without the knowledge or consent of the beneficiary or the knowledge or consent of the participant's spouse.

(c) *Validity requirements.* In order to be valid, a Form TSP-3 must be signed by the participant in the presence of two witnesses, or the participant must acknowledge his or her signature on the Form TSP-3 in the presence of two witnesses. A witness must be age 21 or older, and a witness designated as a beneficiary on the Form TSP-3 will not be entitled to receive a death benefit payment. If a witness is the only named beneficiary, the Form TSP-3 is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries *pro rata*.

(d) *Will.* A will, or any document other than Form TSP-3 or Form TSP-11-B, may not be used to designate a beneficiary(ies) of a TSP account.

§ 1651.4 Change or cancellation of a designation of beneficiary.

(a) *Change.* In order to change a designation of beneficiary, the participant must properly complete a new Form TSP-3, which must be received by the TSP record keeper on or before the date of death of the participant under the same rules as set forth in § 1651.3(a). The TSP record keeper will honor the Form TSP-3 with the latest date signed by the participant which is otherwise valid under the rules set forth in § 1651.3. A change of beneficiary may be made at any time and without the knowledge or consent of the participant's spouse or any current or prior designated beneficiaries.

(b) *Cancellation.* A participant may cancel all prior designations of beneficiaries by sending the TSP record keeper either a new valid Form TSP-3 or a letter, signed and dated by the participant and witnessed in the same manner as a Form TSP-3, stating that all prior designations are canceled. In order to be effective, either of these documents must be received by the TSP record keeper on or before the date of death of the participant in accordance with the rules set forth in § 1651.3(a). The filing of either of these documents will cancel all earlier designations.

(c) *Will.* A will, or any document other than Form TSP-3 or Form TSP-11-B, may not be used to change or cancel a beneficiary(ies) of a TSP account.

§ 1651.5 Spouse of the participant.

For purposes of payment under § 1651.2(a)(2), the spouse of the participant is the person to whom the participant was 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.

[62 FR 32429, June 13, 1997, as amended at 67 FR 49527, July 30, 2002]

§ 1651.6 Child or children.

If the account is to be paid to the child or children, or to descendants of

deceased children by representation, as provided in § 1651.2(a)(3), the following rules apply:

(a) *Child.* A child includes a natural or adopted child of the deceased participant.

(b) *Descendants of deceased children.* "By representation" means that, if a child of the participant dies before the participant, all descendants of the deceased child at the same level will equally divide the deceased child's share of the participant's account.

(c) *Adoption by another.* A natural child of a TSP participant who has been adopted by someone other than the participant during the participant's lifetime will not be considered the child of the participant, unless the adopting parent is the spouse of the TSP participant.

§ 1651.7 Parent or parents.

If the account is to be paid to the participant's parent or parents under § 1651.2(a)(4), the following rules apply:

(a) *Amount.* If both parents are alive at the time of the participant's death, each parent will be separately paid fifty percent of the account. If only one parent is alive at the time of the participant's death, he or she will receive the entire account balance.

(b) *Step-parent.* A step-parent is not considered a parent unless the step-parent adopted the participant.

§ 1651.8 Participant's estate.

If the account is to be paid to the duly appointed executor or administrator of the participant's estate under § 1651.2(a)(5), the following rules apply:

(a) *Appointment by court.* The executor or administrator must provide documentation of court appointment.

(b) *Appointment by operation of law.* If state law provides procedures for handling small estates, the Board will accept the person authorized to dispose of the assets of the deceased participant under those procedures as a duly appointed executor or administrator. Documentation which demonstrates that the person is properly authorized under state law must be submitted to the TSP record keeper.

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§ 1651.9 Participant's next of kin.

If the account is to be paid to the participant's next of kin under § 1651.2(a)(6), the next of kin of the participant will be determined in accordance with the state law of the participant's domicile at the time of death.

§ 1651.10 Deceased and non-existent beneficiaries.

(a) *Designated beneficiary dies before participant.* The share of any beneficiary designated on a Form TSP-3 or Form TSP-11-B who predeceases the participant will be paid *pro rata* to other designated beneficiary(ies). If there are no designated beneficiaries who survive the participant, the account will be paid to the person(s) determined to be the beneficiary(ies) under the order of precedence set forth in § 1651.2(a).

(b) *Trust designated as beneficiary but not in existence.* If a trust or other entity that has been designated as a beneficiary does not exist on the date of death of the participant, or if it is not created by will or other document that is effective upon the participant's death, the amount will be paid in accordance with the rules of paragraph (a) of this section, as if the trust were a beneficiary that predeceased the participant.

(c) *Non-designated beneficiary dies before participant.* If a beneficiary other than a beneficiary designated on a Form TSP-3 or a Form TSP-11-B (*i.e.*, a beneficiary by virtue of the order of precedence) dies before the participant, the beneficiary's share will be paid equally to other living beneficiary(ies) bearing the same relationship to the participant as the deceased beneficiary. However, if the deceased beneficiary is a child of the participant, payment will be made to the deceased child's descendants, if any. If there are no other beneficiaries bearing the same relationship or, in the case of children, there are no descendants of deceased children, the deceased beneficiary's share will be paid to the person(s) next in line according to the order of precedence.

(d) *Beneficiary dies after participant but before payment.* If a beneficiary dies after the participant, the beneficiary's

share will be paid to the beneficiary's estate.

(e) *Death certificate.* A copy of a beneficiary's certified death certificate is required in order to establish that the beneficiary has died.

§ 1651.11 Simultaneous death.

If a beneficiary dies at the same time as the participant, the beneficiary will be treated as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10. The same time is considered to be the same hour and minute as indicated on a death certificate. If the participant and beneficiary are killed in the same event, death is presumed to be simultaneous, unless evidence is presented to the contrary.

§ 1651.12 Homicide.

If the participant's death is the result of a homicide, a beneficiary will not be paid as long as the beneficiary is under investigation by local, state or Federal law enforcement authorities as a suspect. If the beneficiary is convicted of, or pleads guilty to, a crime in connection with the participant's death which would preclude the beneficiary from inheriting under state law, the beneficiary will not be entitled to receive any portion of the participant's account. The Board will follow the state law of the participant's domicile as that law is set forth in a civil court judgment (that, under the law of the state, would protect the Board from double liability or payment) or, in the absence of such a judgment, will apply state law to the facts after all criminal appeals are exhausted. The Board will treat the beneficiary as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10.

§ 1651.13 How to apply for a death benefit.

In order for a deceased participant's account to be disbursed, the TSP record keeper must receive Form TSP-17, Application for Account Balance of Deceased Participant. Any potential beneficiary or other individual can file Form TSP-17 with the TSP record keeper. The individual submitting Form TSP-17 must attach a copy of a

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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 the participant's spouse.* The spouse of the participant may request that the TSP transfer all or a portion of the payment to an eligible retirement plan (including the spouse's TSP account, if he or she already has one). A transfer to a spouse's TSP account is permitted only if the spouse is not receiving monthly payments from the account. In order to request such a transfer, a spouse must file Form TSP-13-S, Spouse's Election to Transfer to IRA or Other Eligible Retirement Plan, with the TSP record keeper.

(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 payment will be made payable to the trust and mailed in care of

the trustee. A TIN must be provided for the trust.

(g) If a death benefit payment is returned as undeliverable, the TSP record keeper will attempt to locate the beneficiary by writing to his or her TSP database address. If the beneficiary does not respond within 60 days, the TSP will forfeit the death benefit payment to the Plan. The beneficiary can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(h) A properly paid death benefit payment cannot be returned to the TSP.

[62 FR 32429, June 13, 1997, as amended at 67 FR 49527, July 30, 2002; 68 FR 35510, June 13, 2003; 68 FR 74451, Dec. 23, 2003]

§ 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

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one or more of them refuses to cooperate in the Board's search for the missing beneficiary, the missing beneficiary's share will be considered abandoned. In such circumstances, the account can be reclaimed if the missing beneficiary is found at a later date. However, earnings will not be credited from the date the fund is abandoned. The beneficiary will be required to submit Form TSP-17 and may be required to submit proof of his or her identity and relationship to the participant.

§ 1651.17 Disclaimer of benefits.

(a) *Right to disclaim.* The beneficiary of a TSP account may disclaim his or her right to receive all or part of a TSP death benefit. If the disclaimant is a minor, the parent or guardian of the minor must sign the disclaimer.

(b) *Valid disclaimer.* The disclaimer must expressly state that the beneficiary is disclaiming his or her right to receive either all or a stated percentage of the death benefit payable from the TSP account of the named participant and must be:

- (1) Submitted in writing;
- (2) Signed by the person (or legal representative) disclaiming the benefit; and
- (3) Received before the TSP pays the death benefit.

(c) *Invalid disclaimer.* A disclaimer is invalid if it is revocable or directs to whom the disclaimed benefit should be paid.

(d) *Disclaimer effect.* The disclaimed share will be paid as though the beneficiary predeceased the participant, according to the rules set forth in § 1651.10.

[68 FR 35510, June 13, 2003]

§ 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.

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PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

Subpart A—Retirement Benefits Court Orders

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- 1653.1 Definitions.
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Subpart B—Legal Process for the Enforcement of a Participant's Legal Obligations to Pay Child Support or Alimony Currently

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- 1653.21 Definitions.
- 1653.22 Purpose.
- 1653.23 Processing and payment.

AUTHORITY: 5 U.S.C. 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

SOURCE: 68 FR 35510, June 13, 2003, unless otherwise noted.

Subpart A—Retirement Benefits Court Orders

§ 1653.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Court means any 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).

Effective date of a court order means the date it was entered by the clerk of the court or, if the order does not show a date entered, the date it was filed by the clerk of the court or, if the order does not contain a date entered or a date filed, the date it was signed by the judge.

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Retirement benefits court order or *order* means a court decree of divorce, annulment or legal separation, or a court order or court-approved property settlement agreement incident to such a decree. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding.

§ 1653.2 Qualifying retirement benefits court orders.

(a) To be qualifying, and thus enforceable against the TSP, a retirement benefits court order must meet the following requirements:

(1) The order must expressly relate to the Thrift Savings Plan account of a TSP participant. This means that:

(i) The order must expressly refer to the "Thrift Savings Plan" or describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits;

(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 participant's TSP account or TSP account balance rather than a benefit formula or the participant's eventual benefits; and

(iii) If the participant has a civilian TSP account and a uniformed services TSP account, the order must expressly identify the account to which it relates.

(2) The order must either require the TSP to freeze the participant's account to preserve the *status quo* pending final resolution of the parties' rights to the participant's TSP account, or to make a payment from the participant's account to a permissible payee.

(3) If the order requires a payment from the participant's account, the award must be for:

(i) A specific dollar amount;

(ii) A stated percentage or fraction of the account;

(iii) A portion of the account to be calculated by applying a formula that yields a mathematically possible result. All of the variables in the formula must have values that are readily ascertainable from the face of the order or from TSP records; or

(iv) A survivor annuity as provided in 5 U.S.C. 8435(d).

(4) A court order can require a payment only to a spouse, former spouse, child or dependent of a participant.

(b) The following retirement benefits court orders are not qualifying and thus are not enforceable against the TSP:

(1) An order relating to a TSP account that has been closed;

(2) An order relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Federal service;

(3) An order requiring the return to the TSP of money that was properly paid pursuant to an earlier court order;

(4) An order requiring the TSP to make a payment in the future, unless the present value of the payee's entitlement can be calculated, in which case the TSP will make the payment currently; and

(5) An order that does not specify the account to which the order applies, if the participant has both a civilian TSP account and a uniformed services TSP account.

[68 FR 35510, June 13, 2003, as amended at 69 FR 29851, May 26, 2004]

§ 1653.3 Processing retirement benefits court orders.

(a) The payment of a retirement benefits court order from the TSP is governed solely by FERSA and by the terms of this subpart. The TSP will honor retirement benefits court orders properly issued by a court (as defined in § 1653.1). However, those courts have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying domestic relations proceedings.

(b) The TSP will review a retirement benefits court order to determine whether it is enforceable against the TSP only after the TSP has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Retirement benefits court orders should be submitted to the TSP record keeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana, 70161-1500. Receipt by

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the TSP record keeper is considered receipt by the TSP. To be complete, a court order must be written in English or be accompanied by a certified English translation and contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's Social Security number (SSN);

(2) The name and last known mailing address of each payee covered by the order; and

(3) The payee's SSN and state of legal residence if he or she is the current or former spouse of the participant.

(c) As soon as practicable after the TSP receives a document that purports to be a qualifying retirement benefits court order, whether or not complete, the participant's account will be frozen. After the account is frozen, no withdrawal or loan disbursements (other than a required minimum distribution pursuant to section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)) will be allowed until the account is unfrozen. All other account activity will be permitted.

(d) The following documents do not purport to be qualifying retirement benefits court orders, and accounts of participants to whom such orders relate will not be frozen:

(1) A document that does not indicate on its face (or is not accompanied by 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 before June 6, 1986;

(4) A court order that does not award all or any part of the TSP account to someone other than the participant; and

(5) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the TSP will review the document further to determine if it is complete; if the document is not complete, the TSP will request a complete document. If a complete copy is not received within 30 days of that request, the account will be unfrozen and no further action will be taken with respect to the document.

(f) The TSP will review a complete copy of an order to determine whether it is a qualifying retirement benefits court order as described in § 1653.2. The TSP will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the court order is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the court order has on the participant's TSP account; and

(4) If the qualifying order requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment;

(iii) Tax information and income tax withholding forms to the person responsible for paying Federal income tax on the payment;

(iv) Information and the form needed to transfer the payment to an eligible employer plan or traditional IRA (if the payee is the current or former spouse of the participant); and

(v) Information and the form needed to receive the payment through an electronic funds transfer (EFT).

(g) The TSP decision letter is a final determination of the parties' rights in the account. There is no administrative appeal from the TSP decision.

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen upon receipt of an incomplete order, the account will be unfrozen if a complete order is not received within 30 days of the date of the request described in paragraph (e) of this section;

(2) If the account was frozen in response to an order issued to preserve the *status quo* pending final resolution of the parties' rights to the participant's TSP account, the account will be unfrozen if the TSP receives a court order that vacates or supersedes the previous order (unless the order vacating or superseding the order itself qualifies to place a freeze on the account). A court order that purports to require a payment from the TSP supersedes an order issued to preserve the *status quo*, even if it does not qualify to require a payment from the TSP;

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(3) If the account was frozen in response to an order purporting to require a payment from the TSP, the freeze will be lifted:

(i) Once payment is made, if the court order is qualifying; or

(ii) Forty-five (45) days after the date of the TSP decision letter if the court order is not qualifying. The 45-day period will be terminated, and the account will be unfrozen, if both parties submit to the TSP a written request for such a termination.

(i) The TSP will hold in abeyance the processing of a court-ordered payment if the TSP is notified in writing that the underlying court order has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the order.

(1) In the notification, the TSP must be provided with proper documentation of the appeal and citations to legal authority, which address the effect of the appeal on the enforceability of the underlying court order.

(i) If the TSP receives proper documentation and citations to legal authority which demonstrate that the underlying court order is not enforceable, the TSP will inform the parties that the payment will not occur until resolution of the appeal, and the account will remain frozen for loans and withdrawals.

(ii) In the absence of proper documentation and citations to legal authority, the TSP will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The TSP must be notified in writing of the disposition of the appeal before the freeze will be removed from the participant's account or a payment will be made. The notification must include a complete copy of an order from the appellate court explaining the effect of the appeal on the participant's account.

(j) Multiple qualifying court orders relating to the same TSP account and received by the TSP will be processed as follows:

(1) If the orders make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP will only honor the order bearing the latest effective date.

(2) If the orders relate to different former spouses of the participant and award survivor annuities, the TSP will honor them in the order of their effective dates.

(3) If the orders relate to different payees and award fixed dollar amounts, percentages or fractions of an account, or portions of an account calculated by the application of formulae, the orders will be honored:

(i) In the order of their receipt by the TSP, if received by the TSP on different days; or

(ii) In the order of their effective dates, if received by the TSP on the same day.

(4) In all other cases, the TSP will honor multiple qualifying court orders relating to the same TSP account in the order of their receipt by the TSP.

[68 FR 35510, June 13, 2003, as amended at 69 FR 29851, May 26, 2004]

§ 1653.4 Calculating entitlements.

(a) For purposes of computing the amount of a payee's entitlement under this section, a participant's TSP account balance will include any loan balance outstanding as of the date used for calculating the payee's entitlement, unless the court order provides otherwise.

(b) If the court order awards a percentage or fraction of an account as of a specific date, the payee's entitlement will be calculated based on the account balance as of that date. If the date specified in the order is not a business day, the TSP will use the participant's account balance as of the last preceding business day.

(c) If the court order awards a percentage or fraction of an account but does not contain a specific date as of which to apply that percentage or fraction, the TSP will use the effective date of the order.

(d) If the court order awards a specific dollar amount, the payee's entitlement will be the lesser of:

(1) The dollar amount stated in the court order; or

(2) The vested account balance on the date of disbursement.

(e) If a court order describes a payee's entitlement in terms of a fixed dollar amount and a percentage or fraction of the account, the TSP will pay

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the fixed dollar amount, even if the percentage or fraction, when applied to the account balance, would yield a different result.

(f) The payee's entitlement will be credited with TSP investment earnings as described:

(1) The entitlement calculated under this section will not be credited with TSP investment earnings unless the court order specifically provides otherwise.

(2) If earnings are awarded and a rate is specified, the rate must be expressed as an annual percentage rate or as a *per diem* dollar amount added to the payee's entitlement.

(3) If earnings are awarded and the rate is not specified, the TSP will credit the payee's entitlement with the rate of return for the G Fund.

(4) Earnings at the G Fund rate will accrue on a monthly basis through May 31, 2003, beginning with the month following the entitlement date; thereafter, G Fund earnings will accrue on a daily basis, beginning with the business day following the date used for calculating the payee's entitlement (or beginning June 1, 2003, if interest or earnings commence before June 1, 2003) and ending 2 business days before payment is made.

(g) The TSP will estimate the amount of a payee's entitlement when it prepares the court order decision letter and will recalculate the entitlement at the time of payment. The recalculation may differ from the initial estimation because:

(1) The estimation of the payee's entitlement includes both vested and nonvested amounts in the participant's account. If, at the time of payment, the nonvested portion of the account has not become vested, the recalculated entitlement will apply only to the participant's vested account balance;

(2) After the estimate of the payee's entitlement is prepared, the TSP may process account transactions that have an effective date on or before the date used to compute the payee's entitlement. Those transactions will be included when the payee's entitlement is recalculated at the time of payment; and

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(3) The amount available for payment from the account may be reduced due to changes in share price (*i.e.*, investment losses).

§ 1653.5 Payment.

(a) Payment pursuant to a qualifying retirement benefits court order ordinarily will be made 60 days after the date of the TSP decision letter. This is intended to permit the payee sufficient time to consider decisions about tax withholding, payment by EFT, and transfer, if applicable, under paragraph (e) of this section. An earlier distribution may be made as follows:

(1) If the payee is the current or former spouse of the participant, the payee can request to receive the payment sooner than 60 days by making a tax withholding election, by requesting a payment by EFT, or by requesting a transfer described in paragraph (e)(1) of this section. The TSP decision letter will provide the forms a payee can use to request an earlier disbursement.

(2) If the payee is someone other than the current or former spouse of the participant, the participant can request a disbursement sooner than 60 days by making the tax withholding election described in paragraph (e)(2) of this section (on forms provided to the participant with the TSP decision letter).

(3) If the court order makes an award to multiple payees, a disbursement may be made earlier than 60 days only if requests for expedited payment are received from all of the payees.

(4) In no event will payment be made earlier than 31 days after the date of the TSP decision letter.

(b) In no case will payment exceed the participant's vested account balance, minus any outstanding loan balance.

(c) The entire amount of a court order payee's entitlement 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 rights to any further payment under that order, even if the entire amount of the entitlement cannot be paid. Any further award must be contained in a separate court order.

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(d) Payment will be made *pro rata* from all TSP investment funds in which the account is invested, based on the balance in each fund on the date payment is made, and from both tax-deferred and tax-exempt balances, if any. The TSP will not honor provisions of a court order that require payment to be made from specific investment funds or contribution sources. A court order may, however, specify a particular payment from the tax-exempt balance of a uniformed services TSP account.

(e) Payment will be made only to the person or persons specified in the court order.

(1) If payment is made to the current or former spouse of the participant, the distribution will be reported to the Internal Revenue Service (IRS) as income to the payee.

(i) A current or former spouse of a participant may request that the TSP transfer all or a portion of the payment to an eligible employer plan or traditional IRA. A retirement benefits court order cannot prevent the TSP from providing this transfer option to a current or former spouse of a participant.

(ii) Any amount that is not so transferred will be distributed to the payee. That distribution will be subject to mandatory Federal income tax withholding. The payee may elect to have an additional amount withheld by filing with the TSP the forms provided to the payee with the decision letter.

(iii) Any distribution directly to the payee will be made under the following rules:

(A) If the court order specifies a third-party mailing address for the payment, the TSP will mail to the address specified any portion of the payment that is not transferred to an eligible employer plan or traditional IRA. That portion will be disbursed in the form of a United States Treasury check made payable solely to the court order payee, and mailed in care of the third party addressee.

(B) If the court order does not specify a third party addressee, the payee can choose to receive the distribution by United States Treasury check or by electronic funds transfer (EFT) to a checking or savings account at a financial institution.

(2) If the payment is made to anyone other than the current or former spouse of the participant, the following rules apply:

(i) The payment is taxable to the participant and is subject to Federal income tax withholding. The participant can elect the amount to be withheld by filing with the TSP the forms provided to the participant with the decision letter. If the participant does not make a withholding election, the TSP will withhold 10 percent from the payment. The tax withholding will be taken from the payee's entitlement and the gross amount of the payment (*i.e.*, the net payment distributed to the payee plus the amount withheld from the payment for taxes) will be reported to the IRS as income to the participant.

(ii) The payment will be made under the same rules described in paragraph (e)(1)(iii) of this section.

(f) Payment will not be made jointly to two or more persons. If the court order requires payments to more than one person, the order must separately indicate the amount to be paid to each.

(g) If there are insufficient funds to pay each court order payee, payment will be made as follows:

(1) If the order specifies an order of precedence for the payments, the TSP will honor it.

(2) If the order does not specify an order of precedence for the payments, the TSP will pay a current or former spouse first, a dependent second, and an attorney third.

(h) If the payee dies before a payment is disbursed, payment will be made to the estate of the payee, unless otherwise specified by the court order. A distribution to the estate of a deceased court order payee will be reported as income to the decedent's estate. If the participant dies before payment is made, the order will be honored so long as it is submitted to the TSP before the TSP account has been closed.

(i) If the parties to a divorce or annulment have remarried each other, 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.

(j) Payment to a person (including the estate of the payee) pursuant to a

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qualifying retirement benefits court order made in accordance with this subpart bars recovery by any other person claiming entitlement to the payment.

(k) If a court ordered payment is returned as undeliverable, the TSP record keeper will attempt to locate the payee by writing to his or her TSP database address. If the payee does not respond within 60 days, the TSP will forfeit the funds to the Plan. The payee can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(l) A properly paid court order payment cannot be returned to the TSP.

[68 FR 35510, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

Subpart B—Legal Process for the Enforcement of a Participant's Legal Obligations To Pay Child Support or Alimony Currently

§ 1653.11 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1600.1.

(b) 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 can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

Child support means payment of funds for the support and maintenance of a child or children of the participant. Child support includes payments to provide for health care, education, recreation, clothing, or to meet other specific needs of a child or children. Child support can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

Competent authority means a court or an administrative agency of competent jurisdiction in any State, territory or possession of the United States; a court or administrative agency of competent

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jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor the process; or an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction pursuant to state or local law.

Legal process means a writ, order, summons, or other similar process in the nature of a garnishment, which is brought to enforce a participant's legal obligations to pay child support or alimony currently.

§ 1653.12 Qualifying legal processes.

(a) The TSP will only honor the terms of a legal process that is qualifying under paragraph (b) of this section.

(b) A legal process must meet each of the following requirements to be considered qualifying:

(1) A competent authority must have issued the legal process;

(2) The legal process must expressly relate to the Thrift Savings Plan account of a TSP participant, as described in § 1653.2(a)(1);

(3) The legal process must require the TSP to:

(i) Pay a stated dollar amount from a participant's TSP account; or

(ii) Freeze the participant's account in anticipation of an order to pay from the account.

(c) The following legal processes are not qualifying:

(1) A legal process relating to a TSP account that has been closed;

(2) A legal process relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Federal service;

(3) A legal process requiring the return to the TSP of money that was properly paid pursuant to an earlier legal process;

(4) A legal process requiring the TSP to make a payment in the future; and

(5) A legal process requiring a series of payments.

§ 1653.13 Processing legal processes.

(a) The payment of legal processes from the TSP is governed solely by the

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Federal Employees' Retirement System Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP will honor legal processes properly issued by a competent authority, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP will review a legal process to determine whether it is enforceable against the TSP only after the TSP has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Legal processes should be submitted to the TSP record keeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, LA 70161-1500. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a legal process must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's Social Security number (SSN);

(2) The name and last known mailing address of each payee covered under the order; and

(3) The SSN and state of legal residence of the payee if he or she if the current or former spouse of the participant.

(c) As soon as practicable after the TSP receives a document that purports to be a qualifying legal process, whether or not complete, the participant's account will be frozen. After the account is frozen, no withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, contribution allocations and interfund transfers.

(d) The following documents will not be treated as purporting to be a qualifying legal processes, and accounts of participants to whom such orders relate will not be frozen:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued by a competent authority;

(2) A legal process relating to a TSP account that has been closed; and

(3) A legal process that does not relate either to the TSP or to the participant's retirement benefits.

(e) After the participant's account is frozen, the TSP will review the document further to determine if it is complete; if the document is not complete, the TSP will request a complete document. If a complete copy is not received by the TSP within 30 days of that request, the account will be unfrozen and no further action will be taken with respect to the document.

(f) As soon as practicable after receipt of a complete copy of a legal process, the TSP will review it to determine whether it is a qualifying legal process as described in §1653.12. The TSP will mail a decision letter to all parties containing the same information described at §1653.3(f).

(g) The TSP decision letter is final. There is no administrative appeal from the TSP decision.

(h) An account frozen under this section will be unfrozen as follows:

(1) If a complete document has not been received within 30 days of the date of a request described in paragraph (e) of this section;

(2) If the account was frozen pursuant to a legal process requiring the TSP to freeze the participant's account in anticipation of an order to pay from the account, the account will be unfrozen if any one of the following events occurs:

(i) As soon as practicable after the TSP receives a complete copy of an order vacating or superseding the preliminary order (unless the order vacating or superseding the preliminary order qualifies to place a freeze on the account);

(ii) Upon payment pursuant to the order to pay from the account, if the TSP determines that the order is qualifying; or

(iii) As soon as practicable after the TSP issues a decision letter informing the parties that the order to pay from the account is not a qualifying legal process;

(3) If the account was frozen after the TSP received a document that purports to be a legal process requiring payment from the participant's account, the account will be unfrozen:

(i) Upon payment pursuant to a qualifying legal process; or

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(ii) As soon as practicable after the TSP informs the parties that the document is not a qualifying legal process.

(i) The TSP will hold in abeyance the processing of a payment required by legal process if the TSP is notified in writing that the legal process has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the legal process. The notification must be accompanied by the documentation and citations to legal authority described at § 1653.3(i).

(j) Multiple qualifying legal processes relating to the same TSP account and received by the TSP will be processed as follows:

(1) If the legal processes make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP will only honor the legal process bearing the latest effective date.

(2) If the legal processes relate to different payees, the legal process will be honored:

(i) In the order of their receipt by the TSP, if received by the TSP on different days; or

(ii) In the order of their effective dates, if received by the TSP on the same day.

§ 1653.14 Calculating entitlements.

A qualifying legal process can only require the payment of a specified dollar amount from the TSP. Payment pursuant to a qualifying legal process will be calculated in accordance with § 1653.4(a), (d), (f) and (g).

§ 1653.15 Payment.

Payment pursuant to a qualifying legal process will be made in accordance with § 1653.5.

Subpart C—Child Abuse Court Orders

§ 1653.21 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Child means an individual less than 18 years of age.

Judgment against a participant for physically, sexually, or emotionally abusing a child means any legal claim per-

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fectured through a final enforceable judgment which is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence.

§ 1653.22 Purpose.

Under 5 U.S.C. 8437(e)(3) and 8467(a)(2), the TSP will honor a court order or other similar process in the nature of a garnishment that is brought to enforce a judgment against a participant for physically, sexually, or emotionally abusing a child.

§ 1653.23 Processing and payment.

To the maximum extent consistent with sections 8437(e)(3) and 8467(a)(2), child abuse court orders will be processed by the TSP under the procedures described in subparts A and B of this part.

PART 1655—LOAN PROGRAM

Sec.

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1655.21 Loan fee.

AUTHORITY: 5 U.S.C. 8433(g), 8439(a)(3) and 8474.

SOURCE: 68 FR 35515, June 13, 2003, unless otherwise noted.

§ 1655.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

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Amortization means the reduction in a loan by periodic payments of principal and interest according to a schedule of payments.

Date of application means the day on which the TSP record keeper receives the loan application, either electronically on the TSP Web site or on Form TSP-20 or Form TSP-U-20.

General purpose loan means any TSP loan other than a loan for the purchase or construction of a primary residence.

Guaranteed funds means a cashier's check, money order, certified check (*i.e.*, a check certified by the financial institution on which it is drawn), cashier's draft, or treasurer's check from a credit union.

Loan issue date means the date on which the TSP record keeper disburses funds from the participant's account for the loan amount.

Loan repayment period means the time over which payments that are required to repay a loan in full are scheduled.

Principal or principal amount means the amount borrowed by a participant from his or her individual account, or, after reamortization, the amount financed.

Reamortization means the recalculation of periodic payments of principal and interest.

Residential loan means a TSP loan for the purchase or construction of a primary residence.

Taxable distribution means the amount of outstanding principal and interest on a loan which must be reported to the Internal Revenue Service as taxable income as a result of the failure of a participant to repay a loan in full, according to the terms of the loan agreement.

§ 1655.2 Eligibility for loans.

A participant can apply for a TSP general purpose or residential loan if:

(a) More than 60 calendar days have elapsed since the participant has repaid in full a TSP loan of the same type.

(b) The participant is in pay status;

(c) The participant is eligible to contribute to the TSP (or would be eligible to contribute but for the suspension of the participant's contributions because he or she obtained a financial hardship in-service withdrawal or because he or

she stopped contributing to the TSP and is not yet eligible to resume contributing);

(d) The participant has at least \$1,000 in employee contributions and attributable earnings in his or her account; and

(e) The participant has not had a TSP loan declared a taxable distribution within the last 12 months for any reason other than a separation from Government service.

[69 FR 29852, May 26, 2004]

§ 1655.3 Information concerning the cost of a loan.

Information concerning the cost of a loan is provided in the booklet TSP Loan Program (available on the TSP Web site, from the participant's personnel office or service, or from the TSP record keeper). From this information, a participant can determine the effects of a loan on his or her final account balance and can compare the cost of a loan to that of other sources of financing.

§ 1655.4 Number of loans.

A participant may have no more than two loans outstanding from his or her TSP account at any time. One of the two outstanding loans may be a residential loan and the other one may be a general purpose loan. A participant with both a civilian TSP account and a uniformed services TSP account may have two outstanding loans from each account.

[68 FR 35515, June 13, 2003, as amended at 69 FR 29852, May 26, 2004]

§ 1655.5 Loan repayment period.

(a) *Minimum.* The minimum repayment period a participant may request for a loan is one year of scheduled payments.

(b) *Maximum.* The maximum repayment period a participant may request for a general purpose loan is five years of scheduled payments. The maximum repayment period a participant may request for a residential loan is 15 years of scheduled payments.

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§ 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 loan must be less than or equal to the smallest of the following:

(1) The portion of the participant's individual account balance that is attributable to employee contributions and attributable earnings (not including any outstanding loan principal);

(2) 50 percent of the participant's vested account balance (including any outstanding loan balance) or \$10,000, whichever is greater, minus any outstanding loan balance; or

(3) \$50,000 minus the participant's highest outstanding loan balance (if any) during the last 12 months.

(c) If a participant has both a civilian TSP account and a uniformed services TSP account, the maximum loan amount available will be based on a calculation that takes into consideration the account balances and outstanding loan balances for both accounts.

§ 1655.7 Interest rate.

(a) Except as provided in paragraph (b) of this section, loans will bear interest at the monthly G Fund interest rate established by the Department of the Treasury in effect on the date the TSP record keeper processes the paper application or on the date the request is entered on the TSP Web site.

(b) The interest rate calculated under this section remains fixed until the loan is repaid, unless a civilian participant informs the TSP record keeper that he or she entered into active duty military service, and, as a result, requests that the interest rate on a loan issued before entry into active duty military service be reduced to an annual rate of 6 percent for the period of such service. The civilian participant must provide the record keeper with the beginning and ending dates of active duty military service.

§ 1655.8 Quarterly statements.

Information relating to any outstanding loan will be included on the quarterly participant statements.

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§ 1655.9 Effect of loans on individual account.

(a) The amount borrowed will be removed from the participant's account when the loan is disbursed. Consequently, these funds will no longer generate earnings.

(b) The loan principal will be disbursed from that portion of the account represented by employee contributions and attributable earnings, *pro rata* from each investment fund in which the account is invested and *pro rata* from tax-deferred and tax-exempt balances.

(c) Loan payments, including both principal and interest, will be credited to the participant's individual account. Loan payments will be credited to the appropriate investment fund in accordance with the participant's most recent contribution allocation.

§ 1655.10 Loan application process.

(a) Any participant may apply for a loan by submitting a completed loan application (Form TSP-20 or Form TSP-U-20) to the TSP record keeper.

(b) The following participants may also apply for and complete a loan request on the TSP Web site:

(1) FERS participants or members of the uniformed services requesting a general purpose loan if they are:

(i) Unmarried; or

(ii) Married and have been granted an exception to the spousal requirements described in § 1655.18.

(2) CSRS participants requesting a general purpose loan if they are:

(i) Unmarried;

(ii) Married and provide a current address for their spouse; or

(iii) Married and have been granted an exception to the spousal requirements described in § 1655.18.

(c) Persons not described in paragraph (b) of this section may use the TSP Web site to submit a loan application and obtain a loan agreement, but must complete the process by submitting the resulting loan agreement and any related documentation on paper.

§ 1655.11 Loan acceptance.

The TSP record keeper will reject a loan application if:

(a) The participant is not qualified to apply for a loan under § 1655.2 or has

failed to provide all required information on the loan application;

(b) The participant has the maximum number of loans outstanding under § 1655.4;

(c) The participant has a pending loan agreement or in-service withdrawal request;

(d) The amount of the requested loan is less than the minimum amount set forth in § 1655.6(a);

(e) A hold has been placed on the account pursuant to 5 CFR 1653.3(c); or

(f) The participant has received a taxable loan distribution from the TSP within the 12-consecutive-month period preceding the date of the application, unless the taxable distribution was the result of the participant's failure to repay the loan upon his or her separation from Government service.

[68 FR 35515, June 13, 2003, as amended at 69 FR 29852, May 26, 2004]

§ 1655.12 Loan agreement.

(a) Upon determining that a loan application meets the requirements of this part, the TSP record keeper will provide the participant with the terms and conditions of the loan, as follows:

(1) If the participant submits a paper loan application, the TSP record keeper will mail the loan agreement (Form TSP-21-G, TSP-U-21-G, TSP-21-R, or TSP-U-21-R, as applicable), and other information as appropriate, to the participant.

(2) If the participant initiates a loan request on the TSP Web site, which cannot be completed on the Web site, the participant must print the partially completed loan agreement directly from the Web site, provide any missing information (including spouse's signature or documents supporting a residential loan request, if applicable), and submit it to the TSP record keeper.

(b) By signing the loan agreement, either electronically or on the form, the participant agrees to be bound by all of its terms and conditions, agrees to repay the loan by payroll deduction, and certifies, under penalty of perjury, to the truth and completeness of all statements made in the loan application and loan agreement to the best of his or her knowledge.

(c) For loans submitted on paper and those that cannot be completed on the TSP Web site, the TSP record keeper must receive the completed loan agreement (including any required supporting documentation) before the expiration date stated on the loan agreement or the agreement will not be processed.

(d) The signed loan agreement must be accompanied by:

(1) In the case of a residential loan, supporting materials that document the purchase or construction of the residence and the amount requested (as described in § 1655.20); and

(2) Any other information that the Executive Director may require.

(e) A participant may request that the loan be disbursed by direct deposit to a checking or savings account maintained by the participant in a financial institution by properly completing the required information on the loan agreement or on the TSP Web site, if the loan request can be completed on the Web site.

§ 1655.13 Loan approval and issuance.

(a) When the completed loan agreement is signed electronically or returned by the participant to the TSP record keeper, together with any documentation required to be submitted, the loan will be initially approved or denied by the TSP record keeper based upon the requirements of this part, including the following conditions:

(1) The participant has signed the promise to repay the loan, has agreed to repay the loan through payroll deductions, and has certified that the information given 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) The spouse of a FERS or uniformed services participant 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 spouse of a CSRS participant has been given notice or, if the spouse's

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whereabouts are unknown, an exception to the spousal requirement described in §1655.18 has been granted;

(5) When a paper agreement is required, the completed loan agreement, including all required supporting documentation, was received by the TSP record keeper before the expiration date specified on the loan agreement; and

(6) The participant has met any other conditions that the Executive Director may require.

(b) If approved, the loan will be issued unless:

(1) The participant's employing agency has reported the participant's separation from Government service;

(2) The TSP receives written notice that the participant has died;

(3) The participant's account balance on the loan issue date does not contain sufficient employee contributions and associated earnings to make a loan of at least \$1,000;

(4) A hold on the account is processed before the loan is disbursed; or

(5) A taxable distribution on an outstanding loan is declared before the new loan is issued.

(c) If the loan is otherwise acceptable but the amount available to borrow is less than the requested amount (but is at least \$1,000), the loan will be issued in the maximum amount available at the time of the disbursement. In such a case, the periodic payment amount will remain the same and the loan term may be shortened.

(d) The loan issue date is considered to be the date the loan was made.

(e) If a loan disbursement is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 60 days, the TSP will repay the loan with the returned loan proceeds.

§ 1655.14 Loan payments.

(a) Loan payments must be made through payroll deduction in accordance with the loan agreement. Once loan payments begin, the employing agency cannot terminate the payroll deductions at the employee's request, unless the TSP instructs it to do so. For example, employing agencies must stop loan payments if the participant

becomes a debtor in a chapter 13 bankruptcy action, unless the bankruptcy court expressly permits the payments to continue.

(b) The participant may make additional payments by mailing a personal check or guaranteed funds to the TSP record keeper. If the TSP receives a payment that repays the outstanding loan amount and overpays the loan by \$10.00 or more, the overpayment will be refunded to the participant. Overpayments of less than \$10 will be applied to the participant's account and will not be refunded. If a loan overpayment refund is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 60 days, the TSP will forfeit the overpayment refund to the Plan. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(c) The initial payment on a loan is due on or before the 60th day following the loan issue date. Interest accrues on the loan from the date of issuance.

(d) Subsequent payments are due at regular intervals as prescribed in the loan agreement, or most recent amortization, according to the participant's pay cycle.

(e) If a payment is not made when due, the TSP will notify the participant of the missed payment and the participant must make up the payment in full. If the participant does not make up all missed payments by the end of the calendar quarter following the calendar quarter in which the first payment was missed, the TSP will declare the loan to be a taxable distribution in accordance with §1655.15. The participant's make-up payment must be in the form of a personal check or guaranteed funds.

(f) Interest will accrue on all missed payments and will be included in the calculation of any taxable distribution subsequently declared in accordance with §1655.15. Interest will also accrue on payments missed while a participant is in nonpay status.

§ 1655.15 Taxable distributions.

(a) The Board may declare any unpaid loan principal, plus unpaid interest, to be a taxable distribution from the Plan if:

(1) A participant is in a confirmed nonpay status for a period of one year or more, has not advised the TSP that he or she is serving on active military duty, and payments are not resumed after the participant is notified the loan has been reamortized;

(2) A participant separates from Government service and does not repay the outstanding loan principal and interest in full within the period specified by the notice to the participant from the TSP record keeper explaining the participant's repayment options;

(3) The TSP record keeper advises the participant that there are missing payments and the participant fails to make (by personal check or guaranteed funds) a direct payment of the entire missing amount or repayment in full by the deadline established in accordance with § 1655.14(e);

(4) Any material information provided in accordance with § 1655.10, § 1655.12, or § 1655.18 is found to be false;

(5) With the exception of a loan described in 5 CFR 1620.45, the loan is not repaid in full (including interest due) within five years, in the case of a general purpose loan, or within 15 years, in the case of a residential loan, from the loan issue date;

(6) The participant dies; or

(7) The participant's loan payments were stopped when he or she became a debtor in a chapter 13 bankruptcy action, and the bankruptcy court did not expressly permit the payments to recommence.

(b) If a taxable distribution occurs in accordance with paragraph (a) of this section, the Board will notify the participant 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. That portion of a loan that represents a uniformed services participant's contributions from pay subject to the combat zone tax exclusion will not be included in this calculation.

(c) If a participant dies and a taxable distribution occurs in accordance with paragraph (a) of this section, the Board

will notify the participant's estate of the amount and date of the distribution. Neither the estate nor any other person, including a beneficiary, may repay the loan of a deceased participant, nor can the funds be returned to the TSP.

(d) If, because of Board or TSP record keeper error, a TSP loan is declared a taxable distribution under circumstances that make such a declaration inconsistent with this part, or inconsistent with other procedures established by the Board or TSP record keeper in connection with the TSP loan program, the taxable distribution will be reversed. The participant will be provided an opportunity to reinstate loan payments or repay in full the outstanding balance on the loan.

[68 FR 35515, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

§ 1655.16 Reamortization.

(a) A participant may request reamortization of a loan at any time to change the amount of the payments, unless the loan is in a default status.

(b) Upon reamortization, the outstanding principal balance remains the same. Any accrued interest is paid off first before payments are applied to principal and current interest.

(c) The interest rate on a reamortized loan will be the same as the interest rate on the original loan.

(d) A participant may request reamortization by using the TSP Web site or by contacting a TSPSO participant service representative.

(e) When a participant's pay cycle changes for any reason, he or she should request a reamortization to adjust the scheduled payment to an equivalent amount in the new pay cycle. If the new pay cycle results in fewer payments per year and the participant does not reamortize the loan, the loan may be declared a taxable distribution pursuant to § 1655.15(a)(3).

§ 1655.17 Prepayment.

(a) A participant may repay a loan in full, without a penalty, at any time before the declaration of a taxable distribution under § 1655.15, unless the participant has separated from Government service and has submitted a signed statement that he or she has

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forfeited the right to repay the loan in full. Repayment in full means receipt by the TSP record keeper of a payment, by personal check or guaranteed funds made payable to the Thrift Savings Plan, of all principal and interest due on the loan.

(b) If a participant returns a loan check to the TSP record keeper, it will be treated as a repayment; however, additional interest may be owed, which, if not paid, could result in a taxable distribution. The loan, even though repaid, will also be taken into account in determining the maximum amount available for future loans, in accordance with § 1655.6(b).

(c) The amount outstanding on a loan can be obtained from the TSP Web site, the ThriftLine, or a TSPSO participant service representative, or by a written request to the TSP record keeper.

§ 1655.18 Spousal rights.

(a) *Spouse of CSRS participant.* (1) Before a loan is disbursed to a CSRS participant, the TSP record keeper will send a notice to the participant's current spouse that the participant has applied for a loan.

(2) A CSRS participant may obtain an exception to the requirement described in paragraph (a)(1) of this section if the participant establishes, to the satisfaction of the Executive Director, that the spouse's whereabouts are unknown as described in paragraph (c) of this section.

(b) *Spouse of FERS or uniformed services participant.* (1) Before a loan agreement is approved for a FERS or uniformed services participant, the spouse must consent to the loan by signing the loan agreement.

(2) A FERS or uniformed services participant may obtain an exception to the requirement described in paragraph (b)(1) of this section if the participant establishes, to the satisfaction of the Executive Director, that:

(i) The spouse's whereabouts are unknown; or

(ii) Exceptional circumstances prevent the participant from obtaining the spouse's consent.

(c) *Exception to spousal requirements.* The procedures for obtaining an exception to the spousal requirements described in paragraphs (a)(1) and (b)(1) of

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this section are the same as the procedures described in 5 CFR part 1650, subpart G.

(d) *Certification of truthfulness.* (1) By signing the loan application and the loan agreement, electronically or on paper, the participant certifies, under penalty of perjury, that all information provided to the TSP during the loan process is true and complete, including statements concerning the participant's marital status, the spouse's address at the time the application is filed, or the current spouse's consent to the loan.

(2) If the Board receives a written allegation from the spouse that the participant may have misrepresented his or 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 information or document in question to the spouse and request that he or she state in writing that the information is false or that the spouse's signature was forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three samples of his or her signature.

(3) If the spouse affirms the allegation, in accordance with the procedure set forth in paragraph (d)(2) of this section, and the loan has been disbursed, the Board will give the participant an opportunity to repay the unpaid loan principal and interest within 60 days. If the loan is repaid during this period, the Board will not investigate the spouse's allegation.

(4) Paragraph (d)(3) of this section will not apply if the participant has received a final divorce decree before the Thrift Savings Plan receives the funds.

(5) If the unpaid loan principal and interest are not repaid to the Plan in full within the time period provided in paragraph (d)(3) of this section, the Board will conduct an investigation into the allegation. If the participant has received a final divorce decree before the Thrift Savings Plan receives the funds, the Board will begin its investigation immediately.

(6) If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his or her marital status or spouse's address

(in the case of a CSRS participant), or submitted the loan agreement 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 (d)(2) of this section, the participant's account will be frozen and no loan will be permitted until after:

(i) Thirty (30) days have elapsed since the participant's spouse was sent a copy of the information or document in question, and the Board has received no written affirmation of the alleged false information or forgery (together with signature samples, if required);

(ii) The loan is repaid pursuant to paragraph (d)(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.

[68 FR 35515, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

§ 1655.19 Effect of court order on loan.

Upon receipt of a document that purports to be a qualifying retirement benefits court order, qualifying legal process relating to a participant's legal obligation to provide child support or to make alimony payments, or a qualifying child abuse order, 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 court orders and legal processes are explained in 5 CFR part 1653.

§ 1655.20 Residential loans.

(a) A residential loan will be made only for the purchase or construction of the primary residence of the participant, or for 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 pur-

chase. If the participant purchases a primary residence with someone other than his or her spouse, only the portion of the purchase costs that is borne by the participant will be considered in making the loan. A residential loan will not be made for the purpose of paying off an existing mortgage or otherwise providing financing for a primary residence purchased more than 2 years before the date of the loan application.

(b) The participant's primary residence is his or her principal residence. A primary residence may include a house, a townhouse, a condominium, a share in a cooperative housing corporation, a mobile home, a boat, or a recreational vehicle; a primary residence does not include a second home or vacation home. A participant cannot have more than one primary residence.

(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 a new residence. A residential loan will not be made for a lease-to-buy option, unless the option to buy is being exercised. Construction of an addition to or the renovation of a residence or the purchase of land only does not constitute the 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. Points or loan origination fees charged for a loan, whether or not they are treated as part of the basis, are not considered a purchase cost. Real estate taxes cannot be included.

(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

(2) For construction, a home construction contract. If a single home construction contract is unavailable, other contracts, building permits, receipts, assessments, or other documentation that demonstrates the construction of an entire primary residence and expenses in the amount of

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the loan may be accepted at the discretion of the Executive Director.

(f) The documentation provided under this section must:

- (1) Be from a third party;
- (2) Show the participant as the purchaser or builder;
- (3) Show the purchase price or construction price;
- (4) Show the full address of the residence; and
- (5) Bear a date that is no more than 24 months preceding the expiration date of the loan agreement.

§ 1655.21 Loan fee.

The TSP will charge a participant a \$50.00 loan fee when it disburses the loan and will deduct the fee from the proceeds of the loan.

[69 FR 29852, May 26, 2004]

PART 1690—THRIFT SAVINGS PLAN

Subpart A—General

Sec.

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AUTHORITY: 5 U.S.C. 8474.

SOURCE: 68 FR 35519, June 13, 2003, unless otherwise noted.

Subpart A—General

§ 1690.1 Definitions.

As used in this chapter:

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

Account balance means the sum of the dollar balances for each source of contributions in each investment fund for an individual account. The dollar balance in each investment fund on a given day is the product of the total number of shares in that investment fund multiplied by the share price for the investment fund on that day.

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. For members of the uniformed services, it is basic pay payable under 37 U.S.C. 204 and compensation received under 37 U.S.C. chapter 206.

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).

Catch-up contributions mean TSP contributions from taxable basic pay that are made by participants age 50 and over, which exceed either the elective deferral limit of 26 U.S.C. 402(g), or the maximum contribution percentage limit of 5 U.S.C. 8351(b) (for CSRS participants), 5 U.S.C. 8432(a) (for FERS participants), or 5 U.S.C. 8440f(a) (for all other participants).

Contribution allocation means the participant's apportionment of his or her future contributions, loan payments, and transfers or rollovers from eligible employer plans or traditional IRAs 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.

Court of competent jurisdiction means the 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).

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 as established by the current employing agency.

Day means calendar day, unless otherwise stated.

Eligible employer plan means a plan qualified under I.R.C. section 401(a) (26 U.S.C. 401(a)), including a section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

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) or 5 U.S.C. 8440e(e).

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. It includes the uniformed services.

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 or any equivalent Federal retirement system.

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

FERSA means the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The provisions of FERSA that govern the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code.

Former spouse means (as defined at 5 U.S.C. 8401(12)) the former spouse of a TSP participant if the participant performed at least 18 months of civilian service creditable under 5 U.S.C. 8411 as an employee or member, and if the par-

ticipant and former spouse were married to one another for at least nine months.

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

G Fund interest rate means the interest rate computed under 5 U.S.C. 8438(e)(2).

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

In-service withdrawal request means a properly completed withdrawal election for either an age-based in-service withdrawal or a financial hardship in-service withdrawal, on any form required by the TSP, together with the supporting documentation required by the application.

Investment fund means any investment fund established pursuant to 5 U.S.C. 8438.

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).

Plan participant or *participant* means any person with an account in the Thrift Savings Plan or who would have an account but for an employing agency error.

Post-employment withdrawal request means a properly completed withdrawal election on any form required by the TSP in order for a participant to elect a post-employment withdrawal of his or her account balance.

Posting means the process of crediting or debiting transactions to an individual account.

Posting date means the date on which a transaction is credited or debited to a participant's account.

Regular employee contributions mean TSP contributions from taxable basic pay that are subject to the Internal Revenue Code limits on elective deferrals and contributions to qualified plans (26 U.S.C. 402(g) and 415(c), respectively), and the maximum contribution percentage limits of 5 U.S.C. 8351(b), 5 U.S.C. 8432(a), or 5 U.S.C. 8440f(a).

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

Separation from Government service means generally the cessation of employment with the Federal Government. For civilian employees it means termination of employment with 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. For uniformed services participants it means the discharge from active duty or the Ready Reserve or the transfer to inactive status or to a retired list as more fully described in 5 CFR 1604.2.

Share means a portion of an investment fund. Transactions are posted to accounts in shares at the share price of the date the transaction is posted. The number of shares for a transaction is calculated by dividing the dollar amount of the transaction by the share price of the appropriate date for the investment fund in question. The number of shares is computed to four decimal places.

Share price means the value of a share in an investment fund. The share price is calculated separately for each investment fund for each business day. The share price includes the cumulative net earnings or losses for each investment fund through the date the share price is calculated.

Source of contributions means regular employee contributions, agency automatic (1%) contributions, or agency matching contributions. All amounts in a participant's account are attributed to one of these three sources. (Catch-up contributions, transfers, rollovers, and loan payments are included in the regular employee contribution source.)

Spouse means the person to whom a TSP participant is married on the date he or she signs a form on which the TSP requests spousal information, including a spouse from whom the participant is legally separated, and a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live. [Where a participant is seeking to reclaim an account that has been forfeited pursuant to 5 CFR

1650.16, spouse also means the person to whom the participant was married on the withdrawal deadline.]

Tax-deferred balance means employee or employer contributions that would otherwise be includible in gross income if paid directly to the participant and earnings on those contributions.

Tax-exempt balance means employee contributions that are made by uniformed services participants from pay subject to the combat zone tax exclusion. It does not include earnings on such contributions.

Thrift Savings Fund or 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 Service Office or TSPSO means the office of the TSP record keeper, 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.

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.

Traditional IRA means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract).

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, Office of Finance and Management, 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 www.tsp.gov.

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

Vested account balance means that portion of an individual's account which is not subject to forfeiture under 5 U.S.C. 8432(g).

Subpart B—Miscellaneous

§ 1690.11 Plan year.

The Thrift Savings Plan's plan year is 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.

§ 1690.12 Power of attorney.

(a) A participant or beneficiary can appoint an agent to conduct business with the TSP on his or her behalf by using a power of attorney (POA). The agent is called an attorney-in-fact. The TSP must approve a POA before the agent can conduct business with the TSP; however, the TSP will accept a document that was signed by the agent before the TSP approved the POA. The TSP will approve a POA if it meets the following conditions:

(1) The POA must give the agent either general or specific powers, as explained in paragraphs (b) and (c) of this section;

(2) A notary public or other official authorized by law to administer oaths or affirmations must authenticate, attest, acknowledge, or certify the participant's or beneficiary's signature on the POA; and

(3) The POA must be submitted to the TSP recordkeeper for approval.

(b) *General power of attorney.* A general POA gives an agent unlimited authority to conduct business with the TSP, including the authority to sign any TSP-related document. By way of example, a POA grants such authority by authorizing the agent to act on behalf of the participant or beneficiary with respect to "all matters," "personal property," "Federal Government

retirement benefits," or "business transactions."

(c) *Specific power of attorney.* A specific power of attorney gives an agent the authority to conduct specific TSP transactions. A specific POA must expressly describe the authority it grants. By way of example, a specific POA may authorize an agent to "obtain information about my TSP account" or "borrow or withdraw funds from my TSP account."

[69 FR 29852, May 26, 2004]

§ 1690.13 Guardianship and conservatorship orders.

(a) A court order can authorize an agent to conduct business with the TSP on behalf of an incapacitated participant or beneficiary. The agent is called a guardian or conservator and the incapacitated person is called a ward. The TSP must approve a court order before an agent can conduct business with the TSP; however, the TSP will accept a document that was signed by the agent before the TSP approved the court order. The TSP will approve a court order appointing an agent if the following conditions are met:

(1) A court of competent jurisdiction (as defined at 5 CFR 1690.1) must have issued the court order;

(2) The court order must give the agent either general or specific powers, as explained in paragraphs (b) and (c) of this section;

(3) The agent must satisfy the TSP that he or she meets any precondition specified in the court order, such as a bonding requirement;

(4) The court order must be submitted to the TSP record keeper for approval.

(b) *General grant of authority.* A general grant of authority gives a guardian or conservator unlimited authority to conduct business with the TSP, including the authority to sign any TSP-related document. By way of example, an order gives a general grant authority by appointing a "guardian of the ward's estate," by permitting a guardian to "conduct business transactions" for the ward, or by authorizing a guardian to care for the ward's "personal property" or "Federal Government retirement benefits."

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(c) *Specific grant of authority.* A specific grant of authority gives a guardian or conservator authority to conduct specific TSP transactions. Such an order must expressly describe the authority it grants. By way of exam-

ple, an order may authorize an agent to “obtain information about the ward’s TSP account” or “borrow or withdraw funds from the ward’s TSP account.”

[69 FR 29852, May 26, 2004]