

### § 1600.33

(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; 72 FR 53413, Sept. 19, 2007]

### § 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.

### Subpart E—Automatic Enrollment Program

AUTHORITY: Sec. 102, Pub. L. 111-31, div. B, tit. I, 123 Stat. 1776, 1853 (5 U.S.C. 8432(b)(2)(A)).

SOURCE: 75 FR 43800, July 27, 2010, unless otherwise noted.

### § 1600.34 Automatic enrollment program.

(a) All newly hired Federal employees who are eligible to participate in the Thrift Savings Plan and those Federal employees who are rehired after a separation in service of 31 or more calendar days and who are eligible to participate in the TSP will automatically have 3 percent of their basic pay contributed to the TSP (default employee

### 5 CFR Ch. VI (1-1-11 Edition)

contribution) unless they elect to not contribute or elect to contribute at some other level by the end of the employee's first pay period (subject to the agency's processing timeframes).

(b) After being automatically enrolled, a participant may elect to terminate default employee contributions or change his or her contribution percentage or amount at any time.

### § 1600.35 Refunds of default employee contributions.

(a) A participant may request a refund of any default employee contributions made on his or her behalf (*i.e.*, the contributions made while under the automatic enrollment program) provided the request is received within 90 days after the date that the first default employee contribution was processed. The election must be made on the TSP's refund request form and must be received by the TSP's record keeper prior to the expiration of the 90-day period.

(1) The distribution of a refund will be reported as income to the participant on IRS Form 1099-R, but it will not be subject to the additional tax under 26 U.S.C. 72(t) (the early withdrawal penalty tax).

(2) A participant who requests a refund will receive the amount of any default employee contributions (adjusted for allocable gains and losses).

(3) Processing of refunds will be subject to the rules set out at 5 CFR part 1650.

(b) A participant will no longer be considered to be covered by the automatic enrollment program if the participant files a contribution election. Consequently, if a participant makes a contribution election during the 90-day period, the participant will only be eligible to receive as a refund an amount equal to his or her default employee contributions (adjusted for allocable gains and losses).

(c) After the expiration of the period allowed for the refund, any withdrawal must be made pursuant to 5 U.S.C. 8433 and 5 CFR part 1650.

(d) A married participant may request a refund of default employee contributions without obtaining the consent of his or her spouse or having the TSP notify the spouse of the request.