

## PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS, CONTRIBUTION ALLOCATIONS, AND AUTOMATIC ENROLLMENT PROGRAM

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AUTHORITY: 5 U.S.C. 8351, 8432(a), 8432(b), 8432(c), 8432(j), 8474(b)(5) and (c)(1), Thrift Savings Plan Enhancement Act of 2009, section 102.

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 § 1600.12 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 Funds only in accordance with 5 CFR part 1601.

[66 FR 22089, May 2, 2001, as amended at 68 FR 35494, June 13, 2003; 70 FR 32207, June 1, 2005; 75 FR 24785, May 6, 2010]

#### § 1600.12 Contribution elections.

(a) An employee may make a contribution election at any time.

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

(c) 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.

(d) A contribution election will become effective no later than the first full pay period after it is received by the employing agency.

[70 FR 32207, June 1, 2005]

#### § 1600.13 Timing of agency contributions.

An employee appointed or reappointed to a position covered by FERS is immediately eligible to receive agency contributions. In order to enable agencies to modify their personnel and payroll systems, agencies must implement this regulation as soon as practicable, but in no case later than the first full pay period in August 2009. Effective with the first

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full pay period of August 2009, all eligible employees must receive immediate agency contributions.

[74 FR 29112, June 19, 2009]

### § 1600.14 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 at any time.

(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.

[70 FR 32207, June 1, 2005]

## 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.* A participant's regular TSP contributions are subject the following limitations:

(1) *FERS percentage limit.* The maximum employee contribution from basic pay for a FERS participant for 2005 is 15 percent. After 2005 the percentage of basic pay limit will not apply and the maximum contribution will be limited only by the provisions of the Internal Revenue Code (26 U.S.C.).

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(2) *CSRS and uniformed services percentage limit.* The maximum employee contribution from basic pay for a CSRS or uniformed services participant for 2005 is 10 percent. After 2005 the percentage of basic pay limit will not apply and the maximum contribution will be limited only by the provisions of the Internal Revenue Code.

(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;

(ii) Is making regular TSP contributions at a rate that will result in the participant making the maximum regular contributions permitted under paragraph (a) of this section; and

(iii) Does not exceed the annual limit on catch-up contributions contained in the Internal Revenue Code.

(2) Elections to make catch-up contributions will 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, but the total amount of the catch-up contributions to both accounts cannot exceed the Internal Revenue Code catch-up contribution limit for the year.

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

[70 FR 32207, June 1, 2005]

## Subpart D—Transfers From Other Qualified Retirement Plans

### § 1600.31 Accounts eligible for transfer.

(a) A participant who has an open TSP account and 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 transfer) that distribution into his or her TSP account.

(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, as amended at 75 FR 78879, Dec. 17, 2010]

**§ 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 either complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper or the Agency must receive sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution. By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan indicating that it is an eligible retirement plan, a check indicating that the contribution is a direct rollover or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(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 must either complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper or the Agency must receive sufficient evidence from which

to reasonably conclude that a contribution is a valid rollover contribution. By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan indicating that it is an eligible retirement plan, a check indicating that the contribution is a direct rollover or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(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;

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(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 con-

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tributed to the TSP (default employee 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.

(e) The rules applicable to frozen accounts (5 CFR 1650.3) and applicable to deceased participants (5 CFR 1650.6) also apply to refunds of the default employee contributions.

**§ 1600.36 Matching contributions.**

(a) A participant is not entitled to keep the matching contributions and their associated earnings that are attributable to refunded default employee contributions.

(b) The matching contributions and associated earnings attributable to refunded default employee contributions shall be forfeited to the TSP and used to offset administrative expenses.

**§ 1600.37 Employing agency notice.**

Employing agencies shall furnish all new employees and all rehired employees covered by the automatic enrollment program a notice that accurately describes:

(a) That default employee contributions equal to 3 percent of the employee's basic pay will be deducted from his or her pay and contributed to the TSP on the employee's behalf if the employee does not make an affirmative election;

(b) The employee's right to elect to not have default employee contributions made to the TSP on his or her behalf or to elect to have a different percentage or amount of basic pay contributed to the TSP;

(c) That the default employee contributions will be invested in the G Fund unless the employee makes a contribution allocation and/or an interfund transfer; and

(d) The employee's ability to request a refund of any default employee contributions (adjusted for allocable gains and losses) and the procedures to request such a refund.

**PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS**

**Subpart A—General**

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1601.1 Definitions.

**Subpart B—Investing Future Deposits**

1601.11 Applicability

1601.12 Investing future deposits in the TSP 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 Error correction.

**Subpart E—Lifecycle Funds**

1601.40 Lifecycle Funds.

AUTHORITY: 5 U.S.C. 8351, 8438, 8474(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 a TSP Fund other than the G 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, as amended at 70 FR 32207, June 1, 2005]