

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), 8432d, 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

§ 1600.12 and includes the following types of elections:

(1) To make employee contributions;

(2) To change the amount of employee contributions;

(3) To change the type of employee contributions (traditional or Roth); or

(4) 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; 77 FR 26422, May 4, 2012]

§ 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.

(e) A uniformed service member may elect to contribute sums to the TSP from basic pay and special or incentive pay (including bonuses). However, in order to contribute to the TSP from special or incentive pay (including bonuses), the uniformed service member must also elect to contribute to the TSP from basic pay. A uniformed service member may elect to contribute

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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 or incentive pay (including bonuses) when the contribution election is made); those elections will take effect when the uniformed service member receives the special or incentive pay (including bonuses).

[70 FR 32207, June 1, 2005, as amended at 77 FR 26422, May 4, 2012]

§ 1600.13 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. Redesignated at 26422, May 4, 2012]

Subpart C—Program of Contributions

§ 1600.18 Separate service member and civilian contributions.

The TSP maintains uniformed services accounts separately from civilian accounts. Therefore, a participant who has made contributions as a uniformed service member and as a civilian employee will have two TSP accounts: A uniformed services account and a civilian account.

[77 FR 26422, May 4, 2012]

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§ 1600.19 Employing agency contributions.

(a) *Agency Automatic (1%) Contributions.* Each pay period, any agency that employs an individual covered by FERS must make a contribution to that employee's tax-deferred balance for the benefit of the individual equal to 1% of the basic pay paid to such employee for service performed during that pay period. The employing agency must make Agency Automatic (1%) Contributions without regard to whether the employee elects to make employee contributions.

(b) *Agency Matching Contributions.* (1) Any agency that employs an individual covered by FERS (or any service that employs an individual who has an agreement described in 37 U.S.C. 211(d)) must make a contribution to the employee's tax-deferred balance for the benefit of the employee equal to the sum of:

(i) The amount of the employee's contribution that does not exceed 3% of the employee's basic pay for such pay period; and

(ii) One-half of such portion of the amount of the employee's contributions that exceeds 3% but does not exceed 5% of the employee's basic pay for such period.

(2) A uniformed service member who receives matching contributions under 37 U.S.C. 211(d) is not entitled to matching contributions for contributions deducted from special or incentive pay (including bonuses).

(c) *Timing of employing agency contributions.* An employee appointed or reappointed to a position covered by FERS is immediately eligible to receive employing agency contributions.

[77 FR 26422, May 4, 2012]

§ 1600.20 Types of employee contributions.

(a) *Traditional contributions.* A participant may make traditional contributions.

(b) *Roth contributions.* A participant may make Roth contributions in addition to or in lieu of traditional contributions.

(c) *Contributions from tax-exempt pay.* A uniformed service member who receives pay which is exempt from taxation under 26 U.S.C. 112 will have contributions deducted from such pay and made to his or her traditional or Roth balance in accordance with an election made under paragraph (a) or (b) of this section.

[77 FR 26422, May 4, 2012]

§ 1600.21 Contributions in whole percentages or whole dollar amounts.

(a) Civilian 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. A participant may contribute a percentage for one type of contribution and a dollar amount for another type of contribution. If a participant elects to contribute a dollar amount to his or her traditional balance and a dollar amount to his or her Roth balance, but the total dollar amount elected is more than the amount available to be deducted from the participant's basic pay, the employing agency will deduct traditional contributions first and Roth contributions second.

(b) Uniformed services members may elect to contribute a basic pay and special or incentive pay (including bonus pay) subject to the limits described in § 1600.22. The election may be expressed as a whole percentage, a dollar amount, or both as determined by the member's service.

[77 FR 26423, May 4, 2012]

§ 1600.22 Maximum employee contributions.

A participant's employee contributions are subject to the following limitations:

(a) The maximum employee contribution will be limited only by the provisions of the Internal Revenue Code (26 U.S.C.).

(b) A participant may make traditional contributions and Roth contributions during the same year, but the combined total amount of the participant's tax-deferred employee contributions and Roth contributions cannot exceed the applicable Internal Revenue Code elective deferral limit for the year.

(c) A participant who has both a civilian and a uniformed services account can make employee contributions to both accounts, but the combined total amount of the participant's tax-deferred employee contributions and Roth contributions made to both accounts cannot exceed the Internal Revenue Code elective deferral limit for the year.

(c) A participant who has both a civilian and a uniformed services account can make employee contributions to both accounts, but the combined total amount of the participant's tax-deferred employee contributions and Roth contributions made to both accounts cannot exceed the Internal Revenue Code elective deferral limit for the year.

[77 FR 26423, May 4, 2012]

§ 1600.23 Catch-up contributions.

(a) A participant may make traditional catch-up contributions or Roth catch-up contributions from basic pay at any time during the calendar year if he or she:

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

(2) Is making employee contributions at a rate that will result in the participant making the maximum employee contributions permitted under § 1600.22; and

(3) Does not exceed the annual limit on catch-up contributions contained in section 414(v) the Internal Revenue Code.

(b) An election to make catch-up contributions must be made using a Catch-Up Contribution Election form (or an electronic substitute) and will be valid only through the end of the calendar year in which the election is made. An election to make catch-up contributions will be separate from the participant's regular contribution election. The election must be expressed in whole dollar amounts.

(c) A participant may make traditional catch-up contributions and Roth catch-up contributions during the same year, but the combined total amount of catch-up contributions of both types cannot exceed the applicable Internal Revenue Code catch-up contribution limit for the year.

(d) A participant who has both a civilian account and a uniformed services account may make catch-up contributions to both accounts, but the combined total amount of catch-up contributions to both accounts cannot exceed the Internal Revenue Code catch-up contribution limit for the year.

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(e) A participant cannot make catch-up contributions to his or her traditional balance from pay which is exempt from taxation under 26 U.S.C. 112.

(f) A participant may make catch-up contributions to his or her Roth balance from pay which is exempt from taxation under 26 U.S.C. 112.

(g) A participant cannot make catch-up contributions from special or incentive pay (including bonus pay).

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

[77 FR 26423, May 4, 2012]

Subpart D—Transfers From Other Qualified Retirement Plans

§ 1600.30 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 transfer or roll over that distribution into his or her existing TSP account in accordance with § 1600.31.

(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).

(c) Notwithstanding paragraph (b) of this section, the TSP will accept Roth funds that are transferred via trustee-to-trustee transfer from an eligible employer plan that maintains a qualified Roth contribution program described in section 402A of the Internal Revenue Code.

(d) The TSP will accept a transfer or rollover only to the extent the transfer or rollover is permitted by the Internal Revenue Code.

[67 FR 17604, Apr. 11, 2002, as amended at 75 FR 78879, Dec. 17, 2010. Redesignated and amended at 77 FR 26423, May 4, 2012]

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§ 1600.31 Methods for transferring eligible rollover distribution to the TSP.

(a) *Trustee-to-trustee transfer.* (1) A participant may request that the administrator or trustee of an eligible employer plan or traditional IRA transfer any or all of his or her account directly to the TSP by executing and submitting the appropriate TSP form 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 or the Agency must receive sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution (as defined by 26 CFR 1.401(a)(31)–1, Q&A–14). 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 administrator or trustee indicating that it is an eligible employer plan or traditional IRA, 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.

(2) If the distribution is from a Roth account maintained by an eligible employer plan, the plan administrator must also provide to the TSP a statement indicating the first year of the participant's Roth 5 year non-exclusion period under the distributing plan and either:

(i) The portion of the trustee-to-trustee transfer amount that represents Roth contributions (*i.e.* basis); or

(ii) A statement that the entire amount of the trustee-to-trustee transfer is a qualified Roth distribution (as defined by Internal Revenue Code section 402A(d)(2))

(b) *Rollover by participant.* A participant who has already received a distribution from an eligible employer plan or traditional IRA may roll over all or part of the distribution into the TSP. However, the TSP will not accept a rollover by the participant of Roth funds distributed from an eligible employer plan. A distribution of Roth

funds from an eligible employer plan may be rolled into the TSP by trustee-to-trustee transfer only. The TSP will accept a rollover by the participant of tax-deferred amounts if the following requirements and conditions are satisfied:

(1) The participant must complete the appropriate TSP form.

(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 employer plan or traditional IRA, 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 TSP form, 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 employer plan or traditional IRA. The transaction is not complete until the TSP record keeper receives the appropriate TSP form, executed by 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. This paragraph shall not apply to Roth funds distributed from an eligible employer plan.

(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. Redesignated and amended at 77 FR 26423, May 4, 2012]

§ 1600.32 Treatment accorded transferred funds.

(a) All funds transferred to the TSP pursuant to §§1600.30 and 1600.31 will be treated as employee contributions.

(b) All funds transferred to the TSP pursuant to §§1600.30 and 1600.31 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 §§1600.30 and 1600.31 are not subject to the limits on contributions described in § 1600.22.

[66 FR 22089, May 2, 2001. Redesignated and amended at 77 FR 26424, May 4, 2012]

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§ 1600.33 Combining uniformed services accounts and civilian accounts.

Uniformed services TSP account balances and civilian TSP account balances may be combined (thus producing one account), subject to the following rules:

(a) An account balance can be combined with another once the TSP is informed (by the participant's employing agency) that the participant has separated from Government service.

(b) Tax-exempt contributions may not be transferred from a uniformed services TSP account to a civilian TSP account.

(c) A traditional balance and a Roth balance cannot be combined.

(d) Funds transferred to the gaining account will be allocated among the TSP Funds according to the contribution allocation in effect for the account into which the funds are transferred.

(e) Funds transferred to the gaining account will be treated as employee contributions and otherwise invested as described at 5 CFR part 1600.

(f) A uniformed service member must obtain the consent of his or her spouse before combining a uniformed services TSP account balance with a civilian account that is not subject to FERS spousal rights. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(g) Before the accountants can be combined, any outstanding loans from the losing account must be closed as described in 5 CFR part 1655.

[77 FR 26424, May 4, 2012]

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 civilian employees who are eligible to participate in the Thrift Savings Plan and those civilian 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% of their basic pay contributed to the employee's traditional TSP balance (default employee contribution) unless they elect by the end of the employee's first pay period (subject to the agency's processing time frames):

(1) To not contribute;

(2) To contribute at some other level;

or

(3) To make Roth contributions in addition to, or in lieu of, traditional contributions.

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

[77 FR 26424, May 4, 2012]

§ 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 the employee's pay and contributed to the employee's traditional TSP balance on the employee's behalf if the employee does not make an affirmative contribution election;

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

(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.

[75 FR 43800, July 27, 2010, as amended at 77 FR 26424, May 4, 2012]

PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

Subpart A—General

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Subpart B—Investing Future Deposits

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Subpart E—Lifecycle Funds

1601.40 Lifecycle Funds.

AUTHORITY: 5 U.S.C. 8351, 8432d, 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