

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1604, 1605, 1606, 1620, 1640, 1645, 1650, 1651, 1653, 1655 and 1690

Various Changes to the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the Thrift Savings Plan (TSP) regulations to accommodate new TSP lifecycle investment allocation funds, eliminate references to open seasons (which Congress repealed), and to require participants to file all death benefit beneficiary designation forms with the TSP record keeper. The Executive Director is also removing obsolete and unhelpful provisions from the regulations, eliminating references to TSP form numbers, notifying TSP participants of a new mailing address for loan payments, and otherwise making the regulations easier to understand.

DATES: These regulations are effective July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942-1661.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On April 25, 2005, the Executive Director published this rule in proposed form in the **Federal Register** (70 FR 21290). The Board received no comments on the proposed rule. Therefore, the Executive Director is publishing the proposed rule as a final rule with several grammatical changes and the three amendments discussed below.

Section 1601.32 of the current TSP regulations concerns the timing of the TSP's implementation of participant contribution elections and interfund transfer requests (transaction requests). Proposed section 1601.32 would have

amended subsections (c) and (d) of that section. Subsection (c) explains how the TSP would process multiple transaction requests and subsection (d) explains how a participant could cancel a transaction request. The proposed amendments to those subsections would have simplified the text and removed from it references to TSP form numbers. Upon further consideration, the Executive Director has decided to remove subsections (c) and (d) from TSP regulations. The TSP processes transaction requests daily; therefore, participants have little opportunity to submit multiple transaction requests or to cancel transaction requests once they are submitted. Accordingly, the rules described in subsections (c) and (d) were unworkable.

Section 1605.14 of the current TSP regulations pertains to retirement system coverage errors that are corrected pursuant to the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), Pub. L. No 106-265, title II, 114 Stat. 770. If a FERCCA correction involves retroactive TSP contributions, the participant is entitled to TSP investment earnings on all retroactive TSP contributions. Current section 1605.14(b)(5) refers to these investment earnings as "lost earnings," while the current TSP term for lost earnings is "breakage." The proposed rule amended subsection (b)(5) to use the correct term. However, upon review, the Executive Director decided to remove subsection (b)(5) from the final rule because it describes OPM policy and regulations, which are subject to change.

Current section 1651.14(g) explains that the TSP will abandon a death benefit payment if it returned as undeliverable to the TSP and the TSP cannot locate the beneficiary. Proposed section 1651.14(g) describes only one of several ways the TSP will attempt to locate the beneficiary although the TSP will attempt to locate the beneficiary by whatever means are appropriate under the circumstances. Therefore, final section 1651.14(g) simply states that the TSP will attempt to locate the beneficiary before abandoning the account.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees and former employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the

criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, the Agency has considered the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, the Agency is not required to prepare a written statement regarding these regulations under 2 U.S.C. 1532.

Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects

5 CFR Parts 1600, 1601, 1606, 1620, 1645, 1650, 1651, 1653, 1690

Employment benefit plans, Government employees, Pensions, Retirement.

5 CFR Parts 1604, 1655

Employment benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1605

Administrative practice and procedure, Employment benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1640

Employment benefit plans, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

Gary A. Amelio,

Executive Director Federal Retirement Thrift Investment Board.

■ For the reasons set forth in the preamble, the Board amends 5 CFR chapter VI as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS AND CONTRIBUTION ALLOCATIONS

■ 1. The authority citation for Part 1600 continues to read as follows:

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

- 1a. Revise the heading for part 1600 to read as set forth above.

Subpart B—Elections

§ 1600.11 [Amended]

- 2. Amend § 1600.11 by removing “TSP’s investment funds” from paragraph (b) and adding in its place “TSP Funds”.
- 3. Revise § 1600.12 to read as follows:

§ 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.

§§ 1600.13 through 1600.18 [Removed]

- 4. Remove §§ 1600.13 through 1600.18.
- 5. Add a new § 1600.13 to read as follows:

§ 1600.13 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 under the following rules:
 - (1) If the effective date of the appointment is any day during the period June 1 through November 30, the agency contributions must begin the first full pay period of the following June; and
 - (2) If the effective date of the appointment is any day during the period December 1 through May 31, the agency contributions must begin the first full pay period of the following December.
- (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.

- 6. Add a new § 1600.14 to read as follows:

§ 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.

Subpart C—Program of Contributions

- 7. Revise § 1600.22 to read as follows:

§ 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.).
 - (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.

§ 1600.23 [Removed]

- 8. Remove § 1600.23.

PART 1601—[AMENDED]

- 9. Revise the Part 1601 Part Heading to read as follows:

PART 1601—PARTICIPANTS’ CHOICES OF TSP FUNDS

- 10. The authority citation for Part 1601 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

Subpart A—General

§ 1601.1 [Amended]

- 11. Amend § 1601.1 by removing “the F Fund, C Fund, S Fund or I” from paragraph (b) and by adding in its place “a TSP Fund other than the G”.

Subpart B—Investing Future Deposits

§ 1601.11 [Amended]

- 12. Amend § 1601.11 by removing “investment funds” wherever it appears and adding in its place “TSP Funds”.
- 13. Revise § 1601.12 to read as follows:

§ 1601.12 Investing future deposits in the TSP 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 TSP Funds based on the most recent contribution allocation on file for the participant.

(b) *TSP Funds availability.* All participants may elect to invest all or any portion of their deposits in any of the TSP Funds.

- 14. Amend § 1601.13 by revising paragraphs (a) and (b) to read as follows:

§ 1601.13 Elections.

(a) *Contribution allocation.* Each participant may indicate his or her choice of TSP Funds for the allocation of future deposits by using the TSP Web site or the ThriftLine, or by completing and filing the appropriate paper TSP form with the TSP record keeper in accordance with the form's instructions. 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 TSP Funds must equal 100 percent;

(2) The percentage elected by a participant for investment of future deposits in a TSP 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 a TSP Fund other than the G Fund must execute an acknowledgment of risk in accordance with § 1601.33;

(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 participant does not correctly complete a contribution allocation, the attempted allocation will have no effect. The TSP will provide the participant with a written statement of the reason the transaction was rejected.

* * * * *

Subpart C—Redistributing Participants' Existing Account Balances (Interfund Transfers)**§ 1601.21 [Amended]**

■ 15. Amend § 1601.21 by removing "TSP's investment funds" and adding in its place "TSP Funds".

■ 16. Revise § 1601.22 to read as follows:

§ 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 and filing the appropriate paper TSP form with the TSP record keeper in

accordance with the form's instructions. 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 TSP 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 a TSP Fund other than the G Fund for the first time must execute an acknowledgment of risk in accordance with § 1601.33.

(b) An interfund transfer request has no effect on 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 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

■ 17. Revise § 1601.32 to read as follows:

§ 1601.32 Timing and posting dates.

(a) *Posting dates.* The date on which the TSP processes or posts a contribution allocation or interfund transfer request (transaction request) is subject to a number of factors, including some that are outside of the control of the TSP, such as power outages, the failure of telephone service, unusually heavy transaction volume, and acts of God. These factors also could affect the availability of the TSP Web site and the ThriftLine. Therefore, the TSP cannot guarantee that a transaction request will be processed on a particular day. However, the TSP will process transaction requests under ordinary circumstances according to the following rules:

(1) A transaction request 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 12:00 noon eastern time of any business day, will ordinarily be posted that business day. A transaction request entered into the system after 12:00 noon eastern time of any business day will

ordinarily be posted on the next business day.

(2) A transaction 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 transaction request made on a paper TSP form will ordinarily be posted under the rules in paragraph (a)(1) of this section, based on when the TSP record keeper enters the form into the TSP system. 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.

■ 18. Revise § 1601.33 to read as follows:

§ 1601.33 Acknowledgment of risk.

(a) A participant who wants to invest in a TSP 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 a paper TSP form.

§§ 1601.34 and 1601.35 [Removed and Redesignated]

■ 19. Remove §§ 1601.34 and 1601.35 and redesignate § 1601.36 as § 1601.34.

■ 20. Add a new subpart E to read as follows:

Subpart E—Lifecycle Funds**§ 1601.40 Lifecycle Funds.**

The Executive Director will establish TSP Lifecycle Funds, which are target date asset allocation portfolios. The TSP Lifecycle Funds will invest solely in the funds established by the TSP pursuant to 5 U.S.C. 8438.

PART 1604—UNIFORMED SERVICES ACCOUNTS

■ 21. The authority citation for Part 1604 continues to read as follows:

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

§ 1604.2 [Amended]

- 22. Amend § 1604.2 by removing the definitions of “eligible retirement plan” and “TSP record keeper”.
- 23. Revise § 1604.3 to read as follows:

§ 1604.3 Contribution elections.

A service member may make contribution elections as described in 5 CFR part 1600. 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 elect to contribute to the TSP from basic pay in order to contribute to the TSP from incentive pay and special pay (including bonuses). 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.

- 24. Amend § 1604.4 by revising paragraphs (a) and (b) to read as follows:

§ 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. The maximum TSP regular employee contribution (including contributions from pay earned in a combat zone) which a service member may make for 2005 is 10 percent of basic pay. 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.).

(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.

* * * * *

- 25. Amend § 1604.5 by revising paragraphs (a)(1) and (b)(3) to read as follows:

§ 1604.5 Separate service member and civilian accounts.

(a) * * *

(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 (26 U.S.C.) contribution limits.

* * * * *

(b) * * *

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

* * * * *

- 26. Amend § 1604.7 by revising paragraph (c) to read as follows:

§ 1604.7 Withdrawals.

* * * * *

(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 a traditional IRA or eligible employer plan, the share of the withdrawal attributable to combat zone contributions (if any) can be transferred only if the IRA or plan accepts such funds.

* * * * *

- 27. Amend § 1604.8 by revising paragraph (c) to read as follows:

§ 1604.8 Death benefits.

* * * * *

(c) *Trustee-to-trustee transfers.* The surviving spouse of a TSP participant can request the TSP to transfer a death benefit payment to a traditional IRA or eligible employer 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 plan accepts such funds.

* * * * *

- 28. Amend § 1604.9 by revising paragraph (c) to read as follows:

§ 1604.9 Court orders and legal processes.

* * * * *

(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 a traditional IRA or eligible employer plan. If the payee requests the TSP to transfer all or a portion of the court-ordered payment to an IRA or 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.

* * * * *

§ 1604.10 [Amended]

- 29. Amend § 1604.10 by removing “; and” from paragraph (a)(3) and adding a period in its place; and by removing paragraph (a)(4).

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

- 30. The authority citation for Part 1605 continues to read as follows:

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

Subpart A—General

- 31. Amend paragraph (b) of § 1605.1 by removing the definitions of “Board error”, “Employing agency error”, and “Record keeper error”, and by adding a new definition of “Error” to read as follows:

§ 1605.1 Definitions.

* * * * *

(b) * * *

Error means any act or omission by the Board, the TSP Record Keeper, or the participant's employing agency that is not in accordance with applicable statutes, regulations, or administrative procedures that are made available to employing agencies and/or TSP participants. It does not mean an act or omission caused by events that are beyond the control of the Board, the TSP Record Keeper, or the participant's employing agency.

* * * * *

- 32. Revise § 1605.2 to read as follows:

§ 1605.2 Calculating, posting, and charging breakage.

(a) The TSP will calculate breakage on late contributions, makeup agency contributions, and loan payments as described by § 1605.15(b). This breakage calculation is subject to the following rules:

(1) The TSP will not calculate breakage if contributions or loan payments are posted within 30 days of the “as of” date, or if the total amount on a late payment record or the total agency contributions on a current payment record is less than \$1.00; and

(2) The TSP will not take the participant's interfund transfers into account when determining breakage.

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

(1) For contributions or loan payments with “as of” dates on or after January 1, 2000, the TSP will:

(i) Use the participant's contribution allocation on file for the “as of” date to determine how the funds 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 funds to have been invested in the G Fund;

(ii) Determine the number of shares of the applicable investment funds the participant would have received had the contributions or loan payments 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 or loan payments been made on the "as of" date; and

(iii) Determine the dollar value on the posting date of the number of shares the participant would have received had the contributions or loan payments been made on time. The difference between the dollar value of the contribution or loan payment on the posting date and the dollar value of the contribution or loan payment on the "as of" date is the breakage.

(2) For contributions and loan payments with an "as of" date before January 1, 2000, the TSP will:

(i) Value the contributions and loan payments 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 Funds;

(ii) Determine the number of shares the participant would have received at conversion; and

(iii) Determine the dollar value of those shares on the posting date by using the greater of either the G Fund share price or the average share price for all of the TSP Funds. The difference between the dollar value of the contribution or loan payment on the posting date and the dollar value of the contribution or loan payment on the "as of" date is the breakage.

(c) *Posting contributions and loan payments.* Makeup and late contributions, late loan payments, and 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 or late loan payment, the TSP will charge the agency 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, or late loan payment, 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 or late loan payments 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 transaction, without netting any gains or losses attributable to different "as of" dates. In addition, gains and losses from different sources of contributions or different TSP Funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, TSP Fund, and source of contributions.

Subpart B—Employing Agency Errors

■ 33. Amend § 1605.11 by revising paragraphs (c)(5), (c)(6) and (c)(8) to read as follows:

§ 1605.11 Makeup of missed or insufficient contributions.

* * * * *

(c) * * *

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

(6) Employee makeup contributions will be included for purposes of applying the annual limit contained in Internal Revenue Code (I.R.C.) section 402(g) (26 U.S.C. 402(g)(1)). For purposes of applying that limit, 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 I.R.C. 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 I.R.C. section 402(g).

* * * * *

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

* * * * *

■ 34. Revise § 1605.12 to read as follows:

§ 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 agencies may only request negative adjustments of erroneous contributions made on or after January 1, 2000. 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 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 attributable pay date and the amount, by source, of the erroneous contribution.

(2) A negative adjustment record may be for any part of the contributions made for the attributable pay date. However, for each source of contributions, the negative adjustment may not exceed the amount of the contributions made for that date, minus any prior negative adjustments for the same date.

(c) *Processing negative adjustments.* To determine current value, a negative adjustment will be allocated among the TSP Funds as it would have been allocated on the attributable pay period (as reported by the employing agency).

(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, for each source of contributions and investment fund:

(i) Determine the dollar value of the amount to be removed by using the

monthly returns for the applicable TSP Fund;

(ii) Determine the number of shares that the dollar value determined in paragraph (c)(1)(i) of this section would have purchased on the conversion date; 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, for each source of contributions and TSP Fund:

(i) Determine the number of shares that represent the amount of the contribution to be removed using 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 equal to or greater than the amount of the proposed negative adjustment, the full amount of the adjustment will be removed from the participant's account and returned to the employing agency. 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 removed from the participant's account and returned to the employing agency. However, the employing agency must refund to the participant the full amount of the erroneous contribution;

(3) If an employing agency requests the removal of erroneous employee contributions from a participant's account, it must also request the removal, under paragraph (e) of this section, of 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 earnings attributable to those contributions will remain in the account until the participant removes them with an in-service or a post-employment withdrawal. If the participant is not eligible to maintain a TSP account, the employing agency must submit an employee data record to the TSP indicating that the participant has

separated from Federal service (this will allow the TSP-eligible participant to make a post-employment withdrawal election).

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

(1) The amount calculated under paragraph (c) of this section will be removed from the participant's account.

(2) 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;

(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 equal to or 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;

(4) 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

(5) 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)(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 TSP Funds will not be netted against each other. Instead, for each attributable pay date

each source of contributions and each TSP Fund will be treated separately for purposes of these calculations. The amount computed by applying the rules in this section will be removed from the participant's account pro rata from all funds, by source, based on the allocation of the participant's account among the TSP Funds when the transaction is posted; and

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

■ 35. Amend § 1605.13 by revising paragraphs (a)(2)(ii), (a)(3), (b)(3), and (d) to read as follows:

§ 1605.13 Back pay awards and other retroactive pay adjustments.

(a) * * *

(2) * * *

(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 if he or she would have been eligible to make such an election but for the erroneous separation.

(3) All contributions made under this paragraph (a) and associated breakage will be invested according to the participant's contribution allocation on the posting date. Breakage will be calculated using the G Fund share prices in accordance with § 1605.2 unless otherwise required by the employing agency or the court or other tribunal with jurisdiction over the back pay case.

(b) * * *

(3) All 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 in accordance with § 1605.2.

* * * * *

(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 Federal service 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 notify 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. Restored funds will not incur breakage.

* * * * *

■ 36. Amend § 1605.14 by removing the word "excess" from the last sentence of paragraph (a)(1) and by revising paragraphs (b)(4) and (c)(3) to read as follows:

§ 1605.14 Misclassified retirement system coverage.

* * * * *

(b) * * *

(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 on contributions from all three sources. Breakage 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 payment 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

* * * * *

(c) * * *

(3) The TSP will consider a participant to be separated from Federal service for all TSP purposes and the employing agency must submit an employee data record to reflect separation from Federal service. 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).

* * * * *

■ 37. Amend § 1605.16 by revising paragraphs (a) and (b) to read as follows:

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

(a) *Agency's discovery of error.* 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 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 it was discovered, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(b) *Participant's discovery of error.* 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 retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim with his or her employing agency to have the error corrected 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; if the participant files a claim to correct any such error after that time, the agency may do so at its sound discretion.

* * * * *

Subpart C—Board or TSP Record Keeper Errors

■ 38. Revise § 1605.21 to read as follows:

§ 1605.21 Plan-paid breakage and other corrections.

(a) *Plan-paid breakage.* (1) Subject to paragraph (a)(3) of this section, if, because of an error committed by the Board or the TSP record keeper, a participant's account is not credited or charged with the investment gains or losses the account have received had the error not occurred, the account will be credited accordingly.

(2) Errors that warrant the crediting of breakage under paragraph (a)(1) of this section include, but are not limited to:

- (i) Delay in crediting contributions or other money 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 breakage under paragraph (a)(1) of this section if the participant had the use of the money on which the investment gains 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's error, the TSP will compute gains or losses under paragraph (a)(1) of this section for the relevant period based upon the investment funds in which the affected money would have been invested had the error not occurred. If the participant did not have, and should not have had, a TSP account during this period, then the TSP will use the G Fund rate of return for the relevant period and return the money 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 breakage, if the Executive Director determines that the correction would serve the interests of justice and fairness and equity among all participants of the TSP.

■ 39. Amend § 1605.22 by revising paragraph (c)(2) to read as follows:

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

* * * * *

(c) * * *

(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 the TSP provides the participant with a transaction confirmation reflecting the error, or makes available on its Web site a participant statement detailing the error. The Board or TSP record keeper must promptly correct such errors.

* * * * *

Subpart D—Miscellaneous Provisions

■ 40. Amend § 1605.31 by revising paragraphs (b), (c)(1) and (d) to read as follows:

§ 1605.31 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 5 CFR 1620.42.

(c) * * *

(1) The employee is entitled to receive the agency automatic (1%) contributions that he or she would have received had he or she 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.

* * * * *

(d) *Breakage.* The employee is entitled to breakage on agency contributions made under paragraph (c) of this section. The employee will elect

to have the calculation based on either the contribution allocation(s) on file for the participant during the period of military service or 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).

PART 1606—[REMOVED AND RESERVED]

■ 41. Under the authority of 5 U.S.C. 8474(c)(1), remove and reserve part 1606.

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

■ 42. The authority citation for Part 1620 is revised to read as follows:

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) of Pub. L. 104–106, 110 Stat. 186, and sec. 7202(m)(2) of Pub. L. 101–508, 104 Stat. 1388.

Subpart E also issued under 5 U.S.C. 8432b(1) and 8440e.

Subpart A—General

§ 1620.1 [Amended]

■ 43. Amend § 1620.1 by removing “, waives open season rules,” from the third sentence.

■ 44. Revise § 1620.2 to read as follows:

§ 1620.2 Definitions.

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

Subpart B—Cooperative Extension Service, Union, and Intergovernmental Personnel Act Employees

■ 45. Amend § 1620.12 by revising the third sentence to read as follows:

§ 1620.12 Employing authority contributions.

* * * The employing authority can commence or terminate employer contributions at any time after providing 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. * * *

■ 46. Revise the Subpart C heading to read as follows:

Subpart C—Justices and Judges

§ 1620.20 [Amended]

■ 47. Amend § 1620.20 by adding the word “judge” to paragraphs (a)(2) and (b) after the word “magistrate”.

■ 48. Amend § 1620.21 by adding the word “judge” to paragraph (b)(2) after the word “magistrate”, and by revising paragraph (a) to read as follows:

§ 1620.21 Contributions.

(a) An individual covered under this subpart can make contributions to the TSP from basic pay in the amount described at 5 CFR 1600.22(a)(1). Unless stated otherwise in this subpart, he or she is covered by the same rules that apply to a CSRS participant in the TSP.

* * * * *

§ 1620.22 [Amended]

■ 49. Amend § 1620.22 by adding the word “judge” to paragraph (a)(2)(ii) after the word “magistrate”.

■ 50. Amend § 1620.23 by revising paragraph (b) to read as follows:

§ 1620.23 Spousal rights.

* * * * *

(b) A current or former spouse of a bankruptcy judge, a United States magistrate judge, 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 is covered under this subpart.

Subpart D—Nonappropriated Fund Employees

§ 1620.33 [Removed and Reserved]

■ 51. Remove and reserve § 1620.33.

Subpart E—Uniformed Services Employment and Reemployment Rights Act (USERRA)—Covered Military Service

■ 52. Revise § 1620.42 to read as follows:

§ 1620.42 Processing TSP contribution elections.

(a) *Current contribution election.* 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. If the employee separated to perform military service, he or she must make a new contribution election to begin current contributions.

(b) *Makeup contribution election.* Upon reemployment or return to pay status, an employee has 60 days to elect to make up missed contributions. An employee’s right to make retroactive TSP contributions will expire if an election is not made within 60 days of the participant’s reemployment or return to pay status.

(c) *Makeup contributions.* Makeup 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 determining the makeup contributions, unless the employee submits a new contribution election which he or she could otherwise have made but for the performance of military service.

(2) An employee who terminated contributions within two months of entering military service will also be eligible to make a retroactive contribution election to be effective on the date the contributions were terminated.

■ 53. Revise § 1620.43 to read as follows:

§ 1620.43 Agency payments to record keeper; agency ultimately responsible.

(a) *Agency making payments to record keeper.* The current employing agency is responsible for making payments to the record keeper for all contributions, regardless of whether some of that expense is ultimately chargeable to a prior employing agency.

(b) *Agency ultimately chargeable with expense.* The agency that reemployed the participant is ordinarily the agency ultimately chargeable with the expense of agency contributions and the breakage attributable to them. 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 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.

■ 54. Amend § 1620.45 by revising paragraphs (a)(1), (a)(2), (c)(2) and (d) to read as follows:

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

(a) * * *

(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 deducting 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 maximum 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) The TSP may close the loan account and declare it to be a taxable distribution if the TSP does not receive documentation that the employee entered into nonpay status. However, the taxable distribution can be reversed in accordance with paragraph (c) of this section.

* * * * *

(c) * * *

(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 maximum 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

* * * * *

(d) *Breakage*. Employees will not receive breakage on amounts returned to their accounts under this section.

■ 55. Amend § 1620.46 by revising paragraphs (b), (d) and (e) to read as follows:

§ 1620.46 Agency responsibilities.

* * * * *

(b) *Agency records; procedure for reimbursement*. The agency making payments to the record keeper for all contributions and attributable breakage 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 this expense, 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.

* * * * *

(d) *Agency automatic (1%) contributions*. Employing agencies must calculate the agency automatic (1%) contributions for all reemployed (or restored) FERS employees and report those contributions to the record keeper 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 complete and file the appropriate paper TSP form with the TSP record keeper in accordance with the form's instructions to have those funds restored.

* * * * *

PART 1640—PERIODIC PARTICIPANT STATEMENTS

■ 56. The authority citation for Part 1640 continues to read as follows:

Authority: 5 U.S.C. 8439(c)(1) and (c)(2), 5 U.S.C. 8474(b)(5) and (c)(1).

■ 57. Amend § 1640.3 by revising paragraph (f)(3) to read as follows:

§ 1640.3 Statement of individual account.

* * * * *

(f) * * *

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

* * * * *

■ 58. Amend § 1640.4 by revising paragraphs (a)(5) and (b)(2) to read as follows:

§ 1640.4 Account transactions.

(a) * * *

(5) Transfers among TSP Funds;

* * * * *

(b) * * *

(2) TSP Funds affected;

* * * * *

■ 59. Amend § 1640.5 by revising the section heading and the first sentence of the introductory language to read as follows:

§ 1640.5 TSP Fund information.

The Board will provide to each participant four (4) times each calendar year a statement concerning each of the TSP Funds. * * *

* * * * *

PART 1645—CALCULATION OF SHARE PRICES

■ 60. The authority citation for Part 1645 continues to read as follows:

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

■ 61. Revise § 1645.2 to read as follows:

§ 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 TSP Fund to the appropriate individual account by the TSP record keeper, using the share price for the date the transaction is posted.

■ 62. Revise § 1645.3 to read as follows:

§ 1645.3 Calculation of total net earnings for each TSP Fund.

(a) Each business day, net earnings will be calculated separately for each TSP Fund.

(b) Net earnings for each fund will equal:

(1) The sum of the following items, if any, accrued since the last business day:

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

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

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

(iv) Capital gains or losses on investments of the fund, net of transaction costs.

(2) Minus the accrued administrative expenses of the fund, determined in accordance with § 1645.4.

(c) The net earnings for each TSP fund determined in accordance with paragraph (b) of this section will be added to the residual net earnings for that 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.

■ 63. Revise § 1645.4 to read as follows:

§ 1645.4 Administrative expenses attributable to each TSP Fund.

A portion of the administrative expenses accrued during each business day will be charged to each TSP Fund. A 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 a particular fund will be charged solely to that fund.

(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 TSP Funds, based on the respective fund balances on the last business day of the prior month end.

■ 64. Revise § 1645.5 to read as follows:

§ 1645.5 Calculation of share prices.

(a) *Calculation of share price*. The share price for each TSP Fund for each business day will apply to all sources of contributions for that fund. The total net earnings (as computed under § 1645.3)

for each fund will be divided by the total fund basis (as computed under § 1645.6) for that fund. The resulting number, computed to ten decimal places, represents the incremental change in the value of that fund from the last business day to the current business day. The share price for that 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 TSP Fund are divided by the total fund basis in that fund, there will be residual net earnings attributable to the truncation described in paragraph (a) of this section which will not be included in the incremental change in the share price of the fund for that business day. The residual net earnings that are not included in the incremental share price for the fund may be added to the earnings for that fund on the next business day.

■ 65. Revise § 1645.6 to read as follows:

§ 1645.6 Basis for calculation of share prices.

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

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 66. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8531, 8433, 8434, 8435, 8474(b)(5) and 8474(c)(1).

Subpart A—General

§ 1650.1 [Amended]

■ 67. Amend § 1650.1 by removing from paragraph (b) the definitions of “Eligible employer plan” and Traditional IRA”.

■ 68. Revise § 1650.4 to read as follows:

§ 1650.4 Certification of truthfulness.

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.

■ 69. Add a new § 1650.6 to read as follows:

§ 1650.6 Deceased participant.

(a) The TSP will cancel a pending withdrawal request if it processes a written notice that a participant is deceased. 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.

(b) If the TSP processes a withdrawal request before being notified that a participant is deceased, the funds cannot be returned to the TSP.

Subpart B—Post-Employment Withdrawals

■ 70. Amend § 1650.11 by adding a new paragraph (c) to read as follows:

§ 1650.11 Withdrawal elections.

* * * * *

(c) If a participant’s vested account balance is less than \$200 when he or she separates from Federal service, the TSP will automatically pay the balance to the participant at his or her TSP address of record. The participant will not be eligible for any other payment option or be allowed to remain in the TSP.

■ 71. Amend § 1650.17 by revising paragraph (a) to read as follows and by removing the word “final” from the last sentence of paragraph (c) and adding in its place the word “fixed”:

§ 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 and those that are entered into the record keeping system by 12:00 noon eastern time will ordinarily be processed that night; those entered after 12:00 noon eastern 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.

* * * * *

Subpart C—Procedures for Post-Employment Withdrawals

■ 72. Amend § 1650.24 by revising the first sentence to read as follows:

§ 1650.24 How to obtain a post-employment withdrawal.

To request a post-employment withdrawal, a participant must submit

to the TSP record keeper a properly completed paper TSP post-employment withdrawal request form or use the TSP Web site to initiate a request. * * *

§ 1650.25 [Removed and Reserved]

■ 73. Remove and reserve § 1650.25.

Subpart E—Procedures for In-Service Withdrawals

■ 74. Amend § 1650.41 by revising the first sentence to read as follows:

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based withdrawal, a participant must submit to the TSP record keeper a properly completed paper TSP age-based withdrawal request form or use the TSP Web site to initiate a request. * * *

■ 75. Amend § 1650.42(a) by revising the first sentence to read as follows:

§ 1650.42 How to obtain a financial hardship withdrawal.

(a) To request a financial hardship withdrawal, a participant must submit to the TSP record keeper a properly completed paper TSP hardship withdrawal request form or use the TSP Web site to initiate a request. * * *

* * * * *

§ 1650.43 [Removed and Reserved]

■ 76. Remove and reserve § 1650.43.

Subpart G—Spousal Rights

■ 77. Amend § 1650.63 by revising paragraph (a) introductory text to read as follows:

§ 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 such an exception must be submitted to the TSP record keeper on the appropriate TSP paper form, accompanied by the following:

* * * * *

PART 1651—DEATH BENEFITS

■ 78. The authority citation for Part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c), 8474(b)(5) and 8474(c)(1).

■ 79. Amend § 1651.2 by revising paragraphs (b) and (d) to read as follows:

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

* * * * *

(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 withdrawal 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 as a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of the TSP withdrawal request form, or as a death benefit in accordance with paragraph (a) of this section if no beneficiary designated on the withdrawal request survives the participant.

(3) If the participant requested a joint life annuity without additional features, the TSP will pay the funds as a death benefit to the joint life annuitant if he or she survives the participant, or 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 as a death benefit to the joint life annuitant if he or she survives the participant, or as a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of the TSP withdrawal request form if the joint life annuitant does not survive the participant, or 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 annuity payments have begun, the annuity vendor will make or stop the payments in accordance with the annuity method selected.

* * * * *

(d) *Investment of a TSP account upon notice of death.* If a participant dies with any portion of his or her TSP account in a TSP 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 from the participant's employing agency reporting the participant's death. The account will accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid out under this part.

■ 80. Revise § 1651.3 to read as follows:

§ 1651.3 Designation of beneficiary.

(a) *Filing requirements.* To designate a beneficiary of a TSP account, a participant must complete and file a TSP designation of beneficiary form with the TSP record keeper. A participant may designate more beneficiaries than the TSP form accommodates by attaching additional pages to the TSP designation of beneficiary form in accordance with the instructions on the form. A valid TSP designation of beneficiary 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 that beneficiary or the knowledge or consent of the participant's spouse.

(c) *Validity requirements.* To be valid, a TSP designation of beneficiary form must be:

(1) Received by the TSP record keeper on or before the date of the participant's death; and

(2) Signed by the participant and two witnesses. The participant must either sign the form in the presence of the witnesses or acknowledge his signature on the form to the witnesses. If the participant attaches an additional page or pages to the designation of beneficiary form, each additional page must be signed and witnessed in the same manner (by the same witnesses) as the form itself, and must follow the format of the TSP designation of beneficiary form. A witness must be age 21 or older. A witness designated as a beneficiary will not be entitled to receive a death benefit payment; if a witness is the only named beneficiary, the designation of beneficiary 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 participant cannot use a will to designate a TSP beneficiary.

■ 81. Revise § 1651.4 to read as follows:

§ 1651.4 How to change or cancel a designation of beneficiary.

(a) *Change.* To change a designation of beneficiary, the participant must submit to the TSP record keeper a new TSP designation of beneficiary form meeting the requirements of § 1651.3 to the TSP record keeper. If the TSP receives more than one valid TSP designation of beneficiary form, it will honor the form with the latest date signed by the participant. A participant may change a TSP beneficiary at any time, without the knowledge or consent of any person, including his or her spouse.

(b) *Cancellation.* A participant may cancel all prior designations of beneficiaries by sending the TSP record keeper either a new valid designation of beneficiary form meeting the requirements of § 1651.3, or a letter. If the participant uses a letter to cancel a designation of beneficiary, it must be signed and witnessed in the same manner as a TSP designation of beneficiary form; it must explicitly state that all prior designations are canceled; and the TSP record keeper must receive it on or before the date of the participant's death.

(c) *Will.* A participant cannot use a will to change or cancel a TSP designation of beneficiary.

■ 82. Revise § 1651.10 to read as follows:

§ 1651.10 Deceased and non-existent beneficiaries.

(a) *Designated beneficiary dies before participant.* The share of any designated beneficiary who predeceases the participant will be paid pro rata to the participant's other designated beneficiary or beneficiaries. If no designated beneficiary survives the participant, the account will be paid according to the order of precedence set forth in § 1651.2(a).

(b) *Trust designated as beneficiary but not in existence.* If a participant designated a trust or other entity as a beneficiary and the entity does not exist on the date of the participant's death, or is not created by will or other document that is effective upon the participant's death, the amount designated to the entity 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 TSP designation of beneficiary form dies before the participant, the beneficiary's

share will be paid equally to other living beneficiaries 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. A copy of a beneficiary's certified death certificate is required in order to establish that the beneficiary has died, and when.

■ 83. Revise § 1651.13 to read as follows:

§ 1651.13 How to apply for a death benefit.

The TSP has created a paper form that a potential beneficiary must use to apply for a TSP death benefit. The TSP must receive this form before a death benefit can be paid. Any individual can file this form with the TSP record keeper. The individual submitting the form must attach to the form a certified copy of the participant's death certificate. The TSP record keeper's acceptance of this form does not entitle the applicant to benefits.

■ 84. Amend § 1651.14 by revising paragraphs (b), (c) and (g) to read as follows:

§ 1651.14 How payment is made.

* * * * *

(b) *Payment.* Payment is made separately to each entitled beneficiary. The TSP will send the payment to the address that is provided on the participant's TSP designation of beneficiary form unless the TSP receives written notice of a more recent address. 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 a traditional IRA or eligible employer 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

use the transfer form provided by the TSP.

* * * * *

(g) If a death benefit payment is returned as undeliverable, the TSP record keeper will attempt to contact the beneficiary. 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 returns.

* * * * *

■ 85. Amend § 1651.16 by revising the last sentence of paragraph (c) to read as follows:

§ 1651.16 Missing and unknown beneficiaries.

* * * * *

(c) * * * The TSP may require the beneficiary to apply for the death benefit with a TSP form and submit proof of identity and relationship to the participant.

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

■ 86. The authority citation for Part 1653 continues to read as follows:

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

Subpart A—Retirement Benefits Court Orders

■ 87. Amend § 1653.5 by revising paragraphs (a), (d) and (e) to read as follows:

§ 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 options. 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 of all or a portion of the payment to a traditional IRA or eligible employer plan. The TSP decision letter will provide the forms a payee must use to choose one of these payment options.

(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 a tax withholding election 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.

* * * * *

(d) Payment will be made *pro rata* from all TSP 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 TSP 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. 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 a traditional IRA or eligible employer plan.

(2) If the payment is made to anyone other than the current or former spouse of the participant, the payment is taxable to the participant and is subject to Federal income tax withholding by the participant. The participant can elect the amount to be withheld by filing with the TSP the forms provided to the participant with the decision letter. 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.

* * * * *

PART 1655—LOAN PROGRAM

■ 88. The authority citation for Part 1655 continues to read as follows:

Authority: 5 U.S.C. 8433(g) and 8474.

■ 89. Amend § 1655.1 by revising the definition of "Date of application" in paragraph (b) to read as follows:

§ 1655.1 Definitions.

* * * * *

(b) * * *

Date of application means the day on which the TSP record keeper receives the loan application, either electronically or on the TSP Web site or on a paper TSP form.

* * * * *

■ 90. Amend § 1655.2 by revising paragraph (c) to read as follows:

§ 1655.2 Eligibility for loans.

* * * * *

(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);

* * * * *

■ 91. Amend § 1655.9 by revising paragraphs (b) and (c) to read as follows:

§ 1655.9 Effect of loans on individual account.

* * * * *

(b) The loan principal will be disbursed from that portion of the account represented by employee contributions and attributable earnings, pro rata from each TSP 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 TSP Fund in accordance with the participant's most recent contribution allocation.

■ 92. Amend § 1655.10 by revising paragraph (a) to read as follows:

§ 1655.10 Loan application process.

(a) Any participant may apply for a loan by submitting a completed TSP loan application form to the TSP record keeper.

* * * * *

■ 93. Amend § 1655.12 by revising paragraph (a)(1) to read as follows:

§ 1655.12 Loan agreement.

(a) * * *

(1) If the participant submits a paper loan application, the TSP record keeper will mail the loan agreement, and other information as appropriate, to the participant.

* * * * *

PART 1690—THRIFT SAVINGS PLAN

■ 94. The authority citation for Part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

Subpart A—General

■ 95. Amend § 1690.1:

- a. By removing the definitions of "Open season" and "Investment fund";
■ b. By adding a new definition of "TSP Fund" to read as follows; and
■ c. By revising the definitions of "Account balance", "Contribution allocation", "Share", "Share price", and "TSP record keeper" to read as follows:

§ 1690.1 Definitions.

* * * * *

Account balance means the sum of the dollar balances for each source of contributions in each TSP Fund for an individual account. The dollar balance in each fund on a given day is the product of the total number of shares in that fund multiplied by the share price for the fund on that day.

* * * * *

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 Funds.

* * * * *

Share means a portion of a TSP 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 fund in question. The number of shares is computed to four decimal places.

Share price means the value of a share in a TSP Fund. The share price is calculated separately for each fund for each business day. The share price includes the cumulative net earnings or losses for each fund through the date the share price is calculated.

* * * * *

TSP Fund means an investment fund established pursuant to 5 U.S.C. 8438 and an investment allocation fund established pursuant to 5 CFR Part 1601, subpart E.

TSP record keeper means the entities the Board engages to perform record keeping services for the Thrift Savings Plan.

* * * * *

Subpart B—Miscellaneous

■ 96. Add a new § 1690.14 to read as follows:

§ 1690.14 Checks made payable to the Thrift Savings Plan.

(a) Accord and satisfaction. The TSP does not agree to accept less than the total amount due by negotiating an instrument such as a check, share draft or money order with a restrictive legend on it (such as "payment in full" or "submitted in full satisfaction of claims"), or by negotiating an instrument that is conditionally tendered to the TSP with an offer of compromise.

(b) TSP Payment Address. The TSP has established an address for the receipt of specified TSP payments. The TSP will not answer correspondence mailed to that payment address.

[FR Doc. 05-10870 Filed 5-31-05; 8:45 am]

BILLING CODE 6760-01-P