

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**5 CFR Parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1650, 1651, 1653, 1655, 1690**

**Employee Elections To Contribute to the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds From the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous**

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the Board's regulations to reflect the processes and terminology of the Thrift Savings Plan's (TSP) new record keeping system, to codify several policy decisions related to the implementation of this new system, to permit the making of catch-up contributions by TSP participants who are age 50 and over, and to add new methods of post-employment withdrawals. This rule also will allow participants more options and greater flexibility with which to manage their TSP accounts.

**EFFECTIVE DATE:** This interim rule is effective June 13, 2003.

**ADDRESSES:** Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Board's FAX is (202) 942-1676.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Forrest on (202) 942-1659, or Merritt A. Willing on (202) 942-1666.

**SUPPLEMENTARY INFORMATION:** The Board administers the 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 have been codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP

participant's account are held in trust for the participant.

Congress amended FERSA in 1996 by enacting the Thrift Savings Plan Act of 1996, Public Law 104-208, 110 Stat. 3009, which permitted the Executive Director to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system.

Thus, the Executive Director is amending the TSP regulations that will be affected by the implementation of the new record keeping system. As explained below, the final rule also adopts uniform definitions, eliminates obsolete regulations, and reorganizes various sections of the regulations to make them more easily understood.

The Board published these regulations in proposed form in the **Federal Register** (67 FR 42856) on June 25, 2002. The Board received no comment on the proposed rule.

After the Board published the proposed regulations, Congress amended FERSA to permit participants who are age 50 and older to make supplemental contributions to the TSP called "catch-up" contributions. See Federal Thrift Savings Plan Catch-up Contributions Act, Public Law 107-304, 116 Stat. 2363 (November 27, 2002). The Board will offer qualified participants the opportunity to make these catch-up contributions in the second half of 2003. Therefore, on April 4, 2003, the Board published a notice of proposed rulemaking in the **Federal Register** (68 FR 16449), proposing to amend the Board's regulations to permit these contributions. The April 4 notice also proposed additional changes to the Board's regulations to accommodate the operation of the new record keeping system. The Board received no comment on this notice.

Accordingly, the Board is adopting the June 25, 2002, proposed rule as an interim rule with a few substantive revisions, which are described below.

#### **Catch-Up Contributions**

The Federal Thrift Savings Plan Catch-up Contributions Act amended 5 U.S.C. 8351(b), 8432(a), and 8440f(a) to authorized TSP participants who are age 50 or older to make additional TSP contributions. These additional contributions exceed the amount the participant could otherwise make by law and are known as "catch-up contributions." Congress' initial reason for permitting these contributions was to allow participants to catch up for

years when they were not employed, took time away from work to raise a family, or were otherwise unable to contribute their retirement plans. Congress later decided to allow anyone age 50 or over to make these contributions, but, nevertheless, retained the name "catch-up." Thus, "catch-up" contributions are supplemental contributions from taxable basic pay made by TSP participants who are age 50 and over. These contributions exceed the maximum that a participant could make by law. This interim rule adds a new paragraph (b) to § 1600.22 to explain how eligible participants can make these catch-up contributions.

Specifically, a participant is eligible to make catch-up contributions as long as he or she is: (1) At least 50 years of age during the calendar year (even if the participant's birthday is December 31, of that year); and (2) currently contributing the maximum amount allowed according to the TSP percentage of basic pay limitations, or the Internal Revenue Code elective deferral limit.

In addition, under 5 U.S.C. 8351(b), 8432(a) and 8440f(a), TSP catch-up contributions must be made from basic pay. Therefore, members of the uniformed services may not make catch-up contributions from special, bonus, or incentive pay. In addition, TSP catch-up contributions must comply with section 414(v) of the Internal Revenue Code (26 U.S.C. 414(v)), which requires catch-up contributions to be elective deferrals. Because elective deferrals are, by definition, made from taxable pay, the law also does not allow members of the uniformed services to make catch-up contributions from tax-exempt basic pay (for example, from the basic pay that is fully exempt due to service in a combat zone). Finally, catch-up contributions are not eligible for agency matching contributions. See 5 U.S.C. 8432(c)(2); 37 U.S.C. 211(d).

#### **Breakage**

The TSP will credit late contributions, and in some cases makeup contributions, with the investment gains and losses they would have earned had the contributions been timely made. The loss incurred or the gain realized on late or makeup contributions is called "breakage." The proposed rule explains how breakage will be computed after implementation of the new record keeping system, with one exception.

Specifically, the proposed rule states that late contributions (and some makeup contributions) will be credited with breakage based on the contribution allocation for the participant's account at the time the contributions should

have been made. However, when the new record keeping system is implemented, it will contain only three and one-half years of converted contribution allocation history and contribution records for each participant. Therefore, if the TSP corrects an error that occurred more than three years before implementation of the new system, the TSP will compute breakage based on a calculated rate of investment return derived by the record keeping system, instead of basing breakage on the participant's contribution allocation as of the time of the error. The calculated rate of return will be either the Government Securities Investment Fund (G Fund) rate, or the average of the rates of return for all of the TSP investment funds, whichever rate is greater. The interim rule codifies this procedure in § 1605.2 and § 1605.13.

In addition, because the TSP will not have a record of the participant's contribution history before January 1, 2000, it will be unable to determine the actual present value of an erroneous contribution made to a participant's account before January 1, 2000. Therefore, as explained in interim § 1605.12 and § 1605.14, the TSP will not process an agency-submitted negative adjustment to remove erroneous contributions from a participant's account if the contributions were made before January 1, 2000.

#### **Agency Submission of Contribution and Loan Payments**

Employing agencies are required to submit contributions and loan payments to the TSP record keeper within 30 days after the pay date associated with their submissions. Contributions and loan payments submitted beyond the 30-day period are subject to lost earnings. Proposed § 1605.15(c) contemplated reducing that time period to 2 days. However, § 1605.15(c) of the interim rule retains the 30-day period; therefore, contributions and loan payments submitted more than 30 days after the pay date associated with the agency's submission will be subject to breakage.

#### **Hardship In-Service Withdrawals**

Under 5 U.S.C. 8433(h)(1)(B), a participant who is still employed by the Federal Government can obtain a financial hardship withdrawal from the TSP to meet certain specified financial obligations. Hardship withdrawals are governed by 5 CFR part 1650. The regulations in effect under the old record keeping system required a participant to document income and expenses on a hardship withdrawal

application, which the TSP would use to calculate how much the participant could withdraw from his or her account. This procedure was retained by proposed §§ 1650.32 and 1650.42. However, interim §§ 1650.32 and 1650.42 require the participant to perform the calculation with the use of a worksheet provided with the hardship withdrawal application, and to request a withdrawal amount based on that calculation.

#### **Death Benefits**

If the TSP learns that a separated participant died after making a withdrawal request, the TSP will not process the withdrawal. Instead, the TSP will pay the funds as a death benefit according to the order of precedence found at 5 U.S.C. 8424(d). If the participant chose to withdraw his or her account as a joint life annuity or an annuity with a refund or 10-year option, the TSP will pay the account to the joint annuitant or to the beneficiary or beneficiaries of the annuity as designated by the participant.

The TSP considered a change to this process in the proposed rule. Specifically, proposed § 1651.2(b) and (c) stated that the TSP would give effect to a participant's withdrawal request in limited circumstances. The Board has decided to retain the current policy because of issues regarding the negotiability of a payment made to a deceased participant.

#### **TSP Loans**

This interim rule codifies two new loan processes not discussed in the proposed rule. Under the old record keeping system, if a participant missed TSP loan payments, but resumed the payments within 90 days of the first missed payment, the missed payments would be added to the end of the participant's loan term. If the participant resumed making loan payments more than 90 days after the first missed payment, the participant was required to reamortize the loan.

Proposed § 1655.14(e) stated that a participant who missed loan payments would be required to make up that missed payment by the end of the next calendar quarter, or the TSP would declare the loan a taxable distribution. Proposed § 1655.14(f) also provided that interest would not accrue on a missed loan payment, as long as the participant made up the payment within a specified time.

Section 1655.14(e) of the interim rule instead requires a participant to become current in his or her loan by making up all missed payments by the end of the next calendar quarter (even those

payments missed in the second calendar quarter). In addition, interim § 1655.14(f) provides that interest will accrue on all missed loan payments from the time they were due.

#### **Funds Returned to the TSP as Undeliverable**

This TSP is adopting new procedures for the processing of funds that are disbursed from the TSP but returned as undeliverable. The new procedures are codified by the interim rule at § 1650.5 (regarding withdrawals), § 1651.14(g) (court ordered payments), § 1653.5(k) (death benefits), and § 1655.13(e) and § 1655.14(b) (loans). If a withdrawal, a refunded loan overpayment, court-ordered payment, or death benefit payment is returned to the TSP as undeliverable, the TSP will attempt to locate the participant or payee in order to reissue the funds. If the TSP cannot locate the participant or payee within 60 days, the funds will be forfeited to the TSP. The participant or payee may reclaim the funds, but investment earnings will not accrue on them after they are first disbursed from the TSP. In the case of a returned loan disbursement, the TSP will use the returned proceeds to repay the participant's loan if the TSP is unable to locate the participant and reissue the loan.

#### **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, Public Law 104-4, section 201, 109 Stat. 48, 64, 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, a statement under section 202, 109 Stat. 48, 64-65, is not required.

### Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. These rules are not major rules as defined at 5 U.S.C. 804(2).

### Waiver of 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find good cause for making this interim rule effective in less than 30 days. This rule explains the processes of the new TSP record keeping system and codifies policy decisions made in connection with its development. It was impossible to establish in advance an effective date for this rule because it was impossible to predict the implementation date of the new system until it was imminent. However, because the new system replaced the old system, the Board's regulations must be amended to accurately describe the TSP processes to participants, beneficiaries, agencies and the uniformed services. Therefore, the Board has decided to make this rule effective immediately, on an interim basis, and to request comments from interested parties.

### List of Subjects

5 *CFR* Parts 1600, 1601, 1603, 1606, 1645, 1650, 1651, 1653, 1690

Employee benefit plans, Government employees, Pensions, Retirement.

5 *CFR* Parts 1604, 1655

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

5 *CFR* Part 1605

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

5 *CFR* Part 1640

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

Gary A. Amelio,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons set out in the preamble, the Executive Director of the Federal Retirement Thrift Investment Board amends 5 *CFR* chapter VI as follows:

### PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

■ 1. The authority citation for part 1600 is revised to read as follows:

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

■ 2. Section 1600.1 is revised to read as follows:

#### § 1600.1 Definitions.

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

■ 3. Section 1600.11 is amended by revising paragraph (a), introductory text, to read as follows:

#### § 1600.11 Types of elections.

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

\* \* \* \* \*

■ 4. Section 1600.12 is amended by revising paragraphs (a) and (b) to read as follows:

#### § 1600.12 Period for making contribution elections.

(a) *Participation upon initial appointment or reappointment.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS may make a TSP contribution election within 60 days after the effective date of the appointment.

(b) *Open season elections.* Any employee may make a contribution election during an open season. Each year, an open season will begin on April 15 and will end on June 30; a second open season will begin on October 15 and end on December 31. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season will be extended through the end of the next business day.

\* \* \* \* \*

■ 5. Section 1600.13 is amended by revising paragraph (a) to read as follows:

#### § 1600.13 Effective dates of contribution elections.

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

\* \* \* \* \*

■ 6. Section 1600.14 is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

#### § 1600.14 Method of election.

(a) A participant must submit a contribution election to his or her employing agency. Employees may use either the paper TSP election form (*i.e.*, Form TSP-1, TSP-1-C, TSP-U-1, or TSP-U-1-C) or, if available from their employing agency, electronic media to make an election. If an electronic medium is used, all relevant elements contained on the paper form must be included in the electronic medium.

(b) A contribution election must:

(1) Be completed in accordance with the instructions on the form, if a paper form is used;

\* \* \* \* \*

■ 7. Section 1600.22 is revised to read as follows:

#### § 1600.22 Maximum contributions.

(a) *Regular employee contributions.* The amount a participant can contribute to the TSP under this paragraph is subject to the Internal Revenue Code (I.R.C.) limitations described in paragraphs (a)(3) and (4) of this section.

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

(2) *CSRS and uniformed services percentage limit.* The maximum employee contribution from basic pay for a CSRS or uniformed services participant for December 2002 through November 2003 is 8 percent per pay period. The maximum contribution will increase one percent in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(3) *I.R.C. limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a dollar limit on the amount an employee may save on a tax-deferred basis through regular contributions to the TSP. The TSP will not accept any regular employee contributions that exceed this limit. If a participant contributes to the TSP and another plan, and the combined contributions exceed the section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform to the limit.

(4) *I.R.C. limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Regular employee contributions and employer contributions made to the TSP will be restricted to the I.R.C. section 415(c) limit. No regular employee contributions may be made to the TSP for any year to the extent that the sum of the regular employee contributions and the employer contributions for the year will exceed the section 415(c) limit.

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

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

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

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

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

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

■ 8. Section 1600.32 is amended by revising paragraph (b)(3) to read as follows:

**§ 1600.32 Methods for transferring eligible rollover distribution to TSP.**

\* \* \* \* \*

(b) \* \* \*

(3) The participant must submit the completed Form TSP-60 or TSP-U-60, together with a certified check, cashier's check, cashier's draft, money order, treasurer's check from a credit union, or personal check, made out to the "Thrift Savings Plan," for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of Federal taxes.

\* \* \* \* \*

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

■ 9. The authority citation for part 1601 continues to read as follows:

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

**Subpart A—General**

■ 10. Section 1601.1 is revised to read as follows:

**§ 1601.1 Definitions.**

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

(b) As used in this part:

*Acknowledgment of risk* means an acknowledgment that any investment in the F Fund, C Fund, S Fund, or I Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

■ 11. Subparts B and C are revised to read as follows:

**Subpart B—Investing Future Deposits**

Sec.

1601.11 Applicability

1601.12 Investing future deposits in the TSP investment funds.

1601.13 Elections.

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

1601.21 Applicability.

1601.22 Methods of requesting an interfund transfer.

**Subpart B—Investing Future Deposits**

**§ 1601.11 Applicability.**

This subpart applies only to the investment of future deposits to the TSP's investment funds, including contributions, loan payments, and transfers or rollovers from traditional IRAs and eligible employer plans; it does not apply to redistributing participants' existing account balances among the investment funds, which is covered in subpart C of this part.

**§ 1601.12 Investing future deposits in the TSP investment funds.**

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

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

**§ 1601.13 Elections.**

(a) *Contribution allocation.* Each participant may indicate his or her

choice of investment funds for the allocation of future deposits by using the TSP Web site or the ThriftLine, or by completing Form TSP-50 (for civilians) or Form TSP-U-50 (for uniformed services), Investment Allocation. The following rules apply to contribution allocations:

(1) Contribution allocations must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100 percent;

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

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

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

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation. If a separated participant is rehired and had not withdrawn his or her entire TSP account, the participant's last contribution allocation before separation from service will be effective until a new allocation is made.

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

(c) *Contribution elections.* A participant may designate the amount of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

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

#### § 1601.21 Applicability.

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

#### § 1601.22 Methods of requesting an interfund transfer.

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

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

(2) The percentages elected by the participant will be applied to the balances in each source of contributions and to both tax-deferred and tax-exempt balances on the effective date of the interfund transfer.

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

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

(c) If an interfund transfer on a Form TSP-50 or Form TSP-U-50 is found to be invalid pursuant to § 1601.34, the purported transfer will not be made. The TSP will provide the participant with a written statement of the reason the transaction was rejected.

### Subpart D—Contribution Allocations and Interfund Transfer Requests

■ 12. Section 1601.32 is revised to read as follows:

#### § 1601.32 Timing and posting dates.

(a) *Posting dates.* (1) A contribution allocation or an interfund transfer

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

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

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

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

(b) *Limit.* There is no limit on the number of contribution allocations or interfund transfer requests that may be made by a participant.

(c) *Multiple contribution allocations or interfund transfer requests.* (1) If two or more contribution allocations or two or more interfund transfer requests are received for a participant and would be posted on the same day, the following rules will apply:

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

(ii) If one or more of the contribution allocations or interfund transfer requests are made through the TSP Web site or the ThriftLine, only the contribution allocation or interfund transfer request entered at the latest time will be posted.

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

the order the TSP record keeper receives them.

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

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

(ii) Central time is used for determining the date and time on which a transaction is entered and confirmed through the TSP Web site or the ThriftLine.

(d) *Cancellation of contribution allocation or interfund transfer request.*

(1) A contribution allocation or an interfund transfer request may be cancelled through the TSP Web site or the ThriftLine, through written correspondence, or by contacting a participant service representative.

(2) A contribution allocation or an interfund transfer request may be cancelled by entering the cancellation on the TSP Web site or the ThriftLine only up to the deadline, described in paragraph (a) of this section, which applies to the original request. If a change or cancellation is received after the deadline, the original request will be processed as scheduled. Any subsequent request will then be processed in turn.

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

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

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

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

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

(B) If the date of a cancellation letter is the same as the date of a pending contribution allocation or an interfund transfer request and the request was

made on Form TSP-50 or Form TSP-U-50, the form will be cancelled.

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

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

■ 13. Section 1601.34 is revised to read as follows:

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

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

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

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

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

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

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

**PART 1603—VESTING**

■ 14. The authority citation for part 1603 continues to read as follows:

**Authority:** 5 U.S.C. 8432(g), 8432b(h)(1), 8474(b)(5) and (c)(1).

■ 15. Section 1603.1 is revised to read as follows:

**§ 1603.1 Definitions.**

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

(b) As used in this part:

*Service* means:

(1) Any non-military service that is creditable under either 5 U.S.C. chapter 83, subchapter III, or 5 U.S.C. 8411. However, that service is to be determined without regard to any time limitations, any deposit or redeposit requirements contained in those statutory provisions after performing the service involved, or any requirement that the individual give written notice of that individual's desire to become

subject to the retirement system established by 5 U.S.C. chapters 83 or 84; or

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

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

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

*Year of service* means one full calendar year of service.

■ 16. Section 1603.2 is amended by revising paragraph (a) to read as follows:

**§ 1603.2 Basic vesting rules.**

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

\* \* \* \* \*

**PART 1604—UNIFORMED SERVICES ACCOUNTS**

■ 17. The authority citation for part 1604 is revised to read as follows:

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

■ 18. Section 1604.4(a)(1) is revised to read as follows:

**§ 1604.4 Contributions.**

(a) \* \* \*

(1) *Temporary percentage limitations.* Subject to paragraph (a)(2) of this section, the maximum TSP regular employee contribution (including contributions from pay earned in a combat zone) a service member may make for January through November 2003 is 8 percent of basic pay per pay period. The maximum contribution will increase one percent in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraph (a)(2) of this section.

\* \* \* \* \*

**PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS**

■ 19. The authority citation for part 1605 is revised to read as follows:

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

**Subpart A—General**

■ 20. Section 1605.1 is revised to read as follows:

**§ 1605.1 Definitions.**

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

(b) As used in this part:

*“As of” date* means the date on which a TSP contribution or other transaction entailing acquisition of investment fund shares should have taken place.

Employing agencies use this date on payment records to report makeup or late contributions or late loan payments.

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

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

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

*Employing agency error* means any act or omission by an employing agency, which is not in accordance with all applicable statutes, regulations, or administrative procedures, including internal procedures promulgated by the employing agency and TSP procedures provided to employing agencies by the Board.

*FERCCA correction* means the correction of a retirement coverage error pursuant to the Federal Erroneous Retirement Coverage Corrections Act, title II, Public Law 106-265, 114 Stat. 770.

*Late contributions* means:

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

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

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

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

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

*Makeup contributions* are employee contributions that should have been deducted from a participant's basic pay or employer contributions that should have been charged to an employing agency on an earlier date, but were not deducted or charged and, consequently, are being deducted or charged currently.

*Negative adjustment* means the removal of money from a participant's TSP account by an employing agency.

*Negative adjustment record* means a data record submitted by an employing agency to remove from a participant's TSP account money that the agency had previously submitted in error.

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

*Payment record* means a data record submitted by an employing agency to report contributions or loan payments to a participant's TSP account.

*Record keeper error* means any act or omission by the TSP record keeper, which is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants.

■ 21. A new § 1605.2 is added to Subpart A to read as follows:

**§ 1605.2 Calculating, posting, and charging breakage.**

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

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

(1) *For contributions with "as of" dates after December 31, 2000,* the TSP will use three steps to calculate breakage:

(i) The TSP will use the participant's contribution allocation on file for the "as of" date to determine how the contributions would have been invested. If there is no contribution allocation on file, or one cannot be derived based on the investment of contributions, the TSP will consider the contributions to have been invested in the G Fund;

(ii) The TSP will then determine the number of shares of the applicable investment funds the participant would

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

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

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

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

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

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

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

(e) *Posting of multiple contributions.* If the TSP posts multiple makeup or late contributions with different "as of" dates for a participant on the same business day, the amount of breakage charged to the employing agency or forfeited to the TSP will be determined separately for each contribution,

without netting any gains or losses attributable to different "as of" dates. In addition, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, investment fund, and source of contributions.

**Subpart B—Employing Agency Errors**

■ 22. Section 1605.11 is revised to read as follows:

**§ 1605.11 Makeup of missed or insufficient contributions.**

(a) *Applicability.* This section applies whenever, as the result of an employing agency error, a participant does not receive all of the TSP contributions to which he or she is entitled. This includes situations in which an employing agency error prevents a participant from making an election to contribute to his or her TSP account, in which an employing agency fails to implement a contribution election properly submitted by a participant, in which an employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or in which an employing agency otherwise erroneously contributes less to the TSP for a participant's account than it should have. The corrections required by this section must be made in accordance with this part and the procedures provided to employing agencies by the Board in bulletins or other guidance. It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to error correction under this section.

(b) *Employer makeup contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required under section 8432(c)(2), or matching contributions that are authorized under 37 U.S.C. 211(d), the following rules apply:

(1) The employing agency must promptly submit all missed contributions to the TSP record keeper on behalf of the affected participant. For each pay date involved, the employing agency must submit a separate payment record showing the "as of" date for the contributions.

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

(c) *Employee makeup contributions.* Within 30 days of receiving information from his or her employing agency indicating that the employing agency acknowledges that an error has occurred which has caused a smaller amount of employee contributions to be made to the participant's account than should have been made, a participant may elect to establish a schedule to make up the deficient contributions through future payroll deductions. Employee makeup contributions can be made in addition to any TSP contributions that the participant is otherwise entitled to make. The following rules apply to employee makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the dollar amount of the contributions to be made each pay period over the duration of the schedule. The contribution amount per pay period may vary during the course of the schedule, but the total amount to be contributed must be established when the schedule is created. After the schedule is created, a participant may, with the agreement of his or her agency, elect to change his or her payment amount (e.g., to accelerate payment). The length of the schedule may not exceed four times the number of pay periods over which the error occurred.

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions which is less than four times the number of pay periods over which the error occurred. The ceiling may not, however, be less than twice the number of pay periods over which the error occurred.

(3) The employing agency must implement the participant's schedule of makeup contributions as soon as practicable.

(4) For each pay date involved, the employing agency must submit a separate payment record showing the "as of" date for which the employee contribution should have been made. An employee is not eligible to make up contributions with an "as of" date occurring during a period of six months following a financial hardship in-service withdrawal, as provided in 5 CFR 1650.33. An employee may make up contributions during a period of ineligibility due to a hardship withdrawal as long as the "as of" date is for an earlier period.

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

the share price of the applicable investment fund(s) on the posting date.

(6) Employee makeup contributions will not be considered in applying the maximum amount per pay period that a participant is permitted to contribute to the TSP, but will be included for purposes of applying the annual limit contained in section 402(g) of the Internal Revenue Code (26 U.S.C. 402(g)(1)). For purposes of applying the annual limit of section 402(g), employee makeup contributions will be applied against the limit for the year of the "as of" date.

(i) Before establishing a schedule of employee makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions for the same year, would exceed the annual contribution limit(s) contained in section 402(g) for the year(s) with respect to which the contributions are being made.

(ii) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit contained in section 402(g).

(7) A schedule of employee makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

(8) A participant may elect to terminate a schedule of employee makeup contributions at any time, but a termination is irrevocable. A participant may not elect to make partial payments under the schedule. If a participant separates from Government service, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck.

(9) At the same time that a participant makes up missed employee contributions, the employing agency must make any agency matching contributions that would have been made had the error not occurred. Agency matching contributions must be submitted pursuant to the rules set forth in paragraph (b) of this section. A participant may not receive matching contributions associated with any employee contributions that are not actually made up. If employee makeup contributions are suspended in

accordance with paragraph (c)(7) of this section, the payment of agency matching contributions must also be suspended.

(10) If a participant transfers to an employing agency different from the one by which the participant was employed at the time of the missed contributions, it remains the responsibility of the former employing agency to determine whether employing agency error was responsible for the missed contributions. If it is determined that such an error has occurred, the current agency must take any necessary steps to correct the error. The current agency may seek reimbursement from the former agency of any amount that would have been paid by the former agency had the error not occurred.

(11) Employee makeup contributions may be made only by payroll deduction from basic pay or, for uniformed services participants, from basic pay, incentive pay, or special pay, including bonus pay. Contributions by check, money order, cash, or other form of payment directly from the participant to the TSP, or from the participant to the employing agency for deposit to the TSP, are not permitted.

■ 23. Section 1605.12 is amended by revising paragraphs (a), (b)(1), (c), (f)(1), and (f)(2) 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 it is only available to remove erroneous contributions made after December 31, 2000. Erroneous contributions made on or before December 31, 2000, will remain in the participant's account. Excess contributions addressed by this section include, for example, excess employee contributions that result from employing agency error and excess employer contributions. This section does not address excess contributions resulting from a FERCCA correction; those contributions are addressed in § 1605.14.

(b) \* \* \*

(1) To remove money from a participant's account, the employing agency must submit, for each attributable pay date involved, a negative adjustment record stating the amount of the erroneous contribution being removed, the attributable pay date with respect to which the erroneous contribution was made, and the source(s) of the contributions.

\* \* \* \* \*

(c) *Processing negative adjustments.* A negative adjustment will be allocated

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

(1) If the attributable pay date for the erroneous contribution is on or before the date TSP accounts were converted to shares (and after December 31, 2000), the TSP will:

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

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

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

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

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

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

\* \* \* \* \*

(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 investment funds will not be netted against each other. Instead, for each attributable pay date each source of contributions and each investment fund will be treated separately for purposes of these calculations;

(2) The amount computed by application of the rules in this section will be removed from the participant's

account *pro rata* from all investment funds, by source, based on the allocation of the participant's most recent account balance; and

\* \* \* \* \*

■ 24. Section 1605.13 is amended by removing paragraph (a)(4) and by revising paragraphs (a)(3), (b)(3), and (d) to read as follows:

**§ 1605.13 Back pay awards and other retroactive pay adjustments.**

(a) \* \* \*

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

(b) \* \* \*

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

(i) If the retroactive adjustment relates to an "as of" date after December 31, 2000, the TSP will use the participant's contribution allocation on the "as of" date; or

(ii) If the retroactive adjustment relates to an "as of" date on or before December 31, 2000, the rate of return will be either the G Fund rate or the average of the rates of return for all of the TSP investment funds, whichever rate is greater.

\* \* \* \* \*

(d) *Prior withdrawal of TSP account.* If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount withdrawn to his or her TSP account. The right to restore the withdrawn funds will expire if the participant does not provide notice to the Board within 90 days of reinstatement. If the participant returns the funds that were withdrawn, the number of shares purchased will be determined by using the share price of the applicable investment fund on the posting date. No breakage will be incurred on any restored funds.

\* \* \* \* \*

■ 25. Section 1605.14 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

**§ 1605.14 Misclassified retirement system coverage.**

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected:

(1) Employee contributions that exceed the applicable contribution percentage for the pay period(s) involved may remain in the participant's account. The participant may request the return of excess employee contributions made after December 31, 2000; those contributed on or before December 31, 2000, must remain in the participant's account. If the participant requests a refund of excess employee contributions, the employing agency must submit a negative adjustment records to remove these funds, under the procedure described in § 1605.12.

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

(b) If a FERS participant is misclassified by an employing agency as a CSRS participant, when the misclassification is corrected:

(1) The participant may not elect to have the contributions made while classified as CSRS removed from his or her account;

(2) The participant may, under the rules of § 1605.11, elect to make up contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification;

(3) The employing agency must, under the rules of § 1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified;

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

makeup contributions may be submitted on either current or late payment records; and

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

\* \* \* \* \*

■ 26. A new § 1605.15 is added to read as follows:

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

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

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

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

**PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS**

■ 27. The authority citation for part 1606 continues to read as follows:

**Authority:** 5 U.S.C. 8432a, 8474(b)(3) and (c)(1). Section 1606.5 also issued under Title II, Pub. L. 106–265, 114 Stat. 770.

**Subpart A—General Provisions**

■ 28. Section 1606.1 is revised to read as follows:

**§ 1606.1 Definitions.**

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

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

(c) As used in this part:

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

■ 29. Section 1606.2 is revised to read as follows:

**§ 1606.2 Purpose.**

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

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

■ 30. Section 1606.4 is amended by revising paragraph (c) to read as follows:

**§ 1606.4 Applicability.**

\* \* \* \* \*

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

\* \* \* \* \*

**Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions**

■ 31. Section 1606.5 is amended by revising paragraph (a)(4) to read as follows:

**§ 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.**

(a) \* \* \*

(4) The lost earnings will be posted to the participant's account based on the contribution allocation in effect on the posting date.

\* \* \* \* \*

**§§ 1606.7 and 1606.8 [Removed]**

■ 32. Sections 1606.7 and 1606.8 are removed.

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

■ 33. Section 1606.9 is removed.

**Subpart E—Processing Lost Earnings Records**

■ 34. Section 1606.13 is revised to read as follows:

**§ 1606.13 Calculation and crediting of lost earnings.**

(a) Lost earnings records submitted pursuant to this part will be processed daily by the TSP record keeper.

(b) In calculating lost earnings attributable to a lost earnings record, earnings and losses for different sources of contributions or investment funds within a source will not be offset against each other.

(c) Notwithstanding any other provision of this part, where the net lost earnings computed in accordance with this part on any lost earnings record are less than zero within a source of contributions, the employing agency will not be credited with respect to that source of contributions. The amount of the negative lost earnings will be removed from the participant's account and applied against TSP administrative expenses.

**Subpart F—[Removed]**

■ 35. Subpart F of part 1606 is removed.

■ 36. Part 1640 is revised to read as follows:

**PART 1640—PERIODIC PARTICIPANT STATEMENTS**

Sec.

- 1640.1 Definitions.
- 1640.2 Information regarding account.
- 1640.3 Statement of individual account.
- 1640.4 Account transactions.
- 1640.5 Investment fund information.
- 1640.6 Methods of providing information.

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

**§ 1640.1 Definitions.**

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

**§ 1640.2 Information regarding account.**

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

**§ 1640.3 Statement of individual account.**

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

- (a) Name, Social Security number, and date of birth under which the account is established;
- (b) Retirement system coverage and employment status of the participant, as provided by the employing agency;
- (c) Statement whether the participant has a beneficiary designation on file with the TSP record keeper;
- (d) Contribution allocation that is current at the end of the statement period;
- (e) Beginning and ending dates of the period covered by the statement;
- (f) The following information for and, as of the close of business on the ending date of, the period covered by the statement:
  - (1) The total account balance and tax-exempt balance, if applicable;
  - (2) The account balance and activity for each source of contributions;
  - (3) The account balance and activity in each of the investment funds, including the dollar amount of the transaction, the share price, and the number of shares; and
  - (4) Loan information and activity, if applicable;
  - (g) Any other information concerning the account that the Board determines should be included in the statement.

**§ 1640.4 Account transactions.**

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

- (1) Contributions;
- (2) Withdrawals;
- (3) Forfeitures;
- (4) Loan disbursements and repayments;
- (5) Transfers among investment funds;
- (6) Adjustments to prior transactions;
- (7) Transfers or rollovers from traditional individual retirement accounts (IRAs) and eligible employer plans; and
- (8) Any other transaction that the Executive Director determines will

affect the status of the individual account.

(b) Where relevant, the statement will contain the following information concerning each transaction identified in paragraph (a) of this section:

- (1) Type of transaction;
- (2) Investment funds affected;
- (3) Date the transaction was posted and, where relevant, any earlier dates on which the transaction should have been posted or from which the calculation of the amount of the transaction was derived;
- (4) Source of the contributions affected by the transaction;
- (5) Amount of the transaction (in dollars and in shares);
- (6) The share price(s) at which the transaction was posted; and
- (7) Any other information the Executive Director deems relevant.

**§ 1640.5 Investment fund information.**

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

- (a) A summary description of the type of investments made by the fund, written in a manner that will allow the participant to make an informed decision; and
- (b) The performance history of the type of investments made by the fund, covering the five-year period preceding the date of the evaluation.

**§ 1640.6 Methods of providing information.**

(a) *Individual account statement.* The information concerning each participant's individual account described in §§ 1640.3 and 1640.4 will be sent to the participant at the participant's address of record in the TSP system by first class mail, unless otherwise elected under paragraph (b) of this section. It is the participant's responsibility to provide his or her current address to his or her agency or service or, in the case of a separated participant, to the TSP record keeper. For employed participants, the employing agency must provide the current address to the TSP record keeper.

(b) *Individual account statements available from the TSP Web site.* As an alternative to receiving an account statement by mail as provided in paragraph (a) of this section, participants may elect to receive their individual account statements by accessing the TSP Web site. Participants who elect to receive their statements from the TSP Web site will not receive a statement by mail.

(c) *Investment information.* The investment information described in § 1640.5 will be furnished to each participant by:

- (1) Mailing the information to the participant by the method described in paragraph (a) of this section;
- (2) Making the information available to the participant on the TSP Web site as described in paragraph (b) of this section; or
- (3) Including the information in material published by the Board and distributed in a manner reasonably designed to reach the participant. This includes distributing the material through the participant's employing agency or service, or, in the case of a separated employee, through the TSP record keeper.

■ 37. Part 1645 is revised to read as follows:

**PART 1645—CALCULATION OF SHARE PRICES****Sec.**

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

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

**§ 1645.1 Definitions.**

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

(b) As used in this part:

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

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

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

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

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

**§ 1645.2 Posting of transactions.**

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

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

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

(b) Net earnings for each investment fund will equal:

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

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

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

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

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

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

(c) The net earnings for each investment fund determined in accordance with paragraph (b) of this section will be added to the residual net earnings for that investment fund from the previous business day, as described in § 1645.5(b), to produce the total net earnings. The total net earnings will be used to calculate the share price for that business day.

**§ 1645.4 Administrative expenses attributable to each investment fund.**

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

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

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

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

**§ 1645.5 Calculation of share prices.**

(a) *Calculation of share price.* The shares of each investment fund will

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

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

**§ 1645.6 Basis for calculation of share prices.**

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

■ 38. Part 1650 is revised to read as follows:

**PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN****Subpart A—General**

Sec.

- 1650.1 Definitions.
- 1650.2 Eligibility for a TSP withdrawal.
- 1650.3 Frozen accounts.
- 1650.4 Certification of truthfulness.
- 1650.5 Returned funds

**Subpart B—Post-Employment Withdrawals**

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

**Subpart C—Procedures for Post-Employment Withdrawals**

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

**Subpart D—In-Service Withdrawals**

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

**Subpart E—Procedures for In-Service Withdrawals**

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

**Subpart F—[Reserved]****Subpart G—Spousal Rights**

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

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

**Subpart A—General****§ 1650.1 Definitions.**

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

(b) As used in this part:

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

*In-service withdrawal* means an age-based or financial hardship withdrawal from the TSP that may be available to a participant who has not yet separated from Government service.

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

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

#### **§ 1650.2 Eligibility for a TSP withdrawal.**

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

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

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

(d) A separated participant who is reemployed in a position in which he or she is eligible to participate in the TSP is subject to the following rules:

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

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

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

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

(g) If a participant has a civilian TSP account and a uniformed services TSP

account, the rules in this part apply to each account separately. For example, the participant is eligible to make one age-based in-service withdrawal from each account.

#### **§ 1650.3 Frozen accounts.**

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

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

#### **§ 1650.4 Certification of truthfulness.**

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

(b) If the Board receives a written allegation from the spouse that the participant may have misrepresented his or her marital status (in the case of a CSRS participant), the spouse's address, or that the signature of the spouse of a FERS participant or uniformed services member was forged, the Board will submit the information or document in question to the spouse and request that he or she state in writing that the information is false or that the spouse's signature was forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three samples of his or her signature.

(c) If the spouse affirms the allegation, the Board will conduct an investigation. If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his or her marital status or, in the case of a CSRS participant, his or her spouse's address, or submitted the withdrawal form with a forged spousal signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

#### **§ 1650.5 Returned funds.**

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

### **Subpart B—Post-Employment Withdrawals**

#### **§ 1650.11 Withdrawal elections.**

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

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

#### **§ 1650.12 Single payment.**

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

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

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

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

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

#### **§ 1650.13 Monthly payments.**

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

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

(2) *A monthly payment amount calculated based on life expectancy.*

Payments based on life expectancy are determined using the factors set forth in the Internal Revenue Service life expectancy tables codified at 26 CFR 1.401(a)(9)–9, Q&A 1 and 2. The monthly payment amount is calculated by dividing the account balance by the factor from the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments are to begin. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the prior December 31 account balance by the factor in the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments will be made. There is no minimum amount for a monthly payment calculated based on this method.

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

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

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

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

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

#### **§1650.14 Annuities.**

(a) A participant electing a full post-employment withdrawal can use all or a portion of his or her account balance

to purchase a life annuity. The portion of the participant's account balance elected and available for the annuity purchase must be at least \$3,500. The TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance or the portion specified, unless an amount must be paid directly to the participant to satisfy any applicable minimum distribution requirement of the Internal Revenue Code. In the event that a minimum distribution is required before the date of the first annuity payment, the TSP will compute that amount and pay it directly to the participant.

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

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

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

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

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

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

(i) A person has an "insurable interest in the participant" if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

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

(iii) A participant can establish that a person not described in paragraph (d)(3)(ii) of this section has an insurable interest in him or her by submitting, with the annuity request, an affidavit from a person other than the participant or the joint annuitant that demonstrates that the designated joint annuitant has an insurable interest in the participant (as described in paragraph (d)(3)(i) of this section).

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

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

(1) A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the amount of the payment that is made when both the participant and the joint annuitant are alive.

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

(3) Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option. However, the 100 percent survivor benefit can only be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court

order) if the joint annuitant is not more than 10 years younger than the participant.

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

(1) *Cash refund*. This feature provides that, if the participant (and joint annuitant, where applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of monthly payments already made will be paid to the beneficiary(ies) designated by the participant (or by the joint annuitant, where applicable). This feature can be combined with any type of annuity.

(2) *Ten-year certain*. This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will be made to the beneficiary(ies) until 120 payments have been made. This feature can be combined with any single life annuity, but cannot be combined with a joint life annuity.

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

#### **§ 1650.15 Abandonment of inactive accounts.**

A separated participant must select a full withdrawal option by the time he or she reaches age 70½. If the participant does not do so and the TSP is unable to locate the participant, the inactive account will be declared abandoned in accordance with § 1650.16.

#### **§ 1650.16 Required withdrawal date.**

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

(b) For account balances of \$200 or more, a separated participant may elect to withdraw his or her account or to begin receiving payments before the date described in paragraph (a) of this section, but is not required to do so.

(c) In the event that a participant does not withdraw his or her account or begin receiving payments in accordance with paragraph (a) of this section, the Board will transfer all of the funds in the participant's account not already invested in the Government Securities Investment (G) Fund to that fund. A

notice of this action will be sent to the participant with a warning that his or her account will be declared abandoned and forfeited unless the participant comes into compliance with paragraph (a) by a date certain specified in the notice.

(d) If the participant does not take the appropriate withdrawal action described in paragraph (c) of this section, the Board will purchase an annuity for the participant after the following steps have been taken:

(1) The account has been declared abandoned and the funds in the account have been forfeited;

(2) A notice of this action has been sent to the participant;

(3) The participant reclaims the account balance that was abandoned, but decides against a withdrawal pursuant to §§ 1650.12 or 1650.13; and

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

#### **§ 1650.17 Changes and cancellation of a withdrawal request.**

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

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

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

Executive Director, the participant may also elect to change the payment amount or to change from a monthly payment based on life expectancy to a final payment amount.

### **Subpart C—Procedures for Post-Employment Withdrawals**

#### **§ 1650.21 Information provided by employing agency.**

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

(b) *Information to be provided to the participant*. When a TSP participant separates from Government service, his or her employing agency must furnish the participant with information regarding the participant's withdrawal options (e.g., the withdrawal booklet and information about the TSP Web site). The employing agency is also responsible for counseling participants concerning TSP withdrawal options.

#### **§ 1650.22 Accounts of \$200 or more.**

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

#### **§ 1650.23 Accounts of less than \$200.**

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

#### **§ 1650.24 How to obtain a post-employment withdrawal.**

To request a post-employment withdrawal under this subpart, a participant must submit to the TSP record keeper a properly completed post-employment withdrawal request Form TSP-70 or Form TSP-U-70, or request the withdrawal on the TSP Web site. (A participant's ability to complete a post-employment withdrawal on the Web will depend on his or her

retirement system coverage, withdrawal election, account balance, marital status, and whether or not the withdrawal will be transferred to an eligible employer plan or traditional IRA.)

**§ 1650.25 Taxes related to post-employment withdrawals.**

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

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

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

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

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

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

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

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

(1) An annuity purchased by the TSP;

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

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

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

(5) A return of excess elective deferrals.

**Subpart D—In-Service Withdrawals**

**§ 1650.31 Age-based withdrawals.**

(a) A participant who has reached age 59½ and who has not separated from Government employment is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. The amount of an age-based withdrawal request must be at least \$1,000, unless the withdrawal request is for the entire vested account balance.

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

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

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

**§ 1650.32 Financial hardship withdrawals.**

(a) A participant who has not separated from Government employment and who can certify that he or she has a financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal request must be at least \$1,000.

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

(1) The participant's monthly cash flow is negative (*i.e.*, the participant's income is less than his or her monthly expenses on a recurring basis);

(2) The participant has incurred medical expenses as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income

tax purposes. Eligible medical expenses include the cost of household improvements required as a result of a medical condition, illness or injury. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person.

(3) The participant must have paid the cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(4) The participant must have paid attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

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

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

(1) The amount requested; or

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

(e) The participant must certify that he or she has a financial hardship as described on the hardship withdrawal form, and that the dollar amount of the withdrawal request does not exceed the actual amount of the financial hardship.

(f) A participant is not eligible for an in-service hardship withdrawal during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code (11 U.S.C. chapter 13).

**§ 1650.33 Contributing to the TSP after an in-service withdrawal.**

(a) A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore, his or her TSP contributions will continue without interruption.

(b) A participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for a period of six months after the withdrawal is processed. Therefore, the participant's employing agency will

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

#### **§ 1650.34 Uniqueness of loans and withdrawals.**

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

### **Subpart E—Procedures for In-Service Withdrawals**

#### **§ 1650.41 How to obtain an age-based withdrawal.**

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

#### **§ 1650.42 How to obtain a financial hardship withdrawal.**

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

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

#### **§ 1650.43 Taxes related to in-service withdrawals.**

(a) When an in-service withdrawal is paid directly from the TSP to a participant, the money is taxable income in the year in which the

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

(b) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to a traditional IRA or an eligible employer plan, consistent with § 1650.25. If the withdrawal is not transferred, it is subject to mandatory 20 percent withholding. The participant may increase the amount of withholding by submitting IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments, to the TSP with the withdrawal request.

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

### **Subpart F—[Reserved]**

### **Subpart G—Spousal Rights**

#### **§ 1650.61 Spousal rights applicable to post-employment withdrawals.**

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

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment withdrawal, unless the participant was granted an exception under § 1650.64 to the spousal notification requirement within 90 days of the date the withdrawal request is processed by the TSP. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the

spouse at the most recent address provided by the participant.

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

(1) To show that the spouse has waived the right to this annuity, the participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary, unless the TSP granted the participant an exception under § 1650.65 to the spousal notification requirement within 90 days of the date the withdrawal form is processed by the TSP. If the TSP granted the participant an exception to the signature requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form.

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

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

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

#### **§ 1650.62 Spousal rights applicable to in-service withdrawals.**

(a) The spousal rights described in this section apply to all in-service withdrawals and do not depend on the amount of the participant's vested account balance or the amount requested for withdrawal.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal, unless the participant was granted an exception under § 1650.64 to the spousal notification requirement within 90 days of the date on which the withdrawal request is processed by the TSP. If the TSP granted the participant an exception to the notice requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the spouse

at the most recent address provided by the participant.

(c) A participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse before obtaining an in-service withdrawal, unless the participant was granted an exception under § 1650.65 to the signature requirement within 90 days of the date the withdrawal form is processed by the TSP. To show the spouse's consent, a participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary. Once a form containing the spouse's consent has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

**§ 1650.63 Executive Director's exception to the spousal notification requirement.**

(a) Whenever this subpart requires the Executive Director to give notice of an action to the spouse of a CSRS participant, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception to the notification requirement based on unknown whereabouts must be submitted to the Executive Director on Form TSP-16 or Form TSP-U-16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A court order stating that the spouse's whereabouts cannot be determined;

(2) A police or governmental agency determination, signed by the appropriate department or division head, which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons, which meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days before the request for an exception was received by the TSP. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address. Negative statements, such as, "I have not seen nor

heard from him," or "I have not had contact with her," are not sufficient.

(ii) The statements from two other persons must support the participant's statement that he or she does not know the spouse's whereabouts, and substantiate the participant's description of the efforts he or she made to locate the spouse, including the dates the participant made those efforts.

(iii) All statements must be signed and dated and must include the following certification: "I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both."

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

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

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

(a) Whenever this subpart requires the consent of a spouse of a FERS or uniformed services participant to a loan or withdrawal or a waiver of the right to a survivor annuity, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.64; or

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

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

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

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling

reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her TSP account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

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

**PART 1651—DEATH BENEFITS**

■ 39. The authority citation for part 1651 is revised to read as follows:

**Authority:** 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 40. Section 1651.1 is revised to read as follows:

**§ 1651.1 Definitions.**

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

(b) As used in this subpart:

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

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

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

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

■ 41. Section 1651.2 is revised to read as follows:

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

(a) *Death benefits.* Except as provided in paragraph (b) of this section, the account balance of a deceased participant will be paid as a death benefit to the individual or individuals surviving the participant, in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant on the TSP designation of beneficiary form that has been properly completed and filed in accordance with § 1651.3;

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

(3) If there are no beneficiaries or persons as described in paragraphs

(a)(1) and (a)(2) of this section, to the child or children of the participant and descendants of deceased children by representation in accordance with § 1651.6;

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

(5) If there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(4) of this section, to the duly appointed executor or administrator of the estate of the participant in accordance with § 1651.8; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Investment of a TSP account upon notice of death.* If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the TSP will transfer the entire account into the G Fund after it processes a notice that the participant has died, or a death code indicating the participant's death from the participant's agency or service. The account will accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid under this part.

■ 42. Section 1651.14 is amended by revising paragraph (f), and by adding a new paragraph (g) to read as follows:

**§ 1651.14 How payment is made.**

\* \* \* \* \*

(f) *Payment to trust.* If payment is to a trust, the payment will be made

payable to the trust and mailed in care of the trustee. A TIN must be provided for the trust.

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

■ 43. Section 1651.17 is revised to read as follows:

**§ 1651.17 Disclaimer of benefits.**

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

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

(1) Submitted in writing;  
(2) Signed by the person (or legal representative) disclaiming the benefit; and

(3) Received before the TSP pays the death benefit.

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

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

■ 44. Part 1653 is revised to read as follows:

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

**Subpart A—Retirement Benefits Court Orders**

Sec.

1653.1 Definitions.

1653.2 Qualifying retirement benefits court orders.

1653.3 Processing retirement benefits court orders.

1653.4 Calculating entitlements.

1653.5 Payment.

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

1653.11 Definitions.

1653.12 Qualifying legal processes.

- 1653.13 Processing legal processes.
- 1654.14 Calculating entitlements.
- 1653.15 Payment.

#### Subpart C—Child Abuse Court Orders

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

**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

##### § 1653.1 Definitions.

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

(b) As used in this subpart:

*Court* means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3).

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

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

##### § 1653.2 Qualifying retirement benefits court orders.

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

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

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

(ii) The order must be written in terms appropriate to a defined contribution plan rather than a defined benefit plan. For example, it should generally refer to the participant's TSP account or TSP account balance rather than a benefit formula or the participant's eventual benefits; and

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

(2) The order must either require the TSP to freeze the participant's account

to preserve the *status quo* pending final resolution of the parties' rights to the participant's TSP account, or to make a payment from the participant's account to a permissible payee.

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

(i) A specific dollar amount;

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

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

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

(4) A court order can only require a payment to:

(i) Current or former spouses of the participant;

(ii) Attorneys of current or former spouses of a participant (as fees);

(iii) Dependents of the participant; and

(iv) Attorneys of dependents of the participant (as fees).

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

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

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

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

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

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

##### § 1653.3 Processing retirement benefits court orders.

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

(b) The TSP will review a retirement benefits court order to determine whether it is enforceable against the TSP only after the TSP has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP.

Retirement benefits court orders should be submitted to the TSP record keeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana, 70161-1500. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a court order must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

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

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

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

(c) As soon as practicable after the TSP receives a document that purports to be a qualifying retirement benefits court order, whether or not complete, the participant's account will be frozen. After the account is frozen, no

withdrawal or loan disbursements (other than a required minimum distribution pursuant to section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)) will be allowed until the account is unfrozen. All other account activity will be permitted.

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

(1) A document that does not indicate on its face (or is not accompanied by a document that establishes) that it has been issued or approved by a court;

(2) A court order relating to a TSP account that has been closed;

(3) A court order dated before June 6, 1986;

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

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

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

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

(1) A determination regarding whether the court order is qualifying;  
 (2) A statement of the applicable statutes and regulations;  
 (3) An explanation of the effect the court order has on the participant's TSP account; and

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

(i) An explanation of how the payment will be calculated and an estimated amount of payment;  
 (ii) The anticipated date of payment;  
 (iii) Tax information and income tax withholding forms to the person responsible for paying Federal income tax on the payment;  
 (iv) Information and the form needed to transfer the payment to an eligible employer plan or traditional IRA (if the payee is the current or former spouse of the participant); and  
 (v) Information and the form needed to receive the payment through an electronic funds transfer (EFT).

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

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

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

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

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

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

(ii) Forty-five (45) days after the date of the TSP decision letter if the court order is not qualifying. The 45-day

period will be terminated, and the account will be unfrozen, if both parties submit to the TSP a written request for such a termination.

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

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

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

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

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

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

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

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

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

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

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

(4) In all other cases, the TSP will honor multiple qualifying court orders

relating to the same TSP account in the order of their receipt by the TSP.

#### § 1653.4 Calculating entitlements.

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

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

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

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

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

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

(e) If a court order describes a payee's entitlement in terms of a fixed dollar amount and a percentage or fraction of the account, the TSP will pay the fixed dollar amount, even if the percentage or fraction, when applied to the account balance, would yield a different result.

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

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

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

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

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

and ending 2 business days before payment is made.

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

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

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

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

#### **§ 1653.5 Payment.**

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

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

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

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

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

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

(c) The entire amount of a court order payee's entitlement must be disbursed at one time. A series of payments will not be made, even if the court order provides for such a method of payment. A payment pursuant to a court order extinguishes all rights to any further payment under that order, even if the entire amount of the entitlement cannot be paid. Any further award must be contained in a separate court order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) If the parties to a divorce or annulment have remarried each other, or a legal separation is terminated, a new court order will be required to prevent payment pursuant to a previously submitted qualifying retirement benefits court order.

(j) Payment to a person (including the estate of the payee) pursuant to a qualifying retirement benefits court order made in accordance with this subpart bars recovery by any other

person claiming entitlement to the payment.

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

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

**§ 1653.11 Definitions.**

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

(b) As used in this subpart:

*Alimony* means the payment of funds for the support and maintenance of a spouse or former spouse. Alimony includes separate maintenance, alimony *pendente lite*, maintenance, and spousal support. Alimony can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

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

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

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

**§ 1653.12 Qualifying legal processes.**

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

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

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

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

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

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

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

(c) The following legal processes are not qualifying:

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

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

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

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

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

**§ 1653.13 Processing legal processes.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) As soon as practicable after the TSP receives a complete copy of an order vacating or superseding the preliminary order (unless the order vacating or superseding the preliminary

order qualifies to place a freeze on the account);

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

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

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

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

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

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

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

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

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

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

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

#### § 1653.14 Calculating entitlements.

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

#### § 1653.15 Payment.

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

### Subpart C—Child Abuse Court Orders

#### § 1653.21 Definitions.

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

(b) As used in this subpart: *Child* means an individual less than 18 years of age.

*Judgment against a participant for physically, sexually, or emotionally abusing a child* means any legal claim perfected through a final enforceable judgment which is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence.

#### § 1653.22 Purpose.

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

#### § 1653.23 Processing and payment.

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

■ 45. Part 1655 is revised to read as follows:

### PART 1655—LOAN PROGRAM

Sec.

- 1655.1 Definitions.
- 1655.2 Eligibility for loans.
- 1655.3 Information concerning the cost of a loan.
- 1655.4 Number of loans.
- 1655.5 Loan repayment period.
- 1655.6 Amount of loan.
- 1655.7 Interest rate.
- 1655.8 Quarterly statements.
- 1655.9 Effect of loans on individual account.
- 1655.10 Loan application process.
- 1655.11 Loan acceptance.
- 1655.12 Loan agreement.
- 1655.13 Loan approval and issuance.
- 1655.14 Loan payments.
- 1655.15 Taxable distributions.
- 1655.16 Reamortization.
- 1655.17 Prepayment.
- 1655.18 Spousal rights.
- 1655.19 Effect of court order on loan.
- 1655.20 Residential loans.

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

#### § 1655.1 Definitions.

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

(b) As used in this part:

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

*Date of application* means the day on which the TSP record keeper receives the loan application, either

electronically on the TSP Web site or on Form TSP-20 or Form TSP-U-20.

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

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

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

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

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

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

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

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

#### § 1655.2 Eligibility for loans.

A participant who is eligible to contribute to the TSP and who is in pay status is eligible to apply for a loan from his or her TSP account. Only a participant who has at least \$1,000 in employee contributions and attributable earnings in his or her account may receive a loan (subject to the other terms and conditions set forth in this part). A participant who is separated from Government service may not receive a loan from his or her TSP account.

#### § 1655.3 Information concerning the cost of a loan.

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

#### § 1655.4 Number of loans.

A participant may have no more than two loans outstanding from his or her

TSP account at any time. Only one of the two outstanding loans may be a residential loan. A participant with both a civilian TSP account and a uniformed services TSP account may have two outstanding loans from each account.

#### **§ 1655.5 Loan repayment period.**

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

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

#### **§ 1655.6 Amount of loan.**

(a) *Minimum amount.* The initial principal amount of any loan may not be less than \$1,000.

(b) *Maximum amount.* The principal amount of a new loan must be less than or equal to the smallest of the following:

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

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

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

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

#### **§ 1655.7 Interest rate.**

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

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

ending dates of active duty military service.

#### **§ 1655.8 Quarterly statements.**

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

#### **§ 1655.9 Effect of loans on individual account.**

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

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

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

#### **§ 1655.10 Loan application process.**

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

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

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

(i) Unmarried; or

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

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

(i) Unmarried;

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

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

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

#### **§ 1655.11 Loan acceptance.**

The TSP record keeper will reject a loan application if:

(a) The participant is not qualified to apply for a loan under § 1655.2 or has failed to provide all required information on the loan application;

(b) The participant has the maximum number of loans outstanding or, if the application is for a residential loan, the participant has a residential loan outstanding from the same account;

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

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

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

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

#### **§ 1655.12 Loan agreement.**

(a) Upon determining that a loan application meets the requirements of this part, the TSP record keeper will provide the participant with the terms and conditions of the loan, as follows:

(1) If the participant submits a paper loan application, the TSP record keeper will mail the loan agreement (Form TSP-21-G, TSP-U-21-G, TSP-21-R, or TSP-U-21-R, as applicable), and other information as appropriate, to the participant.

(2) If the participant initiates a loan request on the TSP Web site, which cannot be completed on the Web site, the participant must print the partially completed loan agreement directly from the Web site, provide any missing information (including spouse's signature or documents supporting a residential loan request, if applicable), and submit it to the TSP record keeper.

(b) By signing the loan agreement, either electronically or on the form, the participant agrees to be bound by all of its terms and conditions, agrees to repay the loan by payroll deduction, and certifies, under penalty of perjury, to the truth and completeness of all statements made in the loan application and loan agreement to the best of his or her knowledge.

(c) For loans submitted on paper and those that cannot be completed on the TSP Web site, the TSP record keeper must receive the completed loan agreement (including any required supporting documentation) before the expiration date stated on the loan agreement or the agreement will not be processed.

(d) The signed loan agreement must be accompanied by:

(1) In the case of a residential loan, supporting materials that document the purchase or construction of the

residence and the amount requested (as described in § 1655.20); and

(2) Any other information that the Executive Director may require.

(e) A participant may request that the loan be disbursed by direct deposit to a checking or savings account maintained by the participant in a financial institution by properly completing the required information on the loan agreement or on the TSP Web site, if the loan request can be completed on the Web site.

#### **§ 1655.13 Loan approval and issuance.**

(a) When the completed loan agreement is signed electronically or returned by the participant to the TSP record keeper, together with any documentation required to be submitted, the loan will be initially approved or denied by the TSP record keeper based upon the requirements of this part, including the following conditions:

(1) The participant has signed the promise to repay the loan, has agreed to repay the loan through payroll deductions, and has certified that the information given is true and complete to the best of the participant's knowledge;

(2) Processing of the loan would not be prohibited by § 1655.19 relating to court orders;

(3) The spouse of a FERS or uniformed services participant has consented to the loan or, if the spouse's whereabouts are unknown or exceptional circumstances make it inappropriate to secure the spouse's consent, an exception to the spousal requirement described in § 1655.18 has been granted;

(4) The spouse of a CSRS participant has been given notice or, if the spouse's whereabouts are unknown, an exception to the spousal requirement described in § 1655.18 has been granted;

(5) When a paper agreement is required, the completed loan agreement, including all required supporting documentation, was received by the TSP record keeper before the expiration date specified on the loan agreement; and

(6) The participant has met any other conditions that the Executive Director may require.

(b) If approved, the loan will be issued unless:

(1) The participant's employing agency has reported the participant's separation from Government service;

(2) The TSP receives written notice that the participant has died;

(3) The participant's account balance on the loan issue date does not contain sufficient employee contributions and

associated earnings to make a loan of at least \$1,000;

(4) A hold on the account is processed before the loan is disbursed; or

(5) A taxable distribution on an outstanding loan is declared before the new loan is issued.

(c) If the loan is otherwise acceptable but the amount available to borrow is less than the requested amount (but is at least \$1,000), the loan will be issued in the maximum amount available at the time of the disbursement. In such a case, the periodic payment amount will remain the same and the loan term may be shortened.

(d) The loan issue date is considered to be the date the loan was made.

(e) If a loan disbursement is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 60 days, the TSP will repay the loan with the returned loan proceeds.

#### **§ 1655.14 Loan payments.**

(a) Loan payments must be made through payroll deduction in accordance with the loan agreement. Once loan payments begin, the employing agency cannot terminate the payroll deductions at the employee's request, unless the TSP instructs it to do so. For example, employing agencies must stop loan payments if the participant becomes a debtor in a chapter 13 bankruptcy action, unless the bankruptcy court expressly permits the payments to continue.

(b) The participant may make additional payments by mailing a personal check or guaranteed funds to the TSP record keeper. If the TSP receives a payment that repays the outstanding loan amount and overpays the loan by \$10.00 or more, the overpayment will be refunded to the participant. Overpayments of less than \$10 will be applied to the participant's account and will not be refunded. If a loan overpayment refund is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 60 days, the TSP will forfeit the overpayment refund to the Plan. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(c) The initial payment on a loan is due on or before the 60th day following the loan issue date. Interest accrues on the loan from the date of issuance.

(d) Subsequent payments are due at regular intervals as prescribed in the loan agreement, or most recent amortization, according to the participant's pay cycle.

(e) If a payment is not made when due, the TSP will notify the participant of the missed payment and the participant must make up the payment in full. If the participant does not make up all missed payments by the end of the calendar quarter following the calendar quarter in which the first payment was missed, the TSP will declare the loan to be a taxable distribution in accordance with § 1655.15. The participant's make-up payment must be in the form of a personal check or guaranteed funds.

(f) Interest will accrue on all missed payments and will be included in the calculation of any taxable distribution subsequently declared in accordance with § 1655.15. Interest will also accrue on payments missed while a participant is in nonpay status.

#### **§ 1655.15 Taxable distributions.**

(a) The Board may declare any unpaid loan principal, plus unpaid interest, to be a taxable distribution from the Plan if:

(1) A participant is in a confirmed nonpay status for a period of one year or more, has not advised the TSP that he or she is serving on active military duty, and payments are not resumed after the participant is notified the loan has been reamortized;

(2) A participant separates from Government service and does not repay the outstanding loan principal and interest in full within the period specified by the notice to the participant from the TSP record keeper explaining the participant's repayment options;

(3) The TSP record keeper advises the participant that there are missing payments and the participant fails to make (by personal check or guaranteed funds) a direct payment of the entire missing amount or repayment in full by the deadline established in accordance with § 1655.14(e);

(4) Any material information provided in accordance with § 1655.10, § 1655.12, or § 1655.18 is found to be false;

(5) With the exception of a loan described in 5 CFR 1620.45, the loan is not repaid in full (including interest due) within five years, in the case of a general purpose loan, or within 15 years, in the case of a residential loan, from the loan issue date;

(6) The participant dies; or

(7) The participant's loan payments were stopped when he or she became a debtor in a chapter 13 bankruptcy action, and the bankruptcy court did not expressly permit the payments to recommence.

(b) If a taxable distribution occurs in accordance with paragraph (a) of this section, the Board will notify the

participant of the amount and date of the distribution. The Board will report the distribution to the Internal Revenue Service as income for the year in which it occurs. That portion of a loan that represents a uniformed services participant's contributions from pay subject to the combat zone tax exclusion will not be included in this calculation.

(c) If a participant dies and a taxable distribution occurs in accordance with paragraph (a) of this section, the Board will notify the participant's estate of the amount and date of the distribution. Neither the estate nor any other person, including a beneficiary, may repay the loan of a deceased participant, nor can the funds be returned to the TSP.

(d) If, because of Board or TSP record keeper error, a TSP loan is declared a taxable distribution under circumstances that make such a declaration inconsistent with this part, or inconsistent with other procedures established by the Board or TSP record keeper in connection with the TSP loan program, the taxable distribution will be reversed. The participant will be provided an opportunity to reinstate loan payments or repay in full the outstanding balance on the loan.

#### **§ 1655.16 Reamortization.**

(a) A participant may request reamortization of a loan at any time to change the amount of the payments, unless the loan is in a default status.

(b) Upon reamortization, the outstanding principal balance remains the same. Any accrued interest is paid off first before payments are applied to principal and current interest.

(c) The interest rate on a reamortized loan will be the same as the interest rate on the original loan.

(d) A participant may request reamortization by using the TSP Web site or by contacting a TSPSO participant service representative.

(e) When a participant's pay cycle changes for any reason, he or she should request a reamortization to adjust the scheduled payment to an equivalent amount in the new pay cycle. If the new pay cycle results in fewer payments per year and the participant does not reamortize the loan, the loan may be declared a taxable distribution pursuant to § 1655.15(a)(3).

#### **§ 1655.17 Prepayment.**

(a) A participant may repay a loan in full, without a penalty, at any time before the declaration of a taxable distribution under § 1655.15, unless the participant has separated from Government service and has submitted a signed statement that he or she has forfeited the right to repay the loan in

full. Repayment in full means receipt by the TSP record keeper of a payment, by personal check or guaranteed funds made payable to the Thrift Savings Plan, of all principal and interest due on the loan.

(b) If a participant returns a loan check to the TSP record keeper, it will be treated as a repayment; however, additional interest may be owed, which, if not paid, could result in a taxable distribution. The loan, even though repaid, will also be taken into account in determining the maximum amount available for future loans, in accordance with § 1655.6(b).

(c) The amount outstanding on a loan can be obtained from the TSP Web site, the ThriftLine, or a TSPSO participant service representative, or by a written request to the TSP record keeper.

#### **§ 1655.18 Spousal rights.**

(a) *Spouse of CSRS participant.* (1) Before a loan is disbursed to a CSRS participant, the TSP record keeper will send a notice to the participant's current spouse that the participant has applied for a loan.

(2) A CSRS participant may obtain an exception to the requirement described in paragraph (a)(1) of this section if the participant establishes, to the satisfaction of the Executive Director, that the spouse's whereabouts are unknown as described in paragraph (c) of this section.

(b) *Spouse of FERS or uniformed services participant.* (1) Before a loan agreement is approved for a FERS or uniformed services participant, the spouse must consent to the loan by signing the loan agreement.

(2) A FERS or uniformed services participant may obtain an exception to the requirement described in paragraph (b)(1) of this section if the participant establishes, to the satisfaction of the Executive Director, that:

(i) The spouse's whereabouts are unknown; or

(ii) Exceptional circumstances prevent the participant from obtaining the spouse's consent.

(c) *Exception to spousal requirements.* The procedures for obtaining an exception to the spousal requirements described in paragraphs (a)(1) and (b)(1) of this section are the same as the procedures described in 5 CFR 1650.64 and 1650.65.

(d) *Certification of truthfulness.* (1) By signing the loan application and the loan agreement, electronically or on paper, the participant certifies, under penalty of perjury, that all information provided to the TSP during the loan process is true and complete, including statements concerning the participant's

marital status, the spouse's address at the time the application is filed, or the current spouse's consent to the loan.

(2) If the Board receives a written allegation from the spouse that the participant may have misrepresented his or her marital status or the spouse's address (in the case of a CSRS participant), or that the signature of the spouse of a FERS participant was forged, the Board will submit the information or document in question to the spouse and request that he or she state in writing that the information is false or that the spouse's signature was forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three samples of his or her signature.

(3) If the spouse affirms the allegation, in accordance with the procedure set forth in paragraph (d)(2) of this section, and the loan has been disbursed, the Board will give the participant an opportunity to repay the unpaid loan principal and interest within 60 days. If the loan is repaid during this period, the Board will not investigate the spouse's allegation.

(4) Paragraph (d)(3) of this section will not apply if the participant has received a final divorce decree before the Thrift Savings Plan receives the funds.

(5) If the unpaid loan principal and interest are not repaid to the Plan in full within the time period provided in paragraph (d)(3) of this section, the Board will conduct an investigation into the allegation. If the participant has received a final divorce decree before the Thrift Savings Plan receives the funds, the Board will begin its investigation immediately.

(6) If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his or her marital status or spouse's address (in the case of a CSRS participant), or submitted the loan agreement with a forged signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

(7) Upon receipt of an allegation described in paragraph (d)(2) of this section, the participant's account will be frozen and no loan will be permitted until after:

(i) Thirty (30) days have elapsed since the participant's spouse was sent a copy of the information or document in question, and the Board has received no written affirmation of the alleged false information or forgery (together with signature samples, if required);

- (ii) The loan is repaid pursuant to paragraph (d)(3) of this section;
- (iii) The Executive Director concludes that the Board's investigation did not yield persuasive evidence that supports the spouse's allegation;
- (iv) The Executive Director has been assured in writing by the spouse that any future request for a loan or withdrawal comports with the applicable requirement of notice or consent; or
- (v) The participant is divorced.

#### **§ 1655.19 Effect of court order on loan.**

Upon receipt of a document that purports to be a qualifying retirement benefits court order, qualifying legal process relating to a participant's legal obligation to provide child support or to make alimony payments, or a qualifying child abuse order, the participant's TSP account will be frozen. After the account is frozen, no loan will be allowed until the account is unfrozen. The Board's procedures for processing court orders and legal processes are explained in 5 CFR part 1653.

#### **§ 1655.20 Residential loans.**

(a) A residential loan will be made only for the purchase or construction of the primary residence of the participant, or for the participant and his or her spouse, and for related purchase costs. The participant must actually bear all or part of the cost of the purchase. If the participant purchases a primary residence with someone other than his or her spouse, only the portion of the purchase costs that is borne by the participant will be considered in making the loan. A residential loan will not be made for the purpose of paying off an existing mortgage or otherwise providing financing for a primary residence purchased more than 2 years before the date of the loan application.

(b) The participant's primary residence is his or her principal residence. A primary residence may include a house, a townhouse, a condominium, a share in a cooperative housing corporation, a mobile home, a boat, or a recreational vehicle; a primary residence does not include a second home or vacation home. A participant cannot have more than one primary residence.

(c) Purchase of a primary residence means acquisition of the residence through the exchange of cash or other property or through the total construction of a new residence. A residential loan will not be made for a lease-to-buy option, unless the option to buy is being exercised. Construction of an addition to or the renovation of a residence or the purchase of land only

does not constitute the purchase of a primary residence.

(d) Related purchase costs are any costs that are incurred directly as a result of the purchase or construction of a residence and which can be added to the basis of the residence for Federal tax purposes. Points or loan origination fees charged for a loan, whether or not they are treated as part of the basis, are not considered a purchase cost. Real estate taxes cannot be included.

(e) The documentation required for a loan under this section is as follows:

- (1) For all purchases, except for construction, a copy of a home purchase contract or a settlement sheet; or
  - (2) For construction, a home construction contract. If a single home construction contract is unavailable, other contracts, building permits, receipts, assessments, or other documentation that demonstrates the construction of an entire primary residence and expenses in the amount of the loan may be accepted at the discretion of the Executive Director.
- (f) The documentation provided under this section must:

- (1) Be from a third party;
- (2) Show the participant as the purchaser or builder;
- (3) Show the purchase price or construction price;
- (4) Show the full address of the residence; and
- (5) Bear a date that is no more than 24 months preceding the expiration date of the loan agreement.

■ 46. Part 1690 is revised to read as follows:

### **PART 1690—THRIFT SAVINGS PLAN**

#### **Subpart A—General**

Sec.

1690.1 Definitions.

#### **Subpart B—Miscellaneous**

1690.11 Plan year.

1690.12 Power of attorney.

1690.13 Guardianship and conservatorship orders.

Authority: 5 U.S.C. 8474.

#### **Subpart A—General**

##### **§ 1690.1 Definitions.**

As used in this chapter:

*Account* or *individual account* means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

*Account balance* means the sum of the dollar balances for each source of contributions in each investment fund for an individual account. The dollar balance in each investment fund on a given day is the product of the total number of shares in that investment

fund multiplied by the share price for the investment fund on that day.

*Agency automatic (1%) contributions* means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3).

*Agency matching contributions* means any contributions made under 5 U.S.C. 8432(c)(2).

*Basic pay* means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition of participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be. For members of the uniformed services, it is basic pay payable under 37 U.S.C. 204 and compensation received under 37 U.S.C. chapter 206.

*Board* means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

*C Fund* means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C).

*Catch-up contributions* mean TSP contributions from taxable basic pay that are made by participants age 50 and over, which exceed either the elective deferral limit of 26 U.S.C. 402(g), or the maximum contribution percentage limit of 5 U.S.C. 8351(b) (for CSRS participants), 5 U.S.C. 8432(a) (for FERS participants), or 5 U.S.C. 8440f(a) (for all other participants).

*Contribution allocation* means the participant's apportionment of his or her future contributions, loan payments, and transfers or rollovers from eligible employer plans or traditional IRAs among the TSP investment funds.

*Contribution election* means a request by an employee to start contributing to the TSP, to change the amount of contributions made to the TSP each pay period, or to terminate contributions to the TSP.

*Court of competent jurisdiction* means the court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3).

*CSRS* means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent Federal retirement system.

*CSRS employee* or *CSRS participant* means any employee or participant covered by CSRS.

*Date of appointment* means the effective date of an employee's accession as established by the current employing agency.

*Day* means calendar day, unless otherwise stated.

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

*Employer contributions* means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3), and agency matching contributions under 5 U.S.C. 8432(c)(2) or 5 U.S.C. 8440e(e).

*Employing agency* means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual. It includes the uniformed services.

*Executive Director* means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

*F Fund* means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B).

*FERS* means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84 or any equivalent Federal retirement system.

*FERS employee* or *FERS participant* means any employee or TSP participant covered by FERS.

*FERSA* means the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The provisions of FERSA that govern the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code.

*Former spouse* means (as defined at 5 U.S.C. 8401(12)) the former spouse of a TSP participant if the participant performed at least 18 months of civilian service creditable under 5 U.S.C. 8411 as an employee or member, and if the participant and former spouse were married to one another for at least nine months.

*G Fund* means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A).

*G Fund interest rate* means the interest rate computed under 5 U.S.C. 8438(e)(2).

*I Fund* means the International Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(E).

*In-service withdrawal request* means a properly completed withdrawal election for either an age-based in-service withdrawal or a financial hardship in-service withdrawal, on any form required by the TSP, together with the supporting documentation required by the application.

*Investment fund* means any investment fund established pursuant to 5 U.S.C. 8438.

*Open season* means the period during which employees may elect to make contributions to the TSP, change the amount of contributions, or terminate contributions (without losing the right to resume contributions during the next open season).

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

*Post-employment withdrawal request* means a properly completed withdrawal election on any form required by the TSP in order for a participant to elect a post-employment withdrawal of his or her account balance.

*Posting* means the process of crediting or debiting transactions to an individual account.

*Posting date* means the date on which a transaction is credited or debited to a participant's account.

*Regular employee contributions* mean TSP contributions from taxable basic pay that are subject to the Internal Revenue Code limits on elective deferrals and contributions to qualified plans (26 U.S.C. 402(g) and 415(c), respectively), and the maximum contribution percentage limits of 5 U.S.C. 8351(b), 5 U.S.C. 8432(a), or 5 U.S.C. 8440f(a).

*S Fund* means the Small Capitalization Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(D).

*Separation from Government service* means generally the cessation of employment with the Federal Government. For civilian employees it means termination of employment with the U.S. Postal Service or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP, for 31 or more full calendar days. For uniformed services participants it means the discharge from active duty or the Ready Reserve or the transfer to inactive status or to a retired list as more fully described in 5 CFR 1604.2.

*Share* means a portion of an investment fund. Transactions are posted to accounts in shares at the share price of the date the transaction is posted. The number of shares for a

transaction is calculated by dividing the dollar amount of the transaction by the share price of the appropriate date for the investment fund in question. The number of shares is computed to four decimal places.

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

*Source of contributions* means regular employee contributions, agency automatic (1%) contributions, or agency matching contributions. All amounts in a participant's account are attributed to one of these three sources. (Catch-up contributions, transfers, rollovers, and loan payments are included in the regular employee contribution source.)

*Spouse* means the person to whom a TSP participant is married on the date he or she signs a form on which the TSP requests spousal information, including a spouse from whom the participant is legally separated, and a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live. [Where a participant is seeking to reclaim an account that has been forfeited pursuant to 5 CFR 1650.16, spouse also means the person to whom the participant was married on the withdrawal deadline.]

*Tax-deferred balance* means employee or employer contributions that would otherwise be includible in gross income if paid directly to the participant and earnings on those contributions.

*Tax-exempt balance* means employee contributions that are made by uniformed services participants from pay subject to the combat zone tax exclusion. It does not include earnings on such contributions.

*Thrift Savings Fund* or *Fund* means the Fund described in 5 U.S.C. 8437.

*Thrift Savings Plan, TSP, or Plan* means the Thrift Savings Plan established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401-8479.

*Thrift Savings Plan Service Office* or *TSPSO* means the office of the TSP record keeper, which provides service to participants. The TSPSO's address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161-1500.

*ThriftLine* means the automated voice response system by which TSP participants may, among other things,

access their accounts by telephone. The ThriftLine can be reached at (504) 255-8777.

*Traditional IRA* means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract).

*TSP record keeper* means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. The TSP record keeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

*TSP Web site* means the Internet location maintained by the Board, which contains information about the TSP and by which TSP participants may, among other things, access their accounts by computer. The TSP Web site address is [www.tsp.gov](http://www.tsp.gov).

*Uniformed services* means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

*Vested account balance* means that portion of an individual's account which is not subject to forfeiture under 5 U.S.C. 8432(g).

## Subpart B—Miscellaneous

### § 1690.11 Plan year.

The Thrift Savings Plan's plan year is established on a calendar-year basis for all purposes, except where another applicable provision of law requires that a fiscal year or other basis be used. As used in this section, the term "calendar-year basis" means a twelve-month period beginning on January 1 and ending on December 31 of the same year.

### § 1690.12 Power of attorney.

This section applies to all regulations in this chapter that require a signature by the participant on a TSP form, where the participant desires to effect transactions through an agent (*i.e.*, an attorney-in-fact). Before an attorney-in-fact may sign a TSP form on behalf of a participant, the TSP must have approved either a general power of attorney which authorizes the attorney-in-fact to act on behalf of the participant with respect to the participant's personal property or in Federal Government retirement, financial, or business transactions, or a special power of attorney which authorizes the attorney-in-fact to effect transactions in the TSP on behalf of the participant. For the TSP to approve a power of attorney, it must be authenticated, attested, acknowledged, or certified by the principal before a notary public or other official authorized by law to administer oaths or affirmations. The TSP will

advise the person submitting a power of attorney whether it is valid to effect transactions in the TSP.

### § 1690.13 Guardianship and conservatorship orders.

This section applies to all regulations in this chapter that require a signature by the participant on a TSP form, where the participant is legally unable to sign his or her name because of physical or mental incapacity. Before a guardian or conservator may sign a TSP form on behalf of such a participant, the Board must have approved a guardianship or conservatorship order issued by a court of competent jurisdiction, as defined in § 1690.1, which generally authorizes the guardian or conservator to manage the participant's estate, personal property, business or financial affairs, or retirement benefits, or which specifically authorizes the guardian or conservator to act on behalf of the participant to effect transactions in the TSP. For a guardianship or conservatorship order to be acceptable to affect TSP transactions, documentation must be submitted establishing that any bonding requirement or other preconditions specified in the court order have been satisfied. The Board will advise the guardian or conservator whether the order is valid to effect transactions in the TSP.

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