

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD****5 CFR Parts 1600, 1620 and 1655****Definition of Basic Pay; Thrift Savings Plan Loans**

**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 publishing an interim rule to implement two provisions of the Thrift Savings Plan Act of 1996, and to amend the Board's interim loan regulations to codify changes made to the Thrift Savings Plan (TSP) loan program since the loan regulations were published in 1990. This interim rule conforms Board regulations to the statutory definition of "Basic pay," expands TSP loan eligibility, and increases the efficiency of the TSP loan program.

**DATES:** This interim rule is effective November 18, 1996. Comments must be received by January 17, 1997.

**ADDRESSES:** Comments may be sent to Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Forrest on (202) 942-1662.

**SUPPLEMENTARY INFORMATION:** The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99-335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8401-8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code.

On September 30, 1996, the President signed the Thrift Savings Plan Act of 1996 (the 1996 Act), Pub. L. 104-208, div. A, tit. I, sec. 101(f), § 659. Prior to the passage of the 1996 Act, FERSA contained a definition of "basic pay" at 5 U.S.C. 8431. Section 206 of the 1996 Act repealed 5 U.S.C. 8431 and amended 5 U.S.C. 8401(4) to provide that the term "basic pay" has the meaning given that term by 5 U.S.C. 8331(3). The Board is amending its regulations to conform with this amendment.

Also prior to the passage of the 1996 Act, FERSA provided at 5 U.S.C. 8433(g)(2) that a TSP loan could be approved only if the funds sought were to be used for the purchase of a primary residence, for financial hardship, or for

educational or medical expenses. Section 203(a)(5)(B) of the 1996 Act eliminated this purpose test and the Board is amending its loan regulations to reflect this change. In addition, section 203(a)(5)(A) of the 1996 Act adds the following sentence to 5 U.S.C. 8433(g)(1): "Before a loan is issued, the Executive Director shall provide in writing the employee or Member with appropriate information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in interest rates between the funds offered by the Thrift Savings Fund, and any other effect of such loan on the employee's or Member's final account balance." This interim rule amends the Board's loan regulations to add this new requirement.

The Board's interim loan regulations were published on January 10, 1990. Since then, the Board has revised TSP loan procedures to increase the efficiency of the loan program. This interim rule also codifies those revisions.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will affect only employees of the United States Government.

**Paperwork Reduction Act**

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

**Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date**

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Section 207 of the 1996 Act provides that the 1996 Act shall take effect on the date of its enactment and that its provisions are to be given effect at the earliest practicable date as determined by the Executive Director in regulations. The Executive Director has determined that the Board can give immediate effect to sections 203(a)(5) and 206 of the 1996 Act; therefore, a delay in their implementation would be contrary to the 1996 Act. In addition, because the remaining provisions of this interim rule codify existing TSP loan program procedures, notice and public procedure on them is unnecessary.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, tit. II, 110 Stat. 847, 857-875 (5 U.S.C. 801(a)(1)(A)), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of this rule in today's Federal Register. This rule is not a major rule as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

**List of Subjects****5 CFR Parts 1600 and 1620**

Government employees, Pensions, Retirement.

**5 CFR Part 1655**

Credit, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.  
Roger W. Mehle,  
*Executive Director.*

For the reasons set out in the preamble, 5 CFR Chapter VI is amended as set forth below:

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

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

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

2. The definition of Basic pay in § 1600.1 is revised to read as follows:

**§ 1600.1 Definitions.**

\* \* \* \* \*

*Basic pay* means basic pay as defined in 5 U.S.C. 8331(3), and it is the rate of pay used in computing any amount the individual is required to contribute to the Civil Service Retirement and

Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

\* \* \* \* \*

#### **PART 1620—CONTINUATION OF ELIGIBILITY**

3. The authority citation for part 1620 continues to read as follows:

Authority: 5 U.S.C. 8474 and 8432b; Pub. L. 99-591, 100 Stat. 3341; Pub. L. 100-238, 101 Stat. 1744; Pub. L. 100-659, 102 Stat. 3910; Pub. L. 101-508, 104 Stat. 1388; Pub. L. 104-106, 110 Stat. 186; Pub. L. 104-134, 110 Stat. 1321.

##### **§ 1620.72 [Amended]**

4. Section 1620.72 is amended by revising "8431" in paragraph (b)(1) to read "8331(3)".

##### **§ 1620.83 [Amended]**

5. Section 1620.83 is amended by revising "8431" in paragraph (a) to read "8331(3)".

#### **PART 1655—LOAN PROGRAM**

6. The authority citation for part 1655 is revised to read as follows:

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

7. Section 1655.1 is amended by removing the definition of "Mid-Month Processing Cycle", by revising the definition of "Interim Account Balance" and by adding, in alphabetical order, two new definitions to read as follows:

##### **§ 1655.1 Definitions.**

\* \* \* \* \*

*Interim Account Balance* means the unvalued account balance of a participant's account on the last business day of the month.

\* \* \* \* \*

*Monthly Processing Cycle* means the process, beginning on the evening of the fourth business day of the month, by which the recordkeeper allocates the amount of earnings to be credited to participant accounts in the Plan and authorizes disbursements from the Plan.

\* \* \* \* \*

*Taxable Distribution* means the reporting to the Internal Revenue Service as taxable income the amount of outstanding principal and interest on a loan upon failure by the participant to repay the loan in full according to the terms of the Loan Agreement/Promissory Note.

\* \* \* \* \*

8. Section 1655.2 is amended by revising the last sentence to read as follows:

##### **§ 1655.2 Eligibility for loans.**

\* \* \* Persons who are eligible to contribute to the Thrift Savings Plan under 5 CFR part 1620 are also eligible to apply for a loan.

9. Section 1655.3 is revised to read as follows:

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

Before a loan is issued, the recordkeeper will provide the participant written information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in earnings rates between the funds offered by the Thrift Savings Fund and any other effect of the loan on the participant's final account balance.

10. Section 1655.4 is revised to read as follows:

##### **§ 1655.4 Number of loans.**

A participant may have no more than two loans outstanding at any time. Only one of the two loans may be a loan for the purchase of a primary residence.

11. Section 1655.9 is amended by revising paragraphs (b) and (c) to read as follows:

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

\* \* \* \* \*

(b) The removal of the principal for earnings allocation purposes described in paragraph (a) of this section will be prorated according to the investment of the portion of the account represented by employee contributions and attributable earnings in the G Fund, the C Fund, and in the F Fund as of the most recent valuation date.

(c) Loan payments, including both principal and interest, will be credited to the individual account of the participant repaying the loan for the month in which the loan payment is processed by the recordkeeper. The loan payments (principal and interest) will be credited *pro rata* to the G Fund, the C Fund, and the F Fund based upon the proportions of the interim account balances of the G Fund, the C Fund, and the F Fund balances in the borrower's account on the last day of the month prior to the month in which the loan payment is processed. Earnings on loan payments will be credited as described in 5 CFR part 1645.

12. Section 1655.10 is amended by removing paragraph (d) and by revising paragraph (c) to read as follows:

##### **§ 1655.10 Loan application.**

\* \* \* \* \*

(c) The application must contain the following information:

(1) The participant's name, Social Security number, date of birth, current address, and pay cycle;

(2) A statement as to whether the loan is for the purchase of a primary residence as described in § 1655.20;

(3) The amount requested and the loan repayment period;

(4) Marital status of the participant and, if married, the name and address of the participant's spouse; and

(5) Any other information that the Executive Director may from time to time prescribe.

13. Section 1655.11 is amended by revising paragraph (d) to read as follows:

##### **§ 1655.11 Loan Agreement/Promissory Note.**

\* \* \* \* \*

(d) The signed Loan Agreement/Promissory Note must be accompanied by:

(1) A completed and signed discretionary payroll allotment form authorizing deductions of all amounts due under the Loan Agreement/Promissory Note, which deduction the participant agrees to maintain through his or her employing agency;

(2) In the case of a loan for the purchase of a primary residence, supporting materials that document the purchase of the residence and the amount requested. This information is described in § 1655.20; and

(3) Any other information that the Executive Director shall from time to time require.

14. Section 1655.12 is revised to read as follows:

##### **§ 1655.12 Loan approval.**

(a) The application will be reviewed by the recordkeeper and will be accepted only if it conforms with the requirements of this part. Upon receipt of the application, the recordkeeper will determine whether:

(1) The participant is qualified to apply for a loan under § 1655.2 and has provided all required information;

(2) The participant already has the maximum number of loans outstanding, or if the application is for a residential loan, the participant already has a residential loan outstanding;

(3) The participant already has a pending loan application;

(4) The requested loan exceeds the maximum amounts set forth in § 1655.6(b), or is less than the minimum amount set forth in § 1655.6(a). If the loan application process date occurs during a month before the monthly processing cycle, the maximum and minimum amounts will be determined using the interim account balance at the

end of the prior month. If the loan application process date occurs after the monthly processing cycle but before the end of the month, the maximum and minimum amounts will be determined using the most recent valued account balance;

(5) The applicant is covered by a retirement system that is eligible to participate in the Thrift Savings Plan;

(6) A CSRS participant who is married but does not know the whereabouts of his or her spouse has been granted an exception to the spousal requirement as described in § 1655.18; and

(7) The participant has received a taxable loan distribution (as described in § 1655.13) from the Thrift Savings Plan within the 12 consecutive month period preceding the date of application, except as a result of a failure to repay the loan upon the participant's separation from service or confirmed non-pay status for a period exceeding one year.

(b) Failure by the applicant to comply with any of the requirements of this part will result in rejection of the loan application.

(c) If the recordkeeper accepts the loan application, a Loan Agreement/Promissory Note will be sent to the applicant, as provided in § 1655.11. When the completed Loan Agreement/Promissory Note is returned by the applicant, along with documentation, if required to be submitted under §§ 1655.11(d) and 1655.20, the loan will be initially approved or denied by the recordkeeper based upon the requirements of this part, including the following conditions:

(1) The participant has signed a promise to pay the loan and a statement that the information provided to the recordkeeper 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) A FERS participant's spouse 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 completed Loan Agreement/Promissory Note was received by the recordkeeper within 45 days of the date it was prepared;

(5) The participant has completed and signed a loan payment allotment form; and

(6) Any other conditions that the Executive Director may from time to time prescribe.

(d) The loan issue date will occur within 60 days of the date the loan is initially approved unless the recordkeeper determines that:

(1) A court order would prohibit the loan for the reasons described in § 1655.19;

(2) The participant's employing agency has reported the death, retirement, or separation of the participant;

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

(4) The loan exceeds the maximum loan amount set forth in § 1655.6(b) as of the most recent valuation date; or

(5) The loan does not comply with any other criteria that the Executive Director may from time to time prescribe.

(e) Loans will be issued once a month. After the loan issue date, the recordkeeper will provide information to the United States Treasury which will permit the Treasury to mail a check for the principal amount of the approved loan to the participant.

(f) A loan is considered to have been made to a participant on the loan issue date.

15. Section 1655.13 is amended by revising paragraphs (a)(1), (a)(2)(ii) and (a)(3) to read as follows:

**§ 1655.13 Distributions.**

(a) \* \* \*

(1) A participant is in confirmed non-pay status for a period of one year or more and the participant has not prepaid the loan as provided in § 1655.17;

(2) \* \* \*

(ii) 90 calendar days after the date of the notice from the recordkeeper to the participant that, because his or her payments were incorrect or missing for 90 calendar days (pursuant to § 1655.15(a)), his or her loan must be reamortized or prepaid in full or a taxable distribution will be declared;

(3) There are incorrect or missing payments (as described in § 1655.15) and the participant fails to or is ineligible to exercise one of the reamortization or repayment in full options set forth in § 1655.15;

\* \* \* \* \*

16. Section 1655.15 is amended by revising paragraph (b) and the fourth sentence of paragraph (c) to read as follows:

**§ 1655.15 Incorrect payments.**

\* \* \* \* \*

(b)(1) Interest from the beginning of the 90-day period described in paragraph (a) of this section will be

added to the outstanding loan principal and the participant will be required to reamortize the loan. Generally, a reamortization schedule will be calculated to maintain the remaining number of payments scheduled for the loan. The recordkeeper will prepare and send a Rider to the Loan Agreement/Promissory Note and a new payroll allotment form to the participant. The recordkeeper must receive from the participant a signed Rider to the Loan Agreement/Promissory Note and a newly signed payroll allotment form within 45 calendar days of the date the Rider is prepared. If the 45th day falls on a Saturday, Sunday, or a Federal holiday, the deadline will be the next business day.

(2) If the remaining number of payments would cause the loan term to extend beyond 18 years less 120 days from the loan issue date for a loan for the purchase of a primary residence, or five years less 120 days from the loan issue date for any other loan, the recordkeeper will reamortize the loan to enable the entire amount of principal and interest to be repaid within those limits. The recordkeeper will prepare and send to the participant a Rider to the Loan Agreement/Promissory Note and a new payroll allotment form. The recordkeeper must receive from the participant, within 45 calendar days of the date the Rider is prepared, the signed Rider to the Loan Agreement/Promissory Note and a newly signed payroll allotment form. If the 45th day falls on a Saturday, Sunday, or a Federal holiday, the deadline will be the next business day.

(3) If no reamortized payments can be calculated under this section to allow the loan to be repaid within the time limit described in paragraph (b)(2) of this section, and the participant does not prepay the loan in full, a taxable distribution will be declared.

(4) If the reamortized loan principal would exceed the maximum loan amount as calculated under § 1655.6(b), the loan will not be reamortized. The participant must prepay the loan in full or a taxable distribution will be declared.

(5) If a participant does not sign and return the Rider to the Loan Agreement/Promissory Note, and the participant does not prepay the loan in full, a taxable distribution will be declared.

(6) A reamortization will be calculated based on the assumption that the reamortization will be completed 50 days after the Rider to the Loan Agreement/Promissory Note is prepared.

(c) \* \* \* If the additional payments would extend the term of the loan

beyond five years from the loan issue date (or 18 years from the loan issue date in the case of a loan for the purchase of a primary residence), the participant must either reamortize the loan so as to establish scheduled payments that will repay the loan within those time periods or prepay in full the remaining unpaid amounts.

\* \* \*

\* \* \* \* \*

17. Section 1655.16 is amended by removing paragraph (d) and by revising paragraph (b) to read as follows:

**§ 1655.16 Reamortization.**

\* \* \* \* \*

(b) Before a loan can be reamortized, the recordkeeper must receive from the participant, within 45 days of the date a Rider to the participant's Loan Agreement/Promissory Note was prepared, a signed Rider to his or her Loan Agreement/Promissory Note which describes the estimated terms and conditions of the reamortized loan and a newly signed payroll allotment form. If the 45th day falls on a Saturday, Sunday, or Federal holiday, the deadline will be the next business day.

\* \* \* \* \*

18. Section 1655.17 is amended by revising the last sentence of paragraph (a) and the first sentence of paragraph (b) to read as follows:

**§ 1655.17 Prepayment.**

(a) \* \* \* Prepayment in full means receipt by the recordkeeper of payment of all principal and interest due in the form of a certified or cashier's check, a certified or treasurer's draft from a credit union, or a money order.

(b) If a participant returns a loan check to the recordkeeper in order to repay his or her loan, it will be treated as a prepayment in full. \* \* \*

19. Section 1655.18 is revised to read as follows:

**§ 1655.18 Spousal rights.**

(a) Within seven calendar days of a CSRS participant's loan application process date, the recordkeeper will send a notice to the participant's current spouse that the participant has applied for a loan.

(b) As a condition for approval of the Loan Agreement/Promissory Note for a FERS participant, the participant must provide the recordkeeper with any evidence the Board requires to demonstrate that the current spouse has consented to the loan for which the participant has applied.

(c) A CSRS participant may obtain a waiver of the spousal requirement described in paragraph (a) of this section if the participant establishes, to the satisfaction of the Executive Director, that the spouse's whereabouts are unknown.

(d) A FERS participant may obtain a waiver of the spousal requirement described in paragraph (b) of this

section if the participant establishes, to the satisfaction of the Executive Director that:

(1) The spouse's whereabouts are unknown; or

(2) Exceptional circumstances prevent the obtaining of consent.

(e) The procedures for obtaining an exception to the spousal requirements (including the definition of exceptional circumstances) described in paragraphs (c) and (d) of this section will be the same as the procedures described in 5 CFR part 1650.

20. Section 1655.19 is revised to read as follows:

**§ 1655.19 Court orders.**

Upon receipt of a document that purports to be a qualifying retirement benefits court order or qualifying legal process relating to a participant's legal obligations to provide child support or make alimony payments, 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 retirement benefits court orders and legal processes are explained in 5 CFR part 1653.

**§§ 1655.21 through 1655.24 [Removed]**

21. Sections 1655.21 through 1655.24 are removed.

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