

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**5 CFR Part 1603****Thrift Savings Plan Vesting**

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations governing vesting of amounts contributed to the Thrift Savings Plan (TSP) by or on behalf of an employee. These regulations conform to the Board's vesting regulations to the Federal Employees' Retirement System Technical Corrections Act of 1988, update the terms used in these regulations to match those used throughout 5 CFR chapter VI, and clarify the language of several provisions of the interim regulations.

EFFECTIVE DATE: These final rules are effective June 23, 1997.

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

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, 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. The vesting provisions of FERSA are found at 5 U.S.C. 8432(g) and 8432b.

On August 12, 1987, the Board published in the **Federal Register** (52 FR 29635) an interim rule with request for comments. The interim rule established 5 CFR part 1603 to implement the vesting provisions of FERSA. On January 7, 1991, the Board published in the **Federal Register** (56 FR 600) an amendment to the interim rule. The amendment to the interim rule revised the definition of "separation from government service" from a separation of more than three days to a separation of more than 30 days. On May 9, 1995, the Board published in the **Federal Register** (60 FR 24535) an interim rule with request for comment. The interim rule implemented section 4 of the Uniformed Services Employment and Reemployment Rights Act (USERRA), Pub. L. 103-353, 108 Stat. 3149, 3170-73. Section 4 of USERRA added section 8432b to title 5 of the United States Code, providing that certain military service will count for

TSP vesting purposes. Finally, on May 9, 1997, the Board published in the **Federal Register** (62 FR 25558) these regulations as proposed rulemaking with a request for comments. The Board received no comments on any of the preceding **Federal Register** publications.

Section 1603.2(b) provides that a TSP participant's first conversion contributions (which are defined in a new definition at proposed section 1603.1) are immediately vested. Under FERSA, first conversion contributions have always been excepted from the years-in-service vesting requirements. 5 U.S.C. 8432(g). However, previous Board regulations addressed this issue only by implication; an explicit treatment of the first conversion contributions issue could help avoid confusion.

Section 1603.2(d) conforms the TSP vesting regulations to section 115 of the Federal Employees' Retirement System, Technical Corrections Act (FERSTC), Pub. L. 100-238, 101 Stat. 1744, 1751 (1988) (codified at 5 U.S.C. 8432(g)), which provides that a participant's agency automatic (1%) contributions are not forfeited if the participant dies before completing the number of years in service that are normally required before such contributions are vested. Because the effective date of FERSTC was January 8, 1988, proposed section 1603.2(d) explains that the agency automatic (1%) contributions of participants who died before January 8, 1988, were subject to the years-in-service vesting requirements. The Board implemented the change required by section 115 of FERSTC on January 8, 1988.

Sections 1603.3 (a) and (b), and the new definitions of "separation date" and "separation from Government service" at section 1603.1, together explain that a participant does not separate from Government service for TSP vesting purposes unless he or she has a break in service of more than 30 calendar days. They also explain that a participant must have fulfilled the years-of-service requirement at the time of separation to avoid the forfeiture of agency automatic (1%) contributions and attributable earnings. Section 1603.3 (a) and (b) and the new definitions do not create new rules; they rewrite and reorganize the Board's regulations to make the current rules which govern the computation of years-of-service easier to understand.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities

because they will apply only to Federal agencies and employees.

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, section 201, Pub. L. 104-4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. These regulations will not compel the expenditure in any one year of \$100 million or more by any 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

Under 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 interim rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1603

Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,
Executive Director.

For the reasons set out in the preamble, 5 CFR Part 1603 is amended as follows:

PART 1603—VESTING

1. The authority citation for part 1603 is revised to read as follows:

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

2. Section 1603.1 is revised to read as follows:

§ 1603.1 Definitions.

Terms used in this part shall have the following meaning:

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1);

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, and any equivalent Federal Government retirement plan;

CSRS employee means any employee, Member, or participant covered by CSRS, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, or 5 U.S.C. 8440a to 8440d;

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, and any equivalent Federal Government retirement plan;

FERS employee means an employee, Member, or participant covered by FERS;

First conversion contributions refers to the retroactive agency contributions, including interest on these contributions, made under 5 U.S.C. 8432(c)(3)(C) to the TSP accounts of employees who were automatically converted to the Federal Employees' Retirement System on January 1, 1987;

Individual account means the total of all sums contributed to the Thrift Savings Plan by or on behalf of a CSRS employee or FERS employee, plus earnings allocated to the employee's account under 5 CFR part 1645;

Separation date means the effective date of an employee's separation from Government service;

Separation from Government service has the same meaning as provided in 5 CFR 1650.3;

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, provided however, that such 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 issued at 5 CFR part 1620, subpart H;

Vested means those amounts in an individual account which are nonforfeitable; and

Year of service means one full calendar year of service.

3. Section 1603.2 is amended by revising the section heading and paragraphs (b) and (c) and by adding a new paragraph (d) to read as follows:

§ 1603.2 Basic vesting rules.

* * * * *

(b) Except as provided in paragraph (c) of this section, all amounts in a FERS employee's individual account (including all first conversion contributions) are immediately vested.

(c) Except as provided in paragraph (d) of this section, upon separation from Government service without meeting the applicable service requirements of § 1603.3, a FERS employee's agency automatic (1%) contributions and attributable earnings will be forfeited.

(d) If a FERS employee dies (or died) after January 7, 1988, without meeting

the applicable service requirements set forth in § 1603.3, the agency automatic (1%) contributions and attributable earnings in his or her individual account are deemed vested and shall not be forfeited. If a FERS employee died on or before January 7, 1988, without meeting those service requirements, his or her agency automatic (1%) contributions and attributable earnings are forfeited to the Thrift Savings Plan.

4. Section 1603.3 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1603.3 Service requirements.

(a) Except as provided under paragraph (b) of this section, FERS employees will be vested in their agency automatic (1%) contributions and attributable earnings upon separating from Government only if, as of their separation date, they have completed three years of service.

(b) FERS employees will be vested in their agency automatic (1%) contributions and attributable earnings upon separating from Government service if, as of their separation date, they have completed two years of service and they are serving in one of the following positions:

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[FR Doc. 97-16379 Filed 6-20-97; 8:45 am]

BILLING CODE 6760-01-P