

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Parts 1620, 1650, 1651, and 1690

#### Expansion and Continuation of Thrift Savings Plan Eligibility; Methods of Withdrawing Funds From the Thrift Savings Plan; Death Benefits; and Miscellaneous Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a final rule to reorganize and amend the regulations on continuation of Thrift Savings Plan (TSP) eligibility; to amend the regulations concerning TSP death benefits and withdrawal options; and to create a new rule pertaining to power-of-attorney documents.

The reorganization of the continuation of eligibility regulations eliminates obsolete and redundant provisions. The amendments to those regulations codify a new TSP loan policy for employees returning to civilian service pursuant to the Uniformed Services Employment and Reemployment Rights Act, codify current TSP procedures governing participation by judges of the Courts of Federal Claims and Veterans Appeals, and otherwise update the terms used in those regulations to correspond with the terms used throughout the Board's other regulations.

The amendment to the withdrawal regulations provides that a participant's TSP account will be forfeited if the participant does not withdraw his or her account in a timely manner. The account will be restored if the participant complies with the withdrawal requirements.

The amendment to the death benefit regulations explains that a deceased participant's TSP account will be transferred into the Government Securities Investment (G) Fund after the TSP receives notice of the participant's death.

The new power-of-attorney regulation explains how a participant or beneficiary can authorize an individual to act on his or her behalf with respect to transactions with the TSP.

**DATES:** This final rule is effective July 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Forrest, (202) 942-1662, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

**SUPPLEMENTARY INFORMATION:** The Federal Retirement Thrift Investment Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, which has 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 employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

#### Analysis of Part 1620

FERSA created the Federal Employees' Retirement System (FERS), and required the establishment of TSP accounts for "employees and Members" covered by FERS. See FERSA section 101(a), 100 Stat. at 541-44, codified as amended at 5 U.S.C. 8432. For purposes of FERS participation, "employee" and "Member" were defined at FERSA section 101(a), 100 Stat. at 517-20, codified as amended at 5 U.S.C. 8401(11) and (20). Voluntary TSP participation was also authorized for "employees and Members" covered under the Civil Service Retirement System (CSRS). See FERSA section 206(a)(1), 100 Stat. at 593-4, codified as amended at 5 U.S.C. 8351. FERSA also permitted TSP participation by various other specifically named groups, such as employees covered under the Foreign Service retirement plan. However, only individuals so authorized by FERSA could participate in the TSP.

From time to time since the passage of FERSA, Congress has expanded FERS participation and TSP eligibility to other groups of employees. Congress has also permitted certain groups of employees to maintain CSRS and FERS coverage after leaving Federal employment, and permitted them to retain their TSP eligibility. In addition, Congress has extended TSP participation to Supreme Court justices, Federal District Court judges, bankruptcy judges, and United States magistrates even though they are not covered by CSRS or FERS.

The Board created 5 CFR part 1620 to describe the rules for TSP participation by these individuals. Because part 1620 was written incrementally, it contained duplication, such as numerous definition sections, restated general TSP principles found elsewhere in the Board's regulations, and described deadlines for actions which have passed. This final rule eliminates those obsolete and redundant provisions.

#### Removed Interim Subparts A, D, and I

The Continuing Appropriations for Fiscal Year 1987, Public Law 99-591, 100 Stat. 3341, permitted food service employees of the House of Representatives who transferred from Federal employment to employment with a private contractor to retain Federal retirement system coverage and their TSP eligibility. On July 14, 1987, the Board published an interim rule with request for comment in the **Federal Register** (52 FR 28293) to implement that provision. The Board received no comment on the interim rule, which was codified at 5 CFR part 1620, subpart A.

The Federal Employees' Retirement System, Technical Corrections [Act of 1988], Public Law 100-238, title I, 101 Stat. 1744, 1744-67, permitted TSP participation by individuals covered by CSRS as a result of the provision of law described in 5 U.S.C. 8347(o). Under section 8347(o), individuals who were employed by an international organization before October 1, 1988, while not employed by the Federal Government, are nevertheless covered by CSRS. On March 28, 1988, the Board published an interim rule with request for comment in the **Federal Register** (53 FR 10038) to implement the above-mentioned provision. The Board received no comment on this interim rule, which was codified at 5 CFR part 1620, subpart D.

Section 101 of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Control Board Act), Public Law 104-8, 109 Stat. 97, 100, established the District of Columbia Financial Responsibility and Management Assistance Authority (Control Board) as an entity within the Government of the District of Columbia. Under the Control Board Act, certain persons who separated from Federal employment and who became employed by the Control Board could maintain their Federal retirement system coverage and TSP eligibility. On January 29, 1996, the Board published an interim rule with request for comment in the **Federal Register** (61 FR 2872), governing TSP participation by CSRS and FERS employees of the Control Board. That interim rule was codified at subpart I. On April 26, 1996, the Control Board Act was amended by section 153 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134, 110 Stat. 1321, to permit a broader group of Control Board employees to elect CSRS or FERS coverage and thereby TSP eligibility. On October 25, 1996, the Board published

in the **Federal Register** (61 FR 55201) an interim rule with request for comment, amending interim subpart I to reflect the 1996 amendments. The Board received no comment on either rule.

Interim subparts A, D, and I are removed by this rule because they are now unnecessary. The deadline for food service employees to elect Federal retirement coverage passed in 1987 and Board regulations no longer need to address the requirements of that election. The remaining provisions of interim subpart A, which describe the rules for making TSP contributions, are unnecessary because food service employees participate in the TSP under the same rules that apply to all Federal employees.

With respect to interim subpart D, §§ 1620.52 and 1620.53 describe the initial election period for employees covered by the subpart and are no longer needed because the election period has passed. The remainder of interim subpart D is unnecessary because it restates general TSP rules found elsewhere in the TSP regulations.

Finally, with respect to interim subpart I, CSRS and FERS employees of the D.C. Control Board also participate in the TSP under conventional rules. Although certain employees of the D.C. Control Board are eligible for CSRS or FERS coverage while others are not, this is a matter within the jurisdiction of the United States Office of Personnel Management, and Board regulations need not address the particulars of that eligibility.

#### *New Subpart A*

This final rule creates a new subpart A to explain the rules that generally apply to all TSP participants covered by part 1620. New § 1620.1 describes who is covered by part 1620 and explains that part 1620 must be read in conjunction with the Board's other regulations at 5 CFR chapter VI. Currently, each subpart of part 1620 contains its own definition section, which results in unnecessary duplication. New § 1620.2 consolidates the definitions, to the extent possible, and conforms the terms used in this part to those used throughout the remainder of 5 CFR chapter VI. New § 1620.3 states the general rule, currently repeated throughout part 1620, that an employing agency must timely notify an employee of his or her TSP eligibility and the applicability of part 1620.

#### *New Subpart B*

The Federal Employees' Retirement System, Technical Corrections [Act of 1988], Public Law 100-238, tit. I, 101

Stat. 1744, 1744-67, permitted the continuation of CSRS and FERS retirement coverage, and resulting TSP eligibility, for three separate groups of Federal employees: (1) those transferred or otherwise assigned to a cooperative extension service (CES), as defined at 7 U.S.C. 3103(5); (2) those who enter on approved leave-without-pay status to serve as full-time officers or employees of an organization composed primarily of "employees" as defined at 5 U.S.C. 8331(1) or 8401(11); and (3) those in an approved leave-without-pay status assigned to a State or local government under the Intergovernmental Personnel Act (IPA), 5 U.S.C. chapter 33, subchapter VI.

On March 28, 1988, the Board published an interim rule with request for comment in the **Federal Register** (53 FR 10038) to implement these provisions of the 1988 Act, which was codified at 5 CFR part 1620, subparts B and C. Interim subpart B addresses CES employees, while interim subpart C addresses union and IPA employees. On May 18, 1988, the Board published in the **Federal Register** (53 FR 17685) an amendment to the March 28, 1988, interim rule which extended the period during which union employees could elect TSP participation. The Board received no comment on either rule.

This rule condenses interim subparts B and C into a new subpart B because, with few exceptions, the same rules apply to TSP participation by union, IPA, and CES employees. Some provisions of the interim regulations have been moved to the new subpart A, *i.e.*, the definitions (§§ 1620.11 and 1620.31), the employee notice provisions (§§ 1620.18(b) and 1620.39), and the reference to other TSP regulations (§§ 1620.19 and 1620.40). Others have been eliminated because they only restated general TSP principles found elsewhere in TSP regulations, *i.e.*, the deadline for making employee contributions (§§ 1620.14 and 1620.33) and the computation of basic pay (§§ 1620.16 and 1620.35). Interim rule §§ 1620.17, 1620.36, and 1620.37, which describe retroactive TSP contributions, are combined and rewritten in new section 1620.13 to omit material discussed in the error correction regulations at 5 CFR part 1605.

#### *New Subpart C*

Section 401(a) of the Federal Employees Health Benefits Amendments Act of 1988, 5 U.S.C. 8440a, permits justices and judges of the United States, as defined at 28 U.S.C. 451, to participate in the TSP. Similarly,

section 7(a) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, 5 U.S.C. 8440b, permits bankruptcy judges and United States magistrates to participate in the TSP. On August 10, 1989, the Board published an interim rule with request for comment in the **Federal Register** (54 FR 32785) to implement sections 8440a and 8440b. The August 10 interim rule was codified at subparts E and F of part 1620. On January 13, 1994, the Board published an interim rule with request for comment in the **Federal Register** (59 FR 1889) to implement an amendment made to 5 U.S.C. 8440a and 8440b by the Thrift Savings Plan Technical Amendments Act of 1990, Public Law 101-335, section 3(b), 104 Stat. 319, 320-21. The 1990 amendment lifted investment restrictions that had required participants to invest their TSP accounts solely in the Government Securities Investment (G) Fund. On November 18, 1996, the Board published an interim rule with request for comment in the **Federal Register** which, *inter alia*, conformed the definitions of basic pay found at §§ 1620.72 and 1620.83 to the definition of that term contained in the Thrift Savings Plan Act of 1996, 5 U.S.C. 8401(4). The Board received no comment on the foregoing publications.

To the extent it is not repeated elsewhere in Board regulations, the information in interim subparts E and F is retained because justices and judges of the United States, United States magistrates, and bankruptcy judges participate with special rules for contributions, withdrawals, and spousal rights. Therefore, this rule condenses interim subparts E and F into a new subpart C.

The new subpart C also contains a discussion of two groups of TSP participants not mentioned in interim subparts E and F. Section 306(d)(1) of the Judicial Improvements Act of 1990, 5 U.S.C. 8440c, permits judges of the United States Court of Federal Claims to participate in the TSP. Section 5(a)(1) of the United States Court of Veterans Appeals, Amendments [Act of 1991], 5 U.S.C. 8440d, permits judges of the Court of Veterans Appeals to participate in the TSP. The Board did not publish regulations in part 1620 to implement sections 8440c and 8440d. However, because these judges participate in the TSP under rules similar to those affecting other judges, the Board decided to discuss them also in the new subpart C.

New subpart C also contains a new statement of law. Interim rule

§§ 1620.73 and 1620.84, which deal with TSP withdrawals, are condensed into a new § 1620.22. However, after the interim regulations were written, legislation was passed that authorized in-service withdrawals. Therefore, new § 1620.22 explains in-service as well as post-employment withdrawal eligibility. New § 1620.22 does not discuss the withdrawals themselves, or the procedures for obtaining them, because those matters are discussed at length in the Board's withdrawal regulations at 5 CFR part 1650.

The new subpart C also condenses several provisions of the Board's interim regulations to eliminate redundant and obsolete statements. New § 1620.21 explains the TSP contribution rules currently found in interim rule §§ 1620.72 and 1620.83, while new § 1620.23 explains the spousal rights currently discussed in interim rule §§ 1620.74 and 1620.85.

The remaining provisions of interim subparts E and F are eliminated. The new subpart C also omits the definitions currently found at interim §§ 1620.71 and 1620.81. If the meaning of any word is not apparent from the text of the regulation, it is defined in the new subpart A. The new subpart C also does not describe the circumstances under which a judge's annuity will be offset, presently set forth in interim rule §§ 1620.72(c) and 1620.75, because judges' annuities are administered by the Administrative Office of the United States Courts, not the TSP. Finally, interim rule § 1620.82 is eliminated. The initial election period established under 5 U.S.C. 8440a has passed; therefore interim rule § 1620.82(a) is obsolete. Elections occurring outside the initial election period must follow the rules found at 5 CFR part 1600; therefore, interim rule § 1620.82(b) is also unnecessary.

#### *New Subpart D*

The Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (1990 Portability Act), Public Law 101-508, 104 Stat. 1388, 1388-335 to 1388-341 (codified largely at 5 U.S.C. 8347(q)(1) and 8461(n)(1)), permitted CSRS and FERS employees of the Department of Defense and the United States Coast Guard who moved on or after January 1, 1987, to a Nonappropriated Fund (NAF) Instrumentality of the Department of Defense (DOD) to participate in the TSP if they elected to maintain their CSRS or FERS retirement coverage after the move. On June 10, 1991, the Board published an interim rule with request for comment in the **Federal Register** (56

FR 26,722) implementing the 1990 Portability Act as it pertained to the TSP. The Board received no comment on the 1991 interim rule, which was codified at 5 CFR part 1620, subpart G.

Section 1043 of the 1996 Defense Authorization Act for Fiscal Year 1996 (Defense Authorization Act), Public Law 104-106, 110 Stat. 186, 434-439, amended the 1990 Portability Act to allow a broader group of employees to participate in the TSP, both prospectively and retroactively. On August 9, 1996, the Board published an interim rule with request for comment in the **Federal Register** (61 FR 41485) amending interim subpart G to implement the Defense Authorization Act amendments.

The Board received a comment from one Federal agency objecting to three provisions of interim subpart G: §§ 1620.93(b), 1620.93(c) and 1620.94(a). After consideration thereof, the Board determined to promulgate those interim provisions as final. Those provisions are renumbered as §§ 1620.33(b), 1620.33(c) and 1620.34(a), respectively, on the new subpart D.

The new subpart D does not change the substance of interim subpart G; rather, it renumbers and reorganizes its provisions. The new subpart D also does not contain certain provisions that have been moved to the new subpart A, *i.e.*, definitions of *basic pay* and *retirement coverage* (§ 1620.91), the employee notice provision (§ 1620.98), and the reference to other TSP regulations (§ 1620.99). The new subpart D omits as unnecessary several provisions of interim subpart G. First, interim rule §§ 1620.92(a)(2) and (b) repeat the TSP contribution election rules found at 5 CFR 1600; that repetition is removed from the new rule and replaced with a reference to part 1600. Second, interim rule § 1620.93(b) provides a detailed restatement of the TSP error correction procedures found at 5 CFR 1605.2(c); new § 1620.33 replaces that recitation with a reference to § 1605.2(c). Finally, interim rule § 1620.95, which explains that the NAF instrumentality must submit agency contributions to the TSP record keeper, is also omitted as an unnecessary restatement of the process described at 5 CFR part 1600.

#### *New Subpart E*

Section 4 of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 5 U.S.C. 8432b, describes the rights to TSP benefits afforded to an employee who is restored to a pay status from a leave-without-pay status or reemployed in the civilian

service under 38 U.S.C. chapter 43 following a release from military service, discharge from hospitalization related to that service, or other similar event. On April 21, 1995, the Board published an interim rule with request for comment in the **Federal Register** (60 FR 19990), which was codified at 5 CFR part 1620 subpart H.

On August 20, 1996, the Small Business Job Protection Act of 1996, Public Law 104-188, 110 Stat. 1755, added section 414(u) to the Internal Revenue Code. Section 414(u) provides that retroactive contributions made by a reemployed veteran pursuant to USERRA are not subject to the elective deferral limit at 26 U.S.C. 402(g) for the year in which the contributions are made. On April 14, 1997, the Board published a final rule in the **Federal Register** (62 FR 18234) which removed a reference in interim subpart H to the elective deferral limit. The April 14 rule also adopted the amended subpart H as final.

This final rule makes one substantive amendment to the 1997 final rule: under new TSP policy, a TSP participant whose loan was closed by taxable distribution due to a USERRA-related absence will be provided an opportunity to reinstate the TSP loan upon reemployment or upon return to Federal employment if the participant was on approved leave-without-pay. An employee will be given one year from the date of his or her reemployment to request reinstatement of the loan. The TSP record keeper will inform the employee if reinstatement is feasible, *i.e.*, whether loan repayment can be accomplished within the time limits described in 5 CFR 1655.13(a)(5), and will not violate the restriction set forth in 5 CFR 1655.4 on the number of outstanding TSP loans. If reinstatement is not feasible, the participant will be given a one-time opportunity to repay the loan in full in the amount which, in effect, reverses the taxable distribution. The TSP record keeper will inform the employee of the amount he or she must repay, and the employee must provide the funds in a single payment to the TSP record keeper within 90 days of that notice.

This final rule also renumbers and reorganizes the substance of subpart H of the 1997 final rule and places it in a new subpart E. The new subpart E does not contain the definition of *record keeper*, currently at § 1620.101 of the 1997 final rule, because that term is defined in new subpart A. In addition, *basic pay* and *retroactive period* have been redefined to be consistent with the Board's other regulations. Section

1620.103 of the 1997 final rule is also omitted because lost earnings are discussed at 5 CFR part 1606.

The provisions of this final rule amending part 1620 were published in proposed form in the **Federal Register** on March 23, 1999 (64 FR 13924). The Board received no comment on that proposed rule, and therefore adopts the rule as final without change.

#### **Analysis of the Amendment to Part 1650**

The deadline for a participant to withdraw or begin withdrawing his or her account is governed by 5 U.S.C. 8433. Under section 8433(f), this deadline is April 1 of the year following the later of the year in which the participant turns age 70½ or the year in which the participant separates from Government employment. Final regulations governing the deadline for withdrawing a TSP account were published in the **Federal Register** on September 18, 1997 (62 FR 49113). These regulations did not address the action the Board will take if a participant fails to comply with the withdrawal deadline.

Under this amendment to the 1997 final rule, whenever a participant does not comply with the withdrawal deadline, the Board will transfer all of the funds in his or her account to the Government Securities Investment Fund (G Fund) that are not already invested in that Fund. The participant will be sent a notice of this action and informed that the account will be declared abandoned and forfeited unless the participant takes the appropriate withdrawal action within 90 days of the date of notice. Forfeiture is necessary because participants who have not taken timely action to withdraw their accounts are no longer eligible to have a TSP account.

If, at a later time, a participant reclaims the TSP account and a proper withdrawal election has been received, the Board will restore the funds to the account and authorize the withdrawal. The amount the participant may withdraw is the amount of funds in the account at the time the Board declared it to be abandoned and forfeited. No earnings will be paid on these funds during the forfeiture period. If the participant reclaims the account balance, but decides not to take a lump sum or monthly payments withdrawal, the Board will purchase an annuity for the participant after it has received the necessary information from him or her. The option of electing an annuity is not available for TSP accounts of \$3,500 or

less. Those accounts will be paid in accordance with § 1650.22.

This amendment to part 1650 was published in proposed form in the **Federal Register** on March 22, 1999 (64 FR 13725). The Board received no comment on the proposed amendment, and therefore adopts the rule as final without change.

#### **Analysis of the Amendment to Part 1651**

The disbursement of death benefits from the TSP is governed by the provisions of 5 U.S.C. 8433(e) and 8424(d). Under section 8433(e), if a TSP participant dies before he or she has completed a withdrawal election, the account is disbursed in accordance with the order of precedence set forth at section 8424(d). Final regulations governing the payment of the TSP account to a beneficiary were published in the **Federal Register** on June 13, 1997 (62 FR 32426).

These regulations do not address how the account will be invested between the participant's death and disbursement of the account to the beneficiary(ies). In the past, the Board has maintained the account as it was invested upon the participant's death; the Board cannot maintain a separate account for a beneficiary and will not permit a beneficiary to direct how the account should be invested. However, it may take several months before the Board can identify and locate the rightful beneficiary(ies) of an account and pay the account balance. During this time, a participant's balances in some investment funds can experience significant changes in value as a result of fluctuations in the market.

FERSA permits a participant to elect to invest all or any portion of his or her contributions in several investment options. At present, all investment options except the Government Securities Investment (G) Fund are invested in securities that fluctuate in value as market conditions change. In contrast, money in the G Fund is invested in short-term Government securities that are backed by the full faith and credit of the United States and that do not fluctuate in value.

Before a participant can invest in an investment fund other than the G Fund, he or she must provide a one-time acknowledgment that the investment is made at the participant's risk, that the participant is not protected by the United States Government or by the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the

investment. FERSA does not grant to beneficiaries the right to own or control the TSP account of a deceased participant; instead, the account is paid out to them as quickly as administratively feasible. Thus, beneficiaries are not solicited to acknowledge the risk of investment in market securities pending payout to them.

Because money in investment funds other than the G Fund remains subject to market risk even after a participant's death, however, and because beneficiaries have neither acknowledged nor have any control over that risk, the Board intends to transfer the entire TSP account into the G Fund after receiving written notice of a participant's death if the participant dies with any portion of his or her account in an investment fund other than the G Fund. The account will continue to accrue earnings at the G Fund rate in accordance with part 1645 until the account is paid in accordance with the order of precedence set forth in paragraph (a) of this section. This action will eliminate the market risk to the beneficiary and will preserve the value of a deceased participant's account until it can be paid out.

This amendment to part 1651 was published in proposed form in the **Federal Register** on February 11, 1999 (64 FR 6818). The Board received nine comments from individuals, three of whom identified themselves as TSP participants, and one comment from a Federal employee group. Comments on the proposed regulations generally opposed the proposed amendment on the ground that the transfer from the C and F Funds to the G Fund might come immediately after the C and F Funds have lost value. While the Board recognizes that this is a possibility, it is equally possible that a transfer could come immediately before a fluctuation in the market that causes the C and F Funds to lose value. Since there is no way to predict if, when, or how the market will fluctuate, the Board believes that it is more prudent to handle the account in a way that preserves the *status quo* at the time of notification of death.

Six of the commenters suggested that the Board permit the beneficiary to decide how to invest the funds. This suggestion is legally and practically impossible. The Board may not legally permit a beneficiary to manage investments in an account since FERSA does not permit the Board to maintain an account for a beneficiary. Although one commenter objected to this restriction, it is not a restriction that the

Board has the authority to alter. Instead, Congress, in drafting FERSA, decided that the Board should immediately pay out the balance in a deceased participant's account to the rightful beneficiary. Thus, the suggestion is also practically impossible since, as soon as the beneficiary is identified, the account is paid.

The risk of market fluctuation which this amendment is designed to mitigate is that fluctuation that may take place after the participant dies but before the beneficiary has been paid. One commenter suggested that the Board can mitigate this risk by lessening the time it takes to identify the proper beneficiary. However, the time needed to identify a beneficiary is dependent upon persons and events that are beyond the Board's control. First, the Board has no knowledge that a separated participant has died until someone (who need not be a beneficiary) notifies the Board of the participant's death. The Board's regulations require that this notice be accompanied by a copy of a death certificate in order to establish the fact of death; however, persons do not always comply with this request. Thus, payment is often delayed until the Board can secure a copy of the participant's death certificate.

After the fact of the death has been established, the Board must determine the identity of the rightful beneficiary. This means not only ensuring that the person designated is the person whom the participant wishes to receive the balance in his or her TSP account, but also that the address for the beneficiary is current. Participants are encouraged to file a Form TSP-3, Designation of Beneficiary; they are also encouraged to ensure that this designation remains current. Participants often do neither and, even if there is a designation of beneficiary form on file, the Board must expend time locating the designated beneficiary.

Even more difficult and time-consuming are the situations in which the participant has not filed a designation of beneficiary form. In these cases, the beneficiary will be identified in accordance with FERSA's order of precedence. However, this process of identification often involves several rounds of correspondence among the Board, the person who provides notice of the participant's death, and persons who might be the appropriate beneficiary. While this process does not occur in each case, it occurs with sufficient regularity to suggest to the Board that participants and their beneficiaries need the protection against

market fluctuation that transferring the account into the G Fund would provide.

Four of the commenters suggested that the Board should leave the account invested as the participant left it. Generally, these commenters recognized that the participant had assumed a risk that the value of his or her account could decrease as well as increase; it was a risk, they suggested, that the participant should be regarded as having imposed on his or her heirs. This conclusion is unwarranted; a living participant's investment choices are subject to his or her control, whereas those of a deceased participant clearly are not.

Moreover, a further suggestion of one of the commenters is inherently infeasible. That commenter suggested that participants be given the option of authorizing the Board to transfer their accounts into the G Fund after their death only if the market had not declined and that, if it had declined, the Board should wait until the account had regained its value before transferring the balance. While the Board recognizes that some market fluctuations in the recent past have been brief and dramatic, historically this has often not been the case. Because the Board cannot legally maintain an account for a beneficiary, it does not have the authority to hold an account for a period of time, however short, until the market has regained a loss (if it does).

Given the restrictions on the Board and its duty to act in the best interests of all participants and their beneficiaries, the Board believes that the best way to do this is, upon notification of a participant's death, to preserve the then-value of the account from the possibility of decline until the balance can be paid out. For this reason, the Board has decided to adopt the proposed rule as final without change.

#### **Analysis of the Amendment to Part 1690**

Many sections of the Board's regulations require a TSP participant to sign a TSP form to affect certain transactions in his or her TSP account, including (but not limited to) withdrawals, loans, interfund transfers, and the designation of a beneficiary in the event of death. However, a participant may become unable to manage his or her own account for various reasons, such as incapacity or absence due to extended travel. In such circumstances, an attorney-in-fact may affect transactions in the TSP on behalf of the participant by signing the TSP form(s) as an agent of the participant.

This final rule requires that, before an attorney-in-fact may sign a TSP form on behalf of a participant, the Board must receive and approve either a general power of attorney that authorizes the attorney-in-fact to act on behalf of the principal in the areas of personal property, finance, retirement, or business transactions; or a special power of attorney that specifically grants the attorney-in-fact the authority to affect transactions in the TSP on behalf of the participant. A valid power of attorney must be authenticated, attested, acknowledged, or certified before a notary public or other authorized official. When the Board receives a power of attorney, it will review it and advise the participant or attorney-in-fact whether it is valid for affecting transactions in the TSP.

This amendment to part 1690 was published in proposed form in the **Federal Register** on December 14, 1998 (63 FR 68699). The Board received no comment on the proposed rule and therefore is adopting it as a final rule without change.

#### **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 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**

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 publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

**List of Subjects****5 CFR Parts 1620, 1651, and 1690**

Government employees, Pensions, Retirement.

**5 CFR Part 1650**

Alimony, Claims, Government employees, Pensions, Retirement.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons set out in the preamble, chapter VI, Code of Federal Regulations, is amended as set forth below:

1. Part 1620 is revised to read as follows:

**PART 1620—EXPANDED AND CONTINUING ELIGIBILITY****Subpart A—General**

Sec.

- 1620.1 Application.
- 1620.2 Definitions.
- 1620.3 Contributions.
- 1620.4 Notices.

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

- 1620.10 Definition.
- 1620.11 Scope.
- 1620.12 Employing authority contributions.
- 1620.13 Retroactive contributions.
- 1620.14 Payment to the record keeper.

**Subpart C—Article III Justices and Judges; Bankruptcy Judges and U.S. Magistrates; and Judges of the Courts of Federal Claims and Veterans Appeals**

- 1620.20 Scope.
- 1620.21 Contributions.
- 1620.22 Withdrawals.
- 1620.23 Spousal rights.

**Subpart D—Nonappropriated Fund Employees**

- 1620.30 Scope.
- 1620.31 Definition.
- 1620.32 Employees who move to a NAF instrumentality on or after August 10, 1996.
- 1620.33 Employees who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965.
- 1620.34 Employees who move from a NAF instrumentality to a Federal Government agency.
- 1620.35 Loan payments.
- 1620.36 Transmission of information.

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

- 1620.40 Scope.
- 1620.41 Definitions.
- 1620.42 Processing TSP contribution elections.
- 1620.43 Agency payments to record keeper; agency ultimately responsible.
- 1620.44 Restoring forfeited agency automatic (1%) contributions.

1620.45 Restoring post-employment withdrawals and reversing taxable distributions.

1620.46 Agency responsibilities.

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

Subpart C also issued under 5 U.S.C. 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8).

Subpart D also issued under sec. 1043(b), Pub. L. 104–106, 110 Stat. 186, 434–435; and sec. 7202(m)(2), Pub. L. 101–508, 104 Stat. 1388.

Subpart E also issued under 5 U.S.C. 8432b(i).

**Subpart A—General****§ 1620.1 Application.**

The Federal Employees' Retirement System Act of 1986 (codified as amended largely at 5 U.S.C. 8351 and 8401 through 8479) originally limited TSP eligibility to specifically named groups of employees. On various occasions, Congress has since expanded TSP eligibility to other groups. Depending on the circumstances, that subsequent legislation requires retroactive contributions, waives open season rules, or provides other special features. Where necessary, this part describes those special features. The employees and employing agencies covered by this part are also governed by the other regulations in 5 CFR chapter VI to the extent that they do not conflict with the regulations of this part.

**§ 1620.2 Definitions.**

As used in this part:

*Account balance* means the nonforfeitable valued account balance of a TSP participant as of the most recent month-end.

*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 for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

*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).

*CSRS* means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

*CSRS employee* or *CSRS participant* means any employee or participant covered by CSRS or an equivalent retirement system, including employees

authorized to contribute to the TSP under 5 U.S.C. 8351.

*Election period* means the last calendar month of a TSP open season and is the earliest period in which an election to make or change a TSP contribution election can become effective.

*Employee contributions* means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8351(a), 8432(a), or 8440a through 8440d.

*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).

*Employing agency* means the organization that employs an individual described at § 1620.1 as being eligible to contribute to the TSP and that has authority to make personnel compensation decisions for such employee.

*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, and any equivalent Federal Government retirement system.

*FERS employee* or *FERS participant* means any employee or participant covered by FERS.

*G Fund* means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A).

*Individual account* means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

*In-service withdrawal* means an age-based or financial hardship withdrawal from the TSP obtained by a participant before separation from Government employment.

*Investment fund* means either the G Fund, the F Fund, or the C Fund, and any other TSP investment funds created after December 27, 1986.

*Monthly processing cycle* means the process, beginning on the evening of the fourth business day of the month, by which the TSP record keeper allocates the amount of earnings to be credited to participant accounts in the TSP, implements interfund transfer requests, and authorizes disbursements from the TSP.

*Open season* means the period during which employees may choose to begin making contributions to the TSP, to change or discontinue (without losing

the right to recommence contributions the next open season) the amount currently being contributed to the TSP, or to allocate prospective contributions to the TSP among the investment funds.

*Plan participant or participant* means any person with an account in the TSP, or who would have an account in the TSP but for an employing agency error.

*Post-employment withdrawal* means a withdrawal from the TSP obtained by a participant who has separated from Government employment.

*Separation from Government employment* means the cessation of employment with the Federal Government or 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.

*Spouse* means the person to whom a TSP participant is married on the date he or she signs forms on which the TSP requests spouse information including a spouse from whom the participant is legally separated, and includes a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live.

*Thrift Savings 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 (TSP) contribution election* means a request by an employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period, or to change the allocation of future TSP contributions among the investment funds, and made effective pursuant to 5 CFR part 1600.

*Thrift Savings Plan Service Computation Date* means the date, actual or constructed, that includes all "service" as defined at 5 CFR 1603.1.

*Thrift Savings Plan Service Office* means the office established by the Board to service participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161-1500.

#### § 1620.3 Contributions.

The employing agency is responsible for transmitting to the Board's record keeper, in accordance with Board procedures, any employee and employer

contributions that are required by this part.

#### § 1620.4 Notices.

An employing agency must notify affected employees of the application of this part as soon as practicable.

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

##### § 1620.10 Definition.

As used in this subpart, *employing authority* means the entity that employs an individual described in § 1620.11 and which has the authority to make personnel compensation decisions for such employee.

##### § 1620.11 Scope.

This subpart applies to any individual participating in CSRS or FERS who:

(a) Has been appointed or otherwise assigned to one of the cooperative extension services, as defined in 7 U.S.C. 3103(5);

(b) Has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by 5 U.S.C. 8331(1) and 8401(11); or

(c) Has been assigned, on an approved leave-without-pay basis, from a Federal agency to a state or local government under 5 U.S.C. chapter 33, subchapter VI.

##### § 1620.12 Employing authority contributions.

The employing authority, at its sole discretion, may choose to make employer contributions under 5 U.S.C. 8432(c) for employees who are covered under FERS. Such contributions may be made for any period of eligible service after January 1, 1984, provided that the employing agency must treat all its employees who are eligible to receive employer contributions in the same manner. The employing authority can only commence or terminate employer contributions during an open season and must provide all affected employees with notice of a decision to commence or terminate such contributions at least 45 days before the beginning of the applicable election period. The employing authority may not contribute to the TSP on behalf of CSRS employees.

##### § 1620.13 Retroactive contributions.

(a) An employing authority can make retroactive employer contributions on behalf of FERS employees described in this subpart, but cannot duplicate

employer contributions already made to the TSP.

(b) An employing authority making retroactive employing agency contributions on behalf of a FERS employee described in § 1620.12 must continue those contributions (but only to the extent they relate to service with the employing authority) if the employee returns to his or her agency of record or is transferred to another Federal agency without a break in service.

(c) CSRS and FERS employees covered by this subpart can make retroactive employee contributions relating to periods of service described in § 1620.12, unless they already have been given the opportunity to make contributions for these periods of service.

##### § 1620.14 Payment to the record keeper.

(a) The employing authority of a cooperative extension service employee (described at § 1620.11(a)) is responsible for transmitting employer and employee contributions to the TSP record keeper.

(b) The employing authority of a union employee or an Intergovernmental Personnel Act employee (described at § 1620.11(b) and (c), respectively) is responsible for transmitting employer and employee contributions to the employee's Federal agency of record. Employee contributions will be deducted from the employee's actual pay. The employee's agency of record is responsible for transmitting the employer and employee's contributions to the TSP record keeper in accordance with Board procedures. The employee's election form (TSP-1) will be filed in the employee's official personnel folder or other similar file maintained by the employing authority.

#### Subpart C—Article III Justices and Judges; Bankruptcy Judges and U.S. Magistrates; and Judges of the Courts of Federal Claims and Veterans Appeals

##### § 1620.20 Scope.

(a) This subpart applies to:

(1) A justice or judge of the United States as defined in 28 U.S.C. 451;

(2) A bankruptcy judge appointed under 28 U.S.C. 152 or a United States magistrate appointed under 28 U.S.C. 631 who has chosen to receive a judges' annuity described at 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100-659, 102 Stat. 3910-3921;

(3) A judge of the United States Court of Federal Claims appointed under 28 U.S.C. 171 whose retirement is covered by 28 U.S.C. 178; and

(4) A judge of the Court of Veterans Appeals appointed under 38 U.S.C. 7253.

(b) This subpart does not apply to a bankruptcy judge or a United States magistrate who has not chosen a judges' annuity, or to a judge of the United States Court of Federal Claims who is not covered by 28 U.S.C. 178. Those individuals may participate in the TSP only if they are otherwise covered by CSRS or FERS.

#### § 1620.21 Contributions.

(a) An individual covered under this subpart can contribute up to 5 percent of basic pay per pay period to the TSP, and, unless stated otherwise in this subpart, he or she is covered by the same rules and regulations that apply to a CSRS participant in the TSP.

(b) The following amounts are not basic pay and no TSP contributions can be made from them:

(1) An annuity or salary received by a justice or judge of the United States (as defined in 28 U.S.C. 451) who is retired under 28 U.S.C. 371(a) or (b), or 372(a);

(2) Amounts received by a bankruptcy judge or a United States magistrate under a judges' annuity described at 28 U.S.C. 377;

(3) An annuity or salary received by a judge of the United States Court of Federal Claims under 28 U.S.C. 178; and

(4) Retired pay received by a judge of the United States Court of Veterans Appeals under 38 U.S.C. 7296.

#### § 1620.22 Withdrawals.

(a) *Post-employment withdrawal.* An individual covered under this subpart can make a post-employment withdrawal election described at 5 U.S.C. 8433(b):

(1) Upon separation from Government employment.

(2) In addition to the circumstance described in paragraph (a)(1) of this section, a post-employment withdrawal election can be made by:

(i) A justice or judge of the United States (as defined in 28 U.S.C. 451) who retires under 28 U.S.C. 317(a) or (b) or 372(a);

(ii) A bankruptcy judge or a United States magistrate receiving a judges' annuity under 28 U.S.C. 377;

(iii) A judge of the United States Court of Federal Claims receiving an annuity or salary under 28 U.S.C. 178; and

(iv) A judge of the United States Court of Veterans Appeals receiving retired pay under 38 U.S.C. 7296.

(b) *In-service withdrawals.* An individual covered under this subpart can request an in-service withdrawal described at 5 U.S.C. 8433(h) if he or she:

(1) Has not separated from Government employment; and

(2) Is not receiving retired pay as described in paragraph (a)(2) of this section.

#### § 1620.23 Spousal rights.

(a) The current spouse of a justice or judge of the United States (as defined in 28 U.S.C. 451), or of a Court of Veterans Appeals judge, possesses the rights described at 5 U.S.C. 8351(b)(5).

(b) A current or former spouse of a bankruptcy judge, a United States magistrate, or a judge of the United States Court of Federal Claims, possesses the rights described at 5 U.S.C. 8435 and 8467 if the judge or magistrate is covered under this subpart.

#### Subpart D—Nonappropriated Fund Employees

##### § 1620.30 Scope.

This subpart applies to any employee of a Nonappropriated Fund (NAF) instrumentality of the Department of Defense (DOD) or the U.S. Coast Guard who elects to be covered by CSRS or FERS and to any employee in a CSRS- or FERS-covered position who elects to be covered by a retirement plan established for employees of a NAF instrumentality pursuant to the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, Public Law 101-508, 104 Stat. 1388, 1388-335 to 1388-341, as amended (codified largely at 5 U.S.C. 8347(q) and 8461(n)).

##### § 1620.31 Definition.

As used in this subpart, *move* means moving from a position covered by CSRS or FERS to a NAF instrumentality of the DOD or Coast Guard, or *vice versa*, without a break in service of more than one year.

##### § 1620.32 Employees who move to a NAF instrumentality on or after August 10, 1996.

Any employee who moves from a CSRS- or FERS-covered position to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS, will be eligible to contribute to the TSP as determined in accordance with 5 CFR part 1600.

##### § 1620.33 Employees who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965.

(a) *Future TSP contributions.*—(1) *Employee contributions.* An employee

who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of that move may elect to make any future contributions to the TSP in accordance with 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, within 30 days of the date of his or her election to be covered by CSRS or FERS. Such contributions will begin being deducted from the employee's pay no later than the pay period following the election to contribute to the TSP. Any TSP contribution election which may have been in effect at the time of the employee's move will not be effective for any future contributions.

(2) *Employer contributions.* If an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, elects to be covered by FERS:

(i) The NAF instrumentality must contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that the employee is eligible to receive under 5 U.S.C. 8432(c)(1), beginning no later than the pay period following the employee's election to be covered by FERS; and

(ii) If the employee elects to make contributions to the TSP pursuant to paragraph (a)(1) of this section, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that the employee is eligible to receive under 5 U.S.C. 8432(c)(2), beginning at the same time as the employee's contributions are made pursuant to paragraph (a)(i) of this section.

(b) *Retroactive TSP contributions.* (1) Without regard to any election to contribute to the TSP under paragraph (a)(i) of this section, the NAF instrumentality will take the following actions with respect to an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of the move:

(i) *Agency automatic (1%) makeup contributions.* The NAF instrumentality must, within 30 days of the date of the employee's election to be covered by FERS, contribute to the Thrift Savings Fund an amount representing the agency automatic (1%) contribution for all pay periods during which the employee would have been eligible to receive the agency automatic (1%) contribution under 5 U.S.C. 8432, beginning with the date of the move and ending with the date that agency

automatic (1%) contributions begin under paragraph (a)(2) of this section. Lost earnings will not be paid on these contributions unless they are not made by the NAF instrumentality within the time frames required by these regulations.

(ii) *Employee makeup contributions.*

(A) Within 60 days of the election to be covered by FERS, an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by FERS, may make an election regarding employee makeup contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions which the employee would have been eligible to make under 5 U.S.C. 8432 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the date that agency automatic (1%) contributions begin under paragraph (a)(2) of this section.

(B) Within 60 days of the election to be covered under CSRS, an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS, may make an election regarding make-up contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions that the employee would have been eligible to make under 5 U.S.C. 8351 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the pay period following the date the election to be covered by CSRS is made.

(C) Deductions made from the employee's pay pursuant to an employee's election under paragraph (b)(1)(ii)(A) or (B) of this section, as appropriate, must be made according to a schedule that meets the requirements of 5 CFR 1505.2(c). The payment schedule must begin no later than the pay period following the date the employee elects the schedule.

(iii) *Agency matching makeup contributions.* The NAF instrumentality must pay to the Thrift Savings Fund any matching contributions attributable to employee contributions made under paragraph (b)(1)(ii)(A) of this section which the NAF instrumentality would have been required to make under 5 U.S.C. 8432(c), at the same time that those employee contributions are contributed to the Fund.

(2) Makeup contributions must be reported for investment by the NAF instrumentality when contributed, according to the employee's election for current TSP contributions. If the employee is not making current contributions, the retroactive contributions must be invested according to an election form (TSP-1-NAF) filed specifically for that purpose.

(c) *Noneligible employees.* An employee who is covered by a NAF retirement system is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement system coverage must be removed from the TSP as required by the regulations at 5 CFR part 1605.

(d) *Elections.* If a TSP election was made by an employee of a NAF instrumentality who elected to be covered by CSRS or FERS before August 10, 1996, and the election was properly implemented by the NAF instrumentality because it was valid under then-effective regulations, the election is effective under the regulations in this subpart.

**§ 1620.34 Employees who move from a NAF instrumentality to a Federal Government agency.**

(a) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by a NAF retirement system is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement coverage must be removed from the TSP as required by the regulations at 5 CFR part 1605.

(b) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by CSRS or FERS will become eligible to participate in the TSP as determined in accordance with 5 CFR part 1600.

**§ 1620.35 Loan payments.**

NAF instrumentalities must deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the record keeper in accordance with 5 CFR part 1655 and Board procedures. Loan payments may not be deducted and transmitted for employees who elect to be covered by the NAF retirement system. Such employees will be considered to have separated from Government service and must prepay their loans or the TSP will declare the loan to be a taxable distribution.

**§ 1620.36 Transmission of information.**

Any employee who moves to a NAF instrumentality must be reported by the losing Federal Government agency to the TSP record keeper as having transferred to a NAF instrumentality of the DOD or Coast Guard rather than as having separated from Government service. If the employee subsequently elects not to be covered by CSRS or FERS, the NAF instrumentality must submit an Employee Data Record to report the employee as having separated from Federal Government service as of the date of the move.

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

**§ 1620.40 Scope.**

To be covered by this subpart, an employee must have:

(a) Separated from Federal civilian service or entered leave-without-pay status in order to perform military service; and

(b) Become eligible to seek reemployment or restoration to duty by virtue of a release from military service, discharge from hospitalization, or other similar event that occurred on or after August 2, 1990; and

(c) Been reemployed in, or restored to, a position covered by CSRS or FERS pursuant to the provisions of 38 U.S.C. chapter 43.

**§ 1620.41 Definitions.**

As used in this subpart:

*Basic pay* means basic pay as defined in § 1620.2, except for the portion of the retroactive period when an employee did not receive a Federal salary. In that case, basic pay is the rate of pay that would have been payable to the employee had he or she remained continuously employed in the position last held before separating (or entering leave-without-pay status) to perform military service.

*Current contributions* means those contributions that are made prospectively for any pay period after the employee has been reemployed.

*Leave without pay* or *LWOP* means a temporary nonpay status and absence from duty (including military furlough) to perform military service.

*Reemployed* or *reemployment* means reemployed in (or restored from a nonpay status to) a position pursuant to 38 U.S.C. chapter 43, which is subject to 5 U.S.C. chapter 84 or which entitles the employee to contribute to the TSP pursuant to 5 U.S.C. 8351.

*Retroactive period* means the period for which an employee is entitled to

make up missed employee contributions and to receive retroactive agency contributions.

*Retroactive period beginning date* means, for an employee who was eligible to contribute to the TSP when military service began, the date following the effective date of separation or, in the case of LWOP, the date the employee enters LWOP status. For an employee who was not eligible to make TSP contributions when military service began, the retroactive period begins on the first day of the first pay period in the election period during which the employee would have been eligible to make contributions had the employee remained in Federal civilian service.

*Retroactive period ending date* means the earlier of the following two dates: the date before the first day of the first election period during which a contribution election could have been made effective after reemployment, or the last day of the pay period before the pay period during which routine current contributions are begun after the employee is reemployed (or restored). If an employee who was making contributions when he or she separated elects not to make routine current contributions, the ending date of the retroactive period is the last day of the pay period during which the employee elects to terminate contributions.

*Separation or separated* means the period an employee was separated from Federal civilian service (or entered a leave-without-pay status) in order to perform military service.

**§ 1620.42 Processing TSP contribution elections.**

(a) *Current TSP contribution elections.* Immediately upon reemployment, an employee's agency will give an eligible employee the opportunity to submit a TSP election form (Form TSP-1) to make current contributions. The effective date of the current Form TSP-1 will be the first day of the first full pay period in the most recent TSP election period. If the employee is reemployed during a TSP Open Season but before the election period, he or she can also submit an election form that will become effective the first day of the first full pay period in the following election period.

(b) *Retroactive contribution elections.* (1) An employee has the following options for making retroactive contributions:

(i) If the employee had a valid contribution election form (Form TSP-1) on file when he or she separated, that election form will be reinstated for purposes of retroactive contributions.

(ii) Instead of making the contributions for the retroactive period under the reinstated contribution election form, the employee may submit a new election form for any Open Season that occurred during the retroactive period. However, the allocation election on each Form TSP-1 for the retroactive period must be the same as the allocation election on the current Form TSP-1.

(2) An employee who terminated contributions within two months before entering military service will be eligible to make a retroactive contribution election effective for the first Open Season that occurs after the effective date that the contributions were terminated. This election may be made even if the termination was made outside of an Open Season.

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

(a) *Agency making payments to record keeper.* The current employing agency always will be the agency responsible for making payments to the record keeper for all contributions (both employee and agency) and lost earnings, regardless of whether some of that expense is ultimately chargeable to a prior employing agency.

(b) *Agency ultimately chargeable with expense.* The agency ultimately chargeable with the expense of agency contributions and lost earnings attributable to the retroactive period is ordinarily the agency that reemployed the employee. However, if an employee changed agencies during the period between the date of reemployment and October 13, 1994, the employing agency as of October 13, 1994, is the agency ultimately chargeable with the expense.

(c) *Reimbursement by agency ultimately chargeable with expense.* If the agency that made the payments to the record keeper for agency contributions and lost earnings is not the agency ultimately chargeable for that expense, the agency that made the payments to the record keeper may, but is not required to, obtain reimbursement from the agency ultimately chargeable with the expense.

**§ 1620.44 Restoring forfeited agency automatic (1%) contributions.**

If an employee's agency automatic (1%) contributions were forfeited because the employee was not vested when he or she separated to perform military service, the employee must notify the employing agency that a forfeiture occurred. The employing agency will follow the procedure described in § 1620.47(d) to have those funds restored.

**§ 1620.45 Restoring post-employment withdrawals and reversing taxable distributions.**

(a) *Post-employment withdrawals.* Employees who received automatic cashouts because their account balances were \$3,500 or less, or who were required to withdraw their TSP accounts before March 1995 because they were not eligible for retirement benefits when they separated, may elect to have the separation for military service treated as if it never occurred. These employees will be permitted to return amounts to the TSP that represent the full amount of the post-employment withdrawal.

(b) *Reversing taxable distributions.* An employee who separated or who entered into nonpay status to perform military service, and whose TSP loan was therefore declared a taxable distribution, may be eligible to have that distribution reversed.

(1) If the employee received a post-employment withdrawal when he or she separated to perform military service, he or she can have a taxable distribution reversed only if that withdrawal is returned under the procedures described in paragraph (a) of this section. If the employee is not eligible to or does not return the withdrawal, he or she cannot have the taxable distribution reversed.

(2) The taxable distribution can be reversed either by reinstating the TSP loan or by repaying the loan in full. TSP loan repayments can be reinstated only if the loan can be repaid within five years of its disbursement for non-residential loans and 15 years for residential loans; and if the employee will have no more than two loans outstanding, one of which can be a residential loan.

(c) *Process.* Eligible employees must notify the TSP record keeper of their intent to return the withdrawn funds and/or reverse a taxable distribution. This notification must be given within one year of reemployment and the employee must provide the TSP record keeper with a copy of the SF-50, Notification of Personnel Action, indicating reemployment or reinstatement was made pursuant to 38 U.S.C. chapter 43, or a letter from his or her agency indicating reemployment or restoration pursuant to 38 U.S.C. chapter 43. If the participant is eligible to return a withdrawal and/or reverse a distribution, the TSP record keeper will:

(1) In the case of a request to return withdrawn funds, notify the employee of the amount of funds to be returned.

(2) In the case of a request to reverse a taxable distribution, reinstate the loan

if permitted, or if not, inform the employee of the repayment amount for the loan.

(3) In the case of returned withdrawal and a repaid loan, inform the employee that both actions must be accomplished in the same transaction (i.e., one payment for both amounts).

(4) In all cases inform the employee that he or she must provide the funds in a single payment to the TSP record keeper within 90 days after the record keeper sends the employee the notice advising of the amount and procedures for repaying the loan or withdrawal. Repayment must be submitted in the form of a certified or cashier's check, a certified or treasurer's draft from a credit union, or a money order.

(d) *Earnings.* Employees will not receive retroactive earnings on any amounts returned to their accounts under this section.

#### § 1620.46 Agency responsibilities.

(a) *General.* Each employing agency must establish procedures for implementing these regulations. These procedures must at a minimum require agency personnel to identify eligible employees and notify them of their options under these regulations and the time period within which these options must be exercised.

(b) *Agency records; procedure for reimbursement.* The agency that is making the payments to the record keeper for all contributions (both employee and agency) and lost earnings will obtain from prior employing agencies whatever information is necessary to make accurate payments. If a prior employing agency is ultimately chargeable under § 1620.43(b) for all or part of the expense of agency contributions and lost earnings, the agency making the payments to the record keeper will determine the procedure to follow in order to collect amounts owed to it by the agency ultimately chargeable with the expense.

(c) *Payment schedule; matching contributions report.* Agencies will, with the employee's consent, prepare a payment schedule for making retroactive employee contributions which will be consistent with the procedures established at 5 CFR part 1605 for the correction of employing agency errors.

(d) *Agency automatic (1%) contributions.* Employing agencies must calculate the agency automatic (1%) contributions for all reemployed (or restored) FERS employees, report those contributions to the record keeper, and submit lost earnings records to cover the

retroactive period within 60 days of reemployment.

(e) *Forfeiture restoration.* When notified by an employee that a forfeiture of the agency automatic (1%) contributions occurred after the employee separated to perform military service, the employing agency must submit to the record keeper Form TSP-5-R, Request to Restore Forfeited Funds, to have those funds restored.

(f) *Thrift Savings Plan Service Computation Date.* The agencies must include the period of military service in the Thrift Savings Plan Service Computation Date (TSP-SCD) of all reemployed FERS employees. If the period of military service has not been credited, the agencies must submit an employee data record to the TSP record keeper containing the correct TSP Service Computation Date.

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

2. The authority citation for part 1650 continues to read as follows:

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

3. Section 1650.15 is amended by adding new paragraphs (c) and (d) to read as follows:

#### § 1650.15 Required withdrawal date.

(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 Fund (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) of this section within 90 days of the date of the notice.

(d) If the participant does not take the appropriate withdrawal action within the 90 day period provided 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 §§ 1650.10 or 1650.11; and

(4) The participant provides the information that the Board needs to purchase an annuity pursuant to § 1650.12.

#### PART 1651—DEATH BENEFITS

4. The authority citation for part 1651 continues to read as follows:

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

5. Section 1651.1 is amended by adding in alphabetical order the definitions of "C Fund", "F Fund", "G Fund", and "Investment fund", to read as follows:

#### § 1651.1 Definitions.

\* \* \* \* \*

*C Fund* means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

\* \* \* \* \*

*F Fund* means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

*G Fund* means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

*Investment fund* means the C Fund, the F Fund, the G Fund, or any other TSP investment fund created subsequent to December 27, 1986;

\* \* \* \* \*

6. Section 1651.2 is amended by adding a new paragraph (c) to read as follows:

#### § 1651.2 Entitlement to benefits.

\* \* \* \* \*

(c) If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the Board will transfer the entire account into the G Fund after receiving written notice of the participant's death. The account will continue to accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid in accordance with the order of precedence set forth in paragraph (a) of this section.

#### PART 1690—MISCELLANEOUS REGULATIONS

7. The authority citation for part 1690 continues to read as follows:

**Authority:** 5 U.S.C. 8474.

8. Section 1690.2 is added to read as follows:

#### § 1690.2 Power of attorney.

This section applies to all regulations in this chapter that require a signature by the participant on a Thrift Savings Plan (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 Board 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 principal'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 a power of attorney to be acceptable to effect transactions in the TSP, it must be authenticated, attested, acknowledged, or certified before a notary public or other official authorized by law to administer oaths or affirmations. The Board will advise the person submitting a power of attorney whether it is valid to effect transactions in the TSP.

[FR Doc. 99-14398 Filed 6-8-99; 8:45 am]

BILLING CODE 6760-01-P