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Part IV

Federal Retirement Thrift Investment Board

5 CFR Parts 1600, 1601

**Employee Elections to Contribute to the
Thrift Savings Plan; Participants' Choices
of Investment Funds; Final Rules**

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Elections to Contribute to the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the regulations on employee elections to contribute to the Thrift Savings Plan (TSP) to provide for employee participation in the TSP to begin immediately upon the employee's appointment to a position covered by FERS or CSRS, or an equivalent retirement plan. Beginning July 1, 2001, participants also will be able to transfer into their TSP accounts funds from certain qualified retirement plans or conduit individual retirement accounts (IRAs). In addition, the limitations on employee contributions (as a percentage of basic pay) are phased out over the next 5 years.

EFFECTIVE DATE: May 2, 2001.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942-1661; Merritt A. Willing on (202) 942-1666; or Patrick J. Forrest on (202) 942-1659. FAX (202) 942-1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, 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, which 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.

On October 27, 2000, Congress passed Public Law 106-361. In it, Congress eliminates the waiting period for new and rehired employees to begin making employee contributions. The Act also permits participants to transfer moneys from certain qualified retirement accounts and conduit IRAs into their TSP accounts. Also, on December 21, 2000, Congress passed the Consolidated Appropriations Act for Fiscal Year 2001, Public Law 106-554, which includes a provision changing the limits on FERS and CSRS TSP employee contributions (i.e., 10 and 5 percent of basic pay, respectively) by raising the percentage limitation one percent each year until

2006, when the limits are removed altogether. However, the Internal Revenue Code annual limits on elective deferrals, I.R.C. sections 402(g) and 415(c), will continue to be applicable to TSP contributions.

On March 26, 2001, the Board published a proposed rule with a request for comments in the **Federal Register** (66 FR 16415). The Board received two comments on the proposed rule, one from a Federal agency and the other from a Washington, D.C., attorney who represents federal employees in domestic relations disputes.

The Federal agency commenter suggested that § 1600.13(a), describing the effective date of TSP contribution elections made after May 15, 2001, be clarified by omitting redundant language. The Board accepted the suggestion and revised § 1600.13(a).

The other commenter suggested that the rule be amended to permit Federal employees to transfer into their TSP accounts retirement funds they received through a domestic relations court order, either from the spouse's TSP account or other qualified retirement plan or from an IRA set up to receive funds transferred from a qualified retirement plan. Public Law 106-361 authorizes the TSP to accept any eligible rollover distribution that a qualified trust can accept under the Internal Revenue Code. A qualified trust can accept a transfer of funds received pursuant to a qualified domestic relations court order, and the proposed regulation is sufficiently broad to permit the TSP to accept a similar transfer. There is nothing in the Board's current court order regulation at 5 CFR § 1653.5(b) which would lead to a contrary result. Thus, the Board believes that the proposed regulation is sufficiently broad to include the transfers contemplated by the commenter. The Board will, however, include a more specific description of these transfers when it revises its court order regulations at 5 CFR part 1653.

Therefore, with the one exception discussed above to § 1600.13, the Board adopts the provisions of the proposed rule as the final rule.

Analysis

Subpart A includes definitions that are relevant to contributions; the definition of highly compensated employee in the existing regulation is deleted because it is obsolete.

Subpart B combines the provisions that relate to contribution elections. The rule deletes obsolete references to the initial open season in 1987, and makes changes necessary to permit immediate employee contributions. It eliminates

the requirement that an employee who was previously eligible to participate in the TSP must wait until an open season to make a contribution election. Under the amended rule, an employee is immediately eligible to make a contribution election for employee contributions. If the employee was previously eligible to receive employer contributions, the employee will also be immediately eligible to receive employer contributions. The amendment makes other changes to differentiate between contribution elections, provided for in this part, and contribution allocations, provided for in part 1601.

In subpart C, the Board has reorganized the provisions that describe the contributions program in general. The amendment phases out the limits on employee contributions as a percentage of basic pay and explains the Internal Revenue Code's limitations on TSP contributions, which still apply.

Subpart D describes the kinds of qualified retirement accounts and conduit IRAs that may be transferred to the TSP, the method by which a transfer may be made, and the treatment accorded such funds in the TSP.

CROSS-REFERENCE TABLES

Old section	New section
1600.1	1600.1.
1600.2(a)	Deleted.
1600.2(b)	1600.12(b).
1600.2(c)	1600.15.
1600.2(d)	1600.16.
1600.3	Deleted.
1600.4(a)	1600.11(a).
1600.4(b)	Deleted.
1600.5	1600.12(c).
1600.6	1600.14.
1600.7	1600.13.
1600.8	Deleted.
1600.9	1600.21.
1600.10	1600.22.
1600.11	1600.23.
1600.12	1600.18.
1600.13	Deleted.
1600.14	Deleted.
1600.15	Deleted.
1600.16	Deleted.
1600.17	Deleted.
1600.18	Deleted.
1600.1	1600.1.
1600.11	1600.4.
1600.12	1600.2(b), 1600.5.
1600.13	1600.7.
1600.14	1600.6.
1600.15	1600.2(c).
1600.16	1600.2(d).
1600.17	New.
1600.18	1600.12.
1600.21	1600.9.
1600.22	1600.10.
1600.23	1600.11.
1600.31	New.
1600.32	New.

CROSS-REFERENCE TABLES—
Continued

Old section	New section
1600.33	New.

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, 2 U.S.C. 602, 632, 653, and 1501–1571, 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 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing 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 in 5 CFR Part 1600

Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, 5 CFR part 1600 is revised to read as follows:

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

Sec.

1600.1 Definitions.

Subpart B—Elections

1600.11 Types of elections.

1600.12 Period for making contribution elections.

1600.13 Effective dates of contribution elections.

1600.14 Method of election.

1600.15 Number of elections.

1600.16 Belated elections.

1600.17 Timing of agency contributions.

1600.18 Effect of transfer to FERS.

Subpart C—Program of Contributions

1600.21 Contributions in whole numbers.

1600.22 Maximum contributions.

1600.23 Required reduction of contribution rates.

Subpart D—Transfers From Other Qualified Retirement Plans

1600.31 Accounts eligible for transfer.

1600.32 Methods for transferring account from qualified retirement plan or conduit IRA to TSP.

1600.33 Treatment accorded transferred funds.

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

Subpart A—General**§ 1600.1 Definitions.**

Terms used in this part have the following meanings:

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

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3).

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2).

Basic pay means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition of participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

Board means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

Contribution allocation means the apportionment of a participant's future contributions and loan payments among the TSP investment funds.

Contribution election means a request by an employee to start contributing to the TSP, to change the amount of contributions made to the TSP each pay period, or to terminate contributions to the TSP.

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

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

Date of appointment means the effective date of an employee's accession by the current employing agency.

Election period means the last calendar month of a TSP open season. It is the earliest period during which 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 8440e.

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 eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84 or any equivalent Federal retirement system.

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

Open season means the period during which employees may elect to make contributions to the TSP, change the amount of contributions, or terminate contributions (without losing the right to resume contributions during the next open season).

Separation from Government service means the cessation of employment with the Federal Government, 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.

Thrift Savings Plan, TSP, or Plan means the Thrift Savings Plan established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan Service Office (TSPSO) means the office of the TSP recordkeeper which provides service to participants. The TSPSO's address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

TSP recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. The TSP recordkeeper is the National Finance Center, Office of

Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

Subpart B—Elections

§ 1600.11 Types of elections.

(a) *Contribution elections.* A contribution election can be made on a Form TSP-1, Thrift Savings Plan Election Form, and includes any one of the following elections:

- (1) To make employee contributions;
- (2) To change the amount of employee contributions; or
- (3) To terminate employee contributions.

(b) *Contribution allocation.* A participant may make or change the manner in which future deposits to his or her account are allocated among the TSP's investment funds only in accordance with 5 CFR part 1601.

§ 1600.12 Period for making contribution elections.

(a) *Participation upon initial appointment or reappointment.* An employee may make a contribution election as follows:

(1) *Appointments made during the period January 1 through June 30, 2001.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS during the period January 1 through June 30, 2001, may make a TSP contribution election during the May 15 through July 31, 2001, open season.

(2) *Appointments made on or after July 1, 2001.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS may make a TSP contribution election within 60 days after the effective date of the appointment.

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

(c) *Election to terminate contributions.* An employee may elect to terminate employee contributions to the TSP at any time. If an employee's election to terminate contributions is received by the employing agency during an open season, the employee, if otherwise eligible, may make an election to resume contributions during the next open season. If the election to

terminate contributions is received by the employing agency outside an open season, the employee may not make an election to resume contributions until the second open season beginning after the election to terminate.

(d) *Forced termination of employee contributions due to in-service hardship withdrawal restrictions under 5 CFR part 1650.* If an employee is reappointed to a position covered by FERS or CSRS following a separation from Government service and, at the time of separation, he or she had been previously ineligible to make employee contributions or receive agency matching contributions because of the restrictions on participants' ability to make contributions after having received an in-service hardship distribution, described in 5 CFR part 1650, the employee continues to be ineligible to make employee contributions or have agency matching contributions made on the employee's behalf during the six-month period described at 5 CFR 1650.32.

§ 1600.13 Effective dates of contribution elections.

(a) *Participation upon initial appointment or reappointment.* (1) TSP contribution elections made pursuant to § 1600.12(a)(1) that are received by the employing agency between May 15, 2001, and June 30, 2001, will become effective the first full pay period in July 2001. TSP contribution elections made pursuant to § 1600.12(a)(1) that are received by the employing agency during July 2001 will become effective no later than the first full pay period after the date the employing agency receives the election.

(2) TSP contribution elections made pursuant to § 1600.12(a)(2) will become effective no later than the first full pay period after the election is received by the employing agency.

(b) *Open season elections.* TSP contribution elections made pursuant to § 1600.12(b) that are received by an employing agency during a portion of an open season which precedes the election period, except for an election to terminate contributions, will become effective the first full pay period of the election period. TSP contribution elections made pursuant to § 1600.12(b) that are received by an employing agency during the election period will become effective no later than the first full pay period after the date the employing agency receives the election.

(c) *Election to terminate contributions.* An election to terminate contributions, whenever it is made, will become effective no later than the first full pay period after the date the employing agency receives the election.

(d) *Elections resulting from transfer to FERS.* Elections made pursuant to § 1600.18 will become effective no later than the first full pay period after the date the employing agency receives the election. If the employee submits a contribution election at the same time that he or she submits the FERS transfer election, both elections will become effective the same pay period.

§ 1600.14 Method of election.

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

(b) A contribution election must:

- (1) Be completed in accordance with the instructions on Form TSP-1, if a paper form is used;
- (2) Be made in accordance with the employing agency's instructions, if the submission is made electronically; and
- (3) Not exceed the maximum contribution limitations described in § 1600.22.

§ 1600.15 Number of elections.

Once a contribution election made during an open season becomes effective, no further contribution elections may be made during the same open season, except an election to terminate contributions.

§ 1600.16 Belated elections.

When an employing agency determines that an employee was unable, for reasons that were beyond the employee's control (other than agency administrative error, as provided in 5 CFR part 1605), to make a contribution election within the time limits prescribed by this part, the agency may accept the employee's election within 30 calendar days after it advises the employee of its determination. The election will become effective no later than the first full pay period after the date the employing agency receives the election.

§ 1600.17 Timing of agency contributions.

(a) *Employees not previously eligible to receive agency contributions.* An employee appointed or reappointed to a position covered by FERS who had not been previously eligible to receive agency contributions is eligible to receive agency contributions the full second election period following the effective date of the appointment. If an

employee is appointed during an election period, that election period is not counted as the first election period.

(b) *Employees previously eligible to receive agency contributions.* An employee reappointed to a position covered by FERS who was previously eligible to receive agency contributions is immediately eligible to receive agency contributions.

(c) Agency matching contributions that are attributable to the employee contributions made to the account of a FERS participant must change or terminate, as applicable, when the employee's contribution election becomes effective.

§ 1600.18 Effect of transfer to FERS.

(a) If an employee appointed to a position covered by CSRS elects to transfer to FERS, the employee may make a contribution election simultaneously with the election to transfer to FERS, or within 30 calendar days after the effective date of his or her transfer.

(b) Eligibility to make employee contributions, and therefore to have agency matching contributions made on the employee's behalf, is subject to the restrictions on making employee contributions after receipt of a financial hardship in-service withdrawal described at 5 CFR part 1650.

(c) If the employee had elected to make TSP contributions while covered by CSRS, the election continues to be valid until the employee makes a new valid election.

(d) Agency automatic (1%) contributions for all employees covered under this section and, if applicable, agency matching contributions attributable to employee contributions must begin the same pay period that the transfer to FERS becomes effective.

Subpart C—Program of Contributions

§ 1600.21 Contributions in whole numbers.

Employees may elect to contribute a percentage of basic pay or a dollar amount, subject to the limits described in § 1600.22. The election must be expressed in whole percentages or whole dollar amounts.

§ 1600.22 Maximum contributions.

(a) *Percentage of basic pay.* (1) Subject to paragraphs (b) and (c) of this section, the maximum FERS employee contribution for 2001 is 11 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(2) Subject to paragraphs (b) and (c) of this section, the maximum CSRS employee contribution for 2001 is 6 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(b) *Internal Revenue Code (I.R.C.) limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Employee contributions to the TSP will be restricted to the I.R.C. limit; the TSP will not accept any contribution that exceeds the I.R.C. section 402(g) limit. If a participant contributes to the TSP and another plan, and the combined contributions exceed the I.R.C. section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform with the limit.

(c) *I.R.C. limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Employee contributions, described in this section, and employer contributions, described in § 1600.17, made to the TSP will be restricted to the I.R.C. section 415(c) limit. No employee contribution may be made to the TSP for any year to the extent that the sum of the employee contributions and the employer contributions for that year would exceed the I.R.C. section 415(c) limit.

§ 1600.23 Required reduction of contribution rates.

(a) The employing agency will reduce the contribution of any FERS or CSRS employee who has elected a whole dollar amount but whose elected contribution for any pay period exceeds any of the applicable maximum percentages set forth in § 1600.22. The employing agency will reduce the whole dollar amount to the highest whole dollar amount that does not exceed the applicable maximum percentage.

(b) An employing agency will not contribute to a participant's TSP account any amounts in excess of the limits referred to in § 1600.22(b) or (c).

Subpart D—Transfers From Other Qualified Retirement Plans

§ 1600.31 Accounts eligible for transfer.

Effective July 1, 2001, participants may transfer funds in the following types of accounts into their existing TSP

accounts. This option is not available to participants who have already made a full withdrawal of their account or who are receiving monthly payments.

(a) *Qualified retirement plan.* For the purposes of this part, a qualified retirement plan is a qualified trust, described in section 401(a) of the I.R.C. (26 U.S.C. 401(a)), which is exempt from taxation under I.R.C. section 501(a) (26 U.S.C. 501(a)), or an annuity plan, described in section 403(a) of the I.R.C. (26 U.S.C. 403(a)).

(b) *Conduit individual retirement account (conduit IRA).* For the purposes of this part, a conduit IRA is an individual retirement account, described in I.R.C. section 408(a) (26 U.S.C. 408(a)), or an individual retirement annuity, described in I.R.C. section 408(b) (26 U.S.C. 408(b)), that contains only funds transferred or rolled over from a qualified retirement plan (and earnings on those amounts).

(c) *Eligible rollover distribution.* In order to be eligible for transfer to the TSP, distributions from accounts that qualify under either paragraph (a) or (b) of this section must also be eligible rollover distributions pursuant to I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)).

§ 1600.32 Methods for transferring account from qualified retirement plan or conduit IRA to TSP.

(a) *Trustee to trustee transfer.* Participants may request that the administrator of their qualified retirement plan or the custodian of their conduit IRA transfer any or all of their account directly to the TSP by completing and submitting a Form TSP-60, Request for a Rollover into the TSP, to the administrator or custodian and requesting that the transaction be completed.

(b) *Rollover by participant.* Participants who have already received a distribution from their plan or conduit IRA may roll over all or part of the distribution into the TSP in accordance with the following requirements:

(1) The participant must complete a Form TSP-60, Request for a Rollover into the TSP.

(2) The administrator of the qualified retirement plan or the custodian of the conduit IRA must certify on the TSP transfer form the amount and date of the distribution, and that the distribution is an eligible rollover distribution in accordance with I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)).

(3) The participant must submit the completed Form TSP-60, together with a certified check, cashier's check, cashier's draft, money order, or treasurer's check from a credit union, made out to the Thrift Savings Plan for

the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from the retirement plan or conduit IRA. The transaction is not complete until the TSP recordkeeper receives the Form TSP-60, executed by both the participant and plan administrator or IRA custodian, together with the guaranteed funds for the amount to be rolled over.

§ 1600.33 Treatment accorded transferred funds.

(a) All funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 will be treated as employee contributions.

(b) All funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 will be invested in accordance with the participant's contribution allocation on file at the time the transfer is completed.

(c) Funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 are not subject to the limits on contributions described in § 1600.22.

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participants' Choices of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the regulations on participants' choices of investment funds. This amendment implements a provision of the Thrift Savings Plan Act of 1996, which added two new investment funds to the Thrift Savings Plan (TSP). It also implements a decision by the Board to transfer the processing of contribution allocations from the employing agencies to the TSP recordkeeper.

EFFECTIVE DATE: May 2, 2001.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942-1661; Merritt A. Willing on (202) 942-1666; or Patrick J. Forrest on (202) 942-1659. FAX (202) 942-1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The Thrift Savings Plan Act of 1996, Public Law 104-208, 110 Stat. 3009, amended FERSA to create two new TSP investment funds. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479. The TSP is a tax-deferred retirement savings plan for Federal employees, 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.

On March 26, 2001, the Board published a proposed rule with a request for comments in the **Federal Register** (66 FR 16415). The Board received no comment on the proposed rule. Therefore, the Board is adopting the provisions of the proposed rule as a final rule without change.

Analysis

The final rule eliminates §§ 1601.2(a), (c) and (d), 1601.4(b), and 1601.6 because those sections are obsolete. Sections 1601.3 and 1601.7 have been redesignated as § 1602.36; effective May 1, 2001, error correction will be processed in accordance with part 1605.

Subpart A contains definitions relevant to participants' choices of investment funds, as it does currently. The definitions of allocation election, election form, and election period in the existing regulation are deleted as unnecessary. Other definitions, such as Board and CSRS, are deleted because they are not specifically applicable to participants' choices of investment funds.

In subpart B, the Board explains a new process for making a contribution allocation. Contribution allocations apply to future TSP contributions and loan payments. Currently, participants make a contribution election and a contribution allocation at the same time, on Form TSP-1; this form is submitted to the participant's employing agency. Participants will continue to use Form TSP-1 to make contribution elections and will submit that form to their employing agency. However, on May 1, 2001, when the new funds are implemented, contribution allocations will be submitted to the TSP recordkeeper following the procedures described in Subpart B.

Subpart B includes a transition rule that explains how new contributions will initially be invested upon implementation of the new funds. This

transition rule will apply to contributions and loan payments posted after April 30, 2001. In particular, § 1601.12 provides that beginning on May 1, 2001, contributions and loan payments for each TSP account will be invested based on the allocation of the most recent contribution posted to a participant's account between March 15 and April 30, 2001. If there was none, contributions and loan payments will be invested based upon any interfund transfer request pending for April 30, 2001. If there is no interfund transfer request pending for April 30, 2001, contributions and loan payments will be allocated based upon the participant's March 31, 2001 month-end account balance. If a participant's March month-end account balance is zero, his or her contributions and loan payments will be invested in the G Fund. This derived allocation will continue until a valid contribution allocation is received and processed.

For accounts first established on or after May 1, 2001, contributions and other deposits received will be invested in the G Fund until the participant makes a different contribution allocation. The participant may subsequently make a contribution allocation to change the investment of future contributions or an interfund transfer to change the investment of his or her existing account balance at any time after he or she is notified by the TSP recordkeeper that the account has been established. Effective May 1, 2001, all TSP participants may elect to invest all or part of their new contributions and loan payments in any of the five investment funds.

Section 1601.13 explains that, effective May 1, 2001, a participant may make a contribution allocation by using the TSP Web site, the ThriftLine, or by completing a Form TSP-50, Investment Allocation. Section 1601.13 also explains the requirements for a valid contribution allocation, largely incorporating existing § 1601.2(b). It also explains that participants will be able to make contribution allocations in increments of one percent instead of the current five percent.

Subpart C describes the rules that a participant must follow in order to make an interfund transfer of his or her existing TSP account balance. Section 1601.22 of the final regulation essentially incorporates § 1601.5 of the existing regulations and also provides that, effective May 1, 2001, a participant may use the TSP Web site, the ThriftLine, or a Form TSP-50 to request an interfund transfer.

Subpart D has been added to part 1601 to consolidate rules that apply to

participants' choices of investment funds for new contributions (contribution allocations) and to redistributing existing account balances (interfund transfers). For example, § 1602.32 describes the timing and posting dates for contribution allocations and interfund transfer requests. Section 1602.33 provides that a participant who elects to make an interfund transfer to the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk (that the investment is made at the participant's risk and the participant understands that the TSP does not guarantee investment returns or guarantee against a loss in the value of the investment). Section 1602.34 prescribes the rules for giving effect to a Form TSP-50.

and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing 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 in 5 CFR Part 1601

Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, 5 CFR part 1601 is revised to read as follows:

PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

Subpart A—General

Sec.

1601.1 Definitions.

Subpart B—Investing Future Contributions and Loan Payments

1601.11 Applicability.

1601.12 Investing future contributions and loan payments in the TSP investment funds.

1601.13 Elections.

Subpart C—Redistributing Participants' Existing Account Balances

1601.21 Applicability.

1601.22 Methods of requesting an interfund transfer.

Subpart D—Contribution Allocations and Interfund Transfer Requests

1601.31 Applicability.

1601.32 Timing and posting dates.

1601.33 Acknowledgment of risk.

1601.34 Effectiveness of Form TSP-50.

1601.35 Posting of transaction requests.

1601.36 Error correction.

Authority: 5 U.S.C. 8351, 8438, 7474(b)(5) and (c)(1).

Subpart A—General

§ 1601.1 Definitions.

As used in this part:

Account balance means the sum of the dollar balances for each source of contributions in each investment fund for an individual account.

Acknowledgment of risk means an acknowledgment that any investment in the F Fund, C Fund, S Fund, or I Fund is made at the participant's risk, that the

participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

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

Contribution allocation means the apportionment of a participant's future contributions and loan payments among the TSP investment funds.

Day means calendar day, unless otherwise stated.

Employing agency means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

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).

I Fund means the International Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(E).

Interfund transfer means the reapportionment, under this part, of a participant's existing account balance among the various TSP investment funds.

Investment fund means any investment fund authorized under 5 U.S.C. 8438.

S Fund means the Small Capitalization Stock Index Fund established under 5 U.S.C. 8438(b)(1)(D).

Source of contributions means employee contributions, agency automatic (1%) contributions, or agency matching contributions.

ThriftLine means the automated voice response system by which TSP participants may, among other things, access their accounts by telephone. The ThriftLine can be reached at (504) 255-8777.

TSP recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. The TSP recordkeeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

TSP Web site means the Internet location maintained by the Board, which contains information about the TSP and by which TSP participants may, among other things, access their accounts by computer. The TSP Web site address is <http://www.tsp.gov>.

CROSS-REFERENCE TABLES

Old section	New section
1601.1	1601.1
1601.2(a), (c), (d)	Deleted.
1601.2(b)	1601.13
1601.3	1601.36
<i>Con't.</i>	<i>Con't.</i>
1601.4(a)	1601.21
1601.4(b)	Deleted.
1601.5	1601.22
1601.6	1601.32
1601.7	1601.36
1601.1	1601.1
1601.11	New.
1601.12	New.
1601.13	1601.2(b)
1601.21	New.
1601.22	1601.5
1601.31	New.
1601.32	1601.6
1601.33	New.
1601.34	New.
1601.35	New.
1601.36	1601.3, 1601.7

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, 2 U.S.C. 602, 632, 653, and 1501-1571, 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,

Subpart B—Investing Future Contributions and Loan Payments

§ 1601.11 Applicability.

This subpart applies only to the investment of future contributions and loan payments in the TSP's investment funds; it does not apply to redistributing participants' existing account balances among the investment funds, which is covered in subpart C of this part.

§ 1601.12 Investing future contributions and loan payments in the TSP investment funds.

(a) *Transition rule.* Effective May 1, 2001, contributions and loan payments will be allocated among the investment funds based on the allocation of the most recent contribution posted to the account between March 15, 2001, and April 30, 2001. If no contributions have been posted to an account between March 15, 2001, and April 30, 2001, the allocation will be based on the allocation shown on an interfund transfer request pending for April 30, 2001. If there is no interfund transfer pending for April 30, 2001, the allocation will be based on the allocation of the account as of the March 31, 2001, account balance. If the March 31, 2001, account balance is zero, the contributions and loan payments will be allocated 100% to the G Fund. The allocation derived under this section will be applied to all contributions and loan payments posted as of a date after April 30, 2001, until a new contribution allocation is made by the participant pursuant to § 1600.12.

(b) *Investment fund availability.* Effective May 1, 2001, all participants may elect to invest all or any portion of their future contributions and loan payments in any of the TSP's five investment funds.

§ 1601.13 Elections.

(a) *Contribution allocation.* Effective May 1, 2001, each participant may indicate his or her choice of investment funds for the allocation of future contributions and loan payments by using the TSP Web site or the ThriftLine, or completing Form TSP-50, Investment Allocation. The following rules apply to contribution allocations:

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

(2) The percentage elected by a participant for investment of future contributions in an investment fund will be applied to all sources of contributions and loan payments. A participant may not make different percentage elections for different

sources of contributions or for loan payments;

(3) A participant who elects for the first time to invest contributions and loan payments in the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk in accordance with § 1601.33;

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

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation. If a separated participant is rehired, his or her last contribution allocation before separation from service will be given effect until a new allocation is made.

(b) *Effect of rejection of form.* If a Form TSP-50 is rejected, the purported contribution allocation made on the form will have no effect. The TSP will provide the participant with a written statement of the reason the form was rejected.

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

Subpart C—Redistributing Participants' Existing Account Balances

§ 1601.21 Applicability.

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

§ 1601.22 Methods of requesting an interfund transfer.

(a) Effective May 1, 2001, participants may make an interfund transfer using the TSP Web site or the ThriftLine, or by completing a Form TSP-50, Investment Allocation. The following rules apply to an interfund transfer request:

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

(2) The percentages elected by the participant will be applied to the balances from each source of contributions that make up the participant's total account balance on the effective date of the interfund transfer;

(3) Any participant who elects to invest in the F Fund, C Fund, S Fund,

or I Fund for the first time must execute an acknowledgment of risk in accordance with § 1601.33.

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

Subpart D—Contribution Allocations and Interfund Transfer Requests

§ 1601.31 Applicability.

This subpart applies both to contribution allocations made under subpart B of this part and interfund transfers made under subpart C of this part.

§ 1601.32 Timing and posting dates.

(a) *Posting dates.* (1) A contribution allocation will ordinarily be posted within 2 business days after it is received.

(2) An interfund transfer request received by midnight (central time) on the 15th of the month will be posted to a participant's account as of the last day of the month. (If the 15th of the month falls on a weekend, holiday, or other nonbusiness day, the deadline will be the next business day.) Requests received after the deadline will be posted to a participant's account as of the last day of the following month.

(b) *Limit.* There is no limit on the number of contribution allocations or interfund transfer requests that may be made by a participant; however, only one interfund transfer will be processed per month.

(c) *Multiple contribution allocations or interfund transfer requests.* (1) If two or more contribution allocations or two or more interfund transfer requests with different dates are received for a participant and would be posted on the same day under the rules set forth in paragraph (a) of this section, only the last contribution allocation or interfund transfer request with the latest date will be posted.

(2) If two or more contribution allocations or two or more interfund transfer requests with the same date are received for a participant and would be posted on the same day, the following rules will apply:

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

contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine will be posted;

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

(iii) If the contribution allocations or interfund transfer requests are submitted using Form TSP-50, all of the forms will be rejected unless the percentage allocations among the investment funds are identical, in which case one will be accepted.

(3) For purposes of determining the date and time of a contribution allocation or an interfund transfer request, the following rules apply:

(i) The date of a contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine, is the date the participant enters the investment percentages;

(ii) The date of a contribution allocation or interfund transfer request made on Form TSP-50 is the date the form is signed by the participant; and

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

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

(1) A contribution allocation or an interfund transfer request may be canceled only through the TSP Web site, the ThriftLine, or through written correspondence.

(2) *Cancellation on the TSP Web site or ThriftLine.* A contribution allocation or an interfund transfer request may be canceled by entering the cancellation on

the TSP Web site or the ThriftLine only up to the deadline, described in paragraph (a) of this section, that is applicable to the original request. If a change or cancellation is received after the deadline, the original request will be processed as scheduled. The second request will then be processed in turn.

(3) *Cancellation by correspondence.* A participant may also cancel a contribution allocation or an interfund transfer request by submitting a letter to the TSP recordkeeper requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation must be received by the deadline described in paragraph (a) of this section. Unless the letter states unambiguously the specific contribution allocation or interfund transfer request it seeks to cancel, the written cancellation will apply to any contribution allocation or interfund transfer request with a date (as determined under paragraph (c)(3) of this section) before the date of the cancellation letter. If the date of a cancellation letter is the same as the date of a contribution allocation or an interfund transfer request and the request was made on Form TSP-50, the form will be canceled. If the request was made on the TSP Web site or ThriftLine, it will only be canceled if the written cancellation specifies the date of the TSP Web site or ThriftLine request to be canceled.

§ 1601.33 Acknowledgment of risk.

(a) A participant who wants to invest in any investment fund other than the G Fund must execute an acknowledgment of risk for that fund. If a required acknowledgment of risk has

not been executed, no transactions involving the fund(s) for which the acknowledgment is required will be accepted.

(b) The acknowledgment of risk may be executed in association with a contribution allocation or an interfund transfer using the TSP Web site, the ThriftLine, or Form TSP-50.

§ 1601.34 Effectiveness of Form TSP-50.

(a) A Form TSP-50 will not be effective if:

- (1) It is not signed and dated;
- (2) It is missing a Social Security number or date of birth;
- (3) The contribution allocation or interfund transfer percentages do not total 100%; or
- (4) The form is otherwise not properly completed in accordance with the instructions on the form.

(b) If a Form TSP-50 is rejected, the TSP will provide the participant with a written statement of the reason the form was rejected.

§ 1601.35 Posting of transaction requests.

The Board fully expects to meet the standards of § 1601.32. However, the Board cannot and does not guarantee that the TSP Web site or the ThriftLine will always be available to accept and process transaction requests.

§ 1601.36 Error correction.

Errors in processing contribution allocations and interfund transfer requests, or errors that otherwise cause money to be invested in the wrong investment fund, will be corrected in accordance with the error correction regulations found at 5 CFR part 1605.

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