

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.

#### 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,

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>.

## 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 request 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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