

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1604

Uniformed Services Accounts

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is adding regulations explaining the rules under which members of the uniformed services can participate in the Thrift Savings Plan (TSP).

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT:

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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 TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. 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 (26 U.S.C. 401(k)).

The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 512, as amended by the National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654, extended the opportunity to participate in the TSP to uniformed services members. The uniformed services include the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration (NOAA). Therefore, beginning on October 9, 2001, uniformed services members can elect to contribute to the TSP, with contributions to commence in January 2002. Generally, uniformed services members are covered by the TSP regulations found at 5 CFR chapter VI. However, they will contribute to the TSP under rules that differ substantially from those that apply to civilian accounts; this rule supplements TSP regulations to explain those differences.

On May 1, 2001, the Board published a proposed rule in the **Federal Register** (66 FR 21693). After that publication date, the Internal Revenue Code (I.R.C.) was amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107-16, 115 Stat. 38. Some of those amendments affect the TSP, and this final rule

reflects those changes. This final rule also makes several changes to the proposed rule for the purpose of clarification and to address comments submitted to the TSP from a Federal agency. With those changes, which are described below, the Board is adopting the proposed rule as final.

Internal Revenue Code Provisions

Under 26 U.S.C. 401(a)(31), certain distributions from the TSP can be transferred directly to an Individual Retirement Account (IRA) or another "eligible retirement plan" as defined in the I.R.C. at 26 U.S.C. 402(c)(8)(B). The EGTRRA amended the definition of eligible retirement plan for tax years beginning in 2002 by adding two types of retirement plans into which TSP funds can be transferred, an annuity contract described in 26 U.S.C. 403(b) and an eligible deferred compensation plan established under 26 U.S.C. 457(b). See EGTRRA, sections 641(a)(1)(A), (a)(2)(A), and (b), 115 Stat. 118-20, to be codified at 26 U.S.C. 457(e)(16), and 402(c)(8)(B)(v)-(vi), respectively. (Generally, a section 403(b) annuity is purchased for an employee of a tax exempt organization or public school; a section 457 plan is a deferred compensation plan for a state or local government or tax-exempt organization.) The final rule thus contains a new definition of "eligible retirement plan" at § 1604.2 which incorporates those changes made to the Internal Revenue Code.

Proposed § 1604.4(a)(2)(i) explains that TSP contributions are subject to the I.R.C. elective deferral limit found at 26 U.S.C. 402(g). Final § 1604.4(a)(2)(i) describes the new elective deferral limit for tax years beginning in 2002, which was established by section 611(d) of the EGTRRA, 115 Stat. at 97-8, to be codified at 26 U.S.C. 402(g)(1) and (g)(5).

Proposed § 1604.4(a)(2)(ii) discusses 26 U.S.C. 457, which could have affected members of the uniformed services contributing to both the TSP and to a section 457 plan by limiting the total dollar amount of their contributions to both plans to \$8,500. The final rule deletes proposed § 1604.4(a)(2)(ii) because the EGTRRA repealed the provision in section 457 which linked TSP contribution to the section 457 contribution limit. See EGTRRA, section 615, 115 Stat. 102, to be codified at 26 U.S.C. 457(c).

Proposed § 1604.4(a)(2)(iii) explains that 26 U.S.C. 415 limits the amount that a participant can contribute to the TSP and to other Federal civilian retirement systems. Effective for tax year 2002, the EGTRRA raised those

contribution limits. See sections 611(b)(2), 632(a)(1), 115 Stat. at 97, 113, to be codified at 26 U.S.C. 415(c)(1). Therefore, proposed § 1604.4(a)(2)(iii) was rewritten for the final rule to describe the new limit; it was also renumbered, replacing the deleted § 1604.4(a)(2)(ii).

Proposed §§ 1604.7(c), 1604.8(c) and 1604.9(c) state that the TSP will not transfer combat zone contributions (as defined in § 1604.2) to an IRA or other eligible retirement plan. Those sections are based on 26 U.S.C. 402(c)(2), which only permits the transfer of sums that are included in gross income (combat zone contributions are not included in gross income). However, effective January 1, 2002, amendments to section 402(c)(2) will permit IRAs and other eligible retirement plans to accept after-tax contributions (if they choose to do so), and thus will permit the transfer of TSP combat zone contributions if the transferee IRA or other eligible retirement plan will accept non-taxable monies. See EGTRRA, section 643(a), 115 Stat. at 122, to be codified at 26 U.S.C. 402(c)(2). Therefore, final §§ 1604.7(c), 1604.8(c) and 1604.9(c) state that combat zone contributions can be transferred to an IRA or other eligible retirement plan if the receiving trustee will accept such funds.

Under current 26 U.S.C. 412(a)(9), the surviving spouse of a TSP participant can only transfer a TSP death benefit to an IRA (to the exclusion of other eligible retirement plans), and proposed § 1604.8(c) explains that limitation. The EGTRRA eliminated this limitation for tax years beginning in 2002, see section 641(d), 115 Stat. at 120, to be codified at 26 U.S.C. 402(c)(9). Therefore, final §§ 1604.8(c) and (d) explain that a surviving spouse can transfer a TSP death benefit to either an IRA or to another eligible retirement plan, including the TSP.

Definitions

The definition of "combat zone contributions" found in proposed § 1604.2 implies that only members of the armed forces can earn them. However, all members of the uniformed services may earn combat zone contributions; therefore, the implication to the contrary is removed from the final rule. The final rule also contains a more accurate definition of "separation from service."

Contributions

Proposed § 1604.3(e) explains that TSP contributions can be made from basic pay, incentive pay, and special pay (including bonuses). However, the proposed section does not explicitly

state that a member of the uniformed services must be making TSP contributions from basic pay in order to contribute to the TSP from incentive pay or special pay. Therefore, a sentence was added to final § 1604.3(e) to state this rule explicitly.

Court Orders

A TSP account can be divided in an action for divorce, annulment, or legal separation, and is subject to legal process relating to alimony, child support, or child abuse. Proposed § 1604.9(b) states that a payment made pursuant to a court order or legal process will be made pro rata from all contribution sources, including combat zone contributions. The Board has determined that the TSP can honor a court order or legal process that apportions combat zone contributions between the participant and the payee; therefore, final § 1604.9(b) states that a pro rata payment will be made unless the court order or legal process directs otherwise.

TSP Loans

Proposed § 1604.5(a)(2) states that a TSP loan can be obtained by active duty members of the uniformed services and inadvertently seems to exclude members of the Ready Reserve from loan eligibility. Final § 1604.5(a)(2) states that members of the uniformed services in any pay status may obtain a TSP loan. In addition, proposed § 1604.10(c) explains how non-taxable combat zone contributions will be accounted for when a participant receives a TSP loan. Final § 1604.10(c) was revised to discuss only loans that are not repaid (and which are therefore deemed to be taxable distributions).

Spousal Rights

Proposed § 1604.5(b) explains that uniformed services and civilian TSP account balances can be combined. Paragraph (b)(4) of that section states that a participant with a TSP account balance in excess of \$3,500 must obtain spousal consent before transferring those funds between civilian and uniformed services TSP accounts. The Board has determined that a narrower rule is appropriate.

The spouse of a member of the uniformed services has the same rights with respect to his or her spouse's TSP account as the spouse of a TSP participant who is covered under the Federal Employees' Retirement System (FERS). Specifically, a FERS-covered participant must obtain his or her spouse's consent before obtaining a TSP loan or an in-service withdrawal, and the spouse is entitled to a joint life

annuity if the participant elects to receive a post-employment withdrawal. Because these rights do not change when funds are transferred between uniformed services accounts and FERS-covered accounts, it is not necessary to require spousal consent for those transfers.

In contrast, the spouse of a TSP participant who is covered under the Civil Service Retirement System (CSRS) is entitled only to notice that the participant has received a TSP loan or withdrawal. It is unnecessary to require a participant to obtain spousal consent before he or she can move funds from a CSRS-covered TSP account into a uniformed services TSP account because the transferred funds will become subject to more stringent spousal rights rules. However, it is necessary to require spousal consent before a participant can move funds from a uniformed services account into a CSRS-covered TSP account because the transferred monies will become subject to the less stringent CSRS spousal protection rights. Therefore, final § 1604.5(b)(4) requires spousal consent only for transfers from uniformed services TSP accounts to CSRS-covered TSP accounts.

Comments on the Proposed Rule

The Board received one comment on the proposed rule from a Federal civilian agency with uniformed services members. The commenter's first remarks pertain to § 1604.4(a)(1), which describes the temporary percentage (of basic pay) limitations on TSP contributions by members of the uniformed services beginning with 2001, and states that this limit will increase "one percent" each year until 2005. The commenter wrote that the section should begin with 2002, as that is when uniformed services contributions will commence, and suggested that the yearly contribution limit increase should be described as "one percentage point" each year until 2005. Another suggestion from the commenter pertains to § 1604.4(b), which states that the secretaries of the military departments may authorize TSP matching contributions. The commenter noted that it is not only the secretaries of the military departments but also the Secretaries of Transportation, Commerce, and Health and Human Services who may authorize matching contributions for members of the Coast Guard, NOAA, and the Public Health Service, respectively. The Board agreed with the comments and incorporated all the suggestions into § 1604.4 of the final rule.

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, 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 1604

Employment benefit plans, Government employees, Military personnel, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Board adds a new 5 CFR part 1604 to read as follows:

PART 1604—UNIFORMED SERVICES ACCOUNTS

Sec.

- 1604.1 Applicability.
- 1604.2 Definitions.
- 1604.3 Contribution elections.
- 1604.4 Contributions.
- 1604.5 Separate service member and civilian accounts.
- 1604.6 Error correction.
- 1604.7 Withdrawals.
- 1604.8 Death benefits.
- 1604.9 Court orders and legal processes.
- 1604.10 Loans.

Authority: 5 U.S.C. 8474(b)(5) and (c)(1); sec. 661(b), Pub. L. 106–65, 113 Stat. 512, 672 (5 U.S.C. 8440e).

§ 1604.1 Applicability.

This part describes the special features of TSP participation applicable to members of the uniformed services. Uniformed services members are also covered by the other regulations of 5 CFR chapter VI to the extent they do not conflict with the regulations of this part.

§ 1604.2 Definitions.

As used in this part:

Basic pay means basic pay payable under 37 U.S.C. 204 and compensation received under 37 U.S.C. 206.

Bonus contributions means contributions made by participants from a bonus as defined in 37 U.S.C. chapter 5.

Civilian account means the TSP account to which contributions have been made by or on behalf of a civilian employee.

Civilian employee means a TSP participant covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or equivalent retirement plans.

Combat zone compensation means compensation received for active service during a month in which a member of the uniformed services serves in a combat zone.

Combat zone contributions means employee contributions that are made from compensation subject to the Federal income tax exclusion at 26 U.S.C. 112 for combat zone compensation.

Eligible retirement plan means a plan defined at 26 U.S.C. 402(c)(8). Generally, an eligible retirement plan is an individual retirement account (IRA) or an individual retirement annuity (other than an endowment contract); a qualified pension, profit sharing, or stock bonus plan; an annuity plan described in 26 U.S.C. 403(a); an annuity contract described in 26 U.S.C. 403(b); or an eligible deferred compensation plan described in 26 U.S.C. 457(b). The IRA or other eligible retirement plan to which a payment from the TSP can be transferred must be a trust established inside the United States (*i.e.*, the 50 states and the District of Columbia).

Employee contributions means contributions made by participants from basic pay, incentive pay, and special pay (including bonuses).

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

Federal civilian retirement system means the Civil Service Retirement System established by 5 U.S.C. chapter

83, subchapter III, the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent Federal civilian retirement system.

Periodic contributions means employee contributions made from recurring incentive pay and special pay (including bonuses) as defined in 37 U.S.C. chapter 5.

Ready Reserve means those members of the uniformed services described at 10 U.S.C. 10142.

Regular contributions means employee contributions made from basic pay.

Separation from service means discharge of a member from active duty or the Ready Reserve or transfer of a member to inactive status or to a retired list pursuant to any provision of title 10, U.S.C. The discharge or transfer may not be followed, before the end of the 31-day period beginning on the day following the effective date of the discharge, by resumption of active duty, an appointment to a civilian position covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or an equivalent retirement system, or continued service in or affiliation with the Ready Reserve. Reserve component members serving on full-time active duty who terminate their active duty status and subsequently participate in the drilling reserve are said to continue in the Ready Reserve. Active component members who are released from active duty and subsequently participate in the drilling reserve are said to affiliate with the Ready Reserve.

Service member means a member of the uniformed services on active duty or a member of the Ready Reserve in any pay status.

Service member account means the account to which contributions have been made by or on behalf of a member of the uniformed services.

Special and incentive pay means pay payable as special or incentive pay under 37 U.S.C. chapter 5.

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

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

§ 1604.3 Contribution elections.

A service member may make contribution elections as described in 5

CFR part 1600, with the following exceptions:

(a) *Initial uniformed services open season.* A service member may make a contribution election during an initial uniformed services TSP open season beginning October 9, 2001, and ending January 31, 2002. Contributions based on an election made on or before December 31, 2001, will be deducted from pay the first full pay period of January 2002; elections made in January 2002 will be effective during the first full pay period after the election is received.

(b) *New service members.* An individual who is appointed as a service member may make a TSP contribution election within 60 days after the effective date of the appointment; contributions based on such an election will be made during the first full pay period after the election is received.

(c) *Conversion between active duty and Ready Reserve status.* A service member who converts from Ready Reserve status to active duty status (for more than 30 days), or who converts from active duty to Ready Reserve status, may make a TSP contribution election within 60 days after the effective date of the conversion; contributions based on such an election will be made during the first full pay period after it is received.

(d) *TSP open season elections.* In addition to being able to make a contribution election during the periods described in paragraphs (a) through (c) of this section, as applicable, a service member may make a contribution election during any TSP open season thereafter (as described at 5 CFR part 1600, subpart B).

(e) *Source of contributions.* A service member may elect to contribute sums to the TSP from basic pay, incentive pay, and special pay (including bonuses). However, the service member must be contributing to the TSP from basic pay in order to contribute to the TSP from incentive pay and special pay (including bonuses). Except for an election to contribute from bonuses, all contribution elections must be made during one of the periods described in paragraphs (a) through (d) of this section. A service member may elect to contribute from special pay or incentive pay (including bonuses) in anticipation of receiving such pay (that is, he or she does not have to be receiving the special pay or incentive pay when the contribution election is made); those elections will take effect when the service member receives the special or incentive pay.

§ 1604.4 Contributions.

(a) *Employee contributions.* Subject to the regulations at 5 CFR part 1600 and the following limitations, a service member may make regular contributions to the TSP from basic pay. If the service member makes regular contributions, he or she also may contribute all or a portion of incentive pay and special pay (including bonuses) to the TSP:

(1) *Temporary percentage limitations.* Subject to paragraph (a)(2) of this section, the maximum service member TSP regular employee contribution (including combat zone contributions) for 2002 is 7 percent of basic pay per pay period. The maximum contribution will increase one percentage point each 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 paragraph (a)(2) of this section.

(2) *Internal Revenue Code limitations.* The dollar amount of TSP employee contributions is limited by two different provisions of the Internal Revenue Code (I.R.C.). If a service member's employee contributions exceed either of these limitations, the service member may request a refund of employee contributions (and associated earnings) from the TSP on the form titled "Request for Return of Excess Employee Contributions to Participant," which can be obtained from the TSP record keeper. The completed form must be returned to the TSP record keeper by February 20 of the year after the excess contributions were made.

(i) *Limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a dollar limit on the amount a person may save on a tax-deferred basis through retirement savings plans. (For 2002, the limit is \$11,000. The limit will increase each year by \$1,000 until it reaches \$15,000 in 2006; thereafter, it will be periodically adjusted by the Internal Revenue Service (IRS).) The TSP will not accept any employee contributions that exceed the I.R.C. section 402(g) limit. If a service member contributes to a civilian TSP account or to another qualified employer plan described at I.R.C. sections 401(k), 403(b), or 408(k) (26 U.S.C. 401(k), 403(b), or 408(k)), and the total employee contributions from taxable income made to all plans 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. (Combat zone contributions are not taken into consideration when determining the application of the I.R.C. section 402(g) limit.)

(ii) *Limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places an annual limit on the combined amount that can be contributed to the TSP and to other Federal civilian retirement systems (as defined in § 1604.2). (The limit is periodically adjusted by the IRS; it is the lesser of 100 percent of compensation or \$40,000 in 2002.) For purposes of applying this limit, compensation includes combat zone compensation. In implementation of this law, no employee contribution may be made to the TSP for any year to the extent that the sum of the employee's contributions to the TSP and to a Federal civilian retirement system, when added to the employer's contributions to the TSP for that year, would exceed the I.R.C. section 415(c) limit. (If a service member contributes to a civilian TSP account and to a service member TSP account in a single calendar year, the annual limit on contributions will be derived from the participant's combined service member and civilian compensation.) Combat zone contributions are taken into consideration when determining the application of the I.R.C. section 415(c) limit.

(b) *Matching contributions.* When matching contributions are authorized for a service member, that service member's regular contributions will be matched dollar-for-dollar on the first three percent of basic pay contributed to the TSP, and 50 cents on the dollar on the next two percent of basic pay contributed. Matching contributions only apply to regular contributions. Matching contributions are not taken into consideration when determining the application of the contribution limit found at I.R.C. section 402(g) (described in paragraph (a)(2)(i) of this section), but they are taken into consideration when determining the application of the contribution limit found at I.R.C. section 415 (described in paragraph (a)(2)(ii) of this section).

(c) *Deduction and transmittal of contributions.* A service member's employing agency will deduct regular contributions from the service member's basic pay each pay period based on his or her contribution election and will transmit the contributions to the TSP. If a service member also elects to make periodic contributions to the TSP, the employing agency must deduct (and transmit to the TSP) these contributions from the service member's incentive pay or special pay (including bonuses), as applicable.

§ 1604.5 Separate service member and civilian accounts.

(a) *Separate accounts.* Service member accounts are maintained separately from civilian accounts. Therefore, service members making both civilian and uniformed services TSP contributions will have two TSP accounts. For those participants, the accounts are treated separately except in the following circumstances:

(1) If a participant contributes to a service member account and a civilian account, the contributions to both accounts together cannot exceed the Internal Revenue Code contribution limits described in § 1604.4(a)(2).

(2) A member of the uniformed services may obtain a loan from his or her account, as described at § 1604.10, and the loan will be disbursed from the uniformed services account. If the TSP maintains a service member account and a civilian account for an individual, the TSP will calculate the Internal Revenue Code maximum loan amount using both account balances, as described in § 1604.10(a)(3).

(b) *Transfers between TSP accounts.* Service member and civilian TSP account balances may be combined through a transfer (thus producing one account), and the transferred funds will be treated as employee contributions and otherwise invested as described at 5 CFR part 1600. Transfers under this section are subject to the following rules:

(1) An account balance can be transferred once the TSP is informed (by the participant's employing agency) that the participant has separated from either civilian or uniformed services employment.

(2) Combat zone contributions may not be transferred from a uniformed services TSP account to a civilian TSP account.

(3) Transferred funds will be allocated among the TSP's investment funds according to the contribution allocation in effect for the gaining account.

(4) A service member must obtain the consent of his or her spouse before transferring a uniformed services TSP account balance into a civilian account that is subject to Civil Service Retirement System spousal rights. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(5) Before the transfer can be accomplished, any outstanding loans from the account to be transferred must be closed as described in 5 CFR part 1655.

§ 1604.6 Error correction.

(a) *General rule.* A service member's employing agency must correct the service member's account if, as the result of employing agency error, a service member does not receive the TSP contributions to which he or she is entitled. Except as provided in paragraph (b) of this section, those corrections must be made in accordance with 5 CFR part 1605.

(b) *Missed bonus contributions.* This paragraph (b) applies when an employing agency fails to implement a contribution election that was properly submitted by a service member requesting that a TSP contribution be deducted from bonus pay. Within 30 days of receiving the employing agency's acknowledgment of the error, a service member may establish a schedule of makeup contributions with his or her employing agency to replace the missed contribution through future payroll deductions. These makeup contributions can be made in addition to any TSP contributions that the service member is otherwise entitled to make.

(1) The schedule of makeup contributions may not exceed four times the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution. For example, a service member who earns \$29,000 yearly in basic pay and who missed a \$2,500 bonus contribution to the TSP can establish a schedule of makeup contributions with a maximum duration of 8 months. This is because it takes the service member 2 months to earn \$2,500 in basic pay (at \$2,416.67 per month).

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions. The ceiling may not, however, be less than twice the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution.

§ 1604.7 Withdrawals.

A service member may withdraw all or a portion of his or her account under the rules in 5 CFR part 1650, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual, a separate withdrawal request must be made for each account.

(b) *Spousal rights.* The spouse of a service member participant has the same TSP spousal rights as the spouse of a civilian participant covered under the Federal Employees' Retirement System; those spousal rights in the

context of a withdrawal (and the process by which a service member may obtain an exception to them) are explained at 5 CFR part 1650.

(c) *Combat zone contributions.* If a service member account contains combat zone contributions, the withdrawal will be distributed *pro rata* from all sources. If a participant requests the TSP to transfer all, or a portion, of a withdrawal to an Individual Retirement Account (IRA) or other eligible retirement plan, the share of the withdrawal attributable to combat zone contributions (if any) can be transferred only if the IRA or retirement plan accepts such funds.

(d) *Separation.* The definition of separation from service at § 1604.2 applies when determining a service member's eligibility for a withdrawal.

§ 1604.8 Death benefits.

The account balance of a deceased service member will be paid as described at 5 CFR part 1651, with the following exceptions:

(a) *Separate accounts.* To designate a beneficiary for a TSP death benefit, a service member must file a valid beneficiary designation form. If the TSP maintains a service member account and a civilian account for an individual, a separate beneficiary designation form must be filed for each account.

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the death benefit payment will be made *pro rata* from all sources.

(c) *Trustee-to-trustee transfers.* The surviving spouse of a TSP participant can request the TSP to transfer a death benefit payment to an Individual Retirement Account (IRA) or other eligible retirement plan. The share of the death benefit payment that is attributable to combat zone contributions (if any) can be transferred only if the IRA or retirement plan accepts such funds.

(d) *Transfer to a TSP account.* If the TSP maintains an account for a death benefit beneficiary who is the surviving spouse of the participant, the spouse can request the TSP to transfer the death benefit payment to his or her TSP account; the share attributable to combat zone contributions (if any) cannot be transferred into a civilian account.

§ 1604.9 Court orders and legal processes.

A TSP account can be divided in an action for divorce, annulment, or legal separation, and is subject to legal process relating to child support, alimony, or child abuse. The TSP will make a payment from a service member's account under such orders or

processes as described at 5 CFR part 1653, with the following exceptions:

(a) *Separate accounts.* To qualify for enforcement against the TSP, a court order or legal process must expressly relate to the TSP. Therefore, if the TSP maintains a service member account and a civilian account for an individual, a qualifying court order or legal process must expressly state from which account payment is to be made.

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the payment will be made *pro rata* from all sources, unless the court order or legal process directs otherwise.

(c) *Trustee-to-trustee transfers.* The current or former spouse of a TSP participant can request the TSP to transfer a court-ordered payment to an Individual Retirement Account (IRA) or other eligible retirement plan. If the payee requests the TSP to transfer all or a portion of the court-ordered payment to an IRA or other eligible retirement plan, the share of the payment attributable to combat zone contributions (if any) can be transferred only if the IRA or plan accepts such funds.

(d) *Transfer to a TSP account.* If the TSP maintains an account for a court order payee who is the current or former spouse of the participant, the payee can request the TSP to transfer the court-ordered payment to the payee's TSP account; the *pro rata* share attributable to combat zone contributions (if any) cannot be transferred.

§ 1604.10 Loans.

A service member may be eligible for a TSP loan as described at 5 CFR part 1655, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual:

(1) A separate loan application must be made for each account;

(2) A participant may have no more than two loans outstanding from each account at any time; one loan from each account may be a loan for the purchase of a primary residence;

(3) The Internal Revenue Code maximum loan amount test, which is described in 5 CFR part 1655, will be applied using the combined balances in both TSP accounts; and

(4) Separate TSP loan statements will be issued for each account.

(b) *Spousal rights.* Before a loan agreement is approved for a service member account, the participant's spouse must consent to the loan by signing the loan agreement. A request for an exception to the spousal consent

requirement will be evaluated under the rules explained in 5 CFR part 1650.

(c) *Combat zone contributions.* The portion of a loan that is attributable to

combat zone contributions (if any) will be determined when the loan is declared a taxable distribution, and that portion will not be reported as taxable

income to the participant as a result of the declaration.

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