

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1605, 1620, 1631, 1640, 1645, 1650, 1651, 1653, 1655, and 1690

Transition to a New Recordkeeping System

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is proposing to update its regulations to reflect new processes and terminology associated with the Thrift Savings Plan's upcoming transition to a new record keeping system.

DATES: Comments must be received on or before May 2, 2022.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Dharmesh Vashee, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.

Comments will be made available to the public online at <https://www.regulations.gov>. Do not include any personally identifiable or confidential information that you do not want publicly disclosed. Anonymous comments are acceptable.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Contact Kim Weaver at (202) 465-5220. For information about how to comment on this proposed rule: Contact Laurissa Stokes at (202) 308-7707.

SUPPLEMENTARY INFORMATION: The FRTIB 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 is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). The provisions of FERSA that govern the TSP are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79.

I. Background

In November 2020, the FRTIB awarded a contract to a service provider that will maintain and operate technology platform(s) to deliver

retirement plan record keeping services. Examples of retirement plan record keeping services include: (1) Maintaining eligibility records, (2) managing payroll data, (3) processing transactions such as contribution elections, investment elections, withdrawals, loans, and beneficiary designations, (4) issuing account statements to participants, (5) providing online account access, and (6) providing responsive customer support to TSP participants.

The FRTIB is currently undergoing an 18-24 month transition from its existing technology platforms to the technology platforms of its new record keeper. Following this transition, TSP participants will be able to take advantage of many new services and functionalities, such as a mobile app, electronic payment options, quick access to customer service support through an online live chat function, and the ability to complete most transactions entirely online instead of using paper forms. As described in more detail below, the FRTIB is proposing to amend its regulations to reflect these and other new processes, and to update its vocabulary to reflect the terminology used by the new record keeper.

II. Proposed Amendments

A. Contributing to, Investing in, and Rolling Over to the TSP

1. *Terminology Changes.* The FRTIB is proposing to amend its regulations to reflect the following new terminology that will be used upon transition to the new recordkeeping system when referring to a TSP participant's ability make contributions and invest in the TSP:

(a) The term "contribution allocation" will be replaced with the term "investment election", which will refer to the apportionment of a participant's future contributions and rollovers amongst the TSP funds.

(b) The term "interfund transfer" will be replaced with two new terms—(i) "fund transfer," which will refer to the transfer of money in a participant's TSP account from one TSP fund to another TSP fund, and (ii) "fund reallocation," which will refer to the total redistribution of a participant's account balance among TSP funds.

(c) The terms "transfer" and "trustee-to-trustee transfer" will be replaced with the term "rollover."

2. *Process Changes.* The FRTIB is proposing to amend its regulations to reflect changes applicable to rollovers and investment elections, as described below.

Currently, TSP participants who want to roll over money directly from another retirement plan or IRA into their TSP account must shepherd paperwork between the TSP and the financial institution that holds their other retirement funds. Post-transition, rollovers will be easier. Specifically, TSP participants will no longer have to ask the transferring financial institution to complete the TSP's paper form. The proposed amendments to paragraphs (a)(1) and (b) of § 1600.31 reflect this change.

Currently, interfund transfer requests and contribution allocation requests received prior to noon eastern time of any business day are ordinarily posted that business day. The same timing will apply to post-transition fund transfer requests and post-transition fund reallocation requests. However, post-transition investment election requests will generally be posted immediately and be effective the next business day regardless of the time they are submitted. In the rare case that a transaction request is submitted on paper, it will generally be entered into the recordkeeping system within 48 hours of receipt by the TSP record keeper. The proposed amendments to paragraphs (a)(1) and (3) of § 1601.32 reflect these changes.

B. Withdrawing Amounts From the TSP

1. *Terminology Changes.* The FRTIB is proposing to amend its regulations to reflect the following new terminology that will be used upon transition to the new recordkeeping system when referring to a TSP participant's ability to withdraw amounts from the TSP:

(a) The term "post-employment withdrawal" will be replaced with the term "post-employment distribution," which will refer to a TSP distribution that is available to participants who have separated from government service.

(b) The term "TSP withdrawal" will refer to a post-employment distribution and/or an in-service withdrawal.

2. *Process Changes.* The FRTIB is proposing to amend its regulations to reflect changes applicable to TSP withdrawals, as described below.

Currently, any withdrawal request requiring a signature must be mailed or faxed to the TSP. With the new recordkeeping system, which supports electronic signatures, all TSP participants (including married FERS participants who must obtain spousal consent) will be able to complete withdrawal requests entirely online. Participants may also call the ThriftLine to initiate a TSP withdrawal request. Notarization will no longer be required

for withdrawal requests initiated online or by calling the ThriftLine because the new record keeper will, instead, use a variety of other identity verification methods. These changes will enable TSP participants to access their money more efficiently and securely. The proposed amendments to §§ 1650.4, 1650.6, 1650.24, 1650.41, 1650.42, 1650.61(c)(4), 1650.62(b)–(c), 1650.63(a)–(b), and 1650.64(b) reflect these changes.

Currently, a TSP participant must be separated from government service for 31 calendar days before they are eligible for a post-employment distribution. This rule exists because Federal employees often separate from one Federal agency to seek employment at another Federal agency. Post-transition, a TSP participant must be separated from government service for at least 60 calendar days before they are eligible for a post-employment distribution. The shorter 31-day time period often misleads participants who are between Federal jobs into requesting post-employment distributions when they are not truly separated from government service. Increasing this time period to 60 calendar days will reduce the number of these occurrences. The proposed amendments to §§ 1600.34, 1620.41, 1650.2(d)(1)–(2), and 1650.23 reflect this change.

Currently, a TSP participant who takes a post-employment distribution in the form of installment payments calculated based on life expectancy has his or her installment payment amount, for each year following the year in which the installment payments begin, calculated on the first installment payment date of that year. Post-transition, the installment payment amount for each year following the year in which the installment payments begin will be calculated in January of that year, regardless of the first installment payment date. The proposed amendments to § 1650.13(a)(2) reflect this change.

Currently, if a TSP withdrawal is returned as undeliverable and the TSP record keeper is not able to locate the participant within 60 days, the returned funds are forfeited to the TSP and may be reclaimed (without earnings) by the participant at any time. Post-transition, returned funds will be forfeited to the TSP if the participant is not located within 90 days. The proposed amendment to § 1650.5 reflects this change.

C. TSP Loans

1. *Terminology Changes.* The FRTIB is proposing to amend its regulations to reflect the following new terminology

that will be used upon transition to the new recordkeeping system when referring to a TSP participant's ability to take a loan from his or her TSP account:

(a) The term “deemed distribution” will refer to the amount of outstanding principal and interest on a TSP loan that must be reported to the Internal Revenue Service (IRS) as taxable income as the result of an active participant's failure to either—(i) make timely loan repayments by the required deadline, or (ii) repay the loan in full by the maximum loan term limit. The new TSP record keeper will also use the terms “loan taxation” and “taxed loan” to refer to a deemed distribution.

(b) The term “loan offset” will refer to the amount of outstanding principal and interest on a TSP loan that must be reported to the IRS as taxable income as the result of the failure of a separated participant to either (i) begin making loan repayments, or (ii) repay his or her loan in full by the deadline imposed by the TSP record keeper. The new TSP record keeper will also use the term “loan foreclosure” to refer to a loan offset.

(c) The term “taxable distribution” will no longer be used.

2. *Process Changes.* The FRTIB is proposing to amend its regulations to reflect changes applicable to TSP loans, as described below.

As noted above, post-transition, TSP participants will be able to leverage new electronic signature capability to complete loan requests (including those that require spousal consent) entirely online. Participants may also call the ThriftLine to initiate a loan request. Notarization will no longer be required for loan requests initiated online or by calling the ThriftLine because the new TSP record keeper will, instead, use a variety of other identity verification methods. The proposed amendments to §§ 1655.10 and 1655.12 reflect these changes.

Currently, a TSP participant can request a residential loan for the purchase or construction of a “primary residence”—which may include a house, a townhouse, a condominium, a share in a cooperative housing corporation, a mobile home, a boat, or a recreational vehicle. Post-transition, the definition of primary residence will no longer include a boat or a recreational vehicle. This change will bring the TSP's requirements and processes for residential loans in line with those used most commonly by private sector plans and will reduce the amount of documentation participants are required to submit with their residential loan requests. For home purchase other than construction, a

participant will need only provide a signed sale/purchase contract/settlement offer or agreement or addendum. For construction, a signed builder's agreement will be sufficient. If the loan request includes closing costs and/or settlement charges, the participant must include a loan estimate/worksheet/statement/closing disclosure from a mortgage company. The proposed amendments to § 1655.20 reflect these changes.

Currently, a participant may have two outstanding loans per TSP account only if one is a general purpose loan and the other is a residential loan. Post-transition, a participant may have two outstanding loans per TSP account as follows—(i) a participant may have two general purpose loans, or (ii) she or he may have one general purpose loan and one residential loan. As required by IRS rules, the maximum loan term for a general purpose loan is 60 months and the maximum loan term for a residential loan is 180 months. Currently, the minimum loan term for both types of loans is 12 months. Post-transition, the minimum loan term for general purpose loans will remain 12 months, but the minimum loan term for residential loans will change from 12 months to 61 months. These changes will help TSP participants avoid the more burdensome paperwork requirements for residential loans by permitting and encouraging the use of general purpose loans in lieu of residential loans. The proposed amendments to §§ 1655.4 and 1655.5(a) reflect this change.

Currently, a TSP participant must wait 60 calendar days following repayment of a prior loan before they are eligible to request a new loan. Additionally, a participant whose prior loan has been reported to the IRS as taxable because of missed loan payments must wait 12 months before requesting a new loan. Post-transition, the 60-calendar day waiting period will be reduced to 30 business days, and the 12-month waiting period will be eliminated altogether. The proposed amendment to § 1655.2(a) and the proposed removal of § 1655.2(e) reflect these changes.

Currently, the maximum amount a participant can borrow is the smallest of the following:

(1) The total of the participant's own contributions and earnings on those contributions (not including agency matching or automatic contributions and not including any outstanding loan balance);

(2) 50% of the participant's total vested account balance (including agency matching and automatic contributions and including any

outstanding loan balance) or \$10,000, whichever is greater, minus any outstanding loan balance; or

(3) \$50,000 minus the participant's highest outstanding loan balance, if any, during the last 12 months.

Post-transition, agency matching and automatic contributions will not be included for purposes of determining the amount that is 50% of the participant's total vested account balance. The proposed amendment to § 1655.6(b)(2) reflects this change. In addition, if the TSP makes a mutual fund window available to participants, amounts invested through the mutual fund window will not be included for purposes of determining either the amount that is the total of the participant's own contributions or the amount that is 50% of the participant's total vested account balance. The proposed addition of paragraph (d) to § 1655.6 reflects this rule.

Currently, the interest rate for new loans is the monthly G Fund rate in effect on the date the loan request is made. Post-transition, the interest rate for new loans will be the monthly G Fund rate in effect on the 15th of the month prior to the date the loan request is made. The proposed amendment to § 1655.7(a) reflects this change.

Currently, a participant who wishes to make extra loan payments to restore their account more quickly, or to make up for missed payments, must do so by check or money order. Post-transition, a participant will also have the option to make extra loan payments via direct debit from his or her personal savings or checking account. The proposed amendments to §§ 1620.35 and 1655.14, 1655.15, and 1655.17 reflect these changes.

Currently, a participant who separates from service with an outstanding loan balance must either repay the entire balance within a certain timeframe (which many participants cannot afford to do) or include it in their taxable income. Post-transition, separated participants will be able to continue to make loan repayments on a monthly basis so as to replenish their retirement savings. These repayments may be made via personal check, money order, or direct debit. The proposed amendments to §§ 1620.35, 1655.14, 1655.15, and 1655.17 reflect these changes.

Currently, a participant may request reamortization of a loan at any time. Post-transition, a participant may request reamortization only when the participant's pay cycle changes. The participant must notify the TSP record keeper of the pay cycle change so his or her loan may be reamortized to adjust the scheduled payment to an equivalent

amount in the new pay cycle. The proposed amendment to § 1655.16(a) reflects this change.

Currently, if a loan disbursement is returned as undeliverable and the TSP record keeper is not able to locate the participant within 60 days, the returned funds are used to repay the loan. This proposed rule would replace 60 days with 90 days. The proposed amendment to § 1655.13 reflects this change.

3. *Fees.* Since 2004, the TSP has imposed a \$50.00 loan fee. This fee is paid only by those participants who choose to take a loan from the TSP and is used to offset the cost of maintaining the loan program. Post-transition, the \$50.00 fee for general purpose loans will remain in place. However, in order to ensure that the costs of the loan program are borne only by those participants who actually use it, a \$100.00 loan fee will be charged for all residential loans. Reviewing residential loan request materials, which include items such as purchase contracts, is much more labor-intensive than reviewing general purpose loan requests, thus necessitating a differentiated loan fee schedule. The proposed amendment to § 1655.21 reflects this change.

D. TSP Beneficiaries and Death Benefits

1. *Terminology Changes.* Although the terminology used in the existing FRTIB regulations regarding TSP beneficiaries and death benefits will not change upon transition to the new recordkeeping system, the FRTIB notes that, commensurate with the move to online beneficiary designations described below, the term "TSP-3," which refers to the paper form currently used to make beneficiary designations, will no longer be used to refer to a TSP beneficiary designation.

2. *Process Changes.* The FRTIB is proposing to amend its regulations to reflect changes applicable to beneficiary designations and death benefit payments, as described below.

Currently, a participant who wants to designate a beneficiary for their TSP account must complete a lengthy paper form. Post-transition, participants will be able to designate beneficiaries entirely online (or by calling the ThriftLine). A participant who has a beneficiary designation already on file may change their designated beneficiary at any time by completing a new beneficiary designation online. The option to cancel a beneficiary designation without designating a new beneficiary, thereby reverting to the statutory order of precedence, will no longer be available. The proposed amendments to §§ 1651.2(a)(1),

1651.3(a), (c) introductory text, and (c)(3), and 1651.4 reflect these changes.

The new recordkeeping system allows participants to designate up to 20 total beneficiaries (primary and contingent). The proposed amendment to § 1651.2(b) reflects this change. Contingent beneficiaries that are designated post-transition will not be linked to a primary beneficiary. Instead, in the event a primary beneficiary predeceases a participant, his or her share of the participant's TSP account will be split evenly among the remaining primary beneficiaries. Contingent beneficiaries will only receive a share of the participant's TSP account balance if there are no surviving primary beneficiaries. The requirement to link contingent beneficiaries to primary beneficiaries under the current system often results in errors that cause otherwise valid TSP beneficiary designations to be rejected. Eliminating the linkage requirement will greatly reduce errors for TSP participants wishing to designate contingent beneficiaries. The removal of § 1651.3(c)(7) reflects this change.

Post-transition, participants will remain able to designate a minor as a beneficiary. However, participants will no longer be permitted to designate a custodian for a minor by reference to the Uniform Transfers to Minors Act. This change is reflected in the proposed amendment to § 1651.3(b).

Currently, upon a participant's death, his or her entire TSP account balance is moved to the G Fund. If a participant dies on or after the transition date, their account balance will remain invested in the same TSP funds as it was invested in on the participant's date of death. The proposed amendment to § 1651.2(d) reflects this change.

Currently, when a beneficiary participant account is established, the entire account balance is invested in the age-appropriate L Fund based on the beneficiary participant's date of birth. Post-transition, the account balance will be allocated to the TSP funds in which the deceased participant's account balance was invested on his or her date of death. The proposed amendment to § 1651.19(a) reflects this change.

Currently, potential beneficiaries apply for TSP death benefits by printing and mailing to the TSP a paper form along with a certified copy of the participant's death certificate. Post-transition, potential beneficiaries will contact the ThriftLine for instructions on providing the certified death certificate and any other information that may be needed. The proposed amendment to § 1651.13 reflects this change.

E. Court Orders and Powers of Attorney

1. *Process Changes*—Retirement Benefits Court Orders (RBCOs). The FRTIB is proposing to amend its regulations to reflect changes applicable to RBCOs, as described below:

A RBCO is a court decree of divorce, annulment, or legal separation (or a court order or court-approved property settlement agreement incident to such a decree) that divides a participant's TSP account between the participant and their spouse or former spouse. To be accepted by the TSP as a qualifying RBCO, a court order must meet the requirements found in 5 United States Code (U.S.C.) 8435(c) and 5 Code of Federal Regulations (CFR) part 1653, subpart A.

TSP participants and their spouses/former spouses (or their attorneys) will sometimes attempt to submit a draft RBCO to the TSP to determine whether it is "qualifying" (*i.e.*, will be accepted by the TSP) before the RBCO is executed by a court. Currently, draft RBCOs are rejected. Post-transition, the new record keeper will review draft RBCOs and notify the parties whether or not the draft RBCO is qualifying. This new service will provide assurance to participants and their spouses/former spouses (or their attorneys) that, once the RBCO is executed by a court, it will be accepted by the TSP. The proposed amendments to §§ 1653.2(b) and 1653.3(d)–(e) and (h)(1) reflect this change.

Post-transition, RBCOs must award a specific dollar amount or stated percentage of a participant's TSP account; fractions will no longer be permitted. The proposed amendments to §§ 1653.2(a)(3)(ii) and (iv), 1653.3(j)(3), and 1653.4(b)–(c), (e), and (f)(3)(i) reflect this change. If a RBCO grants earnings, it may not specify the rate of earnings. The proposed amendments to § 1653.4(f)(1) and (2) and (f)(3) introductory text reflect this change. In addition, a final RBCO must be certified by a court. The proposed amendment to § 1653.3(a) reflects this change.

If a RBCO is accepted as qualifying, payment to the payee will be made as soon as administratively practicable thereafter. However, as required by the Internal Revenue Code, in no event will payment to a payee who is a current or former spouse be made prior to 30 calendar days after the date of the determination. The amendments to § 1653.5(a) reflect these changes.

Currently, upon receipt of a RBCO, the participant's account is frozen. If the RBCO is rejected as not qualifying, the freeze is removed 45 days later. Post-

transition, a TSP account will remain frozen until the earlier of (i) 18 months after the RBCO is rejected, or (ii) when both parties to the non-qualifying RBCO submit a request to unfreeze the account. The proposed amendment to § 1653.3(h)(2)(ii) reflects this change.

If a RBCO is rejected as not qualifying, a participant (or their spouse/former spouse) may appeal this determination under part 1605 if they believe that the RBCO was not processed in accordance with applicable laws and regulations. The FRTIB proposes to amend § 1653.5 by removing paragraph (g), which erroneously suggests that in no event may a participant appeal a RBCO denial.

2. *Process Changes*—Child Support Court Orders (CSCOs). The FRTIB is proposing to amend its regulations to reflect a change to the process for reviewing CSCOs. Namely, post-transition, an incomplete CSCO will automatically be rejected and the TSP account to which it relates will be unfrozen. The proposed amendments to §§ 1653.12(c)(2) and 1653.13(e) and (h)(1) reflect this change.

If a CSCO is rejected as not qualifying, a participant may appeal this determination under part 1605 if he or she believes that the CSCO was not processed in accordance with applicable laws regulations. The FRTIB proposes to amend § 1653.13 by removing paragraph (g), which erroneously suggests that in no event may a participant appeal a CSCO denial.

3. *Process Changes*—Powers of Attorney. Consistent with the approach taken by many private sector plans, the new TSP record keeper will honor a power of attorney if it is valid under the laws of the state in which the participant lives. Not all states require powers of attorney to be notarized. Therefore, the FRTIB is proposing to remove the notarization requirement that is currently applicable to all powers of attorney. The proposed amendment to § 1690.12(a) reflects this change.

4. *Fees*. The process of reviewing RBCOs and CSCOs for qualification is and always has been a very labor-intensive process. In recent years, this process has become significantly more costly as the number of RBCOs and CSCOs submitted has increased. Like the loan program, the RBCO/CSCO review process is only utilized by certain TSP participants. In order to ensure that the associated costs are not subsidized by participants who never use these services, a participant will be charged a \$600.00 fee for each RBCO and CSCO submitted for their account.

In the case of a RBCO, the \$600.00 will be deducted from the participant's TSP account upon receipt of a complete

RBCO. The fee will apply only once per RBCO. In other words, if a draft RBCO is submitted, the \$600.00 fee will be deducted upon receipt of the draft RBCO but an additional fee will not be charged when the final RBCO is submitted. However, the fee will not be refunded if a draft RBCO is never finalized or if the RBCO is rejected as not qualifying. In both cases, the TSP record keeper has still engaged in the review process. If a qualifying RBCO specifies that the parties should split the fee, the payee's portion of the fee will be deducted from their RBCO payment and credited back to the participant's account. Proposed § 1653.6 reflects these changes.

In the case of a CSCO, the \$600.00 will be deducted from the participant's TSP account upon receipt of a complete CSCO and will apply only once per CSCO. For example, if a CSCO for \$1,000.00 is submitted but, after the deduction of the \$600.00 fee, the participant does not have sufficient funds in his or her TSP account to cover the full amount, the fee will not be charged again when another CSCO is submitted to recoup the remaining amounts owed. However, the fee will not be refunded if the CSCO is rejected as not qualifying. Proposed § 1653.16 reflects these changes.

F. Account Statements

The FRTIB proposes to update part 1640 to accurately reflect the information that will be included on participant account statements post-transition. Some information previously provided on statements has been, or will be, removed or truncated to protect personally identifiable information and thereby increase account security. These items include date of birth, retirement system coverage, and employment status. The proposed amendments to § 1640.3 reflect these changes.

In addition, some transaction details currently provided on statements will be removed to conform to the standard configurations of the new TSP record keeper's technology platform. These items include the date the transaction posted, the source of contributions affected by the transaction, the share or unit price at which the transaction was posted, and information relating to outstanding loans. The proposed amendments to §§ 1640.4 and 1655.8 reflect these changes.

G. Miscellaneous

The FRTIB proposes to make certain changes to reflect the way breakage and negative adjustments will be calculated under the new recordkeeping system. Specifically: (i) Daily earnings will be

used in lieu of monthly earnings; and (ii) the share price for the L Income Fund will be used instead of a constructed share price to calculate breakage and negative adjustments in the case of a retired TSP Lifecycle Fund. The proposed amendments to §§ 1605.2(b) and 1605.12(c) reflect these changes.

The FRTIB also proposes to update its regulation governing the calculation of share/unit prices to reflect the fact that the new recordkeeping system truncates share/unit prices to four decimal places rather than two decimal places. The proposed amendment to § 1645.5(a) reflects this change.

III. Amendments for Technical Conformity

The following proposed amendments are necessary to remove obsolete provisions, reconcile cross-references, and ensure consistent language usage:

1. The FRTIB proposes to remove obsolete provisions concerning the suspension of TSP contributions for six months after a hardship withdrawal. Legislation to permit this change was included in the Bipartisan Budget Act of 2018, Public Law 115–123 (132 Stat. 64). Consistent with that legislation, and subsequent IRS guidance, the TSP stopped enforcing the requirement to suspend contributions when a participant takes a hardship withdrawal in September 2019. The proposed amendments to §§ 1600.13(b), 1600.14(b), 1650.33, and 1655.2(c) reflect this change.

2. The FRTIB proposes to update the certificate of truthfulness language in its loan rules to match the certificate of truthfulness language included in its withdrawal rules. The proposed amendment to § 1655.18 reflects this change.

3. The FRTIB proposes to update a list of internal FRTIB offices contained in its regulations because the current list no longer accurately reflects the internal FRTIB offices. The proposed amendments to § 1631.3 reflect this change.

4. The terms “Board”, “TSP”, and “TSP record keeper” are used interchangeably throughout parts 1600–1690. The FRTIB is proposing to modify the usage of these terms in several places to achieve more precision and consistency.

5. The FRTIB proposes to amend § 1600.21(b) to clarify its articulation of FERSA’s requirement that a uniformed services member cannot contribute special or incentive pay unless he or she is also contributing basic pay.

6. The FRTIB proposes to update the cross-reference to 5 U.S.C. 8438 in

§ 1601.40 to clarify that the TSP Lifecycle Funds invest only in the C, S, F, I, and G Funds.

Regulatory Flexibility Act

This proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the TSP, and beneficiary participants.

Paperwork Reduction Act

This proposed regulations does not require additional reporting under the criteria of the Paperwork Reduction Act.

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 2 U.S.C. 1532 is not required.

List of Subjects

5 CFR Part 1600

Claims, Government employees, Pensions, Retirement, Taxes.

5 CFR Part 1601

Government employees, Pensions, Retirement.

5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1620

District of Columbia, Government employees, Pensions, Retirement.

5 CFR Part 1631

Courts, Freedom of information, Government employees.

5 CFR Part 1640

Government employees, Pensions, Retirement.

5 CFR Part 1645

Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1653

Alimony, Child support, Government employees, Pensions, Retirement.

5 CFR Part 1655

Credit, Government employees, Pensions, Retirement.

5 CFR Part 1690

Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB proposes to amend 5 CFR chapter VI as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS, INVESTMENT ELECTIONS, AND AUTOMATIC ENROLLMENT PROGRAM

■ 1. The authority citation for part 1600 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432(a), 8432(b), 8432(c), 8432(j), 8432d, 8474(b)(5) and (c)(1), and 8440e.

■ 2. The heading for part 1600 is revised to read as set forth above.

■ 3. Amend § 1600.11, in paragraph (b), as follows:

■ a. Revise the heading; and

■ b. Remove “TSP Funds” and add in its place “TSP core funds”.

The revision reads as follows:

§ 1600.11 Types of elections.

* * * * *

(b) *Investment election.* * * *

§ 1600.13 [Amended]

■ 4. Amend § 1600.13 by removing and reserving paragraph (b).

■ 5. Amend § 1600.14 as follows:

■ a. Remove and reserve paragraph (b); and

■ b. Revise paragraph (d).

The revision reads as follows:

§ 1600.14 Effect of election to be covered by BRS.

* * * * *

(d) Agency automatic (1%) contributions for all members covered under this section and, if applicable, agency matching contributions attributable to employee contributions must begin at the time set forth in § 1600.19(c).

§ 1600.18 [Amended]

■ 6. Amend § 1600.18, in the first sentence, by removing “TSP” and adding in its place “TSP record keeper”.

■ 7. Amend § 1600.19 as follows:

■ a. Revise the headings for paragraphs (a) and (b);

■ b. In paragraphs (c)(2)(i)(A) and (c)(2)(ii)(A), remove “Agency Automatic (1%) Contributions” and add in its place “Agency automatic (1%) contributions”;

■ c. In paragraphs (c)(2)(i)(B) and (c)(2)(ii)(B), remove “Agency Matching Contributions” “Agency matching contributions”;

■ d. In paragraph (c)(2)(i)(B), remove “2 years” and add in its place “2 years and one day”.

The revisions read as follows:

§ 1600.19 Employing agency contributions.

(a) *Agency automatic (1%) contributions.* * * *

(b) *Agency matching contributions.* * * *

* * * * *

■ 7. Amend § 1600.21 by revising the first sentence of paragraph (b) to read as follows:

§ 1600.21 Contributions in whole percentages or whole dollar amounts.

* * * * *

(b) Uniformed services members may elect to contribute from basic pay and, if they elect to contribute from basic pay, special or incentive pay (including bonus pay) subject to the limits described in § 1600.22. ***

§ 1600.22 [Amended]

■ 8. Amend § 1600.22, in paragraph (a), by removing “(26 U.S.C.)”.

■ 9. Revise subpart D to read as follows:

Subpart D—Rollovers from Other Qualified Retirement Plans

Sec.

1600.30 Accounts eligible for rollover.

1600.31 Methods for rolling over eligible rollover distribution to the TSP.

1600.32 Treatment accorded rollover funds.

1600.33 Combining uniformed services accounts and civilian accounts.

Subpart D—Rollovers from Other Qualified Retirement Plans

§ 1600.30 Accounts eligible for rollover.

(a) A participant who has an open TSP account and is entitled to receive (or receives) an eligible rollover distribution from an eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)), or from a traditional IRA may roll over that distribution into his or her existing TSP account in accordance with § 1600.31.

(b) The only balances that the TSP record keeper will accept are balances that would otherwise be includible in gross income if the distribution were paid to the participant. The TSP record keeper will not accept any balances that

have already been subjected to Federal income tax (after-tax monies) or balances from a uniformed services TSP account that will not be subject to Federal income tax (tax-exempt monies).

(c) Notwithstanding paragraph (b) of this section, the TSP record keeper will accept Roth funds that are transferred via direct rollover from an eligible employer plan that maintains a qualified Roth contribution program described in section 402A of the Internal Revenue Code.

(d) The TSP record keeper will accept a rollover only to the extent the rollover is permitted by the Internal Revenue Code.

§ 1600.31 Methods for rolling over eligible rollover distribution to the TSP.

(a) *Direct rollover.* (1) A participant may request that the administrator or trustee of an eligible employer plan or traditional IRA roll over any or all of his or her account directly to the TSP in the form and manner prescribed by the TSP record keeper. The administrator or trustee must provide to the TSP record keeper the distribution, information about the type of money included in the distribution (*i.e.*, tax-deferred and/or Roth amounts), and sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution (as defined by 26 CFR 1.401(a)(31)–1, Q&A–14). By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan’s determination letter, a letter or other statement from the plan administrator or trustee indicating that it is an eligible employer plan or traditional IRA, a check indicating that the contribution is a direct rollover, a payment confirmation, distribution statement or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(2) If the distribution is from a Roth account maintained by an eligible employer plan, the plan administrator must also provide to the TSP record keeper a statement indicating the first year of the participant’s Roth 5 year non-exclusion period under the distributing plan and either:

(i) The portion of the direct rollover amount that represents Roth contributions (*i.e.*, basis); or

(ii) A statement that the entire amount of the direct rollover is a qualified Roth distribution (as defined by Internal Revenue Code section 402A(d)(2)).

(b) *Indirect rollover by participant.* A participant who has already received a distribution from an eligible employer

plan or traditional IRA may request to roll over all or part of the distribution into the TSP in the form and manner prescribed by the TSP record keeper. However, the TSP record keeper will not accept a rollover by the participant of Roth funds distributed from an eligible employer plan. A distribution of Roth funds from an eligible employer plan may be rolled into the TSP by direct rollover only. The TSP record keeper will accept a rollover by the participant of tax-deferred amounts if the following requirements and conditions are satisfied:

(1) The participant must request to roll over the amounts in the form and manner prescribed by the TSP record keeper.

(2) The administrator or trustee must provide to the TSP record keeper information about the type of money included in the distribution (*i.e.*, tax-deferred and/or Roth) and sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution. By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan’s determination letter, a letter or other statement from the plan indicating that it is an eligible employer plan or traditional IRA, a check indicating that the contribution is a direct rollover, a payment confirmation, distribution statement or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(3) The participant must submit a certified check, cashier’s check, cashier’s draft, money order, treasurer’s check from a credit union, or personal check, made out to the “Thrift Savings Plan,” for the entire amount of the rollover, along with any other information required by the TSP record keeper. 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 his or her eligible employer plan or traditional IRA. The transaction is not complete until the TSP record keeper receives the guaranteed funds for the amount to be rolled over, information sufficient to conclude that the amount is a valid rollover contribution, and any other information required by the TSP record keeper.

(c) *Participant’s certification.* When rolling over a distribution to the TSP by either a direct or indirect rollover, the

participant must certify that the distribution is eligible for roll over into the TSP, as follows:

(1) *Distribution from an eligible employer plan.* The participant must certify that the distribution:

(i) Is not one of a series of substantially equal periodic payments made over the life expectancy of the participant (or the joint lives of the participant and designated beneficiary, if applicable) or for a period of 10 years or more;

(ii) Is not a minimum distribution required by I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9));

(iii) Is not a hardship distribution;

(iv) Is not a plan loan that is deemed to be a taxed loan because of default;

(v) Is not a return of excess elective deferrals; and

(vi) If not rolled over, would be includible in gross income for the tax year in which the distribution is paid. This paragraph (c)(1)(vi) shall not apply to Roth funds distributed from an eligible employer plan.

(2) *Distribution from a traditional IRA.* The participant must certify that the distribution:

(i) Is not a minimum distribution required under I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9)); and

(ii) If not rolled over, would be includible in gross income for the tax year in which the distribution is paid.

§ 1600.32 Treatment accorded rollover funds.

(a) All funds rolled over to the TSP pursuant to §§ 1600.30 and 1600.31 will be treated as employee contributions.

(b) All funds rolled over to the TSP pursuant to §§ 1600.30 and 1600.31 will be invested in accordance with the participant’s investment election on file at the time the rollover is completed.

(c) Funds rolled over to the TSP pursuant to §§ 1600.30 and 1600.31 are not subject to the limits on contributions described in § 1600.22.

§ 1600.33 Combining uniformed services accounts and civilian accounts.

Uniformed services TSP account balances and civilian TSP account balances may be combined (thus producing one account), subject to paragraphs (a) through (g) of this section:

(a) An account balance can be combined with another once the TSP record keeper is informed (by the participant’s employing agency) that the participant has separated from Government service.

(b) Tax-exempt contributions may not be transferred from a uniformed services TSP account to a civilian TSP account.

(c) A traditional balance and a Roth balance cannot be combined.

(d) Funds transferred to the gaining account will be allocated among the TSP core funds according to the investment election in effect for the account into which the funds are transferred.

(e) Funds transferred to the gaining account will be treated as employee contributions and otherwise invested as described at 5 CFR part 1600.

(f) A uniformed service member must obtain the consent of his or her spouse before combining a uniformed services TSP account balance with his or her civilian account, even if the civilian account is not subject to FERS spousal rights. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(g) A loan cannot be transferred between accounts. Before the accounts can be combined, any outstanding loans from the losing account must be closed as described in 5 CFR part 1655.

■ 10. Amend § 1600.34 by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 1600.34 Automatic enrollment program.

(a) All newly hired civilian employees who are eligible to participate in the Thrift Savings Plan and those civilian employees who are rehired after a separation in service of 60 or more calendar days and who are eligible to participate in the TSP will automatically have 5% of their basic pay contributed to the employee’s traditional TSP balance (default employee contribution) unless, by the end of the employee’s first pay period (subject to the agency’s processing time frames), they elect:

* * * * *

(b) All uniformed service members who either enter service on or after January 1, 2018, or re-enter service after a separation from service of 60 or more calendar days after having been covered by BRS at the time of separation will automatically have 5% of their basic pay contributed to the member’s traditional TSP balance (default employee contribution) beginning the first full pay period following the date that is 60 days after the member’s PEBD unless they elect by the end of that 60 day period:

* * * * *

§ 1600.35 [Amended]

■ 11. Amend § 1600.35 as follows:

■ a. In paragraph (a) introductory text, remove “must be made on” and add in its place “may be made on the TSP website or by completing”; and

■ b. In paragraph (d), remove “TSP” and add in its place “TSP record keeper”.

§ 1600.37 [Amended]

■ 12. Amend § 1600.37 as follows:

■ a. In the introductory text, remove “The Board” and add in its place “The TSP record keeper”; and

■ b. In paragraph (c), remove “The fund” and “a contribution allocation”, and add in their places “The TSP core fund” and “an investment election”, respectively.

PART 1601—PARTICIPANTS’ CHOICE OF TSP FUNDS

■ 13. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8438, 8474(b)(5) and (c)(1).

■ 14. Amend § 1601.1, in paragraph (b), as follows:

■ a. In the definition of “Acknowledgment of risk”, remove “TSP Fund” and add in its place “TSP core fund”; and

■ b. Add definitions in alphabetical order for “Fund reallocation” and “Fund transfer”.

The additions read as follows:

§ 1601.1 Definitions.

* * * * *

(b) * * *

Fund reallocation means the total redistribution of a participant’s existing account balance among the TSP core funds.

Fund transfer means either:

(i) The transfer of money from one or more TSP core fund(s) to another TSP core fund(s); or

(ii) The transfer of money from the TSP core funds to the mutual fund window (and vice versa).

■ 15. Revise subpart B to read as follows:

Subpart B—Investing Future Deposits

Sec.

1601.11 Applicability.

1601.12 Investing future deposits in the TSP core funds.

1601.13 Elections.

Subpart B—Investing Future Deposits

§ 1601.11 Applicability.

This subpart applies only to the investment of future deposits to the TSP core funds, including contributions, loan payments, and rollovers from traditional IRAs and eligible employer plans; it does not apply to fund reallocations or fund transfers within the TSP core funds, which is covered in subpart C of this part, or fund transfers to and from the mutual fund window,

which is covered in subpart F of this part.

§ 1601.12 Investing future deposits in the TSP core funds.

(a) *Allocation.* Future deposits in the TSP, including contributions, loan payments, and rollovers from traditional IRAs and eligible employer plans, will be allocated among the TSP core funds based on the most recent investment election on file for the participant.

(b) *TSP core funds availability.* All participants may elect to invest all or any portion of their deposits in any of the TSP core funds.

§ 1601.13 Elections.

(a) *Investment election.* Each participant may indicate his or her choice of TSP core funds for the allocation of future deposits in the form and manner prescribed by the TSP record keeper. Paragraphs (a)(1) through (5) of this section apply to investment elections:

(1) Investment elections must be made in one percent increments. The sum of the percentages elected for all of the TSP core funds must equal 100 percent.

(2) The percentage elected by a participant for investment of future deposits in a TSP core fund will be applied to all sources of contributions and rollovers from traditional IRAs and eligible employer plans. A participant may not make different percentage elections for different sources of contributions.

(3) The following default investment rules shall apply to civilian participants:

(i) All deposits made on behalf of a civilian participant enrolled prior to September 5, 2015, who does not have an investment election in effect will be invested in the G Fund. A civilian participant who is enrolled prior to September 5, 2015, and subsequently rehired on or after September 5, 2015, and has a positive account balance will be considered enrolled prior to September 5, 2015 for purposes of this paragraph (a)(3)(i); and

(ii) All deposits made on behalf of a civilian participant first enrolled on or after September 5, 2015, who does not have an investment election in effect will be invested in the age-appropriate TSP Lifecycle Fund.

(iii) A civilian participant enrolled prior to September 5, 2015, who elects for the first time to invest in a TSP core fund other than the G Fund must execute an acknowledgement of risk in accordance with § 1601.33.

(4) The default investment rule in paragraphs (a)(4)(i) through (iv) of this section apply to uniformed services participants:

(i) All deposits made on behalf of a uniformed services participant who first entered service prior to January 1, 2018, has not elected to be covered by BRS, and does not have an investment election in effect will be invested in the G Fund.

(ii) All deposits made on behalf of a uniformed services participant who first entered service on or after January 1, 2018, and who does not have an investment election in effect will be invested in the age-appropriate TSP Lifecycle Fund.

(iii) If a uniformed services participant makes an election to be covered by BRS as described in 5 CFR 1600.14 and does not have an investment election in effect at the time of the election, then all deposits made after the date of such election will be invested in the age-appropriate TSP Lifecycle Fund. Deposits made prior to the date of the election will remain invested in the G Fund.

(iv) A uniformed services participant who first entered service prior to January 1, 2018, and has not made an election to be covered by the BRS who elects for the first time to invest in a TSP core fund other than the G Fund must execute an acknowledgement of risk in accordance with § 1601.33.

(5) Once an investment election becomes effective, it remains in effect until it is superseded by a subsequent investment election or the participant's account balance is reduced to zero. If a rehired participant has a positive account balance and an investment election in effect, then the participant's investment election will remain in effect until a new election is made. If, however, the participant (other than a participant described in paragraph (a)(4)(i) of this section) has a zero account balance, then the participant's contributions will be allocated to the age-appropriate TSP Lifecycle Fund until a new investment election is made.

(b) *Effect of rejection of investment election.* If a participant does not correctly complete an investment election, the attempted investment election will have no effect. The TSP record keeper will provide the participant with a written statement of the reason the transaction was rejected.

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

■ 16. Revise subpart C to read as follows:

Subpart C—Fund Reallocations and Fund Transfers

Sec.

1601.21 Applicability.

1601.22 Methods of requesting a fund reallocation.

1601.23 Methods of requesting a fund transfer.

Subpart C—Fund Reallocations and Fund Transfers

§ 1601.21 Applicability.

This subpart applies only to fund reallocations and fund transfers involving the movement of money from TSP core fund to one (or more) TSP core fund(s); it does not apply to the investment of future deposits, which is covered in subpart B of this part, nor does it apply to fund transfers involving the movement of money from the TSP core funds to the mutual fund window (and vice versa), which is covered in subpart F of this part.

§ 1601.22 Methods of requesting a fund reallocation.

(a) Participants may make a fund reallocation in the form and manner prescribed by the TSP record keeper. Paragraphs (a)(1) and (2) of this section apply to a fund reallocation request:

(1) Fund reallocation requests must be made in whole percentages (one percent increments). The sum of the percentages elected for all of the TSP core funds must equal 100 percent.

(2) The percentages elected by the participant will be applied to the balances in each source of contributions and to both traditional and Roth balances and tax-deferred and tax-exempt balances on the effective date of the fund reallocation.

(b) A fund reallocation request has no effect on deposits made after the effective date of the fund reallocation request; subsequent deposits will continue to be allocated among the TSP core funds in accordance with the participant's investment election made under subpart B of this part.

(c) If a fund reallocation is found to be invalid pursuant to § 1601.34, the purported fund reallocation will not be made.

§ 1601.23 Methods of requesting a fund transfer.

(a) Participants may make a fund transfer from one or more TSP core fund to a different TSP core fund(s) in the form and manner prescribed by the TSP record keeper. Paragraphs (a)(1) and (2) of this section apply to a fund transfer request:

(1) Fund transfer requests when selecting the TSP core funds to transfer

out of, may be made in whole percentages or in dollars. When selecting the TSP core funds to transfer into, elections must be made in whole percentages (one percent increments). The sum of the percentages elected to transfer into for all of the TSP core funds must equal 100 percent.

(2) The percentages elected by the participant will be applied to the balances in each source of contributions and to both traditional and Roth balances and tax-deferred and tax-exempt balances on the effective date of the fund transfer.

(b) A fund transfer request has no effect on deposits made after the effective date of the fund transfer request; subsequent deposits will continue to be allocated among the TSP core funds in accordance with the participant's investment election made under subpart B of this part.

(c) If a fund transfer is found to be invalid pursuant to § 1601.34, the purported fund transfer will not be made.

■ 17. Revise subpart D to read as follows:

Subpart D—Investment Elections and Fund Reallocation and Fund Transfer Requests

Sec.	
1601.31	Applicability.
1601.32	Timing and posting dates.
1601.33	Acknowledgment of risk.
1601.34	Error correction.

Subpart D—Investment Elections and Fund Reallocation and Fund Transfer Requests

§ 1601.31 Applicability.

This subpart applies to investment elections made under subpart B of this part, fund reallocations and fund transfers made under subpart C of this part, and fund transfers made under subpart F of this part.

§ 1601.32 Timing and posting dates.

(a) *Posting dates.* The date on which an investment election or fund reallocation or fund transfer request (transaction request) is processed is subject to a number of factors, including some that are outside of the control of the TSP, such as power outages, the failure of telephone service, unusually heavy transaction volume, and acts of God. These factors also could affect the availability of the TSP website and the ThriftLine. Therefore, the TSP cannot guarantee that a transaction request will be processed on a particular day. However, the TSP will process transaction requests under ordinary

circumstances described in paragraphs (a)(1) through (4) of this section:

(1) A transaction request other than an investment election request entered into the TSP record keeping system by a participant who uses the TSP website or the ThriftLine, before 12 noon eastern time of any business day, will ordinarily be posted that business day. A transaction request other than an investment election request entered into the system at or after 12 noon eastern time of any business day will ordinarily be posted on the next business day. A transaction request that is an investment election request will ordinarily be posted immediately and be effective the next business day.

(2) A transaction request made on the TSP website or the ThriftLine on a non-business day will ordinarily be posted on the next business day.

(3) A transaction request made on a paper TSP form will ordinarily be posted under the rules in paragraph (a)(1) of this section, based on when the TSP record keeper enters the form into the TSP system. The TSP record keeper ordinarily enters such forms into the system within 48 hours of their receipt.

(4) In most cases, the share price(s) applied to a fund reallocation or fund transfer request is the value of the shares on the date the relevant transaction is posted. In some circumstances, such as error correction, the share price(s) for an earlier date will be used.

(b) *Limit.* There is no limit on the number of investment election requests. A participant may make a total of two unrestricted fund reallocations and/or fund transfers per account (*e.g.*, civilian or uniformed services), per calendar month. A fund reallocation or fund transfer will count toward the monthly total on the date posted by the TSP record keeper and not on the date requested by a participant. After a participant has made a total of two fund reallocations and/or fund transfers in a calendar month, the participant may make additional fund reallocations or fund transfers only into the G Fund until the first day of the next calendar month.

§ 1601.33 Acknowledgment of risk.

(a) Uniformed services participants who first entered service prior to January 1, 2018, and who have not elected to be covered by BRS and civilian participants who enrolled prior to September 5, 2015, must execute an acknowledgement of risk in order to invest in a TSP core fund other than the G 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 an investment election, a fund reallocation, or a fund transfer in the form and manner prescribed by the TSP record keeper.

§ 1601.34 Error correction.

Errors in processing investment elections and fund reallocation or fund 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.

■ 18. Revise § 1601.40 to read as follows:

§ 1601.40 Lifecycle Funds.

The Executive Director will establish TSP Lifecycle Funds, which are target date asset allocation portfolios. The TSP Lifecycle Funds will invest solely in the funds established pursuant to 5 U.S.C. 8438(b)(1)(A)–(E).

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 19. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, 8432d, 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104–106, 110 Stat. 186 and § 7202(m)(2) of Public Law 101–508, 104 Stat. 1388.

■ 20. Amend § 1605.1, in paragraph (b), as follows:

- a. Revise the definition of “Breakage”;
- b. Add in alphabetical order a definition for “Earnings”;
- c. Revise the definitions of “Error” and “Late contributions”.

The revisions and addition read as follows:

§ 1605.1 Definitions.

* * * * *

(b) * * *

Breakage means the loss incurred or the gain realized on makeup or late contributions.

* * * * *

Earnings means both positive and negative fund performance attributable to differences in TSP core fund share prices.

Error means any act or omission by the Board, the TSP record keeper, or the participant's employing agency that is not in accordance with applicable statutes, regulations, or administrative procedures that are made available to employing agencies and/or TSP participants. It does not mean an act or omission caused by events that are

beyond the control of the Board, the TSP record keeper, or the participant's employing agency.

* * * * *

Late contributions means:

(i) Employee contributions that were timely deducted from a participant's basic pay but were not timely reported to the TSP record keeper for investment;

(ii) Employee contributions that were timely reported to the TSP record keeper but were not timely posted to the participant's account by the TSP record keeper because the payment record on which they were submitted contained errors;

(iii) Agency matching contributions attributable to employee contributions referred to in paragraph (i) or (ii) of this definition; and

(iv) Delayed agency automatic (1%) contributions.

* * * * *

■ 21. Revise § 1605.2 to read as follows:

§ 1605.2 Calculating, posting, and charging breakage on late contributions and loan payments.

(a) *General criteria.* The TSP will calculate breakage on late contributions, makeup agency contributions, and loan payments as described by § 1605.15(b). This breakage calculation is subject to the criteria in paragraphs (a)(1) and (2) of this section:

(1) The TSP record keeper will not calculate breakage if contributions or loan payments are posted within 30 days of the "as of" date, or if the total amount on a late payment record or the total agency contributions on a current payment record is less than \$1.00; and

(2) The TSP record keeper will not take the participant's fund reallocations and fund transfers into account when determining breakage.

(b) *Calculating breakage.* The TSP record keeper will calculate breakage for all contributions or loan payment corrections as follows:

(1) Use the participant's investment election on file for the "as of" date to determine how the funds would have been invested, going back to the earliest daily share prices available. If there is no investment election on file, or one cannot be derived based on the investment of contributions, the TSP record keeper will consider the funds to have been invested in the default investment fund in effect for the participant on the "as of" date;

(2) Determine the number of shares of the applicable investment funds the participant would have received had the contributions or loan payments been made on time. If the "as of" date is before TSP account balances were converted to shares, this determination

will be the number of shares the participant would have received on the conversion date, and will include the daily earnings the participant would have received had the contributions or loan payments been made on the "as of" date;

(3) Determine the dollar value on the posting date of the number of shares the participant would have received had the contributions or loan payments been made on time. If the contributions or loan payments would have been invested in a Lifecycle fund that is retired on the posting date, the share price of the L Income Fund will be used. The dollar value shall be the number of shares the participant would have received had the contributions or loan payments been made on time multiplied by the share price; and

(4) The difference between the dollar value of the contribution or loan payment on the posting date and the dollar value of the contribution or loan payment on the "as of" date is the breakage.

(c) *Posting contributions and loan payments.* Makeup and late contributions, late loan payments, and breakage, will be posted to the participant's account according to his or her investment election on file for the posting date. If there is no investment election on file for the posting date, they will be posted to the default investment fund in effect for the participant.

(d) *Charging breakage.* If the dollar amount posted to the participant's account is greater than the dollar amount of the makeup or late contribution or late loan payment, the TSP record keeper will charge the agency the additional amount. If the dollar amount posted to the participant's account is less than the dollar amount of the makeup or late contribution, or late loan payment, the difference between the amount of the contribution and the amount posted will be forfeited to the TSP.

(e) *Posting of multiple contributions.* If the TSP record keeper posts multiple makeup or late contributions or late loan payments with different "as of" dates for a participant on the same business day, the amount of breakage charged to the employing agency or forfeited to the TSP will be determined separately for each transaction, without netting any gains or losses attributable to different "as of" dates. In addition, gains and losses from different sources of contributions or different TSP core funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, TSP core fund, and source of contributions.

§ 1605.3 [Amended]

■ 22. Amend § 1605.3 as follows:

■ a. In paragraph (a), remove "TSP" and add in its place "TSP record keeper", remove "contribution allocation" and add in its place "investment election", and remove "interfund transfer" and add in its place "fund reallocation and fund transfer"; and

■ b. In paragraphs (b) and (c), remove "TSP" and add in its place "TSP record keeper".

§ 1605.11 [Amended]

■ 23. Amend § 1605.11 as follows:

■ a. In paragraph (a), remove "Board" and add in its place "Board and/or the TSP record keeper";

■ b. In paragraph (b) introductory text, remove "Agency Automatic (1%) Contributions" and add in its place "agency automatic (1%) contributions" and remove "Agency Matching Contributions" and add in its place "agency matching contributions";

■ c. In paragraph (b)(2), remove "TSP" and add in its place "TSP record keeper";

■ d. In paragraph (c)(1), remove "agency" and add in its place "employing agency";

■ e. In paragraph (c)(4), remove the last two sentences.

■ f. In paragraph (c)(5), remove "contribution allocation" and add in its place "investment election" and remove "TSP Fund" and add in its place "TSP core fund";

■ g. In paragraph (c)(9), in the second to last sentence, remove "matching contributions" and add in its place "agency matching contributions"; and

■ h. In paragraph (c)(13), remove "TSP" and add in its place "TSP record keeper".

■ 24. Amend § 1605.12 as follows:

■ a. Revise paragraphs (a), (b) introductory text, (c) introductory text, (c)(1) introductory text, (c)(1)(i), (c)(2) introductory text, (c)(2)(ii), and (d)(4);

■ b. Add a heading for paragraph (f); and

■ c. Revise paragraph (f)(1).

The revisions and addition read as follows:

§ 1605.12 Removal of erroneous contributions.

(a) *Applicability.* This section applies to the removal of funds erroneously contributed to the TSP. This action is called a negative adjustment, and agencies may only request negative adjustments of erroneous contributions made on or after January 1, 2000. Excess contributions addressed by this section include, for example, excess employee contributions that result from employing agency error and excess

employer contributions. This section does not address excess contributions resulting from a FERCCA correction; those contributions are addressed in § 1605.14.

(b) *Method of correction.* Negative adjustment records must be submitted by employing agencies in accordance with this part and any other procedures provided by the Board and/or the TSP record keeper.

* * * * *

(c) *Processing negative adjustments.* To determine current value, a negative adjustment will be allocated among the TSP core funds as it would have been allocated on the attributable pay period (as reported by the employing agency). The TSP record keeper will, for each source of contributions and TSP core fund:

(1) If the attributable pay date for the erroneous contribution is on or before the date TSP accounts were converted to shares (and on or after January 1, 2000), the TSP record keeper will, for each source of contributions and investment fund:

(i) Determine the dollar value of the amount to be removed by using the daily returns for the applicable TSP core fund;

* * * * *

(2) If the attributable pay date of the negative adjustment is after the date TSP accounts were converted to shares, the TSP record keeper will, for each source of contributions and TSP core fund:

* * * * *

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section. If the contribution was erroneously contributed to a Lifecycle fund that is retired on the date the adjustment is posted, the share price of the L Income Fund will be used.

(d) * * *

(4) If all employee contributions are removed from a participant's account under the rules set forth in this section, the earnings attributable to those contributions will remain in the account until the participant removes them with a TSP withdrawal. If the participant is not eligible to maintain a TSP account, the employing agency must submit an employee data record to the TSP record keeper indicating that the participant has separated from Government service (this will allow the TSP-ineligible participant to make a post-employment distribution election).

* * * * *

(f) *Multiple negative adjustments.* (1) If multiple negative adjustments for the

same attributable pay date for a participant are posted on the same business day, the amount removed from the participant's account and used to offset TSP administrative expenses, or returned to the employing agency, will be determined separately for each adjustment. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. In addition, for a negative adjustment for any attributable pay date, gains and losses from different sources of contributions or different TSP core funds will not be netted against each other. Instead, for each attributable pay date each source of contributions and each TSP core fund will be treated separately for purposes of these calculations. The amount computed by applying the rules in this section will be removed from the participant's account pro rata from all funds, by source, based on the allocation of the participant's account among the TSP core funds when the transaction is posted; and

* * * * *

■ 25. Amend § 1605.13 as follows:

■ a. In paragraph (a)(3), remove "contribution allocation" and add in its place "investment election";

■ b. In paragraph (b)(3), remove "contribution allocation" and add in its place "investment election"; and

■ c. Revise paragraphs (d) and (e).

The revisions read as follows:

§ 1605.13 Back pay awards and other retroactive pay adjustments.

* * * * *

(d) *Prior withdrawal of TSP account.* If a participant has received a post-employment distribution in any form other than an annuity, and the separation from Government service upon which the post-employment distribution was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount distributed to his or her TSP account. The right to restore the distributed funds will expire if the participant does not notify the TSP record keeper within 90 days of reinstatement. If the participant returns the funds that were distributed, the number of shares purchased will be determined by using the share price of the applicable investment fund on the posting date. Restored funds will not incur breakage.

(e) *Reinstating a loan.* Participants who are covered by paragraph (d) of this section and who elect to return funds that were distributed may also elect to reinstate a loan which was previously declared to be a loan foreclosure.

■ 26. Amend § 1605.14 by revising paragraphs (a)(2), (b)(4), (c)(3), (f)(3), and (g)(2) to read as follows:

§ 1605.14 Misclassified retirement system coverage.

(a) * * *

(2) All agency contributions that were made to a CSRS participant's account will be forfeited. An employing agency may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

(b) * * *

(4) If the retirement coverage correction is a FERCCA correction, the employing agency must submit makeup employee contributions on late payment records. The participant is entitled to breakage on contributions from all sources. Breakage will be calculated pursuant to § 1605.2. If the retirement coverage correction is not a FERCCA correction, the employing agency must submit makeup employee contributions on current payment records; in such cases, the employee is not entitled to breakage. Agency makeup contributions may be submitted on either current or late payment records; and

* * * * *

(c) * * *

(3) The TSP record keeper will consider a participant to be separated from Government service for all TSP purposes and the employing agency must submit an employee data record to reflect separation from Government service. If the participant has an outstanding loan, it will be subject to the provisions of part 1655 of this chapter. The participant may make a TSP post-employment distribution election pursuant to 5 CFR part 1650, subpart B, and the distribution will be subject to the provisions of 5 CFR 1650.60(b).

* * * * *

(f) * * *

(3) The employing agency must, under the rules of § 1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified; and

* * * * *

(g) * * *

(2) All agency contributions that were made to a non-BRS participant's account will be forfeited. An employing service may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

§ 1605.15 [Amended]

■ 27. Amend § 1605.15 as follows:

■ a. In paragraph (b), remove “TSP” and add in its place “TSP record keeper”; and

■ b. In paragraph (d), remove “TSP” and add in its place “TSP record keeper”.

■ 28. Amend § 1605.16 by revising paragraphs (a)(1) and (2) and (b)(1) and (2) to read as follows:

§ 1605.16 Claims for correction of employing agency errors; time limitations.

(a) * * *

(1) Upon discovery of an error made within the past six months involving the correct or timely remittance of payments to the TSP record keeper (other than a retirement system misclassification error, as covered in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before it was discovered, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) For errors involving incorrect dates of birth caused by employing agency error that result in default investment in the wrong L Fund, the employing agency must promptly notify the TSP record keeper that the participant is entitled to breakage if the error is discovered within 30 days of either the date the TSP record keeper provides the participant with a notice reflecting the error or the date the TSP or its record keeper makes available on its website a participant statement reflecting the error, whichever is earlier. If it is discovered after that time, the employing agency may use its sound discretion in deciding whether to pay breakage, but, in any event, must act promptly in doing so.

(b) * * *

(1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of a payment to the TSP record keeper (other than a retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim with his or her employing agency to have the error corrected without a time limit. The agency must promptly correct any such error for which the participant files a claim within six months of its occurrence; if the participant files a claim to correct any such error after that time, the agency may do so at its sound discretion.

(2) For errors involving incorrect dates of birth that result in default investment in the wrong L Fund of which a participant or beneficiary has

knowledge, he or she may file a claim for breakage with the employing agency no later than 30 days after either the date the TSP record keeper provides the participant with a notice reflecting the error or the date the TSP or its record keeper makes available on its website a participant statement reflecting the error, whichever is earlier. The employing agency must promptly notify the TSP record keeper that the participant is entitled to breakage.

* * * * *

■ 29. Amend § 1605.17 by revising paragraphs (b) and (c)(1) through (3) to read as follows:

§ 1605.17 Redesignation and recharacterization.

* * * * *

(b) *Method of correction.* The employing agency must promptly submit a redesignation record or a recharacterization record in accordance with this part and the procedures provided to employing agencies by the Board and/or the TSP record keeper in bulletins or other guidance.

(c) * * *

(1) Upon receipt of a properly submitted redesignation record, the TSP record keeper shall treat the erroneously submitted contribution (and associated positive earnings) as if the contribution had been made to the correct balance on the date that it was contributed to the wrong balance. The TSP record keeper will adjust the participant's traditional balance and the participant's Roth balance accordingly. The TSP record keeper will also adjust the participant's Roth initiation date as necessary.

(2) Upon receipt of a properly submitted recharacterization record or recharacterization request, the TSP record keeper will update the tax characterization of the erroneously characterized contribution.

(3) Agency automatic (1%) contributions and agency matching contributions cannot be redesignated as Roth contributions or recharacterized as tax-exempt contributions.

* * * * *

■ 30. Revise § 1605.21 to read as follows:

§ 1605.21 Plan-paid breakage and other corrections.

(a) *Plan-paid breakage.* (1) Subject to paragraph (a)(3) of this section, if, because of an error committed by the Board or the TSP record keeper, a participant's account is not credited or charged with the investment gains or losses the account would have received had the error not occurred, the account will be credited accordingly.

(2) Errors that warrant the crediting of breakage under paragraph (a)(1) of this section include, but are not limited to:

(i) Delay in crediting contributions or other money to a participant's account;

(ii) Improper issuance of a loan or TSP withdrawal payment to a participant or beneficiary which requires the money to be restored to the participant's account; and

(iii) Investment of all or part of a participant's account in the wrong investment fund(s).

(3) A participant will not be entitled to breakage under paragraph (a)(1) of this section if the participant had the use of the money on which the investment gains would have accrued.

(4) If the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP record keeper's error, the TSP record keeper will compute gains or losses under paragraph (a)(1) of this section for the relevant period based upon the investment funds in which the affected money would have been invested had the error not occurred. If the participant did not have, and should not have had, a TSP account during this period, then the TSP will use the rate of return set forth in § 1605.2(b) for the relevant period and return the money to the participant.

(b) *Other corrections.* The Executive Director may, in his or her discretion and consistent with the requirements of applicable law, correct any other errors not specifically addressed in this section, including payment of breakage, if the Executive Director determines that the correction would serve the interests of justice and fairness and equity among all participants of the TSP.

§ 1605.22 [Amended]

■ 31. Amend § 1605.22, in the last sentence of paragraph (d)(1), by removing “record keeper's” and adding in its place “TSP record keeper's”.

■ 32. Amend § 1605.31 by revising paragraphs (c)(1) through (5) and (d) to read as follows:

§ 1605.31 Contributions missed as a result of military service.

* * * * *

(c) * * *

(1) The employee is entitled to receive the agency automatic (1%) contributions that he or she would have received had he or she remained in civilian service or pay status. Within 60 days of the employee's reemployment or restoration to pay status, the employing agency must calculate the makeup agency automatic (1%) contributions and report those contributions to the record keeper, subject to any reduction in agency

automatic (1%) contributions required by paragraph (c)(5) of this section.

(2) An employee who contributed to a uniformed services TSP account during the period of military service is also immediately entitled to receive makeup agency matching contributions to his or her civilian account for the employee contributions to the uniformed services account that were deducted from his or her basic pay, subject to any reduction in agency matching contributions required by paragraph (c)(4) of this section. However, an employee is not entitled to receive makeup agency matching contributions on contributions that were deducted from his or her incentive pay or special pay, including bonus pay, while performing military service.

(3) An employee who makes up missed contributions is entitled to receive attributable makeup agency matching contributions (unless the employee has already received the maximum amount of matching contributions, as described in paragraphs (c)(2) and (4) of this section).

(4) If the employee received uniformed services agency matching contributions, the makeup agency matching contributions will be reduced by the amount of the uniformed services agency matching contributions.

(5) If the employee received uniformed services agency automatic (1%) contributions, the agency automatic (1%) contributions will be reduced by the amount of the uniformed services agency automatic (1%) contributions.

(d) *Breakage*. The employee is entitled to breakage on agency contributions made under paragraph (c) of this section. Breakage will be calculated based on the investment election(s) on file for the participant during the period of military service.

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

■ 33. The authority citation for part 1620 continues to read as follows:

Authority: 5 U.S.C. 8474(b)(5) and (c)(1). Subpart C also issued under 5 U.S.C. 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8). Subpart D also issued under sec. 1043(b) of Pub. L. 104–106, 110 Stat. 186, and sec. 7202(m)(2) of Pub. L. 101–508, 104 Stat. 1388. Subpart E also issued under 5 U.S.C. 8432b(1) and 8440e.

■ 34. Revise § 1620.3 to read as follows:

§ 1620.3 Contributions.

The employing agency is responsible for transmitting to the TSP record keeper, in accordance with the TSP

record keeper's procedures, any employee and employer contributions that are required by this part.

§ 1620.14 [Amended]

■ 35. Amend § 1620.14 as follows:

■ a. In the section heading, remove “record keeper” and add in its place “TSP record keeper”; and

■ b. In paragraph (b), remove “Board” and add in its place “its”.

§ 1620.22 [Amended]

■ 36. Amend § 1620.22 as follows:

■ a. In paragraph (a) introductory text, remove “withdrawal” and add in its place “distribution”; and

■ b. In paragraph (a)(2) introductory text, remove “withdrawal” and add in its place “distribution”.

■ 37. Revise § 1620.35 to read as follows:

§ 1620.35 Loan payments.

NAF instrumentalities must deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the TSP record keeper in accordance with 5 CFR part 1655 and the TSP record keeper's procedures. Loan payments may not be deducted and transmitted for employees who elect to be covered by the NAF retirement system. Such employees will be considered to have separated from Government service and may continue making loan repayments in accordance with 5 CFR part 1655 and the TSP record keeper's procedures.

§ 1620.41 [Amended]

■ 38. Amend § 1620.41, in the definition of “Separate from civilian service”, by removing “31” and adding in its place “60”.

§ 1620.42 [Amended]

■ 39. Amend § 1620.42, in paragraph (c)(1), by removing the word “form”.

§ 1620.43 [Amended]

■ 40. Amend § 1620.43, in the section heading and paragraphs (a) and (c), by removing “record keeper” and adding in its place “TSP record keeper”.

■ 41. Revise § 1620.45 to read as follows:

§ 1620.45 Suspending TSP loans, restoring post-employment distributions, and reversing loan foreclosures.

(a) *Suspending TSP loans during nonpay status*. If the TSP record keeper is notified that an employee entered into a nonpay status to perform military service, any outstanding TSP loan from a civilian TSP account will be suspended, that is, it will not be declared a loan foreclosure while the employee is performing military service.

(1) Interest will accrue on the loan balance during the period of suspension. When the employee returns to civilian pay status, the employing agency will resume deducting loan payments from the participant's basic pay and the TSP record keeper will reamortize the loan (which will include interest accrued during the period of military service). The maximum loan repayment term will be extended by the employee's period of military service. Consequently, when the employee returns to pay status, the TSP record keeper must receive documentation to show the beginning and ending dates of military service.

(2) The TSP record keeper may close the loan account and declare it to be a loan foreclosure if the TSP record keeper does not receive documentation that the employee entered into nonpay status. However, this can be reversed in accordance with paragraph (c) of this section.

(b) *Restoring post-employment distributions*. An employee who separates from civilian service to perform military service and who receives an automatic payment pursuant to § 1650.11 may return to the TSP an amount equal to the amount of the payment. The employee must notify the TSP record keeper of his or her intent to return the distributed funds within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to return a distribution, the TSP record keeper will then inform the employee of the actions that must be taken to return the funds.

(c) *Reversing loan foreclosures*. An employee may request that a loan foreclosure be reversed if it resulted from the employee's separation or placement in nonpay status to perform military service. The TSP record keeper will reverse the loan foreclosure under the process described as follows:

(1) An employee who received a post-employment distribution when he or she separated to perform military service can have a loan foreclosure reversed only if the distributed amount is returned as described in paragraph (b) of this section;

(2) A loan foreclosure can be reversed either by reinstating the loan or by repaying it in full. The TSP loan can be reinstated only if the employee agrees to repay the loan within the maximum loan repayment term plus the length of military service, and if, after reinstatement of the loan, the employee will have no more than two outstanding loans, only one of which is a residential loan; and

(3) The employee must notify the TSP record keeper of his or her intent to

reverse a loan foreclosure within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to reverse a loan foreclosure, the TSP record keeper will then inform the employee of the actions that must be taken to reverse the distribution.

(d) *Breakage*. Employees will not receive breakage on amounts returned to their accounts under this section.

§ 1620.46 [Amended]

■ 42. Amend § 1620.46, in paragraphs (b) and (d), by removing “record keeper” and adding in its place “TSP record keeper”.

PART 1631—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

■ 43. The authority citation for subpart A of part 1631 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 44. Amend § 1631.3 by revising paragraphs (a)(3) and (7) through (11) to read as follows:

§ 1631.3 Organization and functions.

- (a) * * *
- (3) The Office of Participant Services;
* * * * *
- (7) The Office of Planning and Risk;
(8) The Office of External Affairs;
(9) The Office of Chief Financial Officer;
(10) The Office of Resource Management; and
(11) The Office of Technology Services.
* * * * *

PART 1640—PERIODIC PARTICIPANT STATEMENTS

■ 45. The authority citation for part 1640 continues to read as follows:

Authority: 5 U.S.C. 8439(c)(1) and (c)(2), 5 U.S.C. 8474(b)(5) and (c)(1).

§ 1640.2 [Amended]

■ 46. Amend § 1640.2 by removing “Board” and adding in its place “TSP or its record keeper”.

■ 47. Revise § 1640.3 to read as follows:

§ 1640.3 Statement of individual account.

In the quarterly statements, the TSP or its record keeper will furnish each participant with the following information concerning the participant’s individual account:

(a) Name and account number under which the account is established.

(b) Statement whether the participant has a beneficiary designation on file with the TSP record keeper.

(c) Investment election that is current at the end of the statement period.

(d) Beginning and ending dates of the period covered by the statement.

(e) The following information for and, as of the close of business on the ending date of, the period covered by the statement:

(1) The total account balance and tax-exempt balance, if applicable;

(2) The account balance for each source of contributions;

(3) The account balance and activity in each TSP core fund, including the dollar amount of the transaction, the share price, and the number of shares;

(4) Loan information and activity, if applicable; and

(5) The mutual fund window account balance, if applicable.

(f) Any other information concerning the account that the Executive Director determines should be included in the statement.

■ 48. Revise § 1640.4 to read as follows:

§ 1640.4 Account transactions.

(a) Where relevant, the following transactions will be reported in each individual account statement:

(1) Contributions;

(2) Withdrawals;

(3) Forfeitures;

(4) Loan disbursements and repayments;

(5) Fund reallocations and fund transfers among TSP core funds;

(6) Adjustments to prior transactions;

(7) Rollovers from traditional individual retirement accounts (IRAs) and eligible employer plans within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)); and

(8) Any other transaction that the Executive Director determines will affect the status of the individual account.

(b) Where relevant, the statement will contain the following information concerning each transaction identified in paragraph (a) of this section:

(1) Type of transaction;

(2) TSP core funds affected;

(3) Amount of the transaction (in dollars); and

(4) Any other information the Executive Director deems relevant.

■ 49. Revise § 1640.5 to read as follows:

§ 1640.5 TSP core fund information.

The TSP or its record keeper will provide to each participant each calendar year information concerning each of the TSP core funds, including:

(a) A summary description of the type of investments made by the fund,

written in a manner that will allow the participant to make an informed decision; and

(b) The performance history of the type of investments made by the fund, covering the five-year period preceding the date of the evaluation.

■ 50. Revise § 1640.6 to read as follows:

§ 1640.6 Methods of providing information.

The TSP or its record keeper will furnish the information described in this part to participants by making it available on the TSP website. A participant can request paper copies of that information by calling the ThriftLine, submitting a request through the TSP website, or by writing to the TSP record keeper.

PART 1645—CALCULATION OF SHARE PRICES

■ 51. The authority citation for part 1645 continues to read as follows:

Authority: 5 U.S.C. 8439(a)(3) and 8474.

■ 52. Revise § 1645.2 to read as follows:

§ 1645.2 Posting of transactions.

Contributions, loan payments, loan disbursements, withdrawals, fund reallocations, fund transfers, and other transactions will be posted in dollars and in shares by source and by TSP core fund to the appropriate individual account by the TSP record keeper, using the share price for the date the transaction is posted.

§ 1645.3 [Amended]

■ 53. Amend § 1645.3 as follows:

■ a. In the section heading and paragraph (a), remove “TSP Fund” and add in its place “TSP core fund”; and

■ b. In paragraph (c), remove “each TSP fund” and add in its place “each TSP core fund”.

■ 54. Amend § 1645.4 by revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 1645.4 Administrative expenses attributable to each TSP core fund.

A portion of the administrative expenses accrued during each business day will be charged to each TSP core fund. A fund’s respective portion of administrative expenses will be determined as follows:

(a) Accrued administrative expenses (other than those described in paragraph (b) of this section) will be reduced by:

(1) Accrued forfeitures;

(2) The fees described in §§ 1601.53(a) (relating to the mutual fund window), 1655.21 (relating to loans), 1653.6 (relating to retirement benefits court orders), and 1653.16 (relating to child support court orders) of this chapter; and

(3) Accrued earnings on forfeitures, abandoned accounts, unapplied deposits, and fees described in paragraph (a)(2) of this section.

* * * * *

(c) The amount of accrued administrative expenses not covered by forfeitures, fees, and earnings under paragraph (a) of this section, and not described in paragraph (b) of this section, will be charged on a pro rata basis to all TSP core funds, based on the respective fund balances on the last business day of the prior month end.

§ 1645.5 [Amended]

■ 55. Amend § 1645.5, in paragraph (a), as follows:

- a. Remove “TSP Fund” and adding in its place “TSP core fund”; and
- b. Remove “two decimal places” and add in its place “four decimal places”.

§ 1645.6 [Amended]

■ 56. Amend § 1645.6 by removing “TSP Fund” and adding in its place “TSP core fund”.

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

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

Authority: 5 U.S.C. 8351, 8432d, 8433, 8434, 8435, 8474(b)(5) and 8474(c)(1).

■ 58. Amend § 1650.1, in paragraph (b), as follows:

- a. Remove the definition of “Post-employment withdrawal”; and
- b. Add in alphabetical order definitions for “Post-employment distribution” and “TSP withdrawal”.

The additions read as follows:

§ 1650.1 Definitions.

* * * * *

(b) * * *

Post-employment distribution means a distribution from the TSP that is available to a participant who is separated from Government service.

* * * * *

TSP withdrawal means a post-employment distribution and/or an in-service withdrawal.

■ 59. Amend § 1650.2 by revising paragraphs (a) through (c), (d)(1) and (2), (f), and (h) to read as follows:

§ 1650.2 Eligibility and general rules for a TSP withdrawal.

(a) A participant who is separated from Government service can elect a distribution of all or a portion of his or her account balance by one or a combination of the distribution methods described in subpart B of this part.

(b) A post-employment distribution will not be paid unless TSP records

indicate that the participant is separated from Government service. The TSP record keeper will, when possible, cancel a pending post-employment distribution election upon receiving information from an employing agency that a participant is no longer separated.

(c) A participant cannot make a full post-employment distribution of his or her account until any outstanding TSP loan has either been repaid in full or declared to be a loan foreclosure. An outstanding TSP loan will not affect a participant’s eligibility for a partial post-employment distribution or an in-service withdrawal.

(d) * * *

(1) A participant who is reemployed in a TSP-eligible position on or before the 60th full calendar day after separation is not eligible for a distribution from his or her TSP account in accordance with subpart B of this part.

(2) A participant who is reemployed in a TSP-eligible position more than 60 full calendar days after separation and who made a post-employment distribution while separated may not make any additional post-employment distributions until he or she again separates from Government service.

* * * * *

(f) A participant can elect to have any portion of a single or installment payment that is not rolled over to an eligible employer plan, traditional IRA, or Roth IRA deposited directly, by electronic funds transfer (EFT), into a savings or checking account at a financial institution in the United States.

* * * * *

(h) A participant may elect to have his or her TSP withdrawal distributed from the participant’s traditional balance only, Roth balance only, or pro rata from the participant’s traditional and Roth balances. Any distribution from the traditional balance will be prorated between the tax-deferred balance and any tax-exempt balance. Any distribution from the Roth balance will be prorated between contributions in the Roth balance and earnings in the Roth balance. In addition, all TSP withdrawals will be distributed pro rata from all TSP core funds in which the participant’s account is invested. All prorated amounts will be based on the balances in each TSP core fund or source of contributions on the day the TSP withdrawal is processed.

■ 60. Revise § 1650.3 to read as follows:

§ 1650.3 Frozen accounts.

(a) All distributions from the TSP are subject to the rules relating to spousal

rights (found in subpart G of this part) and to domestic relations orders, alimony and child support legal process, and child abuse enforcement orders (found in 5 CFR part 1653).

(b) A participant may not take a distribution of any portion of his or her account balance if the account is frozen due to a pending retirement benefits court order, an alimony or child support enforcement order, or a child abuse enforcement order, or because a freeze has been placed on the account by the TSP record keeper for another reason.

■ 61. Revise § 1650.4 to read as follows:

§ 1650.4 Certification of truthfulness.

By completing a TSP withdrawal request, the participant certifies, under penalty of perjury, that all information provided to the TSP record keeper during the withdrawal process is true and complete, including statements concerning the participant’s marital status and, where applicable, the spouse’s email or physical address at the time the application is filed or the current spouse’s consent to the withdrawal.

■ 62. Revise § 1650.5 to read as follows:

§ 1650.5 Returned funds.

If a TSP withdrawal is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 90 days, the returned funds will be forfeited to the TSP. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

■ 63. Revise § 1650.6 to read as follows:

§ 1650.6 Deceased participant.

(a) The TSP record keeper will cancel a pending TSP withdrawal request if it receives notice, in the form and manner prescribed by the TSP record keeper, that a participant is deceased. The TSP record keeper will also cancel an annuity purchase made on or after the participant’s date of death but before annuity payments have begun, and the annuity vendor will return the funds to the TSP.

(b) If the TSP record keeper processes a TSP withdrawal request before being notified that a participant is deceased, the funds cannot be returned to the TSP.

■ 64. Revise § 1650.11 to read as follows:

§ 1650.11 Post-employment distribution elections.

(a) Subject to the restrictions in this subpart, participants may elect a distribution of all or a portion of their TSP accounts in a single payment, a series of installment payments, a life

annuity, or any combination of these options.

(b) If a participant's account balance is less than \$5.00 when he or she separates from Government service, the balance will automatically be forfeited to the TSP. The participant can reclaim the money by contacting the TSP record keeper and requesting the amount that was forfeited; however, TSP investment earnings will not be credited to the account after the date of the forfeiture.

(c) Provided that the participant has not submitted a post-employment distribution election prior to the date the automatic payment is processed, if a participant's vested account balance is less than \$200 when he or she separates from Government service, the TSP record keeper will automatically pay the balance in a single payment to the participant at his or her TSP address of record. The participant will not be eligible for any other payment option or be allowed to remain in the TSP.

(d) Only one post-employment distribution election per account will be processed in any 30-calendar-day period.

■ 65. Revise § 1650.12 to read as follows:

§ 1650.12 Single payment.

Provided that, in the case of a partial distribution, the amount elected is not less than \$1,000, a participant can elect a distribution of all or a portion of his or her account balance in a single payment.

■ 66. Amend § 1650.13 by revising paragraphs (a) introductory text, (a)(2), (f), and (g) to read as follows:

§ 1650.13 Installment payments.

(a) A participant can elect a distribution of all or a portion of the account balance in a series of substantially equal installment payments, to be paid on a monthly, quarterly, or annual basis in one of the following manners:

* * * * *

(2) An installment payment amount calculated based on life expectancy. Payments based on life expectancy are determined using the factors set forth in the Internal Revenue Service life expectancy tables codified at 26 CFR 1.401(a)(9)–9(b) and (c). The installment payment amount is calculated by dividing the account balance by the factor from the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments are to begin. This amount is then divided by the number of installment payments to be made per calendar year to yield the installment payment amount. In subsequent years,

the installment payment amount is recalculated in January by dividing the prior December 31 account balance by the factor in the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments will be made. There is no minimum amount for an installment payment calculated based on this method.

* * * * *

(f) A participant receiving installment payments may change the investment of his or her account balance among the TSP core funds and may invest through the mutual fund window as provided in 5 CFR part 1601.

(g) Upon receiving information from an employing agency that a participant receiving installment payments is no longer separated, the TSP record keeper will cancel all pending and future installment payments.

■ 67. Amend § 1650.14 by revising paragraphs (a), (b), (d), (e), (g)(3)(iii), and (h) to read as follows:

§ 1650.14 Annuities.

(a) A participant electing a post-employment distribution can use all or a portion of his or her total account balance, traditional balance only, or Roth balance only to purchase a life annuity.

(b) If a participant has a traditional balance and a Roth balance and elects to use all or a portion of his or her total account balance to purchase a life annuity, the TSP record keeper must purchase two separate annuity contracts for the participant: One from the portion of the withdrawal distributed from his or her traditional balance and one from the portion of the withdrawal distributed from his or her Roth balance.

* * * * *

(d) Unless an amount must be paid directly to the participant to satisfy any applicable minimum distribution requirement of the Internal Revenue Code, the TSP record keeper will purchase the annuity contract(s) from the TSP's annuity vendor using the participant's entire account balance or the portion specified. In the event that a minimum distribution is required by section 401(a)(9) of the Internal Revenue Code before the date of the first annuity payment, the TSP record keeper will compute that amount prior to purchasing the annuity contract(s), and pay it directly to the participant.

(e) An annuity will provide a payment for life to the participant and, if applicable, to the participant's survivor, in accordance with the type of annuity chosen. The TSP annuity vendor will make the first annuity payment

approximately 30 days after the TSP record keeper purchases the annuity.

* * * * *

(g) * * *

(3) * * *

(iii) A participant can establish that a person not described in paragraph (g)(3)(ii) of this section has an insurable interest in him or her by submitting, with the annuity request, an affidavit from a person other than the participant or the joint annuitant that demonstrates that the designated joint annuitant has an insurable interest in the participant (as described in paragraph (g)(3)(i) of this section).

* * * * *

(h) For each distribution election in which the participant elects to purchase an annuity with some or all of the amount distributed, if the TSP record keeper must purchase two annuity contracts, the type of annuity, the annuity features, and the joint annuitant (if applicable) selected by the participant will apply to both annuities purchased. For each distribution election, a participant cannot elect more than one type of annuity by which to receive a distribution, or portion thereof, from any one account.

* * * * *

■ 68. Amend § 1650.16 by revising paragraphs (c) and (d) to read as follows:

§ 1650.16 Required minimum distributions.

* * * * *

(c) In the event that a separated participant does not withdraw from his or her account an amount sufficient to satisfy his or her required minimum distribution for the year, the TSP record keeper will automatically distribute the necessary amount on or before the applicable date described in paragraph (a) of this section.

(d) The TSP record keeper will disburse required minimum distributions described in paragraph (c) of this section pro rata from the participant's traditional balance and the participant's Roth balance.

* * * * *

■ 69. Revise § 1650.17 to read as follows:

§ 1650.17 Changes and cancellation of a post-employment distribution request.

(a) *Before processing.* A pending post-employment distribution request can be cancelled if the cancellation is received and can be processed before the TSP record keeper processes the request. However, the TSP record keeper processes post-employment distribution requests each business day and those that are entered into the record keeping system by 12:00 noon eastern time will

ordinarily be processed that night; those entered after 12:00 noon eastern time will be processed the next business day. Consequently, a cancellation request must be received and entered into the system before the cut-off for the day the request is submitted for processing in order to be effective to cancel the post-employment distribution.

(b) *After processing.* A post-employment distribution election cannot be changed or cancelled after the withdrawal request has been processed. Consequently, funds disbursed cannot be returned to the TSP.

(c) *Change in installment payments.* If a participant is receiving a series of installment payments, with appropriate supporting documentation as required by the TSP record keeper, the participant can change at any time: The payment amount or frequency (including stopping installment payments), the address to which the payments are mailed, the amount of federal tax withholding, whether or not a payment will be rolled over (if permitted) and the portion to be rolled over, the method by which direct payments to the participant are being sent (EFT or check), the identity of the financial institution to which payments are rolled over or sent directly to the participant by EFT, or the identity of the EFT account.

■ 70. Revise subpart C to read as follows:

Subpart C—Procedures for Post-Employment Distributions

Sec.

- 1650.21 Information provided by employing agency or service.
- 1650.22 Accounts of \$200 or more.
- 1650.23 Accounts of less than \$200.
- 1650.24 How to obtain a post-employment distribution.
- 1650.25 Rollovers from the TSP.

Subpart C—Procedures for Post-Employment Distributions

§ 1650.21 Information provided by employing agency or service.

When a TSP participant separates from Government service, his or her employing agency or service must report the separation and the date of separation to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency or service, it will not pay a post-employment distribution.

§ 1650.22 Accounts of \$200 or more.

A participant whose account balance is \$200 or more must submit a properly completed distribution election to request a post-employment distribution of his or her account balance.

§ 1650.23 Accounts of less than \$200.

Upon receiving information from the employing agency that a participant has been separated for more than 60 days and that any outstanding loans have been closed, provided the participant has not made a distribution election before the distribution is processed, if the account balance is \$5.00 or more but less than \$200, the TSP record keeper will automatically distribute the entire amount of his or her account balance. The TSP record keeper will not pay this amount by EFT. The participant may not elect to leave this amount in the TSP, nor will the TSP record keeper roll over any automatically distributed amount to an eligible employer plan, traditional IRA, or Roth IRA. However, the participant may make an indirect rollover of this payment into an eligible employer plan, traditional IRA, or Roth IRA to the extent the roll over is permitted by the Internal Revenue Code.

§ 1650.24 How to obtain a post-employment distribution.

To request a post-employment distribution, a participant must initiate a request in the form and manner prescribed by the TSP record keeper.

§ 1650.25 Rollovers from the TSP.

(a) The TSP record keeper will, at the participant's election, roll over all or any portion of an eligible rollover distribution (as defined by section 402(c) of the Internal Revenue Code) directly to an eligible employer plan or an IRA.

(b) If a post-employment distribution includes a payment from a participant's traditional balance and a payment from the participant's Roth balance, the TSP record keeper will, at the participant's election, roll over all or a portion of the payment from the traditional balance to a single plan or IRA and all or a portion of the payment from the Roth balance to another plan or IRA. The TSP record keeper will also allow the traditional and Roth portions of a payment to be rolled over to the same plan or IRA but, for each type of balance, the election must be made separately by the participant and each type of balance will be rolled over separately. However, the TSP record keeper will not roll over portions of the participant's traditional balance to two different institutions or portions of the participant's Roth balance to two different institutions.

(c) If a post-employment distribution includes an amount from a participant's Roth balance and the participant elects to roll over that amount to another eligible employer plan or Roth IRA, the TSP record keeper will inform the plan administrator or trustee of the start date

of the participant's Roth 5 year non-exclusion period or the participant's Roth initiation date, and the portion of the distribution that represents Roth contributions. If a post-employment distribution includes an amount from a participant's Roth balance and the participant does not elect to roll over the amount, the TSP record keeper will inform the participant of the portion of the distribution that represents Roth contributions.

(d) Tax-exempt contributions can be rolled over only if the IRA or plan accepts such funds.

(e) The TSP record keeper will roll over distributions only to the extent that the rollover is permitted by the Internal Revenue Code.

■ 71. Amend § 1650.31 by revising paragraph (b) to read as follows:

§ 1650.31 Age-based withdrawals.

* * * * *

(b) An age-based withdrawal is an eligible rollover distribution, so a participant may request that the TSP record keeper roll over all or a portion of the withdrawal to a traditional IRA, an eligible employer plan, or a Roth IRA in accordance with § 1650.25.

* * * * *

■ 72. Amend § 1650.32 by revising paragraphs (a), (b)(5), and (e) to read as follows:

§ 1650.32 Financial hardship withdrawals.

(a) A participant who has not separated from Government service and who can certify that he or she has a financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal request must be at least \$1,000.

(b) * * *

(5) The participant has incurred expenses and losses (including loss of income) on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

* * * * *

(e) The participant must certify that he or she has a financial hardship as described on the hardship withdrawal request, and that the dollar amount of the withdrawal request does not exceed

the actual amount of the financial hardship.

* * * * *

§ 1650.33 [Removed and Reserved]

■ 73. Remove and reserve § 1650.33.
 ■ 74. Revise § 1650.34 to read as follows:

§ 1650.34 Uniqueness of loans and in-service withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal or vice versa. Funds distributed as an in-service withdrawal cannot be returned or repaid.

■ 75. Revise subpart E to read as follows:

Subpart E—Procedures for In-Service Withdrawals

Sec.

1650.41 How to obtain an age-based withdrawal.

1650.42 How to obtain a financial hardship withdrawal.

1650.43 [Reserved]

Subpart E—Procedures for In-Service Withdrawals

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based withdrawal, a participant must initiate a request in form and manner prescribed by the TSP record keeper.

§ 1650.42 How to obtain a financial hardship withdrawal.

(a) To request a financial hardship withdrawal, a participant must initiate a request in the form and manner prescribed by the TSP record keeper.

(b) There is no limit on the number of financial hardship withdrawals a participant can make; however, the TSP record keeper will not accept a financial hardship withdrawal request for a period of six months after a financial hardship disbursement is made.

§ 1650.43 [Reserved]

■ 76. Amend § 1650.61 by revising paragraphs (a), (b), (c) introductory text, and (c)(1), (2), (4), and (5) to read as follows:

§ 1650.61 Spousal rights applicable to post-employment distributions.

(a) The spousal rights described in this section apply to total post-employment distributions when the married participant's vested TSP account balance exceeds \$3,500, to partial post-employment distributions without regard to the amount of the participant's account balance, and to any change in the amount or frequency of an existing installment payment series, including a change from

payments calculated based on life expectancy to payments based on a fixed-dollar amount.

(b) Unless the participant was granted an exception under this subpart to the spousal notification requirement within 90 days of the date the distribution request is processed by the TSP record keeper, the spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment distribution or makes a change to the amount or frequency of an existing installment payment series. The participant must provide the TSP record keeper with the spouse's correct email or physical address to which to send the required notice.

(c) The spouse of a FERS or uniformed services participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund based on the participant's entire account balance when the participant elects a total post-employment distribution.

(1) The participant may make a different total post-employment distribution election only if his or her spouse consents to that election and waives the right to this annuity.

(2) A participant's spouse must consent to any partial post-employment distribution election (other than an election to purchase this type of an annuity with such amount) and waive his or her right to this annuity with respect the amount distributed.

* * * * *

(4) Unless the participant was granted an exception under this subpart to the spousal consent requirement within 90 days of the date the distribution request is processed by the TSP record keeper, to show that the spouse has consented to a different total or partial post-employment distribution election or installment payment change and waived the right to this annuity with respect to the applicable amount, the participant must submit to the TSP record keeper a properly completed distribution request, signed by his or her spouse.

(5) The spouse's consent and waiver is irrevocable for the applicable distribution or installment payment change once the TSP record keeper has received it.

■ 77. Amend § 1650.62 by revising paragraphs (b) and (c) to read as follows:

§ 1650.62 Spousal rights applicable to in-service withdrawals.

* * * * *

(b) Unless the participant was granted an exception under this subpart to the spousal notification requirement within 90 days of the date on which the withdrawal request is processed by the

TSP record keeper, the spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal. The participant must provide the TSP record keeper with the spouse's correct email or physical address to which to send the required notice.

(c) Unless the participant was granted an exception under this subpart to the spousal consent requirement within 90 days of the date the withdrawal request is processed by the TSP record keeper, before obtaining an in-service withdrawal, a participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse and waiver of the spouse's right to a joint and survivor annuity described in § 1650.61(c) with respect to the applicable amount. To show the spouse's consent and waiver, a participant must submit to the TSP record keeper a properly completed withdrawal request, signed by his or her spouse. Once a request containing the spouse's consent and waiver has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

■ 78. Amend § 1650.63 by revising paragraphs (a) introductory text, (a)(3)(i), (b), and (c) to read as follows:

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) Whenever this subpart requires the Executive Director to give notice of an action to the spouse of a CSRS participant, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for such an exception must be submitted to the TSP record keeper in the form and manner prescribed by the TSP record keeper, accompanied by the following:

* * * * *

(3) * * *

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days before the request for an exception was received by the TSP record keeper. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address.

Negative statements, such as, “I have not seen nor heard from him,” or “I have not had contact with her,” are not sufficient.

* * * * *

(b) A TSP withdrawal election will be processed within 90 days of an approved exception so long as the spouse named on the TSP withdrawal request is the spouse for whom the exception has been approved.

(c) The TSP and/or its record keeper may require a participant to provide additional information before granting a waiver. The TSP and/or its record keeper may use any of the information provided to conduct its own search for the spouse.

■ 79. Amend § 1650.64 by revising paragraphs (a) introductory text, (a)(2)(ii)(C), and (b) to read as follows:

§ 1650.64 Executive Director’s exception to the spousal consent requirement.

(a) Whenever this subpart requires the consent of a spouse of a FERS or uniformed services participant to a loan or TSP withdrawal or a waiver of the right to a survivor annuity, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that:

* * * * *

(2) * * *

(ii) * * *

(C) Expressly states that the participant may obtain a loan from his or her TSP account or make a TSP withdrawal notwithstanding the absence of the spouse’s signature.

(b) A post-employment distribution election or an in-service withdrawal request processed within 90 days of an approved exception will be accepted by the TSP record keeper so long as the spouse named on the request is the spouse for whom the exception has been approved.

PART 1651—DEATH BENEFITS

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

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

§ 1651.1 [Amended]

■ 81. Amend § 1651.1 by removing the definition of “TIN”.

■ 82. Amend § 1651.2 by revising paragraphs (a) introductory text, (a)(1), (b) introductory text, (b)(1) through (4), (c), and (d) to read as follows:

§ 1651.2 Entitlement to funds in a deceased participant’s account.

(a) *Death benefits.* Except as provided in paragraph (b) of this section, the

account balance of a deceased participant will be paid as a death benefit to the individual or individuals surviving the participant, in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant in accordance with § 1651.3;

* * * * *

(b) *TSP withdrawals.* If the TSP record keeper processes a notice that a participant has died, it will cancel any pending request by the participant to withdraw his or her account. The TSP record keeper will also cancel an annuity purchase made on or after the participant’s date of death but before annuity payments have begun, and the annuity vendor will return the funds to the TSP. The funds designated by the participant for the withdrawal will be paid as a death benefit in accordance with paragraph (a) of this section, unless the participant elected to withdraw his or her account in the form of an annuity, in which case the funds designated for the purchase of the annuity will be paid as described in paragraphs (b)(1) through (5) of this section:

(1) If the participant requested a single life annuity with no cash refund or 10-year certain feature, the TSP record keeper will pay the funds as a death benefit in accordance with paragraph (a) of this section.

(2) If the participant requested a single life annuity with a cash refund or 10-year certain feature, the TSP record keeper will pay the funds as a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of the TSP post-employment distribution request, or as a death benefit in accordance with paragraph (a) of this section if no beneficiary designated on the withdrawal request survives the participant.

(3) If the participant requested a joint life annuity without additional features, the TSP record keeper will pay the funds as a death benefit to the joint life annuitant if he or she survives the participant, or as a death benefit in accordance with paragraph (a) of this section if the joint life annuitant does not survive the participant.

(4) If the participant requested a joint life annuity with a cash refund or 10-year certain feature, the TSP record keeper will pay the funds as a death benefit to the joint life annuitant if he or she survives the participant, or as a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of the TSP post-employment distribution

request if the joint life annuitant does not survive the participant, or as a death benefit in accordance with paragraph (a) of this section if neither the joint life annuitant nor any designated beneficiary survives the participant.

* * * * *

(c) *TSP loans.* If the TSP record keeper processes a notice that a participant has died, any pending loan disbursement will be cancelled and the funds designated for the loan will be distributed as a death benefit in accordance with paragraph (a) of this section. If a TSP loan has been disbursed, but the check has not been negotiated (or an electronic funds transfer (EFT) has been returned), the loan proceeds will be used to pay off the loan. If the loan check has been negotiated (or the EFT has been processed), the funds cannot be returned to the TSP and the TSP record keeper will declare the loan balance as a loan foreclosure in accordance with part 1655 of this chapter.

(d) *TSP investments.* Upon a participant’s death, his or her TSP account will remain invested in the same TSP core funds as the account balance was invested on his or her date of death. If any portion of the participant’s TSP account is invested through the mutual fund window at the time of his or her death, his or her mutual fund window account will be closed and the balance will be transferred back to the TSP core funds in the participant’s TSP account in accordance with his or her most recent investment election until it is paid out or a beneficiary participant account is established under this part.

■ 83. Revise § 1651.3 to read as follows:

§ 1651.3 Designation of beneficiary.

(a) *Designation requirements.* A participant may designate one or more beneficiaries for his or her TSP account. A valid TSP designation of beneficiary remains in effect until it is properly changed as described in § 1651.4.

(b) *Eligible beneficiaries.* Any individual, firm, corporation, or legal entity, including the U.S. Government, may be designated as a beneficiary. A participant can name up to 20 total (primary and contingent) beneficiaries to share the death benefit. A beneficiary may be designated without the knowledge or consent of that beneficiary or the knowledge or consent of the participant’s spouse.

(c) *Validity requirements.* To be valid and accepted by the TSP record keeper, a TSP designation of beneficiary must:

(1) Be received by the TSP record keeper on or before the date of the participant’s death;

(2) Identify the participant in such a manner so that the TSP record keeper can locate his or her TSP account;

(3) Be signed and properly dated by the participant and signed and properly dated by one witness:

(i) The participant must either sign the designation of beneficiary in the presence of the witness or acknowledge his or her signature on the designation of beneficiary to the witness;

(ii) A witness must be age 21 or older; and

(iii) A witness designated as a beneficiary will not be entitled to receive a death benefit payment; if a witness is the only named beneficiary, the designation of the beneficiary is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries pro rata;

(4) Designate primary beneficiary shares which when summed equal 100%;

(5) Contain no substantive alterations (e.g., struck-through shares or scratched-out names of beneficiaries);

(6) Designate each primary and each contingent beneficiary in such a manner so that the TSP record keeper can identify the individual or entity;

(7) Not attempt to designate beneficiaries for the participant's traditional balance and the participant's Roth balance separately; and

(8) Be received by the TSP record keeper not more than 365 calendar days after the date of the participant's most recent signature.

(d) *Will*. A participant cannot use a will to designate a TSP beneficiary.

■ 84. Revise § 1651.4 to read as follows:

§ 1651.4 How to change a designation of beneficiary.

(a) *Change*. To change a designation of beneficiary, the participant must submit to the TSP record keeper a new TSP designation of beneficiary meeting the requirements of § 1651.3 to the TSP record keeper. If the TSP record keeper receives more than one valid designation of beneficiary, it will honor the designation with the latest date signed by the participant. A participant may change a TSP beneficiary at any time, without the knowledge or consent of any person, including his or her spouse.

(b) [Reserved]

(c) *Will*. A participant cannot use a will to change a TSP designation of beneficiary.

§ 1651.5 [Amended]

■ 85. Amend § 1651.5, in paragraph (b), by removing “TSP” and adding in its place “TSP record keeper”.

§ 1651.6 [Amended]

■ 86. Amend § 1651.6, in paragraph (d) introductory text, by removing “TSP” and adding in its place “TSP record keeper”.

§ 1651.8 [Amended]

■ 87. Amend § 1651.8, in paragraph (b), by removing “Board” and adding in its place “TSP record keeper”.

§ 1651.10 [Amended]

■ 88. Amend § 1651.10, in paragraph (c), by removing “form”.

§ 1651.12 [Amended]

■ 89. Amend § 1651.12 by removing “Board” and adding in its place “TSP record keeper” wherever it appears.

■ 90. Revise § 1651.13 to read as follows:

§ 1651.13 How to apply for a death benefit.

To apply for a TSP death benefit, a potential beneficiary must contact the ThriftLine for instructions on providing a certified copy of the participant's death certificate, along with any other information as required by the TSP.

■ 90. Revise § 1651.14 to read as follows:

§ 1651.14 How payment is made.

(a) *In general*. Each beneficiary's death benefit will be disbursed pro rata from the participant's traditional and Roth balances. The payment from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all death benefits will be disbursed pro rata from all TSP core funds in which the deceased participant's account is invested. All pro rated amounts will be based on the balances in each TSP core fund or source of contributions on the day the disbursement is made. Disbursement will be made separately for each entitled beneficiary.

(b) *Spouse beneficiaries*. The TSP record keeper will automatically transfer a surviving spouse's death benefit to a beneficiary participant account (described in § 1651.19) established in the spouse's name. The TSP record keeper will not maintain a beneficiary participant account if the balance of the beneficiary participant account is less than \$200 on the date the account is established. The TSP record keeper also will not transfer this amount or pay it by electronic funds transfer. Instead the spouse will receive an immediate distribution in the form of a check.

(c) *Nonspouse beneficiaries*. The TSP record keeper will send notice of pending payment to each beneficiary. Payment will be sent to the address that is provided on the participant's TSP designation of beneficiary unless the TSP record keeper receives notice of a more recent address. All individual beneficiaries must provide the TSP record keeper with a Social Security number. The following additional rules apply to payments to nonspouse beneficiaries:

(1) *Payment to minor child or incompetent beneficiary*. Payment will be made in the name of a minor child or incompetent beneficiary. A parent or other guardian may direct where the payment should be sent and may make any permitted tax withholding election. A guardian of a minor child or incompetent beneficiary must submit court documentation showing his or her appointment as guardian.

(2) *Payment to executor or administrator*. If payment is to the executor or administrator of an estate, the check will be made payable to the estate of the deceased participant, not to the executor or administrator. A taxpayer identification number must be provided for all estates.

(3) *Payment to trust*. If payment is to a trust, the payment will be made payable to the trust and mailed in care of the trustee. A taxpayer identification number must be provided for the trust.

(4) *Payment to inherited IRA on behalf of a nonspouse beneficiary*. If payment is to an inherited IRA on behalf of a nonspouse beneficiary, the check will be made payable to the account. Information pertaining to the inherited IRA must be submitted by the IRA trustee. A payment to an inherited IRA will be made only in accordance with the rules set forth in 5 CFR 1650.25.

(5) *Undeliverable payments*. If a death benefit payment is returned as undeliverable, the TSP record keeper will attempt to contact the beneficiary. If the beneficiary does not respond within 90 days, the death benefit payment will be forfeited to the TSP. The beneficiary can claim the forfeited funds, although they will not be credited with investment returns.

(6) *Proper payments*. A properly paid death benefit payment cannot be returned to the TSP.

■ 91. Amend § 1651.16 by revising paragraph (c) to read as follows:

§ 1651.16 Missing and unknown beneficiaries.

* * * * *

(c) *Abandoned account*. If no beneficiaries of the account are located,

the account will be considered abandoned and the funds will revert to the TSP. If there are multiple beneficiaries and one or more of them refuses to cooperate in the TSP record keeper's search for the missing beneficiary, the missing beneficiary's share will be considered abandoned. In such circumstances, the account can be reclaimed if the missing beneficiary is found at a later date. However, earnings will not be credited from the date the account is abandoned. The TSP may require the beneficiary to apply for the death benefit in the form and manner prescribed by the TSP record keeper and submit proof of identity and relationship to the participant.

■ 92. Amend § 1651.19 by revising paragraphs (a), (b), (c)(3) and (4), (e), (g), (h), (k), (l), (m) introductory text, (m)(1) and (4), and (n) to read as follows:

§ 1651.19 Beneficiary participant accounts.

* * * * *

(a) *Initial investment allocation.* Each beneficiary participant account, once established, will be allocated to the TSP core funds in which the deceased participant's account balance was invested on his or her date of death. A beneficiary participant may redistribute his or her beneficiary participant account balance among the TSP core funds by making a fund reallocation or fund transfer request described in part 1601, subpart C, of this chapter. A beneficiary participant may move a portion of his or her beneficiary account balance from the TSP core funds to the mutual fund window by making a fund transfer request described in part 1601, subpart F.

(b) *Contributions.* A beneficiary participant may not make contributions or rollovers to his or her beneficiary participant account. The TSP record keeper will not accept an investment election request described in part 1601, subpart B, of this chapter for a beneficiary participant account.

(c) * * *

(3) In the event that a beneficiary participant does not withdraw from his or her beneficiary participant account an amount sufficient to satisfy his or her required minimum distribution for the year, the TSP record keeper will automatically distribute the necessary amount on or before the applicable date described in paragraph (c)(1) of this section.

(4) The TSP record keeper will disburse required minimum distributions described in paragraph (c)(3) of this section pro rata from the beneficiary participant's traditional

balance and the beneficiary participant's Roth balance.

* * * * *

(e) *Ineligibility for certain withdrawals.* A beneficiary participant is ineligible to request the following types of withdrawals from his or her beneficiary participant account: Age-based withdrawals described in § 1650.31 of this chapter, financial hardship withdrawals described in § 1650.32 of this chapter, or loans described in part 1655 of this chapter.

* * * * *

(g) *Rollovers.* A beneficiary participant may request that the TSP record keeper roll over all or a portion of an eligible rollover distribution (within the meaning of I.R.C. section 402(c)) from his or her beneficiary participant account to a traditional IRA, Roth IRA or eligible employer plan (including a civilian or uniformed services TSP account other than a beneficiary participant account) in the form and manner prescribed by the TSP record keeper.

(h) *Periodic statements.* The TSP or its record keeper will furnish beneficiary participants with periodic statements in a manner consistent with part 1640 of this chapter.

* * * * *

(k) *Court orders.* Court orders relating to a civilian beneficiary participant account or uniformed services beneficiary participant account shall be processed pursuant to the procedures set forth in part 1653 of this chapter as if all references to a TSP participant are references to a beneficiary participant and all references to a TSP account or account balance are references to a beneficiary participant account or beneficiary participant account balance. Notwithstanding any provision of part 1653, a payee of a court-ordered distribution from a beneficiary participant account cannot request a rollover of the court-ordered distribution to an *eligible employer plan or IRA*.

(l) *Death of beneficiary participant.* To the extent it is not inconsistent with this § 1651.19, a beneficiary participant account shall be disbursed upon the death of the beneficiary participant in accordance with part 1651 as if any reference to a participant is a reference to a beneficiary participant. For example, a beneficiary participant may designate a beneficiary for his or her beneficiary participant account in accordance with §§ 1651.3 and 1651.4. No individual who is entitled to a death benefit from a beneficiary participant account shall be eligible to keep the death benefit in the TSP or request that

the TSP record keeper roll over all or a portion of the death benefit to an IRA or eligible employer plan.

(m) *Uniformed services beneficiary participant accounts.* Uniformed services beneficiary participant accounts are subject to the following additional rules and procedures:

(1) Uniformed services beneficiary participant accounts are established and maintained separately from civilian beneficiary participant accounts. Beneficiary participants who have a uniformed services beneficiary participant account and a civilian beneficiary participant account will be issued two separate TSP account numbers. A beneficiary participant must submit separate fund allocation, fund transfer, re and/or TSP withdrawal requests for each account and submit separate beneficiary designations for each account;

* * * * *

(4) A beneficiary participant may roll over all or any portion of an eligible rollover distribution (within the meaning of I.R.C. section 402(c)) from a uniformed services beneficiary participant account into a civilian or uniformed services TSP participant account. However, tax-exempt money attributable to combat zone contributions cannot be rolled over from a uniformed services beneficiary participant account to a civilian TSP participant account.

(n) *Multiple beneficiary accounts.* Each beneficiary participant account is maintained separately from all other beneficiary participant accounts. If an individual has multiple beneficiary participant accounts, each of the individual's beneficiary participant accounts will have a unique account number. A beneficiary participant must submit separate fund reallocation, fund transfer, and/or TSP withdrawal requests and submit separate beneficiary designations for each beneficiary participant account that the TSP maintains for him or her. A beneficiary participant account cannot be combined with another beneficiary participant account.

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 93. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8432d, 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

§ 1653.1 [Amended]

■ 94. Amend § 1653.1, in the definition of "TSP investment earnings or

earnings”, by removing “TSP fund” and adding in its place “TSP core fund”.

■ 95. Amend § 1653.2 by revising paragraphs (a)(3)(ii) and (iv) and (b)(1), (2), (4), (5), and (7) to read as follows:

§ 1653.2 Qualifying retirement benefits court orders.

(a) * * *

(3) * * *

(ii) A stated percentage of the account;
or

* * * * *

(iv) The following examples would qualify to require payment from the TSP, although ambiguous or conflicting language used elsewhere could cause the order to be rejected.

(A) *Example 1. Ordered:* [payee’s name, Social Security number (SSN), and address] is awarded \$___ from the [civilian or uniformed services] Thrift Savings Plan account of [participant’s name, account number or SSN, and address].

(B) *Example 2. Ordered:* [payee’s name, SSN, and address] is awarded ___% of the [civilian and/or uniformed services] Thrift Savings Plan account[s] of [participant’s name, account number or SSN, and address] as of [date].

Note 1 to paragraph (a)(3)(iv). The following optional language can be used in conjunction with any of the above examples. *Further ordered:* Earnings will be paid on the amount of the entitlement under this *order* until payment is made.

* * * * *

(b) * * *

(2) An order relating to a TSP account that contains only nonvested money;

* * * * *

(4) An order requiring the TSP to make a payment in the future, unless the present value of the payee’s entitlement can be calculated, in which case the TSP will make the payment currently;

(5) An order that does not specify the account to which the order applies, if the participant has both a civilian TSP account and a uniformed services TSP account;

* * * * *

(7) An order that designates the TSP core fund, source of contributions, or balance (e.g., traditional, Roth, or tax-exemption) from which the payment or portions of the payment shall be made.

■ 96. Revise § 1653.3 to read as follows:

§ 1653.3 Processing retirement benefits court orders.

(a) The payment of a retirement benefits court order from the TSP is governed solely by FERSA and by the terms of this subpart. The TSP record

keeper will honor retirement benefits court orders properly issued and certified by a court (as defined in § 1653.1). However, those courts have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying domestic relations proceedings.

(b) The TSP record keeper will review a retirement benefits court order to determine whether it is enforceable against the TSP only after the TSP record keeper has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP record keeper. Retirement benefits court orders should be submitted to the TSP record keeper at the current address as provided at <https://www.tsp.gov>. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a court order must be written in English or be accompanied by a certified English translation and contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant’s account number or Social Security number (SSN);

(2) The name and last known mailing address of each payee covered by the order; and

(3) The payee’s SSN and state of legal residence if he or she is the current or former spouse of the participant.

(c) As soon as practicable after the TSP record keeper receives a document that purports to be a qualifying retirement benefits court order, whether or not complete, the participant’s account will be frozen. After the account is frozen, no withdrawals or loan disbursements (other than a required minimum distribution pursuant to section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)) will be allowed until the account is unfrozen. All other account activity will be permitted.

(d) The following documents do not purport to be qualifying retirement benefits court orders, and accounts of participants to whom such orders relate will not be frozen:

(1) A court order relating to a TSP account that has been closed;

(2) A court order dated before June 6, 1986;

(3) A court order that does not award all or any part of the TSP account to someone other than the participant; and

(4) A court order that does not mention retirement benefits.

(e) After the participant’s account is frozen, the TSP record keeper will review the document further to determine if it is complete; if the

document is not complete, it will be rejected, the account will be unfrozen and no further action will be taken with respect to the document.

(f) The TSP record keeper will review a complete copy of an order to determine whether it is a qualifying retirement benefits court order as described in § 1653.2. The TSP record keeper will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the court order is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the court order has on the participant’s TSP account; and

(4) If the qualifying order requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment;

(iii) Tax and withholding information to the person responsible for paying Federal income tax on the payment;

(iv) Information on how to roll over the payment to an eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)), traditional IRA, or Roth IRA (if the payee is the current or former spouse of the participant); and

(v) Information on how to receive the payment through an electronic funds transfer (EFT).

(g) [Reserved]

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen in response to an order issued to preserve the status quo pending final resolution of the parties’ rights to the participant’s TSP account, the account will be unfrozen if the TSP record keeper receives a court order that vacates or supersedes the previous order (unless the order vacating or superseding the order itself qualifies to place a freeze on the account). A court order that purports to require a payment from the TSP supersedes an order issued to preserve the status quo, even if it does not qualify to require a payment from the TSP;

(2) If the account was frozen in response to an order purporting to require a payment from the TSP, the freeze will be lifted:

(i) Once payment is made, if the court order is qualifying; or

(ii) Eighteen (18) months after the date of the decision letter if the court order is not qualifying. The 18-month period will be terminated, and the account will be unfrozen, if both parties submit to the TSP record keeper a written request for such a termination.

(i) The TSP record keeper will hold in abeyance the processing of a court-ordered payment if the TSP record keeper is notified in writing that the underlying court order has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the order.

(1) In the notification, the TSP record keeper must be provided with proper documentation of the appeal and citations to legal authority, which address the effect of the appeal on the enforceability of the underlying court order.

(i) If the TSP record keeper receives proper documentation and citations to legal authority which demonstrate that the underlying court order is not enforceable, the TSP record keeper will inform the parties that the payment will not occur until resolution of the appeal, and the account will remain frozen for loans and withdrawals.

(ii) In the absence of proper documentation and citations to legal authority, the TSP record keeper will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The TSP record keeper must be notified in writing of the disposition of the appeal before the freeze will be removed from the participant's account or a payment will be made. The notification must include a complete copy of an order from the appellate court explaining the effect of the appeal on the participant's account.

(j) Multiple qualifying court orders relating to the same TSP account and received by the TSP record keeper will be processed as follows:

(1) If the orders make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP record keeper will only honor the order bearing the latest effective date.

(2) If the orders relate to different former spouses of the participant and award survivor annuities, the TSP record keeper will honor them in the order of their effective dates.

(3) If the orders relate to different payees and award fixed dollar amounts, percentages of an account, or portions of an account calculated by the application of formulae, the orders will be honored:

(i) In the order of their receipt by the TSP record keeper, if received by the TSP record keeper on different days; or

(ii) In the order of their effective dates, if received by the TSP record keeper on the same day.

(4) In all other cases, the TSP record keeper will honor multiple qualifying court orders relating to the same TSP

account in the order of their receipt by the TSP record keeper.

■ 97. Amend § 1653.4 by revising paragraphs (b), (c), (f) introductory text, (f)(1), (f)(3) introductory text, (f)(3)(i) and (iii), (g) introductory text, and (g)(2) to read as follows:

§ 1653.4 Calculating entitlements.

* * * * *

(b) If the court order awards a percentage of an account as of a specific date, the payee's entitlement will be calculated based on the account balance as of that date. If the date specified in the order is not a business day, the TSP record keeper will use the participant's account balance as of the last preceding business day.

(c) If the court order awards a percentage of an account but does not contain a specific date as of which to apply that percentage, the TSP record keeper will use the liquidation date.

* * * * *

(f) The payee's entitlement will be credited with TSP investment earnings as described:

(1) The entitlement calculated under this section will not be credited with TSP investment earnings unless the court order specifically provides otherwise. The court order may not specify a rate for earnings.

* * * * *

(3) If earnings are awarded, the TSP record keeper will calculate the amount to be awarded by:

(i) Determining the payee's award amount (e.g., the percentage of the participant's account);

* * * * *

(iii) Multiplying the price per share as of the payment date by the number and composition of shares calculated in paragraph (f)(3)(ii) of this section.

(g) The TSP record keeper will estimate the amount of a payee's entitlement when it prepares the decision letter and will recalculate the entitlement at the time of payment. The recalculation may differ from the initial estimation because:

* * * * *

(2) After the estimate of the payee's entitlement is prepared, the TSP record keeper may process account transactions that have an effective date on or before the date used to compute the payee's entitlement. Those transactions will be included when the payee's entitlement is recalculated at the time of payment; and

* * * * *

■ 98. Amend § 1653.5 by revising paragraphs (a)(1) and (2), (d), (e), (g), (h), (k), (m), and (n) to read as follows:

§ 1653.5 Payment.

(a) * * *

(1) As soon as administratively practicable after the date of the decision letter when the payee is the current or former spouse of the participant, but in no event earlier than 30 days after the date of the decision letter.

(2) As soon as administratively practicable after the date of the decision letter when the payee is someone other than the current or former spouse of the participant.

* * * * *

(d) Payment will be made pro rata from the participant's traditional and Roth balances. The distribution from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all payments will be distributed pro rata from all TSP core funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the disbursement is made. The TSP record keeper will not honor provisions of a court order that require payment to be made from a specific TSP core fund, source of contributions, or balance.

(e) Payment will be made only to the person or persons specified in the court order. However, if the court order specifies a third-party mailing address for the payment, the TSP record keeper will mail to the address specified any portion of the payment that is not rolled over to a traditional IRA, Roth IRA, or eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)).

* * * * *

(g) If there are insufficient funds to pay each court order payee, payment will be made as follows:

(1) If the order specifies an order of precedence for the payments, the TSP record keeper will honor it.

(2) If the order does not specify an order of precedence for the payments, the TSP record keeper will pay a current or former spouse first and a dependent second.

(h) If the payee dies before a payment is disbursed, payment will be made to the estate of the payee, unless otherwise specified by the court order. A distribution to the estate of a deceased court order payee will be reported as income to the decedent's estate. If the participant dies before payment is made, the order will be honored so long as it is submitted to the TSP record

keeper before the TSP account has been closed.

* * * * *

(k) If a court ordered payment is returned as undeliverable, the TSP record keeper will attempt to locate the payee by writing to the address provided on the court order. If the payee does not respond within 90 days, the funds will be forfeited to the TSP. The payee can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

* * * * *

(m) A payee who is a current or former spouse of the participant may elect to roll over a court-ordered payment to a traditional IRA, eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)), or Roth IRA. Any election permitted by this paragraph (m) must be made pursuant to the rules described in 5 CFR 1650.25.

(n) If a court order payee who is the current or former spouse of the participant has their own TSP account (other than a beneficiary participant account), the payee can request that the TSP record keeper roll over the court-ordered payment to the payee's TSP account in accordance with the rules described in 5 CFR 1650.25. However, any pro rata share attributable to tax-exempt contributions cannot be rolled over; instead it will be paid directly to the payee.

■ 99. Add § 1653.6 to subpart A to read as follows:

§ 1653.6 Fees.

The TSP record keeper will charge a participant a \$600.00 court order processing fee as follows:

(a) Upon receipt of a complete court order document (whether draft or final) and prior to reviewing the order to determine whether it is a qualifying retirement benefits court order, the fee will be deducted from his or her TSP account balance on a pro rata basis from the participant's traditional and Roth balances. The portion of the fee deducted from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The portion of the fee deducted from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, the entire fee will be distributed pro rata from all TSP core funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the fee is deducted;

(b) The fee will be charged only once per court order. However, it will not be

refunded in the event that the court order is never determined to be a qualifying retirement benefits court order; and

(c)(1) If the court order:

(i) Is determined to be a qualifying retirement benefits court order; and

(ii) Explicitly requires the fee to be split between the participant and the payee;

(2) The TSP record keeper will deduct the payee's portion of the fee from his or her payment and credit that amount back to the participant's TSP account balance.

■ 100. Amend § 1653.12 as follows:

■ a. In paragraph (a), remove "TSP" and add in its place "TSP record keeper";

■ b. Revise paragraph (c)(2); and

■ c. In paragraph (c)(6), remove "TSP Fund" and add in its place "TSP core fund".

The revision reads as follows:

§ 1653.12 Qualifying legal processes.

* * * * *

(c) * * *

(2) A legal process relating to a TSP account that contains only nonvested money;

* * * * *

■ 101. Revise § 1653.13 to read as follows:

§ 1653.13 Processing legal processes.

(a) The payment of legal processes from the TSP is governed solely by the Federal Employees' Retirement System Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP record keeper will honor legal processes properly issued by a competent authority, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP record keeper will review a legal process to determine whether it is enforceable against the TSP only after the TSP record keeper has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Legal processes should be submitted to the TSP record keeper at the current address as provided at <https://www.tsp.gov>. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a legal process must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's account number or Social Security number (SSN);

(2) The name and last known mailing address of each payee covered under the order; and

(3) The SSN and state of legal residence of the payee if he or she if the

current or former spouse of the participant.

(c) As soon as practicable after the TSP record keeper receives a document that purports to be a qualifying legal process, whether or not complete, the participant's account will be frozen. After the account is frozen, no TSP withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, investment elections, fund reallocations, and fund transfers.

(d) The following documents will not be treated as purporting to be a qualifying legal processes, and accounts of participants to whom such orders relate will not be frozen:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued by a competent authority;

(2) A legal process relating to a TSP account that has been closed; and

(3) A legal process that does not relate either to the TSP or to the participant's retirement benefits.

(e) After the participant's account is frozen, the TSP record keeper will review the document further to determine if it is complete; if the document is not complete, it will be rejected, the account will be unfrozen and no further action will be taken with respect to the document.

(f) As soon as practicable after receipt of a complete copy of a legal process, the TSP record keeper will review it to determine whether it is a qualifying legal process as described in § 1653.12. The TSP record keeper will mail a decision letter to all parties containing the same information described at § 1653.3(f).

(g) [Reserved]

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen pursuant to a legal process requiring the TSP to freeze the participant's account in anticipation of an order to pay from the account, the account will be unfrozen if any one of the following events occurs:

(i) As soon as practicable after the TSP record keeper receives a complete copy of an order vacating or superseding the preliminary order (unless the order vacating or superseding the preliminary order qualifies to place a freeze on the account);

(ii) Upon payment pursuant to the order to pay from the account, if the TSP record keeper determines that the order is qualifying; or

(iii) As soon as practicable after the TSP issues a decision letter informing

the parties that the order to pay from the account is not a qualifying legal process;

(2) If the account was frozen after the TSP record keeper received a document that purports to be a legal process requiring payment from the participant's account, the account will be unfrozen:

(i) Upon payment pursuant to a qualifying legal process; or

(ii) As soon as practicable after the TSP record keeper informs the parties that the document is not a qualifying legal process.

(i) The TSP record keeper will hold in abeyance the processing of a payment required by legal process if the TSP record keeper is notified in writing that the legal process has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the legal process. The notification must be accompanied by the documentation and citations to legal authority described at § 1653.3(i).

(j) Multiple qualifying legal processes relating to the same TSP account and received by the TSP record keeper will be processed as follows:

(1) If the legal processes make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP record keeper will only honor the legal process bearing the latest effective date.

(2) If the legal processes relate to different payees, the legal process will be honored:

(i) In the order of their receipt by the TSP record keeper, if received by the TSP record keeper on different days; or

(ii) In the order of their effective dates, if received by the TSP record keeper on the same day.

■ 102. Add § 1655.16 to subpart B to read as follows:

§ 1653.16 Fees.

The TSP record keeper will charge a participant a \$600.00 legal process processing fee as follows:

(a) Upon receipt of a complete legal process document (whether draft or final) and prior to reviewing order to determine whether it is a qualifying legal process, the fee will be deducted from his or her TSP account balance on a pro rata basis from the participant's traditional and Roth balances. The portion of the fee deducted from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The portion of the fee deducted from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, the entire fee will be distributed pro rata from all TSP core

funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the fee is deducted; and

(b) The fee will be charged only once per legal process. However, it will not be refunded in the event that the court order is never determined to be a qualifying legal process.

§ 1653.22 [Amended]

■ 103. Amend § 1653.22 by removing "TSP" and adding in its place "TSP record keeper".

§ 1653.23 [Amended]

■ 104. Amend § 1653.23 by removing "TSP" and adding in its place "TSP record keeper".

§ 1653.32 [Amended]

■ 105. Amend § 1653.32 as follows:

■ a. In paragraph (a), remove "TSP" and add in its place "TSP record keeper";

■ b. In paragraph (c)(2), remove "the TSP" and add in its place "the TSP record keeper"; and

■ c. In paragraph (c)(6), remove "TSP Fund" and add in its place "TSP core fund".

§ 1653.33 [Amended]

■ 106. Amend § 1653.33 as follows:

■ a. In paragraph (a), remove "TSP" and add in its place "TSP record keeper";

■ b. In paragraph (c)(2), remove "the TSP" and add in its place "the TSP record keeper"; and

■ c. In paragraph (c)(6), remove "TSP Fund" and add in its place "TSP core fund".

■ 107. Revise § 1634.34 to read as follows:

§ 1653.34 Processing Federal tax levies and criminal restitution orders.

(a) The payment of tax levies and criminal restitution orders from the TSP is governed solely by the Federal Employees' Retirement Systems Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP record keeper will honor tax levies or criminal restitution orders properly issued, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP record keeper will review a tax levy or criminal restitution order to determine whether it is enforceable against the TSP record keeper only after it has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP record keeper. Tax levies and criminal restitution orders should be submitted to the TSP record keeper at the current address as provided at

<https://www.tsp.gov>. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a tax levy or criminal restitution order must meet all the requirements of § 1653.32 or § 1653.33; it must also provide (or be accompanied by a document or enforcement letter that provides):

(1) The participant's TSP account number or Social Security number (SSN); and

(2) The name and mailing address of the payee.

(c) As soon as practicable after the TSP record keeper receives a document that purports to be a qualifying tax levy or criminal restitution order, the participant's account will be frozen. After the participant's account is frozen, no TSP withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, investment elections, fund reallocations, and fund transfers. Once a disbursement from the account is made in accordance with the restitution order or levy, the hold will be removed from the participant's account.

(d) As soon as practicable after receipt of a complete copy of a tax levy or criminal restitution order, the TSP record keeper will review it to determine whether it is qualifying as described in § 1653.32 or § 1653.33. The TSP record keeper will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the restitution order or levy is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the restitution order or levy has on the participant's TSP account; and

(4) If the qualifying restitution order or levy requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment.

§ 1653.36 [Amended]

■ 108. Amend § 1653.36 as follows:

■ a. In paragraph (a), remove "TSP";

■ b. In paragraph (e), remove "TSP Funds" and add in its place "TSP core funds"; and

■ c. In paragraph (h), remove "TSP" and add in its place "TSP record keeper".

PART 1655—LOAN PROGRAM

■ 109. The authority citation for part 1655 continues to read as follows:

Authority: 5 U.S.C. 8432d, 8433(g), 8439(a)(3) and 8474.

■ 110. Amend § 1655.1, in paragraph (b), as follows:

- a. Add in alphabetical order a definition for “Cure period”;
- b. Remove the definition of “Date of application”;
- c. Add in alphabetical order definitions for “Deemed distribution”, “Loan direct debit repayment”, and “Loan offset”; and
- d. Remove the definition of “Taxable distribution”.

The additions read as follows:

§ 1655.1 Definitions.

* * * * *

(b) * * *

Cure period means the period set forth at § 1655.14(e).

Date of request means the day on which the TSP record keeper receives the loan request in the form and manner prescribed by the TSP record keeper.

Deemed distribution means a deemed distribution under Internal Revenue Code section 72(p) and the regulations promulgated thereunder. Also referred to as a loan taxation or taxed loan, it means the amount of outstanding principal and interest on a loan that must be reported to the Internal Revenue Service as taxable income as a result of the failure of a participant who has not separated from Government service to:

- (i) Make timely loan repayments before the end of the cure period; or
- (ii) Repay the loan in full by the maximum term limit.

* * * * *

Loan direct debit repayment means a loan repayment made directly from a participant’s personal savings or checking account.

* * * * *

Loan offset means a loan offset under Internal Revenue Code section 72(p) and the regulations promulgated thereunder. Also referred to as a loan foreclosure, it means the amount of outstanding principal and interest on a loan that must be reported to the Internal Revenue Service as taxable income as a result of the failure of a participant who has separated from Government service to repay his or her loan in full or begin making repayments by the deadline imposed by the TSP record keeper.

* * * * *

■ 111. Revise § 1655.2 to read as follows:

§ 1655.2 Eligibility for loans.

A participant can apply for a TSP general purpose or residential loan if:

- (a) More than 30 business days have elapsed since the participant has repaid in full any TSP loan;

(b) The participant is in pay status;

(c) The participant is eligible to contribute to the TSP; and

(d) The participant has at least \$1,000 in employee contributions and attributable earnings in his or her account. Paragraph (b) of this section shall not apply to loan requests made during a Government shutdown by participants who are furloughed or excepted from furlough due to the Government shutdown.

§ 1655.3 [Amended]

- 112. Amend § 1655.3 by removing “record keeper”.
- 113. Revise § 1655.4 to read as follows:

§ 1655.4 Number of loans.

A participant may have no more than two loans outstanding from his or her TSP account at any time. No more than one outstanding loan from an account may be a residential loan. A participant with both a civilian TSP account and a uniformed services TSP account may have two outstanding loans from each account.

- 114. Revise § 1655.5 to read as follows:

§ 1655.5 Loan repayment period.

(a) *Minimum.* The minimum repayment period a participant may request for a general purpose loan is 12 months of scheduled payments. The minimum repayment period a participant may request for a residential loan is 61 months of scheduled payments.

(b) *Maximum.* The maximum repayment period a participant may request for a general purpose loan is 60 months of scheduled payments. The maximum repayment period a participant may request for a residential loan is 180 months years of scheduled payments.

- 115. Amend § 1655.6 by revising paragraph (b)(2) and adding paragraph (d) to read as follows:

§ 1655.6 Amount of loan.

* * * * *

(b) * * *

(2) 50 percent of the participant’s vested account balance that is attributable to employee contributions and attributable earnings (including any outstanding loan balance) or \$10,000, whichever is greater, minus any outstanding loan balance; or

* * * * *

(d) Any amount invested through the mutual fund window at the time the participant makes a loan request will not be considered for purposes of determining either the minimum or maximum loan amounts.

■ 116. Amend § 1655.7 by revising paragraph (a) to read as follows:

§ 1655.7 Interest rate.

(a) Except as provided in paragraph (b) of this section, loans will bear interest at the monthly G Fund interest rate established by the Department of the Treasury in effect on the 15th of the month prior to the date the loan request is made.

* * * * *

§ 1655.8 [Removed and Reserved]

- 117. Remove and reserve § 1655.8.
- 118. Amend § 1655.9 as follows:
 - a. In paragraph (b), remove “TSP Fund” and add in its place “TSP core fund”;
 - b. In paragraph (c), remove “TSP Funds” and “TSP Fund” and add in their place “TSP core funds”;
 - c. In paragraph (d), remove “contribution allocation” and add in its place “investment election” and remove “TSP Fund” and add in its place “TSP core fund”; and
 - d. Add paragraph (e).

The addition reads as follows:

§ 1655.9 Effect of loans on individual account.

* * * * *

(e) Loan disbursements will not be made from any amounts invested through the mutual fund window and loan payments will not be credited to a participant’s mutual fund window account.

- 119. Revise § 1665.10 to read as follows:

§ 1655.10 Loan request process.

(a) Any participant may apply for a loan by submitting a completed TSP loan request in the form and manner prescribed by the TSP record keeper.

(b) If a participant has a uniformed services account and a civilian account, a separate loan request must be made for each account.

- 120. Revise § 1655.11 to read as follows:

§ 1655.11 Loan acceptance.

If the requirements set forth in §§ 1655.2, 1655.4, and 1655.6(a) are satisfied, the TSP record keeper will nevertheless reject a loan request if:

(a) The participant has failed to provide all required information on the loan request;

(b) The participant has a pending loan request or in-service withdrawal request; or

(c) A hold has been placed on the account pursuant to 5 CFR 1653.3(c).

- 122. Revise § 1655.12 to read as follows:

§ 1655.12 Loan agreement.

(a) Upon determining that a loan request meets the requirements of this part, the TSP record keeper will provide the participant with the terms and conditions of the loan.

(b) By accepting the loan agreement, the participant agrees to be bound by all of its terms and conditions, agrees to repay the loan by payroll deduction, and certifies, under penalty of perjury, to the truth and completeness of all statements made in the loan request and loan agreement to the best of his or her knowledge.

(c) For loan requests not completed on the TSP website, the TSP record keeper must receive the completed loan agreement (including any required supporting documentation) before the expiration date stated on the loan agreement or the agreement will not be processed.

(d) The signed loan agreement must be accompanied by:

(1) In the case of a residential loan, supporting materials that document the purchase or construction of the residence and the amount requested (as described in § 1655.20); and

(2) Any other information that the Executive Director may require.

(e) A participant may request, in the form and manner prescribed by the TSP record keeper, that the loan be disbursed by direct deposit to a checking or savings account maintained by the participant in a financial institution.

§ 1655.13 [Amended]

■ 123. Amend § 1655.13 as follows:

■ a. In paragraph (b)(2), remove “TSP” and add in its place “TSP record keeper”;

■ b. Remove paragraph (b)(5); and

■ c. In paragraph (e), remove “60” and add in its place “90” and remove “TSP” and add in its place “TSP record keeper”.

■ 124. Revise § 1655.14 to read as follows:

§ 1655.14 Loan payments.

(a) In the case of a participant who has not separated from Government service, loan payments must be made through payroll deduction in accordance with the loan agreement. Once loan payments begin, the employing agency cannot terminate the payroll deductions at the employee's request, unless the TSP or its record keeper instructs it to do so.

(b) The participant may make additional payments by mailing a check or guaranteed funds to the TSP record keeper or by enrolling in loan direct debit repayments from his or her

personal savings or checking account. If the TSP record keeper receives a payment that repays the outstanding loan amount and overpays the loan by \$10.00 or more, the overpayment will be refunded to the participant.

Overpayments of less than \$10.00 will be applied to the participant's account and will not be refunded. If a loan overpayment refund is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 90 days, the overpayment refund will be forfeited to the TSP. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(c) The initial payment on a loan is due on or before the 60th day following the loan issue date. Interest accrues on the loan from the date of issuance.

(d) Subsequent payments are due at regular intervals as prescribed in the loan agreement, or most recent amortization, according to the participant's pay cycle.

(e) In the case of a participant who has not separated from Government service, if a payment is not made when due, the TSP record keeper will notify the participant of the missed payment and the participant must make up the payment in full. The participant's make-up payment must be in the form of a check, guaranteed funds, or a one-time payment via loan direct debit from his or her personal savings or checking account. If the participant does not make up all missed payments by the end of the calendar quarter following the calendar quarter in which the first payment was missed, the TSP record keeper will declare the loan to be a deemed distribution in accordance with § 1655.15(a). The declaration of a deemed distribution does not relieve the participant of his or her obligation to repay the amount.

(f) Interest will accrue on all missed payments and will be included in the calculation of any deemed distribution subsequently declared in accordance with § 1655.15(a). Interest will also accrue on payments missed while a participant is in nonpay status and on any deemed distribution until it is repaid in full.

(g) A participant who has separated from Government service with an outstanding loan balance may continue making loan repayments via check, guaranteed funds, or loan direct debit repayments. If a separated participant does not begin making post-separation loan repayments or pay off the loan in full by the deadline imposed by the TSP record keeper, the TSP record keeper will declare the outstanding loan

balance and accrued interest to be a loan offset in accordance with § 1655.15(b). In the case of a separated participant who commences post-separation loan repayments, if a payment is not made when due, the TSP record keeper will notify the separated participant of the missed payment and he or she must make up the payment in full. The make-up payment must be in the form of a check, guaranteed funds, or a one-time payment via loan direct debit from his or her personal savings or checking account. If the participant does not make up all missed payments by the end of the calendar quarter following the calendar quarter in which the first payment was missed, the TSP record keeper will declare the outstanding loan balance and accrued interest to be a loan offset in accordance with § 1655.15(b).

■ 125. Revise § 1655.15 to read as follows:

§ 1655.15 Deemed Distributions and Loan Offsets.

(a) The TSP record keeper will ensure that all requirements set forth in section 72(p) of the Internal Revenue Code and the regulations promulgated thereunder with respect to deemed distributions are satisfied.

(1) The TSP record keeper will declare the entire unpaid balance of an outstanding loan (including interest) to be a deemed distribution if:

(i) The participant misses two or more loan payments or the participant's payments are made for less than the required amount, and the delinquency is not cured within the cure period;

(ii) The loan is not repaid in full by the maximum term limit; or

(iii) A participant is in a confirmed nonpay status for a period of one year or more, has not advised the TSP record keeper that he or she is serving on active military duty, and payments are not resumed after the participant is notified the loan has been reamortized.

(2) Loan taxation does not relieve a participant of his or her obligation to repay the taxed loan amount. A participant may repay a taxed loan in full (including accrued interest) via check or money order up until the time he or she separates from Government service. The tax basis in a participant's TSP account will be adjusted to reflect the repayment of a taxed loan.

(3) If a participant does not repay a taxed loan:

(i) His or her account balance will be permanently reduced; and

(ii) The taxed loan will count as one of the two loans the participant is permitted per account and is treated as an outstanding loan balance when

calculating the participant's maximum loan amount.

(b) The TSP record keeper will ensure that all requirements set forth in section 72(p) of the Internal Revenue Code and the regulations promulgated thereunder with respect to loan offsets are satisfied.

(1) The TSP record keeper will declare a loan offset in the following situations:

(i) A participant separates from Government service and does not begin making loan repayments or repay the outstanding loan principal and interest in full within the period specified by the notice to the participant from the TSP record keeper explaining the participant's repayment options; or

(ii) The participant dies.

(2) [Reserved]

(c) If a deemed distribution or loan offset occurs in accordance with paragraph (a) or (b) of this section, as applicable, the TSP record keeper will notify the participant of the amount and date of the distribution. The TSP record keeper will report the distribution to the Internal Revenue Service as income for the year in which it occurs.

(d) If a participant dies and a loan offset occurs in accordance with paragraph (b) of this section, the TSP record keeper will notify the participant's estate of the amount and date of the distribution. Neither the estate nor any other person, including a beneficiary, may repay the loan of a deceased participant, nor can the funds be returned to the TSP.

(e) If, because of Board or TSP record keeper error, a TSP loan is declared a deemed distribution or loan offset under circumstances that make such a declaration inconsistent with this part, or inconsistent with other procedures established by the Board or TSP record keeper in connection with the TSP loan program, the distribution will be reversed. The participant will be provided an opportunity to reinstate loan payments or repay in full the outstanding balance on the loan.

■ 126. Revise § 1655.16 to read as follows:

§ 1655.16 Reamortization.

(a) When a participant's pay cycle changes for any reason, he or she must notify the TSP record keeper of the change in the form and manner prescribed by the TSP record keeper. Upon notification, the participant's loan will be reamortized to adjust the scheduled payment to an equivalent amount in the new pay cycle. If the new pay cycle results in fewer payments per year and the participant does not reamortize the loan, the loan may be

declared a taxable distribution pursuant to § 1655.15(a)(3).

(b) Upon reamortization, the outstanding principal balance remains the same. Any accrued interest is paid off first before payments are applied to principal and current interest.

(c) The interest rate on a reamortized loan will be the same as the interest rate on the original loan.

■ 127. Revise § 1655.17 to read as follows:

§ 1655.17 Prepayment.

(a) A participant may repay a loan in full, without a penalty, at any time before the declaration of a deemed distribution or loan foreclosure under § 1655.15. Repayment in full means receipt by the TSP record keeper of a payment, by check or guaranteed funds made payable to the Thrift Savings Plan or via loan direct debit repayments, of all principal and interest due on the loan.

(b) If a participant returns a loan check to the TSP record keeper, it will be treated as a repayment; however, additional interest may be owed, which, if not paid, could result in a deemed distribution. The loan, even though repaid, will also be taken into account in determining the maximum amount available for future loans, in accordance with § 1655.6(b).

(c) The amount outstanding on a loan can be obtained from the TSP website, the ThriftLine, or by a written request to the TSP record keeper.

■ 128. Amend § 1655.18 by revising paragraph (d) to read as follows:

§ 1655.18 Spousal rights.

* * * * *

(d) *Certification of truthfulness.* By completing a loan request, the participant certifies, under penalty of perjury, that all information provided to the TSP record keeper during the loan process is true and complete, including statements concerning the participant's marital status, the spouse's email or physical address at the time the application is filed, or the current spouse's consent to the loan.

■ 129. Revise § 1655.20 to read as follows:

§ 1655.20 Residential loans.

(a) A residential loan will be made only for the purchase or construction of the primary residence of the participant, or for the participant and his or her spouse, and for the amount required to close on the purchase. The participant must actually bear all or part of the cost of the purchase. If the participant purchases a primary residence with someone other than his or her spouse,

only the portion of the purchase costs that is borne by the participant will be considered in making the loan. A residential loan will not be made for the purpose of paying off an existing mortgage or otherwise providing financing for a previously purchased primary residence.

(b) The participant's primary residence is his or her principal residence. A primary residence may include a house, a townhouse, a condominium, a share in a cooperative housing corporation, or a mobile home; a primary residence does not include a second home or vacation home. A participant cannot have more than one primary residence.

(c) Purchase of a primary residence means acquisition of the residence through the exchange of cash or other property or through the total construction of a new residence. A residential loan will not be made for a lease-to-buy option, unless the option to buy is being exercised and the documentation states that the funds are being used to purchase the primary residence. Construction of an addition to or the renovation of a residence or the purchase of land only does not constitute the purchase of a primary residence.

(d) The amount required to close on the purchase of a primary residence does not include points or loan origination fees charged for a loan. In addition, real estate taxes cannot be included.

(e) The documentation required for a loan under this section is as follows:

(1) For all purchases, except for construction, a signed sale/purchase contract/settlement offer or agreement or addendum; or

(2) For construction, a signed builder's agreement/contract; and

(3) For requests including closing costs and/or settlement charges, a loan estimate/worksheet/statement/closing disclosure from a mortgage company.

(f) The documentation provided under this section must meet the requirements set forth by the TSP record keeper.

■ 130. Revise § 1655.21 to read as follows:

§ 1655.21 Loan fee.

The TSP will charge a participant a \$50.00 loan fee when it disburses a general purpose loan and a \$100.00 loan fee when it disburses a residential loan and will deduct the applicable fee from the proceeds of the loan.

PART 1690—THRIFT SAVINGS PLAN

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

Authority: 5 U.S.C. 8474.

- 132. Amend § 1690.1 as follows:
- a. Remove the definitions of “Account or individual account” and “Account balance”;
- b. Remove the definition of “Agency Automatic (1%) Contributions” and add in its place a definition for “Agency automatic (1%) contributions”;
- c. Remove the definition of “Contribution allocation”;
- d. Revise the definitions of “Employer contributions” and “In-service withdrawal request”;
- e. Add in alphabetical order definitions for “Investment election”, “L Fund”, and “Post-employment distribution request”;
- f. Revise the definitions of “Post-employment withdrawal request” and “Roth balance”, paragraph (1)(iii) of the definition of “Roth initiation”, the definitions of “Separation from Government service” and “Source of contributions”, paragraph (1) of the definition of “Tax-deferred balance”, and the definition of “Traditional balance”;
- g. Remove the definition of “Trustee-to-trustee transfer or transfer”;
- h. Add in alphabetical order a definition for “TSP core fund”;
- i. Remove the definition of “TSP Fund”;
- j. Revise the definition of “TSP record keeper”; and
- k. Remove the definition of “TSP website” and add a definition for “TSP website” in its place.

The revisions and additions read as follows:

§ 1690.1 Definitions.

* * * * *

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3). It also includes service automatic (1%) contributions made under 5 U.S.C. 8440e(e)(3)(A).

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2). It also includes service matching contributions under 5 U.S.C. 8440e(e)(3)(B).

* * * * *

Employer contributions means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1), 8432(c)(3), or 5 U.S.C. 8440e(e)(3)(A) and agency matching contributions under 5 U.S.C. 8432(c)(2) or 5 U.S.C. 8440e(e)(3)(B).

* * * * *

In-service withdrawal request means a properly completed withdrawal election for either an age-based in-service withdrawal under 5 CFR 1650.41 or a financial hardship in-service withdrawal under 5 CFR 1650.42.

Investment election means the participant’s apportionment of his or her future contributions, loan payments, and rollovers from eligible employer plans or traditional IRAs among the TSP core funds.

L Fund means the Lifecycle Funds described in 5 CFR part 1601, subpart E.

Post-employment distribution request means a properly completed distribution withdrawal election under 5 CFR 1650.24.

* * * * *

Roth balance means the sum of:

(1) Roth contributions and associated earnings; and

(2) Amounts rolled over to the TSP from a Roth account maintained by an eligible employer plans and earnings on those amounts.

* * * * *

Roth initiation date * * *

(1) * * *
(iii) The date used, by a plan from which the participant directly rolled over Roth money into the TSP, to measure the participant’s Roth 5 year non-exclusion period.

* * * * *

Separation from Government service means generally the cessation of employment with the Federal Government. For civilian employees it means termination of employment with 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 60 or more full calendar days. For uniformed services members, it means the discharge from active duty or the Ready Reserve or the transfer to inactive status or to a retired list pursuant to any provision of title 10 of the United States Code. The discharge or transfer may not be followed, before the end of the 60-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.

* * * * *

Source of contributions means traditional contributions, Roth contributions, agency automatic (1%) contributions, or agency matching contributions. All amounts in a participant’s account are attributed to one of these four sources. Catch-up contributions, rollovers, and loan payments are included in the traditional contribution source or the Roth contribution source.

* * * * *

Tax-deferred balance * * *

(1) All contributions and rollovers in a participant’s traditional balance that would otherwise be includible in gross income if paid directly to the participant and earnings on those amounts; and

* * * * *

Traditional balance means the sum of:

- (1) Tax-deferred contributions and associated earnings;
- (2) Tax-deferred amounts rolled over into the TSP and associated earnings;
- (3) Tax-exempt contributions and associated earnings;
- (4) Agency matching contributions and associated earnings;
- (5) Agency automatic (1%) contributions and associated earnings.

* * * * *

TSP core fund means an investment fund established pursuant to 5 U.S.C. 8438(b)(1)(A)–(E) and (c)(2).

TSP record keeper means the entities the Board engages to perform record keeping and administration services for the Thrift Savings Plan.

TSP website means the internet location(s) maintained by the TSP and/or its record keeper, which contain(s) information about the TSP and by which TSP participants may, among other things, access their accounts by computer.

* * * * *

■ 133. Revise § 1690.12 to read as follows:

§ 1690.12 Power of attorney.

(a) A participant or beneficiary can appoint an agent to conduct business with the TSP on his or her behalf by using a power of attorney (POA). The agent is called an attorney-in-fact. The TSP record keeper must approve a POA before the agent can conduct business with the TSP; however, the TSP record keeper will accept a document that is signed by the agent before the TSP record keeper approved the POA. The TSP record keeper will approve a POA if it meets the following conditions:

- (1) The POA must give the agent either general or specific powers, as explained in paragraphs (b) and (c) of this section;

(2) The POA must be signed by the participant;

(3) The POA must provide the names and addresses of the participant and the agent;

(4) The POA must meet the state law requirements of the participant's state of domicile as determined by the address on file with the TSP record keeper;

(5) The POA must be a complete document; and

(6) The POA must be submitted to the TSP recordkeeper for approval.

(b) A general POA gives an agent unlimited authority to conduct business with the TSP, including the authority to sign any TSP-related document.

Additional information regarding general powers of attorney can be accessed at <https://www.tsp.gov>.

(c) A specific power of attorney gives an agent the authority to conduct specific TSP transactions. A specific POA must expressly describe the authority it grants. Additional information regarding specific powers of attorney, as well as a sample form, can be accessed at <https://www.tsp.gov>.

■ 134. Revise § 1690.13 to read as follows:

§ 1690.13 Guardianship and conservatorship orders.

(a) A court order can authorize an agent to conduct business with the TSP on behalf of an incapacitated participant or beneficiary. The agent is called a guardian or conservator and the incapacitated person is called a ward. The TSP record keeper must approve a court order before an agent can conduct business with the TSP; however, the TSP record keeper will accept a document that was signed by the agent

before the TSP record keeper approved the court order. The TSP record keeper will approve a court order appointing an agent if the following conditions are met:

(1) A court of competent jurisdiction (as defined at § 1690.1) must have issued the court order;

(2) The court order must give the agent either general or specific powers, as explained in paragraphs (b) and (c) of this section; and

(3) The agent must demonstrate that he or she meets any precondition specified in the court order, such as a bonding requirement.

(b) A general grant of authority gives a guardian or conservator unlimited authority to conduct business with the TSP, including the authority to sign any TSP-related document. By way of example, an order gives a general grant authority by appointing a “guardian of the ward’s estate,” by permitting a guardian to “conduct business transactions” for the ward, or by authorizing a guardian to care for the ward’s “personal property” or “Federal Government retirement benefits.”

(c) A specific grant of authority gives a guardian or conservator authority to conduct specific TSP transactions. Such an order must expressly describe the authority it grants. By way of example, an order may authorize an agent to “obtain information about the ward’s TSP account” or “borrow or withdraw funds from the ward’s TSP account.”

■ 135. Amend § 1690.14 by revising paragraph (b) to read as follows:

§ 1690.14 Checks made payable to the Thrift Savings Plan.

* * * * *

(b) *TSP payment address.* The TSP record keeper has established an address for the receipt of specified TSP payments. The TSP record keeper will not answer correspondence mailed to that payment address.

■ 136. Revise § 1690.15 to read as follows:

§ 1690.15 Freezing an account—administrative holds.

(a) The TSP record keeper may freeze (e.g., place an administrative hold on) a participant’s account for any of the following reasons:

(1) Pursuant to a qualifying retirement benefits court order as set forth in part 1653 of this chapter;

(2) Pursuant to a request from the Department of Justice under the Mandatory Victims Restitution Act;

(3) Upon the death of a participant;

(4) Upon suspicion or knowledge of fraudulent account activity or identity theft;

(5) In response to litigation pertaining to an account;

(6) For operational reasons (e.g., to correct a processing error or to stop payment on a check when account funds are insufficient);

(7) Pursuant to a written request from a participant made in the manner prescribed by the TSP record keeper; and

(8) For any other reason necessary to ensure the integrity of TSP accounts or compliance with law.

(b) [Reserved]

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