

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

**5 CFR Parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1650, 1651, 1653, 1655, 1690**

**Employee Elections To Contribute to the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds From the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous**

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

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the Board's regulations to reflect the processes and terminology of the Thrift Savings Plan's (TSP) new record keeping system, to codify several policy decisions related to the implementation of this new system, to permit the making of catch-up contributions by TSP participants who are age 50 and over, and to add new methods of post-employment withdrawals. This rule also will allow participants more options and greater flexibility with which to manage their TSP accounts.

**EFFECTIVE DATE:** This interim rule is effective June 13, 2003.

**ADDRESSES:** Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Board's FAX is (202) 942-1676.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Forrest on (202) 942-1659, or Merritt A. Willing on (202) 942-1666.

**SUPPLEMENTARY INFORMATION:** The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP

participant's account are held in trust for the participant.

Congress amended FERSA in 1996 by enacting the Thrift Savings Plan Act of 1996, Public Law 104-208, 110 Stat. 3009, which permitted the Executive Director to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system.

Thus, the Executive Director is amending the TSP regulations that will be affected by the implementation of the new record keeping system. As explained below, the final rule also adopts uniform definitions, eliminates obsolete regulations, and reorganizes various sections of the regulations to make them more easily understood.

The Board published these regulations in proposed form in the **Federal Register** (67 FR 42856) on June 25, 2002. The Board received no comment on the proposed rule.

After the Board published the proposed regulations, Congress amended FERSA to permit participants who are age 50 and older to make supplemental contributions to the TSP called "catch-up" contributions. See Federal Thrift Savings Plan Catch-up Contributions Act, Public Law 107-304, 116 Stat. 2363 (November 27, 2002). The Board will offer qualified participants the opportunity to make these catch-up contributions in the second half of 2003. Therefore, on April 4, 2003, the Board published a notice of proposed rulemaking in the **Federal Register** (68 FR 16449), proposing to amend the Board's regulations to permit these contributions. The April 4 notice also proposed additional changes to the Board's regulations to accommodate the operation of the new record keeping system. The Board received no comment on this notice.

Accordingly, the Board is adopting the June 25, 2002, proposed rule as an interim rule with a few substantive revisions, which are described below.

### Catch-Up Contributions

The Federal Thrift Savings Plan Catch-up Contributions Act amended 5 U.S.C. 8351(b), 8432(a), and 8440f(a) to authorized TSP participants who are age 50 or older to make additional TSP contributions. These additional contributions exceed the amount the participant could otherwise make by law and are known as "catch-up contributions." Congress' initial reason for permitting these contributions was to allow participants to catch up for

years when they were not employed, took time away from work to raise a family, or were otherwise unable to contribute their retirement plans. Congress later decided to allow anyone age 50 or over to make these contributions, but, nevertheless, retained the name "catch-up." Thus, "catch-up" contributions are supplemental contributions from taxable basic pay made by TSP participants who are age 50 and over. These contributions exceed the maximum that a participant could make by law. This interim rule adds a new paragraph (b) to § 1600.22 to explain how eligible participants can make these catch-up contributions.

Specifically, a participant is eligible to make catch-up contributions as long as he or she is: (1) At least 50 years of age during the calendar year (even if the participant's birthday is December 31, of that year); and (2) currently contributing the maximum amount allowed according to the TSP percentage of basic pay limitations, or the Internal Revenue Code elective deferral limit.

In addition, under 5 U.S.C. 8351(b), 8432(a) and 8440f(a), TSP catch-up contributions must be made from basic pay. Therefore, members of the uniformed services may not make catch-up contributions from special, bonus, or incentive pay. In addition, TSP catch-up contributions must comply with section 414(v) of the Internal Revenue Code (26 U.S.C. 414(v)), which requires catch-up contributions to be elective deferrals. Because elective deferrals are, by definition, made from taxable pay, the law also does not allow members of the uniformed services to make catch-up contributions from tax-exempt basic pay (for example, from the basic pay that is fully exempt due to service in a combat zone). Finally, catch-up contributions are not eligible for agency matching contributions. See 5 U.S.C. 8432(c)(2); 37 U.S.C. 211(d).

### Breakage

The TSP will credit late contributions, and in some cases makeup contributions, with the investment gains and losses they would have earned had the contributions been timely made. The loss incurred or the gain realized on late or makeup contributions is called "breakage." The proposed rule explains how breakage will be computed after implementation of the new record keeping system, with one exception.

Specifically, the proposed rule states that late contributions (and some makeup contributions) will be credited with breakage based on the contribution allocation for the participant's account at the time the contributions should