

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**5 CFR Part 1620****Thrift Savings Plan; Continuation of Eligibility**

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 publishing interim regulations concerning the eligibility of certain individuals to have make-up contributions credited to their Thrift Savings Plan (TSP) accounts and, in certain cases, restore withdrawn funds and reestablish loan accounts. Section 4 of the Uniformed Services Employment and Reemployment Rights Act amends Title 5 of the United States Code to add a new section 8432b that addresses TSP benefits that apply to any Federal employee whose release from military service, discharge from hospitalization related to that service, or other similar event making the individual eligible to seek restoration from leave-without-pay status or reemployment under 38 U.S.C. Chapter 43, occurs on or after August 2, 1990. This interim rule governs retroactive participation in the TSP by these employees.

DATES: The interim rule is effective August 2, 1990. Comments must be received by June 21, 1995.

ADDRESSES: Comments may be sent to: John J. O'Meara, Federal Retirement Thrift Investment Board, 1250 H Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara (202) 942-1660.

SUPPLEMENTARY INFORMATION: These regulations are being given retroactive effect to August 2, 1990, in order to provide eligible employees an opportunity to seek and obtain TSP benefits from the effective date of Public Law 103-353.

These regulations include provisions to ensure that all employees are given the opportunity to make up any TSP contributions that were not made to their TSP accounts because they separated (or were in a leave-without-pay status) from Federal civilian employment to perform military service. Employing agencies are required to deposit the appropriate amount of Agency Matching Contributions to the accounts of those employees covered by the Federal Employees' Retirement System (FERS) who elect to make up missed contributions. In addition,

employing agencies are required to deposit to the accounts of eligible FERS employees an amount equal to one percent of their basic pay for the retroactive period. Subject to *de minimis* rules, lost earnings will also be paid by the employing agencies on retroactive agency contributions that are reported for investment.

Employing agencies are required to notify the TSP recordkeeper if an employee's Agency Automatic (1%) Contributions and associated earnings were forfeited because the employee was not vested when he or she separated to perform military service. The employing agency will request that these funds be restored.

Employees who are subject to the TSP automatic cashout provisions (those employees whose account balances were \$3,500 or less) and employees who separated without eligibility for retirement benefits and prior to March 1995 withdrew amounts greater than \$3,500, may elect to have the separation for military service treated as if it had never occurred. These employees will be allowed to return amounts to the Thrift Savings Plan that represent the full amount of the withdrawal. In addition, in certain cases, if a taxable distribution was declared on a Thrift Savings Plan loan and the employee returns the full amount of the withdrawal to the Thrift Savings Plan, the taxable distribution that was declared on a Thrift Savings Plan loan may be reversed. In this case, the employee will be able to resume regular loan payments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only Federal employees who leave, or have left, Federal civilian service to perform military service and have, under certain conditions, returned to Federal civilian service.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the Paperwork Reduction Act.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. It is necessary for these regulations to be effective as of August 2, 1990, which is the day on which employees eligible under the regulations

were first eligible to obtain retroactive Thrift Savings Plan benefits.

List of Subjects in 5 CFR Part 1620

Employee benefit plans, Government employees, Retirement, Pensions.

Dated: April 13, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

Accordingly, 5 CFR Part 1620 is amended as follows:

PART 1620—CONTINUATION OF ELIGIBILITY

1. The authority citation for Part 1620 is revised to read as follows:

Authority: 5 U.S.C. 8474 and 8432b; Pub. L. 99-591, 100 Stat. 3341; Pub. L. 100-238, 101 Stat. 1744; Pub. L. 100-659, 102 Stat. 3910.

2. Part 1620 is amended by adding subpart H, consisting of §§ 1620.100 through 1620.107, to read as follows:

Subpart H—Military Service

Sec.

- 1620.100 Scope.
- 1620.101 Definitions.
- 1620.102 Processing contribution elections.
- 1620.103 Processing lost earnings.
- 1620.104 Agency payments to recordkeeper; agency ultimately responsible.
- 1620.105 Restoring forfeited Agency Automatic (1%) Contributions.
- 1620.106 Returning withdrawals.
- 1620.107 Agency responsibilities.

Subpart H—Military Service**§ 1620.100 Scope.**

(a) *General.* To be covered by this subpart, an employee must have:

(1) Been separated from Federal civilian service or entered leave-without-pay status in order to perform military service;

(2) Been reemployed; and

(3) Become eligible to seek reemployment by virtue of a release from military service, discharge from hospitalization, or other similar event that occurred on or after August 2, 1990.

(b) *Other rules.* Except as provided in this part, the rules governing contributions to the TSP set forth in 5 CFR Part 1600 will apply to persons reemployed under this subpart.

§ 1620.101 Definitions.

As used in this subpart:

(a) *Basic pay* has one of two meanings:

(1) For the portion of the retroactive period when an employee did not receive a Federal civilian salary, the rate of basic pay is that which would have been payable to the employee if the

employee had remained continuously employed in the position which he or she last held before separating (or entering leave-without-pay status) to perform military service;

(2) For the portion of the retroactive period that occurs after the employee is reemployed, his or her actual basic pay will be used to calculate contributions.

(b) *Current contributions* means those contributions that are made prospectively for any pay period after the employee has been reemployed.

(c) *Employee* means any Federal employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under 38 U.S.C. chapter 43 occurs on or after August 2, 1990.

(d) *Leave-without-pay* means a temporary nonpay status and absence from duty (including military furlough) to perform military service.

(e) *Recordkeeper* means the organization designated by the Federal Retirement Thrift Investment Board as the Thrift Savings Plan's recordkeeper.

(f) *Reemployed or reemployment* means reemployed in (or restored to) a position pursuant to 5 U.S.C. chapter 43, which is subject to 5 U.S.C. chapter 84 or which entitles the employee to contribute to the Thrift Savings Plan pursuant to 5 U.S.C. 8351.

(g) *Retroactive period* means the period for which an employee is entitled to make up missed Employee Contributions and to receive retroactive Agency Automatic (1%) Contributions and Agency Matching Contributions.

(1) *Beginning of retroactive period.* For an employee who was eligible to make contributions when military service began, the retroactive period begins on the date following the effective date of separation or, in the case of leave-without-pay, the date the employee enters leave-without-pay status. For an employee who was not eligible to make contributions when military service began, the retroactive period begins on the first day of the first pay period in the election period during which the employee would have been eligible to make contributions had the employee remained in Federal civilian service.

(2) *End of retroactive period.* The retroactive period ends on the earlier of the following two dates: the date before the first day of the first election period during which a contribution election could have been made effective after reemployment, or the last day of the pay period before the pay period during which routine current contributions are begun after the employee is reemployed (or restored). If an employee who was

making contributions when he or she separated elects not to make routine current contributions, the ending date of the retroactive period is the last day of the pay period during which the employee elects to terminate contributions.

(h) *Separation or separated* means the period an employee was separated from Federal civilian service (or entered a leave-without-pay status) in order to perform military service.

§ 1620.102 Processing contribution elections.

(a) *Current contribution elections.* Immediately upon reemployment, an employee's agency will give an eligible employee the opportunity to submit a contribution election form (Form TSP-1) to make current contributions. The effective date of the current Form TSP-1 will be the first day of the first full pay period in the most recent TSP election period. If the employee is reemployed during a TSP Open Season but before the election period, he or she can also submit an election form that will become effective the first day of the first full pay period in the following election period.

(b) *Retroactive contribution elections.* (1) An employee has the following options for making retroactive contributions:

(i) If the employee had a valid contribution election form (Form TSP-1) on file when he or she separated, that election form will be reinstated for purposes of retroactive contributions upon the employee's reemployment, unless a new contribution election form is submitted to terminate all retroactive contributions or those contributions that would have been made from the date of separation through the end of the Open Season that occurred immediately after the separation.

(ii) Instead of making the contributions for the retroactive period under the reinstated contribution election form, the employee may submit a new election form for any Open Season that occurred during the retroactive period. However, the allocation election on each Form TSP-1 for the retroactive period must be the same as the allocation election on the current Form TSP-1.

(2) An employee who terminated contributions within two months before entering military service will be eligible to make a retroactive contribution election effective for the first Open Season that occurs after the effective date that the contributions were terminated. This election may be made even if the termination was made outside of an Open Season.

(3) Employees may not make any retroactive contributions that will cause them to exceed the Internal Revenue Service's elective deferral limit. If an employee's current contributions, when added to the make-up contributions, will exceed the annual elective deferral limit, the employing agency must suspend the make-up contributions in accordance with 5 CFR 1605.2(b)(2)(ii).

§ 1620.103 Processing lost earnings.

(a) *Agency Automatic (1%) Contributions.* Subject to the *de minimis* rules in 5 CFR part 1606, employing agencies are required to pay lost earnings on the Agency Automatic (1%) Contributions that are made for the retroactive period.

(b) *Agency Matching Contributions.* Subject to the *de minimis* rules in 5 CFR part 1606, employing agencies are required to pay lost earnings for the agency contributions that match make-up Employee Contributions.

(c) *Make-up Employee Contributions.* Employing agencies may not pay lost earnings for make-up Employee Contributions associated with the retroactive period.

(d) *Lost earnings calculation.* Lost earnings will be calculated on all retroactive agency contributions using the rates of return for the Government Securities Investment Fund (G Fund), unless the employee submitted one or more interfund transfer requests during the period of separation. In the case of interfund transfer requests, the earnings will be calculated using the G Fund rates of return until the first interfund transfer was processed. The contribution that is subject to lost earnings will be moved to the investment fund(s) the employee requested and lost earnings will be calculated based on the earnings for that fund(s). The amount of lost earnings calculated will be posted to the investment fund(s) to which the contribution was moved. If there were no interfund transfers processed during the lost earnings calculation period, the amount of lost earnings calculated will be posted to the employee's G Fund account.

§ 1620.104 Agency payments to recordkeeper; agency ultimately chargeable.

(a) *Agency making payments to recordkeeper.* The current employing agency will always be the agency responsible for making payments to the recordkeeper for all contributions (both employee and agency) and lost earnings, regardless of whether some of that expense is ultimately chargeable to a prior employing agency.

(b) *Agency ultimately chargeable with expense.* The agency ultimately chargeable with the expense of agency contributions and lost earnings attributable to the retroactive period is ordinarily the agency that reemployed the employee. However, if an employee changed agencies during the period between the date of reemployment and October 13, 1994, the employing agency as of October 13, 1994, is the agency ultimately chargeable with the expense.

(c) *Reimbursement by agency ultimately chargeable with expense.* If the agency that made the payments to the recordkeeper for agency contributions and lost earnings is not the agency ultimately chargeable with that expense, the agency that made the payments to the recordkeeper may, but is not required to, obtain reimbursement from the agency ultimately chargeable with the expense.

§ 1620.105 Restoring forfeited Agency Automatic (1%) Contributions.

If an employee's Agency Automatic (1%) Contributions were forfeited because the employee was not vested when he or she separated to perform military service, the employee must notify the employing agency that a forfeiture occurred. Employing agencies will submit a written request to the recordkeeper to restore any Agency Automatic (1%) Contributions that were forfeited from an employee's account because he or she was not vested at the time the employee separated to perform military service.

§ 1620.106 Returning withdrawals.

(a) *General.* Employees who are subject to the TSP automatic cashout provisions (employees whose account balances were \$3,500 or less) and employees who separated without eligibility for retirement benefits and prior to March 1995 withdrew amounts greater than \$3,500, may elect to have the separation for military service treated as if it had never occurred. These employees will be allowed to return amounts to the Thrift Savings Plan that represent the full amount of the withdrawal. Eligible employees must notify the recordkeeper by April 21, 1996, or one year from the date of reemployment, whichever is later, of their intent to return the withdrawn funds.

(b) *Documentation.* An eligible employee who elects to return the full amount of a withdrawal under this

section must provide documentation of reemployment to the recordkeeper. The recordkeeper will notify the employee of the amount of funds to be returned and the deadline for making that payment. The employee must provide the funds in a single payment to the recordkeeper within 90 days after the recordkeeper sends the employee the notice advising of the amount and procedures for returning the funds.

(c) *Earnings.* Employees will not receive retroactive earnings on any amounts withdrawn that they later return to their accounts.

(d) *Taxable distribution reversed.* Employees who return withdrawn funds under this section may be eligible to have a taxable distribution associated with a loan reversed. At the time the recordkeeper notifies the employee of the amount required to return the withdrawn funds, it will notify the employee whether he or she is eligible to have a taxable distribution reversed.

§ 1620.107 Agency responsibilities.

(a) *General.* Each employing agency must establish procedures for implementing these regulations. These procedures must at a minimum, require agency personnel to identify and notify eligible employees concerning their options under these regulations and tell them the time period within which those options must be exercised. For employees who are reemployed on or after August 2, 1990, and before April 21, 1995, the agency must perform these functions by June 20, 1995. For employees who are reemployed on or after April 21, 1995, employing agencies must perform these functions within 60 days of the employee's reemployment. An employee must submit a written request to the employing agency to make up Employee Contributions for the retroactive period on or before April 21, 1996, or one year from the date the employee was reemployed, whichever is later, or forfeit the right to make up these contributions.

(b) *Agency records; procedure for reimbursement.* The agency that is making the payments to the recordkeeper for all contributions (both employee and agency) and lost earnings will obtain from prior employing agencies whatever information is necessary in order to make accurate payments. If a prior employing agency is ultimately chargeable under § 1620.104(b) for all or part of the

expense of agency contributions and lost earnings, the agency making the payments to the recordkeeper will determine the procedure to follow in order to collect amounts owed to it by the agency ultimately chargeable with the expense.

(c) *Payment schedule; matching contributions report.* Agencies will, with the employee's consent, prepare a payment schedule for making retroactive Employee Contributions. In addition, the employing agencies will calculate the Agency Matching Contributions that will be reported for investment to the recordkeeper in equal installments for each pay period covered by the payment schedule. The employing agency may impose limits on the maximum amount of time during which an employee may make up the missed contributions. This maximum amount of time may be no less than two times and no more than four times the number of pay periods that were covered by the period of missed contributions. An employee may decide to terminate the make-up contributions; however, such a decision is irrevocable.

(d) *Agency Automatic (1%) Contributions.* Employing agencies must calculate the Agency Automatic (1%) Contributions for all reemployed FERS employees, report these contributions to the recordkeeper, and submit lost earnings records to cover the retroactive period by June 20, 1995, or 60 days from the date of reemployment, whichever is later.

(e) *Forfeiture restoration.* When notified by an employee that a forfeiture of the Agency Automatic (1%) Contributions occurred after the employee separated to perform military service, the employing agency must submit a written request to the recordkeeper to restore these funds.

(f) *Thrift Savings Plan Service Computation Date.* The agencies must review the Thrift Savings Plan Service Computation Date for all reemployed Federal Employees' Retirement System employees for purposes of crediting military service performed during the separation period. If the period of military service has not been credited, the agency must submit a corrected Thrift Savings Plan Service Computation Date to the recordkeeper.

[FR Doc. 95-9606 Filed 4-20-95; 8:45 am]

BILLING CODE 6760-01-M