

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD****5 CFR Part 1620****Thrift Savings Plan Participation for Certain Employees of the District of Columbia Financial Responsibility and Management Authority**

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

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

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board is publishing interim regulations to implement section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Act). Under this Act, persons who separate from Federal employment and who are employed within two months by the District of Columbia Financial Responsibility and Management Authority may elect to participate in the Federal retirement system in which they last participated before separating from Federal service. These regulations address participation in the Thrift Savings Plan (TSP) by eligible employees who elect Federal retirement coverage. They do not apply to eligibility to participate in retirement programs administered by the Office of Personnel Management (OPM).

**DATES:** This interim rule is effective January 29, 1996. Comments must be received on or before March 29, 1996.

**ADDRESSES:** Comments may be sent to: Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, D.C. 20005.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Forrest, (202) 942-1662.

**SUPPLEMENTARY INFORMATION:** The Federal Retirement Thrift Investment Board (Board) administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99-335, 100 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401-8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code.

The District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Act), Pub. L. 104-8, section 101, 109 Stat. 97, 100, established the District of Columbia Financial Responsibility and Management Assistance Authority (Authority) as an entity within the

Government of the District of Columbia. The Act provides that individuals who commence employment with the Authority within two months of separating from Federal service may elect to retain their participation in the "retirement system in which the individual last participated before so separating \* \* \*." *Id.*, section 102(e)(1)(A), 109 Stat. at 102. Although this language is not explicit with respect to the TSP, the Act contemplates TSP participation because the TSP is a component of the Federal Employees' Retirement System (FERS) and the Civil Service Retirement System (CSRS).

Section 1653.113 of these interim regulations provides that the Authority must notify an employee of his or her right to participate in the TSP at the time the employee is required to be notified of his or her right to elect Federal retirement coverage. Because the TSP is an important part of the Federal employee's total retirement package, an employee should be advised of eligibility for TSP participation in order to make an educated decision whether to elect Federal retirement coverage.

Section 1620.114 provides that some employees may be eligible to contribute to the TSP immediately upon employment with the Authority, while others would be eligible to participate in the TSP during subsequent TSP open seasons.

Section 1620.114(a) pertains to employees who leave Federal service and are employed by the Authority with a break in service of less than 31 full calendar days. These employees are treated as though they transferred from one Federal agency to another with no break in service. Therefore, if such an employee had a valid TSP contribution election in effect on the date the employee separated from the Federal service, the employee's contributions to the TSP will continue without interruption pursuant to the election that was in effect upon separation. If such an employee was eligible to participate in the TSP prior to separation but did not have a valid TSP election in effect on the date that he or she separated from the Federal service, the employee will be eligible to contribute to the TSP during the first open season beginning after the date he or she commences employment with the Authority. If such an employee was not previously eligible to participate in the TSP, the employee will become eligible during the second open season beginning after the date he or she began to work for the Federal Government, not with the Authority.

Section 1620.114(b) pertains to employees who were separated from Federal service for 31 or more full calendar days but less than 2 months before they were employed by the Authority. Section 1620.114(b)(1) provides that if such an employee was previously eligible to participate in the TSP, he or she will be eligible to contribute to the TSP during the first open season beginning after the date he or she is employed by the Authority. Section 1620.114(b)(2) provides that if the employee was not previously eligible to participate in the TSP, he or she will be eligible to contribute to the TSP during the second open season beginning after the date he or she is employed by the Authority.

Section 1620.114(b)(3) provides that if an employee covered under section 1620.114(b)(1) or (b)(2) commences employment with the Authority during an open season but before the election period (the last month of the open season), that open season is considered the employee's first open season.

These rules are applied in the following examples:

**Example Number 1:** Assume an employee leaves Federal service and 40 days later, on December 15, 1995 (which is during an open season), commences employment with the Authority. Assume also that the employee elects retirement coverage under CSRS. Assume further that the employee was eligible to contribute to the TSP at the time she separated from the Federal agency. Because she commenced employment with the Authority after 31 or more full calendar days, but within 2 months after separating from Federal service, section 1620.114(b) applies. Because she previously was eligible to contribute to the TSP, section 1620.114(b)(1) applies. Therefore, the employee is eligible to contribute to the TSP during the first open season beginning after the date the employee commenced employment with the Authority. Furthermore, because the employee was hired during a TSP open season, but not during the last month of an open season, section 1620.114(b)(3) provides that the open season during which she commences employment with the Authority is her first open season. Accordingly, the employee would be eligible to contribute to the TSP beginning in the first full pay period in January 1996. (Note that under section 1620.115(a), if the employee was covered by FERS, she would be entitled to Agency Automatic (1%) Contributions beginning in the first full pay period in January 1996, whether or not she elected to contribute to the TSP; and that she would be entitled to

matching contributions if she did elect to contribute.)

Example Number 2: Assume an employee begins working for the Federal Government on February 28, 1995, and is recruited by the Authority to begin working on October 30, 1995. Assume further that the employee separates from Federal service one week before commencing service with the Authority, and that he elects continued retirement coverage under FERS once he starts working for the Authority. Because he commenced employment with the Authority with less than a 31 day break in service, 1620.114(a) applies. Because he was not previously eligible to contribute to the TSP, section 1620.114(a)(3) applies and provides that he is eligible to contribute to the TSP during the second open season beginning after the date he first began working for the Federal Government. The employee's first open season was the May 15, 1995, to July 31, 1995, open season, during which he was employed by the Federal Government. His second open season is the November 15, 1995, to January 31, 1996, open season, during which he will be employed by the Authority. Therefore, the employee can contribute to the TSP in the first full pay period in January 1996. (Also note that under section 1620.115(a), because the employee is covered by FERS, he would be entitled to Agency Automatic (1%) Contributions beginning in the first full pay period in January 1996, whether or not he elected to contribute; and that he would be entitled to matching contributions if he did elect to contribute.)

Section 1620.117 provides that an employee of the Authority who elects Federal retirement coverage must notify the TSP recordkeeper that he or she has commenced employment with the Authority if the employee separated from Federal service with an outstanding TSP loan. It may be possible for such employees to continue their TSP loan payments and thereby avoid repaying in full or having a taxable distribution declared, if their loan payments resume before their loan accounts are closed.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will affect only a small number of former Federal employees and a single agency of the Government of the District of Columbia.

#### Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the

criteria of the Paperwork Reduction Act of 1980.

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

Under 5 U.S.C. 553 (b)(3)(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. Elections made under these regulations will affect qualifying employees' participation in the TSP retroactive to their entry on duty with the Authority. The intent of the legislation is to allow eligible employees to participate in the TSP as soon as practicable. A delay in the effective date of these regulations would be contrary to the intent of the legislation and to the public interest because it would delay the election opportunity for eligible employees during the initial staffing of the Authority.

#### Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

#### List of Subjects in 5 CFR Part 1620

District of Columbia, Employment benefit plans, Government employees, Retirement, Pensions.  
Federal Retirement Thrift Investment Board.  
Roger W. Mehle,  
*Executive Director.*

For the reasons set out in the preamble, 5 CFR Chapter VI is amended as set forth below:

#### 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; Pub. L. 104-4, 109 Stat. 48.

2. Subpart I is added to part 1620 to read as follows:

#### Subpart I—Certain Employees of the District of Columbia Financial Responsibility and Management Assistance Authority.

Sec.

- 1620.110 Scope.
- 1620.111 Definitions.
- 1620.112 Eligibility requirements.
- 1620.113 Notice to an employee of his or her right to participate in the TSP.
- 1620.114 Employee contributions.
- 1620.115 Employer contributions.
- 1620.116 TSP contributions.
- 1620.117 TSP loan payments.
- 1620.118 Failure to participate or delay in participation.
- 1620.119 Other regulations.

#### Subpart I—Certain Employees of the District of Columbia Financial Responsibility and Management Assistance Authority

##### § 1620.110 Scope.

The District of Columbia Financial Responsibility and Management Assistance Authority (Authority) was established by the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (the Act), Public Law 104-8, 109 Stat. 97. Although the Authority is an agency of the District of Columbia Government, any individual who is employed by the Authority within two months after being separated from Federal service may elect to retain his or her participation in the retirement system in which the individual last participated before separating from Federal service. This subpart governs participation in the Thrift Savings Plan (TSP) by employees of the Authority who elect to be covered by FERS or CSRS.

##### § 1620.111 Definitions.

As used in this subpart:

*Authority* means the District of Columbia Financial Responsibility and Management Authority.

*Basic pay* means basic pay as defined in 5 U.S.C. 8431.

*CSRS* means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, United States Code, or any equivalent Government retirement plan.

*Election period* means the last calendar month of an open season and is the period in which an election to make or change contributions during that open season can first become effective.

*FERS* means the Federal Employees' Retirement System established by chapter 84 of title 5, United States Code, and any equivalent retirement system.

*Open season* means the period during which employees may make an election with respect to their contributions to the Thrift Savings Plan.

*Recordkeeper* means the organization under contract to the Board to perform recordkeeping services. This currently is the National Finance Center, United States Department of Agriculture, P.O. Box 61500, New Orleans, Louisiana 70161-1500.

*Retirement election* means an election by an eligible employee of the Authority to remain covered by either CSRS or FERS.

*Thrift Savings Plan (TSP) election* means a request by an eligible employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period (including a request to terminate contributions), or to change the allocation of TSP contributions among the TSP investment funds, as described at 5 CFR 1600.4. A TSP election must be made on Form TSP-1, Thrift Savings Plan Election Form.

**§ 1620.112 Eligibility requirements.**

To be eligible to participate in the TSP, an employee of the Authority must:

(a) Have been separated from the Federal service for not more than 2 months before commencing employment with the Authority;

(b) Have been covered by FERS or CSRS immediately before separating from Federal service; and

(c) Have elected to be covered by FERS or CSRS within the time permitted by the United States Office of Personnel Management.

**§ 1620.113 Notice to an employee of his or her right to participate in the TSP.**

The Authority must notify an employee of his or her right to participate in the TSP at the time the employee is required to be notified of his or her right to elect to be covered under FERS or CSRS.

**§ 1620.114 Employee contributions.**

(a) An employee of the Authority who is separated from Federal service for less than 31 full calendar days before commencing employment with the Authority and who elects to be covered by FERS or CSRS within the time period mandated by the United States Office of Personnel Management will be eligible to contribute to the TSP as though he or she had transferred to the Authority from the losing Federal agency, i.e., as though the employee did not have a break in service as defined by the TSP.

(b) An employee who is employed by the Authority after 31 or more full calendar days but within 2 months after separating from Federal service and who elects to be covered by FERS or CSRS within the time period permitted by the United States Office of Personnel Management will be eligible to contribute to the TSP as follows:

(1) If the employee was previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the first open season (as determined in accordance with paragraph (b)(3) of this section) beginning after the date the employee commences employment with the Authority.

(2) If the employee was not previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the second open season (as determined in accordance with paragraph (b)(3) of this section) beginning after the date the employee commences employment with the Authority.

(3) If an employee of the Authority who is described in paragraphs (b)(1) and (b)(2) of this section is employed by the Authority during an open season, but before the election period (the last calendar month of the open season), the open season during which the employee is employed will be considered the employee's first open season.

(c) TSP contributions from employees of the Authority must be made from the employee's basic pay for service with the Authority and are subject to the limits described at 5 CFR Part 1600, subpart C.

**§ 1620.115 Employer contributions.**

(a) If an eligible employee of the Authority elects to be covered by FERS, the Authority must contribute on the employee's behalf each pay period to the Thrift Savings Fund, in accordance with Board procedures, an amount equal to 1 percent of the employee's basic pay paid to such employee for that period of service, as required by 5 U.S.C. 8432(c)(1)(A), beginning:

(1) Immediately upon employment with the Authority if the employee separated from Federal service less than 31 full calendar days before commencing employment with the Authority and was eligible to participate in the TSP when he or she separated from Federal service; or

(2) With the first pay period in which the employee is eligible to contribute to the TSP (as determined in accordance with § 1620.114 of this subpart) for all other FERS employees of the Authority.

(b) If a FERS employee of the Authority elects to participate in the TSP under § 1620.114 of this subpart, the Authority must contribute on behalf of such employee each pay period to the Thrift Savings Fund, in accordance with Board procedures, any matching contributions which he or she is eligible to receive under 5 U.S.C. 8432(c).

**§ 1620.116 TSP contributions.**

The Authority is responsible for transmitting, in accordance with Board procedures, any employee and employer contributions that are required by this subpart to the Board's Recordkeeper.

**§ 1620.117 TSP loan payments.**

The Authority shall deduct and transmit TSP loan payments for employees in accordance with 5 CFR part 1655 and Board procedures. An employee of the Authority who separates from Federal service with an outstanding TSP loan and who elects to be covered under FERS or CSRS must notify the recordkeeper that he or she has commenced employment with the Authority.

**§ 1620.118 Failure to participate or delay in participation.**

If an employee of the Authority who elects to be covered by FERS or CSRS fails to participate or is delayed in participating in the TSP because of a delay in the implementation of the Act or in the promulgation of the regulations in this subpart, the employee may request that retroactive corrective action be taken in accordance with 5 CFR 1605.2(b)(2), as if the delay were attributable to employing agency error. Lost earnings shall be payable pursuant to 5 CFR part 1606 due to delay described in this section, as if the delay were attributable to employing agency error.

**§ 1620.119 Other regulations.**

The Authority and individuals covered by § 1620.110 of this subpart are governed by the regulations in 5 CFR chapter VI, to the extent the regulations in 5 CFR chapter VI are not inconsistent with this subpart.

[FR Doc. 96-1492 Filed 1-26-96; 8:45 am]

BILLING CODE 6760-01-P