

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

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

SOURCE: 66 FR 22089, May 2, 2001, unless otherwise noted.

### **Subpart A—General**

#### **§ 1600.1 Definitions.**

Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

[68 FR 35494, June 13, 2003]

### **Subpart B—Elections**

#### **§ 1600.11 Types of elections.**

(a) *Contribution elections.* A contribution election must be made pursuant to § 1600.12 and includes the following types of elections:

(1) To make employee contributions;

(2) To change the amount of employee contributions;

(3) To change the type of employee contributions (traditional or Roth); or

(4) To terminate employee contributions.

(b) *Investment election.* A participant may make or change the manner in which future deposits to his or her account are allocated among the TSP core funds only in accordance with 5 CFR part 1601.

[66 FR 22089, May 2, 2001, as amended at 68 FR 35494, June 13, 2003; 70 FR 32207, June 1, 2005; 75 FR 24785, May 6, 2010; 77 FR 26422, May 4, 2012; 87 FR 31672, May 24, 2022]

#### **§ 1600.12 Contribution elections.**

(a) An employee may make a contribution election at any time.

(b) A participant must submit a contribution election to his or her employing agency. To make an election, employees may use either the paper election form provided by the TSP, or, if available from their employing agency, electronic media. If an electronic medium is used, all relevant elements contained on the paper form must be included in the electronic medium.

(c) A contribution election must:

(1) Be completed in accordance with the instructions on the form, if a paper form is used;

(2) Be made in accordance with the employing agency's instructions, if the submission is made electronically; and

(3) Not exceed the maximum contribution limitations described in § 1600.22.

(d) A contribution election will become effective no later than the first full pay period after it is received by the employing agency.

(e) A uniformed service member may elect to contribute sums to the TSP from basic pay and special or incentive pay (including bonuses). However, in order to contribute to the TSP from special or incentive pay (including bonuses), the uniformed service member

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must also elect to contribute to the TSP from basic pay. A uniformed service member may elect to contribute from special pay or incentive pay (including bonuses) in anticipation of receiving such pay (that is, he or she does not have to be receiving the special or incentive pay (including bonuses) when the contribution election is made); those elections will take effect when the uniformed service member receives the special or incentive pay (including bonuses).

[70 FR 32207, June 1, 2005, as amended at 77 FR 26422, May 4, 2012]

#### § 1600.13 Effect of transfer to FERS.

(a) If an employee appointed to a position covered by CSRS elects to transfer to FERS, the employee may make a contribution election at any time.

(b) [Reserved]

(c) If the employee had elected to make TSP contributions while covered by CSRS, the election continues to be valid until the employee makes a new valid election.

(d) Agency automatic (1%) contributions for all employees covered under this section and, if applicable, agency matching contributions attributable to employee contributions must begin the same pay period that the transfer to FERS becomes effective.

[70 FR 32207, June 1, 2005. Redesignated at 26422, May 4, 2012, as amended at 87 FR 31672, May 24, 2022]

#### § 1600.14 Effect of election to be covered by BRS.

(a) If a uniformed service member elects to be covered by BRS, the member may make a contribution election at any time.

(b) [Reserved]

(c) If the member had elected to make TSP contributions while not covered by BRS, the election remains effective until the member makes a new election.

(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).

[82 FR 60102, Dec. 19, 2017, as amended at 87 FR 31672, May 24, 2022]

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#### Subpart C—Program of Contributions

#### § 1600.18 Separate service member and civilian contributions.

The TSP record keeper maintains uniformed services accounts separately from civilian accounts. Therefore, a participant who has made contributions as a uniformed service member and as a civilian employee will have two TSP accounts: A uniformed services account and a civilian account.

[77 FR 26422, May 4, 2012, as amended at 87 FR 31672, May 24, 2022]

#### § 1600.19 Employing agency contributions.

(a) *Agency automatic (1%) contributions.* Each pay period, subject to the limitations in paragraph (c) of this section, any agency that employs an individual covered by FERS or BRS must make a contribution to that employee's tax-deferred balance for the benefit of the individual equal to 1% of the basic pay paid to such employee for service performed during that pay period. The employing agency must make Agency Automatic (1%) Contributions without regard to whether the employee elects to make employee contributions.

(b) *Agency matching contributions.* (1) Subject to the limitations in paragraph (c) of this section, any agency that employs an individual covered by FERS or BRS must make a contribution to the employee's tax-deferred balance for the benefit of the employee equal to the sum of:

(i) The amount of the employee's contribution that does not exceed 3% of the employee's basic pay for such pay period; and

(ii) One-half of such portion of the amount of the employee's contributions that exceeds 3% but does not exceed 5% of the employee's basic pay for such period.

(2) A uniformed service member is not entitled to matching contributions for contributions deducted from special or incentive pay (including bonuses).

(c) *Timing of employing agency contributions.* (1) An employee appointed or reappointed to a position covered by FERS is immediately eligible to receive employing agency contributions.

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(2) A uniformed service member covered by BRS will be eligible to receive employing agency contributions pursuant to the following rules:

(i) A uniformed service member who first entered service on or after January 1, 2018 is entitled to:

(A) Agency automatic (1%) contributions beginning in the first full pay period following the date that is 60 days after the uniformed service member's PEBD and ending in the first full pay period following the date that is 26 years after the uniformed service member's PEBD.

(B) Agency matching contributions beginning in the first full pay period following the date that is 2 years and one day after the uniformed service member's PEBD and ending in the first full pay period following the date that is 26 years after the uniformed service member's PEBD.

(ii) A uniformed service member who elects to enroll in BRS is entitled to:

(A) Agency automatic (1%) contributions beginning in the first full pay period following the date the uniformed service member enrolled in BRS and ending in the first full pay period following the date that is 26 years after the Uniformed service member's PEBD.

(B) Agency matching contributions beginning in the first full pay period following the date the uniformed service member enrolled in BRS and ending in the first full pay period following the date that is 26 years after the uniformed service member's PEBD.

[77 FR 26422, May 4, 2012, as amended at 82 FR 60102, Dec. 19, 2017; 82 FR 61129, Dec. 27, 2017; 87 FR 31672, May 24, 2022]

### § 1600.20 Types of employee contributions.

(a) *Traditional contributions.* A participant may make traditional contributions.

(b) *Roth contributions.* A participant may make Roth contributions in addition to or in lieu of traditional contributions.

(c) *Contributions from tax-exempt pay.* A uniformed service member who receives pay which is exempt from taxation under 26 U.S.C. 112 will have contributions deducted from such pay and made to his or her traditional or Roth balance in accordance with an election

made under paragraph (a) or (b) of this section.

[77 FR 26422, May 4, 2012]

### § 1600.21 Contributions in whole percentages or whole dollar amounts.

(a) Civilian employees may elect to contribute a percentage of basic pay or a dollar amount, subject to the limits described in § 1600.22. The election must be expressed in whole percentages or whole dollar amounts. A participant may contribute a percentage for one type of contribution and a dollar amount for another type of contribution. If a participant elects to contribute a dollar amount to his or her traditional balance and a dollar amount to his or her Roth balance, but the total dollar amount elected is more than the amount available to be deducted from the participant's basic pay, the employing agency will deduct traditional contributions first and Roth contributions second.

(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. The election may be expressed as a whole percentage, a dollar amount, or both as determined by the member's service.

[77 FR 26423, May 4, 2012, as amended at 87 FR 31672, May 24, 2022]

### § 1600.22 Maximum employee contributions.

A participant's employee contributions are subject to the following limitations:

(a) The maximum employee contribution will be limited only by the provisions of the Internal Revenue Code.

(b) A participant may make traditional contributions and Roth contributions during the same year, but the combined total amount of the participant's tax-deferred employee contributions and Roth contributions cannot exceed the applicable Internal Revenue Code elective deferral limit for the year.

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(c) A participant who has both a civilian and a uniformed services account can make employee contributions to both accounts, but the combined total amount of the participant's tax-deferred employee contributions and Roth contributions made to both accounts cannot exceed the Internal Revenue Code elective deferral limit for the year.

[77 FR 26423, May 4, 2012, as amended at 87 FR 31672, May 24, 2022]

### § 1600.23 Catch-up contributions.

(a) A participant may make traditional catch-up contributions or Roth catch-up contributions from basic pay at any time during the calendar year if he or she:

(1) Is at least age 50 by the end of the calendar year;

(2) Is making employee contributions at a rate that will result in the participant making the maximum employee contributions permitted under § 1600.22; and

(3) Does not exceed the annual limit on catch-up contributions contained in section 414(v) the Internal Revenue Code.

(b) [Reserved]

(c) A participant may make traditional catch-up contributions and Roth catch-up contributions during the same year, but the combined total amount of catch-up contributions of both types cannot exceed the applicable Internal Revenue Code catch-up contribution limit for the year.

(d) A participant who has both a civilian account and a uniformed services account may make catch-up contributions to both accounts, but the combined total amount of catch-up contributions to both accounts cannot exceed the Internal Revenue Code catch-up contribution limit for the year.

(e) A participant cannot make catch-up contributions to his or her traditional balance from pay which is exempt from taxation under 26 U.S.C. 112.

(f) A participant may make catch-up contributions to his or her Roth balance from pay which is exempt from taxation under 26 U.S.C. 112.

(g) A participant cannot make catch-up contributions from special or incentive pay (including bonus pay).

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(h) [Reserved]

[77 FR 26423, May 4, 2012, as amended at 85 FR 72964, Nov. 16, 2020 ]

### Subpart D—Rollovers From Other Qualified Retirement Plans

SOURCE: 87 FR 31672, May 24, 2022, unless otherwise noted.

### § 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:

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(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.

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(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.

### Subpart E—Automatic Enrollment Program

AUTHORITY: Sec. 102, Pub. L. 111–31, div. B, tit. I, 123 Stat. 1776, 1853 (5 U.S.C. 8432(b)(2)(A)).

SOURCE: 75 FR 43800, July 27, 2010, unless otherwise noted.

### § 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 31 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:

(1) To not contribute;

(2) To contribute at some other level; or

(3) To make Roth contributions in addition to, or in lieu of, traditional contributions.

(b) All uniformed service members who either enter service on or after January 1, 2018 or re-enter service after a separation in service of 31 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:

(1) To not contribute;

(2) To contribute at some other level; or

(3) To make Roth contributions in addition to, or in lieu of, traditional contributions.

(c) If, for any calendar year, a uniformed service member described in paragraph (b) of this section does not make a contribution in the final full pay period of such calendar year due to the member's election to terminate contributions prior to the final full pay period, then that member will automatically have 5% of his or her basic pay contributed to his or her traditional TSP balance beginning the first full pay period of the following calendar year unless he or she makes a subsequent election by December 31st:

(1) To not contribute;

(2) To contribute at some other level;

(3) To make Roth contributions in addition to, or in lieu of, traditional contributions.

[82 FR 60102, Dec. 19, 2017, as amended at 85 FR 57666, Sept. 16, 2020]

#### **§ 1600.35 Refunds of default employee contributions.**

(a) Subject to the limitations in paragraph (f) of this section, a participant may request a refund of any default employee contributions made on his or her behalf (*i.e.*, the contributions made while under the automatic enrollment program) provided the request is received within 90 days after the date that the first default employee contribution was processed. The election may be made on the TSP website or by completing the TSP's refund re-

quest form and must be received by the TSP's record keeper prior to the expiration of the 90-day period.

(1) The distribution of a refund will be reported as income to the participant on IRS Form 1099-R, but it will not be subject to the additional tax under 26 U.S.C. 72(t) (the early withdrawal penalty tax).

(2) A participant who requests a refund will receive the amount of any default employee contributions (adjusted for allocable gains and losses).

(3) Processing of refunds will be subject to the rules set out at 5 CFR part 1650.

(b) A participant will no longer be considered to be covered by the automatic enrollment program if the participant files a contribution election. Consequently, if a participant makes a contribution election during the 90-day period, the participant will only be eligible to receive as a refund an amount equal to his or her default employee contributions (adjusted for allocable gains and losses).

(c) After the expiration of the period allowed for the refund, any withdrawal must be made pursuant to 5 U.S.C. 8433 and 5 CFR part 1650.

(d) A married participant may request a refund of default employee contributions without obtaining the consent of his or her spouse or having the TSP record keeper notify the spouse of the request.

(e) The rules applicable to frozen accounts (5 CFR 1650.3) and applicable to deceased participants (5 CFR 1650.6) also apply to refunds of the default employee contributions.

(f) A participant may not receive a refund of default employee contributions made pursuant to § 1600.34(c).

[75 FR 43800, July 27, 2010, as amended at 82 FR 60103, Dec. 19, 2017; 87 FR 31673, May 24, 2022]

#### **§ 1600.36 Matching contributions.**

(a) A participant is not entitled to keep the matching contributions and their associated earnings that are attributable to refunded default employee contributions.

(b) The matching contributions and associated earnings attributable to refunded default employee contributions

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shall be forfeited to the TSP and used to offset administrative expenses.

### § 1600.37 Notice.

The TSP record keeper shall furnish all new employees and all rehired employees covered by the automatic enrollment program, and all employees described in paragraph (c) of § 1600.34, covered by the automatic enrollment program a notice that accurately describes:

(a) That default employee contributions equal to 5 percent of the employee's basic pay will be deducted from the employee's pay and contributed to the employee's traditional TSP balance on the employee's behalf if the employee does not make an affirmative contribution election;

(b) The employee's right to elect to not have default employee contributions made to the TSP on the employee's behalf, to elect to have a different percentage or amount of basic pay contributed to the TSP, or to make Roth contributions;

(c) The TSP core fund in which the default employee and agency contributions will be invested unless the employee makes an investment election;

(d) The employee's ability (or inability) to request a refund of any default employee contributions (adjusted for allocable gains and losses) and the procedure to request such a refund; and

(e) That an investment in any fund other than the G Fund is made at the employee's risk, that the employee is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

[75 FR 43800, July 27, 2010, as amended at 77 FR 26424, May 4, 2012; 80 FR 52173, Aug. 28, 2015; 82 FR 60103, Dec. 19, 2017; 85 FR 57666, Sept. 16, 2020; 87 FR 31673, May 24, 2022]

## PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

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

SOURCE: 66 FR 22093, May 2, 2001, unless otherwise noted.

### Subpart A—General

#### § 1601.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

*Acknowledgment of risk* means an acknowledgment that any investment in a TSP core fund other than the G Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

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

*Fund transfer* means either: