

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1600

#### Employee Contribution Elections and Contribution Allocations

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

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

**SUMMARY:** The Federal Retirement Thrift Investment Board (Agency) proposes to amend its regulations at 5 CFR part 1600. These changes implement the Agency's automatic enrollment program as authorized by the Thrift Savings Plan Enhancement Act of 2009.

**DATES:** Comments must be received on or before July 19, 2010.

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

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Thomas Emswiler, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942-1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change. We will post all substantive comments (including any personal information provided) without change (with the exception of redaction of SSNs, profanities, *et cetera*) on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Megan G. Grumbine at 202-942-1644 or Laurissa Stokes at 202-942-1645.

**SUPPLEMENTARY INFORMATION:** The Agency administers the Thrift Savings

Plan (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 are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. 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)).

On June 22, 2009, the President signed the Thrift Savings Plan Enhancement Act of 2009 ("the Act"), Public Law 111-31 (123 Stat. 1776, 1853). The Act authorized the Agency to add an automatic enrollment program for all Federal employees eligible for the Thrift Savings Plan. Members of the uniformed services were excluded from the automatic enrollment program. This proposed rule would conform the Agency's regulations to the Act and would set forth the details of the program.

Under the Agency's automatic enrollment program, all newly hired Federal employees who are eligible to participate in the TSP and those Federal 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 3 percent of their basic pay contributed to the TSP, unless they decline to contribute or decide to contribute at some other level by the end of the employee's first pay period (subject to the agency's processing standards). Otherwise, payroll offices will automatically deduct 3 percent of their basic pay and submit it to the TSP. Employees covered by the Federal Employees' Retirement System (and equivalent retirement systems) will also receive dollar for dollar matching contributions from their employing agencies as well as the Agency Automatic (1%) Contributions. Employees always have the option to change the percentage or amount of their contributions or terminate their contributions to the TSP.

The Government Securities Investment (G) Fund will remain the default investment fund for new employees. The G Fund will also be the default investment fund for rehired participants with a zero account balance

as is currently the case. Therefore, unless an employee makes a contribution allocation and/or interfund transfer, all employee and agency contributions will be invested in the G Fund. (The contribution allocation on file will be used if the rehired employee has retained his or her TSP account.)

A participant may request a refund of his or her contributions made under the automatic enrollment program (and associated earnings) as long as the request for the refund is received within 90 days after the date the first contribution under the automatic enrollment program is processed. These refunds are permissible withdrawals as defined by 26 U.S.C. 414(w)(2). A married participant may request a refund under the automatic enrollment program without the Agency providing notice or obtaining the consent of his or her spouse. 5 U.S.C. 8351, 8435; 26 CFR 1.414(w)-1(d)(3).

A participant will no longer be considered to be participating in 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 withdraw those contributions attributable to the automatic enrollment program.

A participant who requests a refund will receive the amount of any employee contributions made under the automatic enrollment program (adjusted for allocable gains and losses through the date of distribution). The Agency will report the amount of a refund as a non-periodic payment on Form 1099-R for the year in which it was distributed, but the amount will not be subject to the 10-percent early withdrawal penalty tax. 26 CFR 1.414(w)-1(d)(1). The Agency will process and distribute a refund request in accordance with the Agency's ordinary procedures for processing and distributing withdrawals. The participant's Agency Automatic (1%) Contributions will remain in his or her account. However, the matching contributions associated with the employee contributions made while the participant was automatically enrolled and their associated earnings will be forfeited to the TSP. 26 CFR 1.414(w)-1(d)(2), 72 FR 63144, 63148.

After the expiration of the 90-day period, the participant will only be able

to make a withdrawal under the Agency's normal withdrawal program.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986, Public Law 99-335, 100 Stat. 514, and administered by the Agency.

### Paperwork Reduction Act

I certify that these regulations do 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, 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 § 1532 is not required.

### List of Subjects in 5 CFR Part 1600

Government employees, Pensions, Retirement.

Gregory T. Long,

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons stated in the preamble, the Agency proposes to amend 5 CFR part 1600 as follows:

### PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS AND CONTRIBUTION ALLOCATIONS

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

**Authority:** 5 U.S.C. 8351, 8432(a), 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

2. Revise the heading to part 1600 to read as follows:

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

3. Add subpart E to read as follows:

#### Subpart E—Automatic Enrollment Program

1600.34 Automatic enrollment program

1600.35 Refunds of default employee contributions.

1600.36 Matching contributions  
1600.37 Employing agency notice

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

#### § 1600.34 Automatic enrollment program.

(a) All newly hired Federal employees who are eligible to participate in the Thrift Savings Plan and those Federal 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 3 percent of their basic pay contributed to the TSP (default employee contribution) unless they elect to not contribute or elect to contribute at some other level by the end of the employee's first pay period (subject to the agency's processing timeframes).

(b) After being automatically enrolled, a participant may elect to terminate default employee contributions or change his or her contribution percentage or amount at any time.

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

(a) 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 must be made on the TSP's refund request 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 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.

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

#### § 1600.37 Employing agency notice.

Employing agencies shall furnish all new employees and all rehired employees covered by the automatic enrollment program a notice that accurately describes:

(a) That default employee contributions equal to 3 percent of the employee's basic pay will be deducted from his or her pay and contributed to the TSP on the employee's behalf if the employee does not make an affirmative election;

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

(c) That the default employee contributions will be invested in the G Fund unless the employee makes a contribution allocation and/or an interfund transfer; and

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

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