



[BILLING CODE 6760-01-P]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1603, 1605, 1650, 1651 and 1690

Blended Retirement System

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (“FRTIB”) is amending its regulations to implement changes to the uniformed services’ retirement system that are mandated by the National Defense Authorization Act for Fiscal Year 2016.

DATES: This rule is effective January 1, 2018.

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SUPPLEMENTARY INFORMATION: The FRTIB 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)).

The National Defense Authorization Act for Fiscal Year 2016 (NDAA), Public Law 114-92, signed into law November 25, 2015, changed the uniformed services' retirement plan from one that relied primarily on a cliff-vested defined benefit to one that blends a reduced defined benefit with enhanced TSP benefits, continuation pay, and lump-sum options. The new retirement system is known as the Blended Retirement System (BRS).

On September 11, 2017, the Agency published a proposed rule with request for comments in the Federal Register (82 FR 42613). The Agency received one or more comments from four individuals and a Federal Agency.

One individual provided suggestions for improving the Department of Defense (DoD) calculator. Although this comment does not affect these regulations, the comment was forwarded to DoD for its review. Another individual commented supporting the implementation of BRS.

One individual noted that contributing continuation pay to the TSP may potentially limit the amount of Service Matching Contributions available if doing so causes the individual to exceed the IRC section 402(g) elective deferral limit. The commenter suggested that continuation pay not count towards that limit. The TSP is subject to the same elective deferral limits as private-sector 401(k) plans. Therefore, the Agency is bound by the Internal Revenue Code and Treasury Regulations which state that elective deferrals from bonuses (such as continuation pay) are included in the overall limit along with contributions made from basic pay.

One individual along with the Department of Defense requested that affirmative (voluntary) contribution elections made by members of the uniformed services who first join a service on or after January 1, 2018 be effective immediately. The proposed regulations had a 60 day delay in automatic enrollment along with a 60 day delay for contributions made by an affirmative election. This design made sense because the underlying purpose of automatic enrollment in retirement plans is to have employees contributing as soon as they are eligible to participate, and DoD requested that automatic enrollment

occur 60 days after the service member's Pay Entry Base Date (PEBD). Additionally, these service members would not be eligible to receive the Service Automatic (1%) Contributions until after they have reached 60 days of service.

The comment from DoD presented different positions as to why affirmative contribution elections in the first 60 days of service should be effective immediately and automatic enrollment should remain delayed until the first pay period after 60 days from the member's PEBD. In particular, DoD noted that if automatic enrollment begins immediately upon accession, some service members may not be given ample opportunity to request a refund because they will still be in basic training. However, in the view of DoD, this is not a concern with contributions made through an affirmative election. DoD posits that because the ability to request a refund is unique to automatic enrollment and not contributions made through an affirmative election, it is permissible to delay automatic enrollment for 60 days while allowing for contributions made by affirmative election to be effective immediately, even if made within the first 60 days of service. DoD further suggests that doing so would be beneficial to those

service members who make an affirmative contribution election within the first 60 days of service.

The Agency supports the position put forth by DoD. Therefore, in this final rule, the amendments made to section 1600.12 in the proposed rule are deleted. However, the Board is publishing the remaining provisions of the proposed rule as final without modification.

BRS Eligibility

BRS covers service members who first enter a uniformed service on or after January 1, 2018. It also covers service members who (1) have completed fewer than 12 years of service (or, if in the reserve component, have fewer than 4,320 retirement points) as of December 31, 2017, and (2) elect, within a certain timeframe, to transfer from the legacy retirement system to BRS (this process is also known as electing to "opt-in" to BRS). The employing services are responsible for making BRS eligibility determinations and reporting each service member's retirement coverage status to the TSP.

Service Automatic (1%) Contributions

Timing Restrictions

The NDAA placed timing restrictions on the receipt of Service Automatic 1% Contributions to a service member's

TSP account. Service members who first enter duty on or after January 1, 2018 cannot receive any Service Automatic (1%) Contributions until the first full pay period following the date that is 60 days after the member's Pay Entry Base Date (PEBD).¹ For members who elect to transfer to the BRS, Service Automatic (1%) Contributions will begin the first full pay period following their election to transfer.

Service Automatic (1%) Contributions must stop the first full pay period that is 26 years after the service member's PEBD. This rule applies to all BRS participants whether they entered duty on or after January 1, 2018, or they elected to transfer to BRS. For example, a member who has served six years before electing to transfer to BRS can receive matching contributions for only 20 years.

Vesting

The NDAA requires each BRS participant to complete 2 years of military service before they are vested in their Service Automatic (1%) Contributions. A service member's

¹ PEBD is the date that denotes how much service a member has for the purpose of determining longevity pay rates. The Navy and Marine Corps refer to this as the pay entry base date, while the Air Force calls it simply the pay date. DoD refers to it as the basic pay date. The services are responsible for determining each member's PEBD and providing each member's PEBD to the TSP.

civil service will not count toward the completion of that two years. Therefore, the FRTIB amends section 1603.1 to have separate definitions for civilian service and military service. The definition for civilian service will remain the same as it is today. Military service will be defined as service that is creditable under 37 U.S.C. 205, which is the provision that defines years of service for purposes of computing basic pay. For service members who elect to transfer to BRS, all military service completed prior to the election will count towards the vesting requirement. For example, if a service member has completed 3 years of service prior to transferring to BRS, that member will be immediately vested in the Service Automatic (1%) Contributions made to his or her TSP account.

Enrollment and Member Contributions

Automatic Enrollment

The NDAA requires employing services to automatically enroll all uniformed service members who first enter service on or after January 1, 2018. Employing services must also automatically enroll all BRS participants (whether they entered duty on or after January 1, 2018, or transferred to BRS) who separate from service and later re-enter service.

Automatic Enrollment is deferred for BRS participants until the first full pay period following the date that is 60 days after the member's PEBD because some service members would be in basic training for the entire refund period if automatic enrollment were not delayed. This delay will mitigate that concern and place all automatically enrolled service members on equal footing.

The Executive Director has the statutory authority to select a default contribution percentage rate for automatically enrolled participants that is no less than 2% and no more than 5%. The default percentage rate for BRS participants is set at 3%. This is the same contribution rate at which civilian participants are automatically enrolled. A participant who is automatically enrolled may change the amount that he or she is contributing by filing a contribution election with his or her payroll office.

Service members who elect to transfer to BRS, absent a contribution election in the alternative, will continue to make contributions at the rate that they were making contributions prior to their election to transfer. They will not be automatically enrolled. However, if a member who transfers to BRS separates from service and later re-enters service, that member will be automatically enrolled

to contribute 3% of his or her basic pay beginning the first full pay period following the date that is 60 days after the member's PEBD.

Service members who are not covered by BRS will not be automatically enrolled even if they separate from service and later re-enter service.

Annual Automatic Re-enrollment

NDAA requires employing services to automatically re-enroll, on January 1st of each year, BRS participants who have declined automatic enrollment for a year. Accordingly, service members subject to automatic enrollment who terminate their contributions at any point during the year and do not elect to resume them by the last full pay period of the year will be automatically re-enrolled at a contribution rate of 3% as of January 1st of the following year. The employing services are responsible for determining which BRS participants are not making contributions in the last full pay period of the year.

Automatic Enrollment Refunds

Service members who are automatically enrolled in the TSP may request a refund of the automatic enrollment contributions deducted from their basic pay (including associated earnings) within the first 90 days of the

member's first automatic enrollment contribution. Members who stop making contributions are not eligible for refunds of contributions deducted when they are automatically re-enrolled on January 1st because, under rules mandated by the Internal Revenue Service, a new 90-day refund period is not allowed unless one full calendar year (January through December) has passed since the member's last automatic enrollment contribution.

There are very few participants who will go an entire plan year without any default employee contributions because they will be subject to automatic re-enrollment for each plan year. There are significant programming limitations to track the small number of members who will go an entire plan year without any default employee contributions. For these reasons, the Board has decided to disallow refunds of contributions associated with automatic re-enrollment.

Hardship Withdrawals and Automatic Enrollment

Under existing IRS rules, a participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for a period of six months after the withdrawal is processed. This final rule provides that no BRS participant will be automatically enrolled or re-enrolled

during a six month non-contribution period. For example, a service member who is in a non-contribution period at the end of the year will not be reenrolled in January. However, if the member does not resume contributions after the end of the six month non-contribution period and consequently is not making contributions during the last full pay period of the year, the member's employing service must automatically enroll the member on January 1st of the subsequent year.

Service Matching Contributions

Timing Restrictions

Service Matching Contributions begin the first full pay period that is 2 years after the service member's PEBD. For members who elect to transfer to the BRS, Service Matching Contributions begin the first full pay period following their election to transfer. For example, a member who has served 1 year before electing to transfer to BRS will receive Service Matching Contributions beginning the first full pay period following their election even though 2 years have not passed since their PEBD.

Service Matching Contributions must stop at the same time Service Automatic (1%) Contributions stop, which is the first full pay period that is 26 years after the

service member's PEBD. This is true regardless of how the service member became covered by BRS.

Vesting

All BRS participants will immediately vest in their Service Matching Contributions.

Repeal of Existing Matching Program for Critical Specialties

The NDAA repeals the service matching program described in 37 U.S.C. 211(d) as of January 1, 2018. There are no service members currently participating in the program. Therefore, this final rule deletes all references to 37 U.S.C. 211(d).

Default Investment Fund

A member who first enters service on or after January 1, 2018, will have his or her contributions invested in an age-appropriate L Fund by default until the member makes an affirmative contribution allocation that directs incoming contributions into a different fund or combination of funds. Likewise, if a service member who elects to transfer to BRS has not made either an affirmative contribution allocation or an interfund transfer, then any contributions made after becoming covered by BRS will be invested in an age-appropriate L Fund.

If a service member who elects to transfer to BRS has made an interfund transfer in the past but not a contribution allocation, then any contributions made after becoming covered by BRS will be invested in the G Fund. If a service member who elects to transfer to BRS has made an affirmative contribution allocation in the past, then any contributions made after becoming covered by BRS will be invested in accordance with the member's contribution allocation. However, if a member elects to transfer to BRS and has a zero account balance, contributions will be invested in an age-appropriate L Fund regardless of any past contribution allocation or interfund transfer. The investment of contributions made prior to becoming covered by BRS will remain unchanged. Uniformed service members who are not covered by BRS will continue to have their contributions defaulted into the G Fund.

When an employing agency automatically re-enrolls a participant because they were not making contributions in the last full pay period of the year, the participant's contributions will be invested in the same manner as they were prior to re-enrollment (regardless of whether it was an affirmative contribution allocation or a default investment). Likewise, contributions of a rehired service

member will be invested in the fund(s) to which they were being invested prior to being rehired (regardless of whether the fund(s) were an affirmative contribution allocation or a default investment and regardless of how much time has passed since the rehired service member separated from service). However, if a re-enrolled or rehired service member has a zero account balance, future contributions will be defaulted to an age-appropriate L Fund.

The first time a BRS participant's employing agency automatically enrolls him or her, or when he or she first transfers to BRS, or as soon as practicable thereafter, the TSP will provide each BRS participant who is subject to default investment in an age-appropriate L Fund with a notification concerning the risk of investing.

Correction of Administrative Errors

BRS introduces new potential errors that are not currently addressed in regulations. Specifically, employing services may classify members of the uniformed services in the wrong retirement system (i.e., legacy instead of BRS and vice versa). If this error occurs, it is possible that service members will not be automatically enrolled and not receive service contributions. Additionally, if this error

were to occur, service member contributions may be invested in the wrong default investment fund which would require breakage calculations. Therefore, the FRTIB amends Part 1605 to provide the necessary mechanisms to correct errors related to BRS.

If a BRS participant is misclassified by an employing agency as a non-BRS participant, when the misclassification is corrected, the participant may, under the rules of § 1605.11, elect to make up contributions that he or she would have been eligible to make as a BRS participant during the period of misclassification. In addition, the employing service must, under the rules of § 1605.11, make up Service Automatic (1%) Contributions and Service Matching Contributions on employee contributions.

If a non-BRS participant is misclassified by an employing service as a BRS participant, employee contributions may remain in the participant's account when the misclassification is corrected. If the participant requests a refund of employee contributions, the employing service must submit a negative adjustment record to remove the funds under the procedure described in § 1605.12. The TSP will forfeit all service contributions that were made to a non-BRS participant's account, except that an

employing service may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

The TSP will charge the employing service for any positive breakage that results from an incorrect default investment. To initiate a breakage calculation for the uniformed service member, the employing service must notify the TSP that the participant is entitled to breakage. Notification from the employing service to the TSP that the participant has been misclassified will not itself trigger the TSP to take corrective action other than to update the participant's retirement system coverage.

Finally, the FRTIB amends section 1605.31 to reduce makeup civilian agency contributions by any Service Automatic (1%) Contributions the participant receives while in military service. Currently, USERRA requires civilian agencies to makeup automatic (1%) and matching contributions missed while a member was separated or in a non-pay status for military service. The regulations currently reduce the agency makeup matching contributions by any matching contributions received while performing military service. These amendments will extend that reduction to include Service Automatic (1%) Contributions

received while performing military service. The amendments also provide that breakage on agency or service contributions will be based on the contribution allocation(s) on file for the participant during the period of military service.

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 and members of the uniformed services who participate in the TSP.

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, and 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 2 U.S.C. 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the Federal Register. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects

5 CFR Part 1600

Government employees, Pensions, Retirement.

5 CFR Part 1601

Government employees, Pensions, Retirement.

5 CFR Part 1603

Government employees, Pensions, Retirement.

5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1690

Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director,

Federal Retirement Thrift Investment Board

For the reasons stated in the preamble, the FRTIB amends 5 CFR Chapter VI as follows:

PART 1600 -- EMPLOYEE CONTRIBUTION ELECTIONS, CONTRIBUTION ALLOCATIONS, AND AUTOMATIC ENROLLMENT PROGRAM

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

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

2. Add § 1600.14 to subpart B to read as follows:

§ 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) Eligibility to make employee contributions, and therefore to have Agency Matching Contributions made on the

member's behalf, is subject to the restrictions on making employee contributions after receipt of a financial hardship in-service withdrawal described at 5 CFR part 1650.

(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 the first full pay period that the transfer to BRS becomes effective.

3. Amend § 1600.19 to revise paragraphs (a), (b) (1) introductory text, (b) (2) and (c) to read as follows:

§ 1600.19 Employing agency contributions.

(a) Agency Automatic (1%) Contributions. Each pay period, subject to the limitations in paragraph (d) 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 (d) 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:

* * * * *

(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.

(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 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.

4. Revise § 1600.34 to read as follows:

§ 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 3% 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 3% 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 3% 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.

5. Amend § 1600.35 by revising the first sentence of paragraph (a) and adding paragraph (f) to read as follows:

§ 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. * * *

* * * * *

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

6. Amend § 1600.37 by revising the introductory text and paragraph (d) to read as follows:

§ 1600.37 Notice.

The Board 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:

* * * * *

(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

* * * * *

PART 1601 - PARTICIPANTS' CHOICES OF TSP FUNDS

7. The authority citation for part 1601 continues to read as follows:

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

8. Revise § 1601.13 to read as follows:

§ 1601.13 Elections.

(a) *Contribution allocation.* Each participant may indicate his or her choice of TSP Funds for the allocation of future deposits by using the TSP Web site or the ThriftLine, or by completing and filing the appropriate paper TSP form with the TSP record keeper in accordance with the form's instructions. The following rules apply to contribution allocations:

(1) Contribution allocations must be made in one percent increments. The sum of the percentages elected for all of the TSP Funds must equal 100 percent;

(2) The percentage elected by a participant for investment of future deposits in a TSP Fund will be applied to all sources of contributions and transfers (or rollovers) from traditional IRAs and eligible employer plans. A participant may not make different percentage elections for different sources of contributions;

(3) The following default investment rules shall apply to civilian participants:

(i) All deposits made on behalf of a civilian

participant enrolled prior to September 5, 2015 who does not have a contribution allocation in effect will be invested in the G Fund. A civilian participant who is enrolled prior to September 5, 2015 and subsequently rehired on or after September 5, 2015 and has a positive account balance will be considered enrolled prior to September 5, 2015 for purposes of this paragraph; and

(ii) All deposits made on behalf of a civilian participant first enrolled on or after September 5, 2015 who does not have a contribution allocation in effect will be invested in the age-appropriate TSP Lifecycle Fund;

(iii) A civilian participant enrolled prior to September 5, 2015 who elects for the first time to invest in a TSP Fund other than the G Fund must execute an acknowledgement of risk in accordance with §1601.33;

(4) The following default investment rules shall apply to uniformed services participants:

(i) All deposits made on behalf of a uniformed services participant who first entered service prior to January 1, 2018, has not elected to be covered by BRS, and does not have a contribution allocation in effect will be invested in the G Fund;

(ii) All deposits made on behalf of a uniformed

services participant who first entered service on or after January 1, 2018 and who does not have a contribution allocation in effect will be invested in the age-appropriate TSP Lifecycle Fund;

(iii) If a uniformed services participant makes an election to be covered by BRS as described in 5 CFR 1600.14 and does not have a contribution allocation in effect at the time of the election, then all deposits made after the date of such election will be invested in the age-appropriate TSP Lifecycle Fund. Deposits made prior to the date of the election will remain invested in the G Fund.

(iv) A uniformed services participant who first entered service prior to January 1, 2018 and has not made an election to be covered by the BRS who elects for the first time to invest in a TSP Fund other than the G Fund must execute an acknowledgement of risk in accordance with §1601.33;

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation or the participant's account balance is reduced to zero. If a rehired participant has a positive account balance and a contribution allocation in effect, then the participant's contribution allocation will

remain in effect until a new allocation is made. If, however, the participant (other than a participant described in paragraph (a)(4)(i) of this section) has a zero account balance, then the participant's contributions will be allocated to the age-appropriate TSP Lifecycle Fund until a new allocation is made.

(b) *Effect of rejection of contribution allocation.* If a participant does not correctly complete a contribution allocation, the attempted allocation will have no effect. The TSP will provide the participant with a written statement of the reason the transaction was rejected.

(c) *Contribution elections.* A participant may designate the amount or type of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

9. Amend § 1601.33 by revising the first sentence of paragraph (a) to read as follows:

§ 1601.33 Acknowledgment of risk.

(a) Uniformed services participants who first entered service prior to January 1, 2018 and who have not elected to be covered by BRS and civilian participants who enrolled prior to September 5, 2015 must execute an acknowledgement of risk in order to invest in a TSP Fund other than the G

Fund. * * *

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PART 1603 - VESTING

10. The authority citation for part 1603 continues to read as follows:

Authority: 5 U.S.C. 8432(g), 8432b(h)(1), 8474(b)(5) and (c)(1).

11. Amend paragraph (b) of § 1603.1 as follows:

a. Amend the definition of "Service" by removing "Service means" and adding in its place "Civilian service means"; and

b. Add a definition of "Military service" in alphabetical order to read as follows:

§ 1603.1 Definitions.

* * * * *

(b) * * *

Military service means service that is creditable under 37 U.S.C. 205.

* * * * *

12. Revise § 1603.2 to read as follows:

§ 1603.2 Basic vesting rules.

(a) All amounts in a CSRS employee's individual account are immediately vested.

(b) Except as provided in paragraph (c) of this section, all amounts in a FERS employee's or uniformed service member's individual account (including all first conversion contributions) are immediately vested.

(c) Except as provided in paragraph (d) of this section, upon separation from Government service without meeting the applicable service requirements of § 1603.3, a FERS employee's or a BRS uniformed service member's Agency Automatic (1%) Contributions and attributable earnings will be forfeited.

(d) If a FERS employee or uniformed service member dies (or died) after January 7, 1988, without meeting the applicable service requirements set forth in § 1603.3, the Agency Automatic (1%) Contributions and attributable earnings in his or her individual account are deemed vested and shall not be forfeited. If a FERS employee died on or before January 7, 1988, without meeting those service requirements, his or her Agency Automatic (1%) Contributions and attributable earnings are forfeited to the Thrift Savings Plan.

13. Amend § 1603.3 by revising paragraph (a) and the introductory text of paragraph (b), and adding paragraph (c) to read as follows:

§ 1603.3 Service requirements.

(a) Except as provided under paragraph (b) of this section, FERS employees will be vested in their Agency Automatic (1%) Contributions and attributable earnings upon separating from Government only if, as of their separation date, they have completed three years of civilian service.

(b) FERS employees will be vested in their Agency Automatic (1%) Contributions and attributable earnings upon separating from Government service if, as of their separation date, they have completed two years of civilian service and they are serving in one of the following positions:

* * * * *

(c) Uniformed service members who are covered by BRS will be vested in their Agency Automatic (1%) Contributions and attributable earnings upon separation from the uniformed services only if, as of their separation date, they have completed two years of military service.

PART 1605 - CORRECTION OF ADMINISTRATIVE ERRORS

14. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, 8432d, 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104-106, 110 Stat. 186 and § 7202(m)(2) of

Public Law 101-508, 104 Stat. 1388.

15. Amend paragraph (b) of § 1605.1 by adding definitions of "BRS participant" and "Non- BRS participant" in alphabetical order to read as follows:

§ 1605.1 Definitions.

* * * * *

(b) * * *

BRS participant means any member of the Uniformed Services described in 5 U.S.C. 8440e(e) (1).

* * * * *

Non-BRS participant means any member of the Uniformed Services not described in 5 U.S.C. 8440e(e) (1).

* * * * *

16. Amend § 1605.3 by adding paragraph (c) to read as follows:

§ 1605.3 Calculating, posting, and charging breakage on errors involving investment in the wrong fund.

* * * * *

(c) If a uniformed services participant's retirement system is misclassified and the error results in default investment in the wrong fund, when the error is corrected pursuant to § 1605.14(f)-(g), the TSP will charge the employing agency for any positive breakage that results

from the incorrect default investment. The retirement misclassification correction received from an employing agency will not trigger corrective action other than to update the participant's retirement system coverage. To initiate a breakage calculation for the uniformed service member, the employing agency must notify the TSP that the participant is entitled to breakage.

17. Amend § 1605.11 by revising the introductory text of paragraph (b) to read as follows:

§ 1605.11 Makeup of missed or insufficient contributions.

* * * * *

(b) *Employer makeup contributions.* If an employing agency has failed to make Agency Automatic (1%) Contributions that are required under 5 U.S.C. 8432(c)(1)(A) and 5 U.S.C. 8440e(e)(3)(A), or Agency Matching Contributions that are required under section 8432(c)(2) and 5 U.S.C. 8440e(e)(3)(B), the following rules apply:

* * * * *

18. Amend § 1605.14 by adding paragraphs (f) and (g) to read as follows:

§ 1605.14 Misclassified retirement system coverage.

* * * * *

(f) If a BRS participant is misclassified by an employing agency as a non-BRS participant, when the misclassification is corrected:

(1) The participant may not elect to have the contributions made while classified as non-BRS removed from his or her account;

(2) The participant may, under the rules of § 1605.11, elect to make up contributions that he or she would have been eligible to make as a BRS participant during the period of misclassification;

(3) The employing agency must, under the rules of § 1605.11, make Agency Automatic (1%) Contributions and Agency Matching Contributions on employee contributions that were made while the participant was misclassified; and

(4) The employing agency must submit makeup employee contributions on current payment records and service makeup contributions may be submitted on either current or late payment records.

(g) If a non-BRS participant is misclassified by an employing agency as a BRS participant, when the misclassification is corrected:

(1) Employee contributions may remain in the participant's account. If the participant requests a refund

of employee contributions, the employing agency must submit a negative adjustment record to remove these funds under the procedure described in § 1605.12.

(2) The TSP will forfeit all agency contributions that were made to a non-BRS participant's account. An employing service may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

19. Amend § 1605.31 by revising paragraph (c) (1), adding paragraph (c) (5), and revising paragraph (d) to read as follows:

§ 1605.31 Contributions missed as a result of military service.

* * * * *

(c) * * *

(1) The employee is entitled to receive the Agency Automatic (1%) Contributions that he or she would have received had he or she remained in civilian service or pay status. Within 60 days of the employee's reemployment or restoration to pay status, the employing agency must calculate the Agency Automatic (1%) makeup contributions and report those contributions to the record keeper, subject to any reduction in Automatic (1%) Contributions

required by paragraph (c) (5) of this section.

* * * * *

(5) If the employee received uniformed services Automatic (1%) Contributions, the Agency Automatic (1%) Contributions will be reduced by the amount of the uniformed services Automatic (1%) Contributions.

(d) Breakage. The employee is entitled to breakage on agency contributions made under paragraph (c) of this section. Breakage will be calculated based on the contribution allocation(s) on file for the participant during the period of military service.

PART 1650 - METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

20. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8433, 8434, 8435, 8474(b) (5) and 8474(c) (1).

21. Amend § 1650.33 by revising the second sentence of paragraph (b) to read as follows:

§ 1650.33 Contributing to the TSP after an in-service withdrawal.

* * * * *

(b) * * * Therefore, the participant's employing

agency will discontinue his or her contributions (and any applicable Agency Matching Contributions) for six months after the agency is notified by the TSP; in the case of a FERS or BRS participant, Agency Automatic (1%) Contributions will continue. * * *

PART 1651 - DEATH BENEFITS

22. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c) (2), 8474(b) (5) and 8474(c) (1).

23. Amend § 1651.3 by revising paragraph (c) (3) to read as follows:

§ 1651.3 Designation of beneficiary.

* * * * *

(c) * * *

(3) Be signed and properly dated by the participant and signed and properly dated by one witness;

(i) The participant must either sign the form in the presence of the witness or acknowledge his or her signature on the form to the witness;

(ii) All submitted and attached pages of the form must be signed and dated by the participant;

(iii) All submitted and attached pages of the form

must be signed and dated by the same witness;

(iv) A witness must be age 21 or older; and

(v) A witness designated as a beneficiary will not be entitled to receive a death benefit payment; if a witness is the only named beneficiary, the designation of the beneficiary is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries pro rata.

* * * * *

PART 1690 - THRIFT SAVINGS PLAN

24. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

25. Amend § 1690.1 as follows:

a. Revise the definitions of *Agency Automatic (1%) Contributions, Agency Matching Contributions, and Bonus contributions.*

b. Add definitions of *BRS* and *BRS participant* in alphabetical order.

c. Revise the definition of *Civilian employee.*

d. Revise the definitions of *Employer contributions* and *Employing agency.*

e. Add a definition of *PEBD* in alphabetical order.

f. Revise the definitions of *Uniformed service member* and *Uniformed services*.

The revisions and additions read as follows:

§ 1690.1 Definitions.

* * * * *

Agency Automatic (1%) Contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3). It also includes service automatic (1%) contributions made under 5 U.S.C. 8440e(e)(3)(A).

Agency Matching Contributions means any contributions made under 5 U.S.C. 8432(c)(2). It also includes service matching contributions under 5 U.S.C. 8440e(e)(3)(B).

* * * * *

Bonus contributions means contributions made by a participant from any part of any special or incentive pay that the participant receives under chapter 5 of title 37.

BRS means the blended retirement system as established by the National Defense Authorization Act for FY 2016, Pub. L. No. 114-92, secs. 631-635 (2015).

BRS participant means a TSP participant covered by BRS.

* * * * *

Civilian employee or *civilian participant* means a TSP

participant covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or equivalent retirement plan.

* * * * *

Employer contributions means Agency Automatic (1%) Contributions under 5 U.S.C. 8432(c)(1), 8432(c)(3), or 5 U.S.C. 8440e(e)(3)(A) and Agency Matching Contributions under 5 U.S.C. 8432(c)(2) or 5 U.S.C. 8440e(e)(3)(B).

Employing agency means the organization (or the payroll office that services the organization) that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual. It includes the employing service for members of the uniformed services.

* * * * *

PEBD means the pay entry base date (or pay entry basic date for some services), which is determined by each uniformed service and is used to calculate how much time in service a member has for the purpose of determining longevity pay rates.

* * * * *

Uniformed service member or uniformed services participant means a TSP participant who is a member of the

uniformed services on active duty or a member of the Ready Reserve in any pay status.

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

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