

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

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

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to have make-up contributions credited to their Thrift Savings Plan (TSP) accounts and, in certain cases, restore withdrawn funds and reestablish loan accounts.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

EFFECTIVE DATE: The final rule is effective April 14, 1997.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005. Telephone: (202) 942-1660.

SUPPLEMENTARY INFORMATION: Interim regulations governing retroactive TSP contributions by certain reemployed veterans were published in the **Federal Register** on April 21, 1995 (60 FR 19990). The Board received no comments on those interim regulations. Section four of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. L. 103-353, 108 Stat. 3149, amended the Federal Employees' Retirement System Act of

1986, Pub. L. 99-335, 100 Stat. 514, codified, as amended, largely at 5 U.S.C. 8401-8479 (1994), to permit veterans returning to a Federal civilian job from qualified military service to make retroactively any employee contributions to the TSP which might have been made if the veteran had remained continuously employed.

Taxes on these retroactive contributions were deferred only within certain overall limits. On August 20, 1996, Congress passed the Small Business Job Protection Act of 1996 (the Small Business Act), Pub. L. 104-188, 110 Stat. 1755. The Small Business Act added section 414(u) to the Internal Revenue Code to provide that contributions made by a reemployed veteran pursuant to USERRA are not subject to the limits on elective deferrals that are otherwise applicable to TSP contributions. Section 1620.102(b)(3) of the Board's interim regulations stated that employees may not make any retroactive contributions that would cause them to exceed the Internal Revenue Code's elective deferral limit. The final rule removes paragraph (b)(3) of § 1620.102 to conform with the Internal Revenue Code as amended by the Small Business Act. The final rule adopts the interim rule as final in all other respects.

These regulations are being given retroactive effect to August 2, 1990, in order to provide eligible employees an opportunity to seek and obtain TSP benefits from the effective date of USERRA.

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 employees of the United States Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

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.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Board 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 prior to the publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1620

Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

Accordingly, the interim rule amending 5 CFR part 1620 which was published at 60 FR 1990 on April 21, 1995, is adopted as a final rule with the following change:

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. 104-188, 110 Stat. 1755.

§ 1620.102 [Amended]

2. Section 1620.102 is amended by removing paragraph (b)(3).

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