

government retirement plans, including the TSP, to begin making distributions to participants by April 1 of the year following the year they become age 70½ or the year they separate from Government employment, whichever is later. These rules also require that, in certain circumstances, minimum distribution amounts be paid directly to the participant rather than transferred to an IRA or other eligible retirement plan or used to purchase an annuity. Consequently, the minimum distribution rules can limit the ability of some participants to have their entire accounts paid according to the withdrawal method they choose under these rules. The Board intends to publish separate rules, adding subpart E to part 1650, describing the effect of minimum distributions on TSP accounts. Reference to the minimum distribution rules is required here because they limit the participant's ability to withdraw the entire account according to his or her choice. Until regulations are issued adding subpart E to part 1650, those rules will simply be referred to as "minimum distribution requirements."

Third, the rules concerning matrimonial court orders and child support and alimony orders can affect the ability of the participant to withdraw his or her account, as well as the amount in the account available for withdrawal. Those rules are being published separately in part 1653.

Section 1650.3 describes what constitutes a "separation from Government employment" for purposes of determining who is entitled to withdraw his or her TSP account. Section 8433 of title 5 limits the ability to withdraw an account from the TSP to persons who have "separated from Government employment." This limitation is in keeping with the primary purpose of the TSP as a retirement plan under which contributions and earnings are afforded favorable tax treatment because they will be used primarily to fund retirement benefits.

Section 1650.3 makes it clear that the term "separation from Government employment" encompasses separation from positions in the Federal Government, the Postal Service, and in organizations that have employees who by statute are eligible to contribute to the TSP. For example, certain employees of employee organizations and employees working for a state or local government on an Intergovernmental Personnel Act (IPA) assignment are eligible to participate in the TSP under the provisions of Public Law 100-238. (See 5 CFR Part 1620).

Under these regulations, separation from such positions will be considered a separation from Government employment (unless the participant returns to his or her position with the Federal Government).

Section 1650.3 also makes it clear that the Board interprets the term "separation" to mean separation from Government employment (as described above) for at least 31 full calendar days. Because Congress limited access to the often significant amounts of money in TSP accounts to persons who had separated from Government employment, the Board determined that persons transferring between Government jobs (for example) should not be able to gain access to their TSP accounts after a short break in service. Thus the regulation states that a break in service must be at least 31 full calendar days. Similar rules have been adopted by Congress to limit access to refunds under the FERS and CSRS basic annuity programs.

Section 1650.4 sets forth rules for dealing with employees who are rehired by the Government before they withdraw their TSP accounts. Because the Board has decided to define "separation" to mean a break in service of 31 or more full calendar days, it is necessary to establish procedures to ensure that participants who are withdrawing have the requisite break in service. Therefore, § 1650.4(a) describes the statements that participants must make concerning their employment status and the length of their expected break in service in order to be able to withdraw their TSP accounts.

This "self-certifying" approach was deemed preferable to an approach requiring the agency immediately to report all rehired employees. Because rehired employees are not permitted to resume TSP contributions until the next election period (see 5 U.S.C. 8432(b)), agencies may not need to report transactions to the TSP concerning these employees for up to six months after the date of rehire. Consequently, information concerning the rehired employee would not otherwise be reported to the TSP promptly or within a consistent timeframe after the date of rehire. Also, the Board wanted to avoid imposing upon the employing agencies the administrative burden of reporting every rehire action to the TSP, when only a few of those actions would ever affect TSP withdrawals. Because false information provided by the participant is subject to criminal penalties, self-certification was deemed a reasonable way to ensure that persons who have been rehired (or expect to be rehired)

within 31 days are prevented from withdrawing their accounts.

Section 1650.4(b) states the rules for persons who are rehired after 31 full calendar days but still want to withdraw the portion of their accounts attributable to the earlier period of employment. Section 1650.4(b) provides that such a participant can only withdraw the portion of the account balance attributable to the first period of employment. The term "attributable to the first period of employment" means amounts contributed to the account during the period of employment to which the separation relates and any earnings on those amounts as of the date of payment. Amounts contributed after the date of rehire and earnings on such amounts are excluded.

Section 1650.4(b) also provides that, if the amount in the account attributable to the first period of employment is more than \$3,500, the participant can withdraw that amount only if he or she submits a valid withdrawal request form prior to the date the participant is rehired. As explained above, this requirement is fulfilled by the requirement that the participant state on the form if he or she has been rehired. It was not feasible to require that withdrawal actually occur before the date of rehire, because administrative delays on the part of the employing agency or the Board might make withdrawal impossible before then. However, it seemed inappropriate to give rehired participants the ability to withdraw their funds at any time (perhaps many years) after they were rehired. Thus, the Board has established the rule that the withdrawal request must be submitted before the date of rehire.

If, however, the amount in the participant's account attributable to the first period of employment is \$3,500 or less, the participant is eligible to receive an "automatic cashout" under the procedures set forth in § 1650.17 without submitting any withdrawal forms. Therefore, the participant cannot be required to submit a withdrawal form prior to rehire in order to receive a withdrawal. For such a participant, § 1650.4(b) allows the scheduled automatic cashout of the amount attributable to the first period of employment to proceed, even if the person has already been rehired (after more than 31 days) and no forms are submitted.

Section 1650.5 states the rule that a participant cannot withdraw his or her TSP account until an outstanding loan has either been paid in full or declared to be a taxable distribution. Under the TSP loan program (see 5 CFR Part 1655),