

the participant. The participant who chooses this feature must, before the annuity can be purchased, complete Form TSP-11-B, Beneficiary Designation for a TSP Annuity, to name the beneficiaries to receive this payment and to state the portion of the payment to be paid to each beneficiary. After the annuity is purchased, the participant may change the beneficiaries. If the annuity is a joint life annuity, the survivor (even if not the participant) may also change the beneficiaries or their shares. Beneficiary changes after the purchase of an annuity are handled between the annuitant and the annuity provider and do not involve the TSP.

The second feature, described in § 1650.10(d)(2), is known as the "10-year certain" feature. This feature provides that, if a single life annuity is chosen, payments will be made for at least 10 years. If the participant dies before the 10-year period expires, payments will be made to a designated beneficiary for the remainder of the period. Beneficiaries under this feature are designated on a Form TSP-11-B, in the same way as under the cash refund feature. The 10-year certain feature is only available for single life annuities, because it is expected that, in most cases, payments under joint life annuities would last at least 10 years.

Section 1650.10(e) provides that the Board can establish other types of annuities and other optional annuity features, as it did in the case of the cash refund and 10-year certain features. The statute makes it clear that the Board can decide to offer additional annuity options.

Section 1650.10(f) reflects the requirement found in the statute that any annuity method must be available to separating participants for at least 5 years after the date it is eliminated. This provision appears to have been designed to prevent the Board from eliminating annuity methods precipitously, when a participant may have been planning to choose such a method. Although the 5 year requirement may have little applicability to younger participants, it appears to be designed to preserve options for those participants who are near retirement age and who might be able to change their retirement date if they knew in advance that an annuity method would cease to be offered. Although the statute only speaks in terms of elimination of a "method of payment," the regulation makes it clear that the Board would apply this rule to any annuity type (other than the statutorily prescribed annuity types), any benefit level, or any other annuity feature (such as the cash refund feature)

that the Board has previously decided to offer.

Section 1650.11 describes the situations under which a participant can have the TSP transfer all or a portion of a TSP withdrawal payment to an IRA or other eligible retirement plan, as defined in the Internal Revenue Code. Transfer of the entire account balance to an eligible retirement plan was mandated by Congress in FERSA. At the time of issuance of the original interim regulations in 1987, the participant had to choose to transfer either the entire account balance or nothing at all. However, in 1992 Congress enacted Public Law 102-318, which required all tax-qualified retirement plans (including the TSP), effective in 1993, to allow the transfer to an IRA or other eligible retirement plan of all or part of any "eligible rollover distribution." Any part of an eligible rollover distribution that is not directly transferred is subject to mandatory 20 percent income tax withholding. Therefore, beginning in 1993, the Board implemented changes in the TSP transfer option to comply with the requirements of Public Law 102-318. This means that all TSP withdrawals that are identified as "eligible rollover distributions" can now be transferred, in whole or in part, to an IRA or other eligible retirement plan. Eligible rollover distributions include all single payments, as well as final single payments that end a series of monthly payments. Thus, a participant who wants his or her entire account balance transferred can elect a single payment (which is an option now available to all) and can have the entire payment transferred.

Because the definition of "eligible rollover distribution" in Public Law 102-318 includes monthly payments expected to be made for fewer than 10 years and not based on life expectancy, certain TSP monthly payments also qualify for transfer. Section 1650.11 explains that monthly payments can be transferred if the participant elects fewer than 120 payments (i.e., fewer than 10 years of monthly payments), or the participant elects a monthly payment amount which, when divided into the account balance, yields a number less than 85. This number was chosen based upon an assumed annual earnings rate of 8 percent for the account. This means that a fixed payment amount chosen by the participant that would result in fewer than 85 payments if paid in equal monthly installments from his or her existing account balance could be expected to result in fewer than 120 payments if the account accrued earnings at the rate of 8 percent per year

during the payout period. TSP monthly payments calculated based on life expectancy cannot be transferred. This is because the Internal Revenue Code does not allow any payment which is calculated based on life expectancy to be transferred. (This also means that TSP annuity payments and minimum distribution payments cannot be transferred.)

Section 1650.11(d) states the definition of an eligible retirement plan, which is found in section 402(c)(8) of the Internal Revenue Code. An IRA is included in the definition of an eligible retirement plan. The Internal Revenue Code also requires that an IRA or other eligible retirement plan be maintained in the United States, which is defined as the 50 states and the District of Columbia. Plans maintained in foreign countries or in United States possessions, such as Puerto Rico, the Virgin Islands, or Guam, do not qualify.

Section 1650.12(a) contains the basic rule establishing the participant's right to choose that a single payment be made, or that monthly payments or an annuity begin, at a future date of his or her own choosing. This type of election is referred to as a "deferred withdrawal" election, and is specifically authorized in 5 U.S.C. 8433(b).

Section 1650.12(b) describes the time limit placed by 5 U.S.C. 8433(b) upon the participant's right to make a deferred withdrawal election. Under that section, a participant must choose a date for his or her withdrawal to begin that is no later than April 1 of the year following the year the participant becomes age 70½. Because the TSP is a monthly valued plan, as explained in § 1650.7, the month chosen for payment under § 1650.12(b) must be no later than March of the relevant year, so that a payment can be made by April 1. Also, because the first annuity payment is made approximately 30 days after the annuity is purchased, an annuity will be purchased in the monthly cycle prior to the month chosen. Therefore, if a participant chooses an annuity to begin in March of the year following the year in which he or she becomes age 70½ (i.e., the latest possible date), the annuity will be purchased in February of that year. Persons who are already past the limit date (e.g., participants who separate when they are age 73) when they make a withdrawal election cannot make a deferred withdrawal election. They must elect an immediate withdrawal.

The rule stated in § 1650.12(b) generally comports with the minimum distribution requirements found in the Internal Revenue Code. The minimum distribution rules generally require