

income is less than his or her monthly expenses on a recurring basis);

(2) The participant has incurred medical expenses as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income tax purposes. Eligible medical expenses include the cost of household improvements required as a result of a medical condition, illness or injury. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person.

(3) The participant must have paid the cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(4) The participant must have paid attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) When determining financial hardship needs, a participant cannot use any expenses that are already paid or are reimbursable to the participant by insurance or otherwise.

(d) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested; or

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings.

(e) The participant must certify that he or she has a financial hardship as described on the hardship withdrawal form, and that the dollar amount of

the withdrawal request does not exceed the actual amount of the financial hardship.

(f) A participant is not eligible for an in-service hardship withdrawal based solely on monthly negative cash flow (as described in paragraph (b)(1) of this section) during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code (11 U.S.C. chapter 13).

[68 FR 35503, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

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

(a) A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore, his or her TSP contributions will continue without interruption.

(b) 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. 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 participant, agency automatic (1%) contributions will continue. A participant whose TSP contributions are discontinued by his or her agency after a financial hardship withdrawal can resume contributions any time after expiration of the six-month period by submitting a new TSP contribution election. Contributions will not resume automatically.

§ 1650.34 Uniqueness of loans and withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal or vice versa. Funds distributed as an in-service withdrawal cannot be returned or repaid.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based in-service withdrawal, a participant must submit to the TSP record keeper a properly

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completed age-based withdrawal request, Form TSP-75 or TSP-U-75, or use the TSP Web site to initiate a request. A participant's ability to complete an age-based withdrawal on the Web will depend on his or her retirement system coverage, marital status, and whether or not part or all of the withdrawal will be transferred to an eligible employer plan or traditional IRA.

§ 1650.42 How to obtain a financial hardship withdrawal.

(a) To request a financial hardship in-service withdrawal, a participant must submit to the TSP Service Office a properly completed financial hardship withdrawal form, Form TSP-76 or Form TSP-U-76, or use the TSP Web site to initiate a request. A participant's ability to complete a financial hardship withdrawal on the Web will depend on his or her retirement system coverage and marital status.

(b) There is no limit on the number of financial hardship withdrawals a participant can make; however, the TSP will not accept a financial hardship withdrawal request for a period of six months after a financial hardship disbursement is made.

§ 1650.43 Taxes related to in-service withdrawals.

(a) When an in-service withdrawal is paid directly from the TSP to a participant, the money is taxable income in the year in which the payment is made (except contributions from pay subject to the combat zone tax exclusion). However, a participant does not pay taxes on an age-based withdrawal that the TSP transfers directly or the participant rolls over to a traditional IRA or an eligible employer plan until the money is withdrawn.

(b) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to a traditional IRA or an eligible employer plan, consistent with § 1650.25. If the withdrawal is not transferred, it is subject to mandatory 20 percent withholding. The participant may increase the amount of withholding by submitting IRS Form W-4P, Withholding Certificate for Pension or

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Annuity Payments, to the TSP with the withdrawal request.

(c) A financial hardship in-service withdrawal from the TSP is not an eligible rollover distribution, and a participant therefore may not request the TSP to transfer a financial hardship in-service withdrawal to a traditional IRA or an eligible employer plan. A financial hardship in-service withdrawal is subject to 10 percent withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments, to the TSP with the withdrawal request.

Subpart F [Reserved]

Subpart G—Spousal Rights

§ 1650.61 Spousal rights applicable to post-employment withdrawals.

(a) The spousal rights described in this section apply to full post-employment withdrawals when the married participant's vested TSP account balance exceeds \$3,500, and to partial post-employment withdrawals without regard to the amount of the participant's account balance.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment withdrawal, unless the participant was granted an exception under this subpart to the spousal notification requirement within 90 days of the date the withdrawal request is processed by the TSP. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the spouse at the most recent address provided by the participant.

(c) The spouse of a FERS or uniformed services participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund based on the participant's entire account balance when the participant elects a full post-employment withdrawal. The participant may make a different withdrawal election only if his or her spouse waives the right to this annuity.