

§ 1620.40

as having separated from Government service. If the employee subsequently elects not to be covered by CSRS or FERS, the NAF instrumentality must submit an Employee Data Record to report the employee as having separated from Federal Government service as of the date of the move.

Subpart E—Uniformed Services Employment and Reemployment Rights Act (USERRA)—Covered Military Service

§ 1620.40 Scope.

To be covered by this subpart, an employee must have:

(a) Separated from Federal civilian service or entered leave-without-pay status in order to perform military service; and

(b) Become eligible to seek reemployment or restoration to duty by virtue of a release from military service, discharge from hospitalization, or other similar event that occurred on or after August 2, 1990; and

(c) Been reemployed in, or restored to, a position covered by CSRS or FERS pursuant to the provisions of 38 U.S.C. chapter 43.

§ 1620.41 Definitions.

As used in this subpart:

Current contributions means contributions that must be made for the current pay date which is reported on the journal voucher that accompanies the payroll submission.

Nonpay status means an employer-approved temporary absence from duty.

Reemployed or returned to pay status means reemployed in or returned to a pay status, pursuant to 38 U.S.C. chapter 43, to a position that is subject to 5 U.S.C. 8351 or chapter 84.

Retroactive period means the period for which an employee can make up missed employee contributions and receive missed agency contributions. It begins the day after the employee separates or enters nonpay status to perform military service and ends when the employee is reemployed or returned to pay status.

Separate from civilian service means to cease employment with the Federal Government, the U.S. Postal Service,

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or with any other employer from a position that is deemed to be civilian Government employment for purposes of participating in the TSP, for 31 or more full calendar days.

[67 FR 49525, July 30, 2002]

§ 1620.42 Processing TSP contribution elections.

(a) *Current contribution election.* If the employee entered nonpay status with a valid contribution election on file, the agency must immediately reinstate that election for current contributions when the employee returns to pay status, unless the employee files a new contribution election. If the employee separated to perform military service, he or she must make a new contribution election to begin current contributions.

(b) *Makeup contribution election.* Upon reemployment or return to pay status, an employee has 60 days to elect to make up missed contributions. An employee's right to make retroactive TSP contributions will expire if an election is not made within 60 days of the participant's reemployment or return to pay status.

(c) *Makeup contributions.* Makeup contributions will be processed as follows:

(1) If the employee had a valid contribution election on file when he or she separated or entered nonpay status to perform military service, that election form will be reinstated for purposes of determining the makeup contributions, unless the employee submits a new contribution election which he or she could otherwise have made but for the performance of military service.

(2) An employee who terminated contributions within two months of entering military service will also be eligible to make a retroactive contribution election to be effective on the date the contributions were terminated.

[70 FR 32213, June 1, 2005]

§ 1620.43 Agency payments to record keeper; agency ultimately responsible.

(a) *Agency making payments to record keeper.* The current employing agency is responsible for making payments to

the record keeper for all contributions, regardless of whether some of that expense is ultimately chargeable to a prior employing agency.

(b) *Agency ultimately chargeable with expense.* The agency that reemployed the participant is ordinarily the agency ultimately chargeable with the expense of agency contributions and the breakage attributable to them. However, if an employee changed agencies during the period between the date of reemployment and October 13, 1994, the employing agency as of October 13, 1994, is the agency ultimately chargeable with the expense.

(c) *Reimbursement by agency ultimately chargeable with expense.* If the agency that made the payments to the record keeper for agency contributions is not the agency ultimately chargeable for that expense, the agency that made the payments to the record keeper may, but is not required to, obtain reimbursement from the agency ultimately chargeable with the expense.

[70 FR 32213, June 1, 2005]

§ 1620.44 Restoring forfeited agency automatic (1%) contributions.

If an employee's agency automatic (1%) contributions were forfeited because the employee was not vested when he or she separated to perform military service, the employee must notify the employing agency that a forfeiture occurred. The employing agency will follow the procedure described in § 1620.46(e) to have those funds restored.

[64 FR 31057, June 9, 1999, as amended at 67 FR 49526, July 30, 2002]

§ 1620.45 Suspending TSP loans, restoring post-employment withdrawals, and reversing taxable distributions.

(a) *Suspending TSP loans during nonpay status.* If the TSP is notified that an employee entered into a nonpay status to perform military service, any outstanding TSP loan from a civilian TSP account will be suspended, that is, it will not be declared a taxable distribution while the employee is performing military service.

(1) Interest will accrue on the loan balance during the period of suspension. When the employee returns to ci-

vilian pay status, the employing agency will resume deducting loan payments from the participant's basic pay and the TSP will reamortize the loan (which will include interest accrued during the period of military service). The maximum loan repayment term will be extended by the employee's period of military service. Consequently, when the employee returns to pay status, the TSP record keeper must receive documentation to show the beginning and ending dates of military service.

(2) The TSP may close the loan account and declare it to be a taxable distribution if the TSP does not receive documentation that the employee entered into nonpay status. However, the taxable distribution can be reversed in accordance with paragraph (c) of this section.

(b) *Restoring post-employment withdrawals.* An employee who separates from civilian service to perform military service and who receives an automatic cashout of his or her account may return to the TSP an amount equal to the amount of the payment. The employee must notify the TSP record keeper of his or her intent to return the withdrawn funds within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to return a withdrawal, the TSP record keeper will then inform the employee of the actions that must be taken to return the funds.

(c) *Reversing taxable distributions.* An employee may request that a taxable loan distribution be reversed if the taxable distribution resulted from the employee's separation or placement in nonpay status to perform military service. The TSP will reverse the taxable distribution under the process described as follows:

(1) An employee who received a post-employment withdrawal when he or she separated to perform military service can have a taxable distribution reversed only if the withdrawn amount is returned as described in paragraph (b) of this section;

(2) A taxable loan distribution can be reversed either by reinstating the loan or by repaying it in full. The TSP loan can be reinstated only if the employee