

# Rules and Regulations

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## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1605

#### Default Investment Fund Errors

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Retirement Thrift Investment Board (Agency) is amending its regulations to codify procedures for correcting certain default investment fund errors.

**DATES:** This rule is effective September 22, 2015.

**FOR FURTHER INFORMATION CONTACT:** Austen Townsend at (202) 864-8647.

**SUPPLEMENTARY INFORMATION:** The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees, members of the uniformed services, and spouse beneficiaries. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On August 17, 2015, the Agency published a proposed rule with request for comments in the *Federal Register* (80 FR 49173, August 17, 2015). The Agency received no comments and, therefore, is publishing the proposed rule as final without change.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal civilian employees and spouse

beneficiaries who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, and which is administered by the Agency.

#### Paperwork Reduction Act

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

#### Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501-1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

#### Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency 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 before publication of this rule in the *Federal Register*. The rule is not a major rule as defined in 5 U.S.C. 804(2).

#### List of Subjects in 5 CFR Part 1605

Government employees, Pensions, Retirement.

**Gregory T. Long,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

#### PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 1. The authority citation for part 1605 continues to read as follows:

**Authority:** 5 U.S.C. 8351, 8432(a), 8432(d), 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104-106, 110 Stat. 186 and § 7202(m)(2) of Public Law 101-508, 104 Stat. 1388.

■ 2. Amend § 1605.2 by revising the section heading and paragraphs (b)(1)(i) and (c) to read as follows:

#### § 1605.2 Calculating, posting, and charging breakage on late contributions and loan payments.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Use the participant's contribution allocation on file for the "as of" date to determine how the funds would have been invested. If there is no contribution allocation on file, or one cannot be derived based on the investment of contributions, the TSP will consider the funds to have been invested in the default investment fund in effect for the participant on the "as of" date.

\* \* \* \* \*

(c) *Posting contributions and loan payments.* Makeup and late contributions, late loan payments, and breakage, will be posted to the participant's account according to his or her contribution allocation on file for the posting date. If there is no contribution allocation on file for the posting date, they will be posted to the default investment fund in effect for the participant.

\* \* \* \* \*

■ 3. Add § 1605.3 to subpart A to read as follows:

#### § 1605.3 Calculating, posting, and charging breakage on errors involving investment in the wrong fund.

(a) The TSP will calculate and post breakage on date of birth errors that result in default investment in the wrong L Fund, contribution allocation errors, and interfund transfer errors.

(b) The TSP will charge the employing agency for positive breakage on incorrect dates of birth caused by employing agency error that result in default investment in the wrong L Fund. A date of birth change received from an employing agency will not trigger corrective action other than to update the date of birth. To initiate a breakage calculation for an employee, the employing agency must notify the TSP that the participant is entitled to breakage.

■ 4. Amend § 1605.13 by revising paragraph (a)(3) to read as follows:

#### § 1605.13 Back pay awards and other retroactive pay adjustments.

(a) \* \* \*

(3) All contributions made under this paragraph (a) and associated breakage will be invested according to the participant's contribution allocation on the posting date. Breakage will be calculated using the share prices for the default investment fund in effect for the participant in accordance with § 1605.2 unless otherwise required by the employing agency or the court or other tribunal with jurisdiction over the back pay case.

\* \* \* \* \*

■ 5. Amend § 1605.16 by revising paragraphs (a) and (b) to read as follows:

**§ 1605.16 Claims for correction of employing agency errors; time limitations.**

(a) *Agency's discovery of error.* (1) Upon discovery of an error made within the past six months involving the correct or timely remittance of payments to the TSP (other than a retirement system misclassification error, as covered in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before it was discovered, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) For errors involving incorrect dates of birth caused by employing agency error that result in default investment in the wrong L Fund, the employing agency must promptly notify the TSP that the participant is entitled to breakage if the error is discovered within 30 days of either the date the TSP provides the participant with a notice reflecting the error or the date the TSP makes available on its Web site a participant statement reflecting the error, whichever is earlier. If it is discovered after that time, the employing agency may use its sound discretion in deciding whether to pay breakage, but, in any event, must act promptly in doing so.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of a payment to the TSP (other than a retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim with his or her employing agency to have the error corrected without a time limit. The agency must promptly correct any such error for which the participant files a claim within six months of its occurrence; if the participant files a claim to correct any such error after that time, the agency may do so at its sound discretion.

(2) For errors involving incorrect dates of birth that result in default investment in the wrong L Fund of which a participant or beneficiary has knowledge, he or she may file a claim for breakage with the employing agency no later than 30 days after either the date the TSP provides the participant with a notice reflecting the error or the date the TSP makes available on its Web site a participant statement reflecting the error, whichever is earlier. The employing agency must promptly notify the TSP that the participant is entitled to breakage.

(3) If a participant or beneficiary fails to file a claim for breakage for errors involving incorrect dates of birth in a timely manner, the employing agency may nevertheless, in its sound discretion, pay breakage on any such error that is brought to its attention.

\* \* \* \* \*

■ 6. Amend § 1605.22 by revising paragraphs (b)(2) and (c)(2) and (3) to read as follows:

**§ 1605.22 Claims for correction of Board or TSP record keeper errors; time limitations.**

\* \* \* \* \*

(b) \* \* \*

(2) For errors involving an investment in the wrong fund caused by Board or TSP record keeper error, the Board or the TSP record keeper must promptly pay breakage if it is discovered within 30 days of the issuance of the most recent TSP participant (or loan) statement, transaction confirmation, or other notice that reflected the error, whichever is earlier. If it is discovered after that time, the Board or TSP record keeper may use its sound discretion in deciding whether to pay breakage, but, in any event, must act promptly in doing so.

(c) \* \* \*

(2) For errors involving an investment in the wrong fund of which a participant or beneficiary has knowledge, he or she may file a claim for breakage with the Board or TSP record keeper no later than 30 days after the TSP provides the participant with a transaction confirmation or other notice reflecting the error, or makes available on its Web site a participant statement reflecting the error, whichever is earlier. The Board or TSP record keeper must promptly pay breakage for such errors.

(3) If a participant or beneficiary fails to file a claim for breakage concerning an error involving an investment in the wrong fund in a timely manner, the Board or TSP record keeper may nevertheless, in its sound discretion,

pay breakage for any such error that is brought to its attention.

\* \* \* \* \*

■ 7. Amend § 1605.31 by revising paragraph (d) to read as follows:

**§ 1605.31 Contributions missed as a result of military service.**

\* \* \* \* \*

(d) *Breakage.* The employee is entitled to breakage on agency contributions made under paragraph (c) of this section. The employee will elect to have the calculation based on either the contribution allocation(s) on file for the participant during the period of military service or the default investment fund in effect for the participant; the participant must make this election at the same time his or her makeup schedule is established pursuant to § 1605.11(c).

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**OFFICE OF GOVERNMENT ETHICS**

**5 CFR Parts 2600, 2601, and 2604**

**RIN 3209-AA40, 3209-AA41, 3209-AA39**

**Organization and Functions; Implementation of Statutory Gift Acceptance Authority; Freedom of Information Act**

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Government Ethics (OGE) is issuing this final rule to update and streamline its organization and functions regulation and its statutory gift acceptance authority implementation. The final rule also updates and streamlines OGE's Freedom of Information Act (FOIA) regulation to reflect OGE's existing policy and practice and to implement changes to the FOIA. Finally, the final rule extends a requester's time to file an administrative appeal, makes administrative changes, and updates cost figures for calculating and charging fees.

**DATES:** *Effective date:* October 22, 2015.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Matis, Assistant Counsel, Office of Government Ethics, 202-482-9216.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On April 3, 2015, OGE published proposed amendments to update and streamline its organization and functions regulation, its statutory gift acceptance authority implementation,