

§ 1603.2

that the individual give written notice of that individual's desire to become subject to the retirement system established by 5 U.S.C. chapters 83 or 84; or

(2) Any military service creditable under the provisions of 5 U.S.C. 8432b(h)(1) and the regulations at 5 CFR part 1620, subpart H.

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration, as well as members of the Ready Reserve including the National Guard.

Military service means service that is creditable under 37 U.S.C. 205.

Vested means those amounts in an individual account which are nonforfeitable.

Year of service means one full calendar year of service.

[68 FR 35497, June 13, 2003, as amended at 82 FR 60104, Dec. 19, 2017]

§ 1603.2 Basic vesting rules.

(a) All amounts in a CSRS employee's individual account are immediately vested.

(b) Except as provided in paragraph (c) of this section, all amounts in a FERS employee's or uniformed service member's individual account (including all first conversion contributions) are immediately vested.

(c) Except as provided in paragraph (d) of this section, upon separation from Government service without meeting the applicable service requirements of § 1603.3, a FERS employee's or a BRS uniformed service member's Agency Automatic (1%) Contributions and attributable earnings will be forfeited.

(d) If a FERS employee or uniformed service member dies (or died) after January 7, 1988, without meeting the applicable service requirements set forth in § 1603.3, the Agency Automatic (1%) Contributions and attributable earnings in his or her individual account are deemed vested and shall not be forfeited. If a FERS employee died on or before January 7, 1988, without meeting those service requirements, his or her Agency Automatic (1%) Contributions and attributable earnings

5 CFR Ch. VI (1–1–23 Edition)

are forfeited to the Thrift Savings Plan.

[82 FR 60104, Dec. 19, 2017]

§ 1603.3 Service requirements.

(a) Except as provided under paragraph (b) of this section, FERS employees will be vested in their Agency Automatic (1%) Contributions and attributable earnings upon separating from Government only if, as of their separation date, they have completed three years of civilian service.

(b) FERS employees will be vested in their Agency Automatic (1%) Contributions and attributable earnings upon separating from Government service if, as of their separation date, they have completed two years of civilian service and they are serving in one of the following positions:

(1) A position in the Senior Executive Service as a non-career appointee (as defined in 5 U.S.C. 3132(a)(7));

(2) Positions listed in 5 U.S.C. 5312, 5313, 5314, 5315 or 5316;

(3) A position placed in level IV or level V of the Executive Schedule, pursuant to 5 U.S.C. 5317;

(4) A position in the Executive Branch which is excepted from the competitive service by the Office of Personnel Management because of the confidential and policy-determining character of the position; or

(5) A Member of Congress or a Congressional employee.

(c) Uniformed service members who are covered by BRS will be vested in their Agency Automatic (1%) Contributions and attributable earnings upon separation from the uniformed services only if, as of their separation date, they have completed two years of military service.

[52 FR 29835, Aug. 12, 1987, as amended at 60 FR 24535, May 9, 1995; 62 FR 33969, June 23, 1997; 82 FR 60104, Dec. 19, 2017]

PART 1604 [RESERVED]

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

Subpart A—General

Sec.
1605.1 Definitions.

Federal Retirement Thrift Investment Board

§ 1605.1

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

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

Subpart B—Employing Agency Errors

1605.11 Makeup of missed or insufficient contributions.

1605.12 Removal of erroneous contributions.

1605.13 Back pay awards and other retroactive pay adjustments.

1605.14 Misclassified retirement system coverage.

1605.15 Reporting and processing late contributions and late loan payments.

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

1605.17 Redesignation and recharacterization.

Subpart C—Board or TSP Record Keeper Errors

1605.21 Plan-paid breakage and other corrections.

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

Subpart D—Miscellaneous Provisions

1605.31 Contributions missed as a result of military service.

AUTHORITY: 5 U.S.C. 8351, 8432a, 8432d, 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.

SOURCE: 66 FR 44277, Aug. 22, 2001, unless otherwise noted.

Subpart A—General

§ 1605.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

“*As of*” date means the date on which a TSP contribution or other transaction entailing acquisition of investment fund shares should have taken place. Employing agencies use this date on payment records to report makeup or late contributions or late loan payments.

Attributable pay date means:

(i) The pay date of a contribution that is being redesignated from traditional to Roth, or vice versa;

(ii) In the case of the uniformed services, the pay date of a contribution that is being recharacterized from tax-deferred to tax-exempt, or vice versa; or

(iii) The pay date of an erroneous contribution for which a negative adjustment is being made. However, if the erroneous contribution for which a negative adjustment is being made was a makeup or late contribution, the attributable pay date is the “as of” date of the erroneous makeup or late contribution.

Breakage means the loss incurred or the gain realized on makeup or late contributions.

BRS participant means any member of the Uniformed Services described in 5 U.S.C. 8440e(e)(1).

Earnings means both positive and negative fund performance attributable to differences in TSP core fund share prices.

Error means any act or omission by the Board, the TSP record keeper, or the participant’s employing agency that is not in accordance with applicable statutes, regulations, or administrative procedures that are made available to employing agencies and/or TSP participants. It does not mean an act or omission caused by events that are beyond the control of the Board, the TSP record keeper, or the participant’s employing agency.

FERCCA correction means the correction of a retirement coverage error pursuant to the Federal Erroneous Retirement Coverage Corrections Act, title II, Public Law 106-265, 114 Stat. 770.

Late contributions means:

(i) Employee contributions that were timely deducted from a participant’s basic pay but were not timely reported to the TSP record keeper for investment;

(ii) Employee contributions that were timely reported to the TSP record keeper but were not timely posted to the participant’s account by the TSP record keeper because the payment record on which they were submitted contained errors;

(iii) Agency matching contributions attributable to employee contributions referred to in paragraph (i) or (ii) of this definition; and

§ 1605.2

5 CFR Ch. VI (1–1–23 Edition)

(iv) Delayed agency automatic (1%) contributions.

Makeup contributions are employee contributions that should have been deducted from a participant's basic pay or employer contributions that should have been charged to an employing agency on an earlier date, but were not deducted or charged and, consequently, are being deducted or charged currently.

Negative adjustment means the removal of money from a participant's TSP account by an employing agency.

Negative adjustment record means a data record submitted by an employing agency to remove from a participant's TSP account money that the agency had previously submitted in error.

Non-BRS participant means any member of the Uniformed Services not described in 5 U.S.C. 8440e(e)(1).

Pay date means the date established by an employing agency for paying its employees or service members.

Payment record means a data record submitted by an employing agency to report contributions or loan payments to a participant's TSP account.

Recharacterization means the process of changing a contribution that the employing agency erroneously submitted as a tax-deferred contribution to a tax-exempt contribution (or vice versa). Recharacterization is a method of error correction only. It applies only to the traditional balance of a uniformed services account.

Recharacterization record means a data record submitted by an employing agency to recharacterize a tax-deferred contribution that the employing agency erroneously submitted as a tax-exempt contribution (or vice versa).

Redesignation means the process of moving a contribution (and its associated positive earnings) from a participant's traditional balance to the participant's Roth balance or vice versa in order to correct an employing agency error that caused the contribution to be submitted to the wrong balance. Redesignation is a method of error correction only. A participant cannot request the redesignation of contributions unless the employing agency made an error in the submission of the contributions.

Redesignation record means a data record submitted by an employing agency to redesignate a contribution that the employing agency erroneously submitted to the wrong balance (traditional or Roth).

[68 FR 35497, June 13, 2003, as amended at 70 FR 32209, June 1, 2005; 77 FR 26425, May 4, 2012; 82 FR 60104, Dec. 19, 2017; 87 FR 31676, May 24, 2022]

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

(a) *General criteria.* The TSP will calculate breakage on late contributions, makeup agency contributions, and loan payments as described by § 1605.15(b). This breakage calculation is subject to the criteria in paragraphs (a)(1) and (2) of this section:

(1) The TSP record keeper will not calculate breakage if contributions or loan payments are posted within 30 days of the "as of" date, or if the total amount on a late payment record or the total agency contributions on a current payment record is less than \$1.00; and

(2) The TSP record keeper will not take the participant's fund reallocations and fund transfers into account when determining breakage.

(b) *Calculating breakage.* The TSP record keeper will calculate breakage for all contributions or loan payment corrections as follows:

(1) Use the participant's investment election on file for the "as of" date to determine how the funds would have been invested, going back to the earliest daily share prices available. If there is no investment election on file, or one cannot be derived based on the investment of contributions, the TSP record keeper will consider the funds to have been invested in the default investment fund in effect for the participant on the "as of" date;

(2) Determine the number of shares of the applicable investment funds the participant would have received had the contributions or loan payments been made on time. If the "as of" date is before TSP account balances were converted to shares, this determination will be the number of shares the participant would have received on the conversion date, and will include the daily

earnings the participant would have received had the contributions or loan payments been made on the “as of” date;

(3) Determine the dollar value on the posting date of the number of shares the participant would have received had the contributions or loan payments been made on time. If the contributions or loan payments would have been invested in a Lifecycle fund that is retired on the posting date, the share price of the L Income Fund will be used. The dollar value shall be the number of shares the participant would have received had the contributions or loan payments been made on time multiplied by the share price; and

(4) The difference between the dollar value of the contribution or loan payment on the posting date and the dollar value of the contribution or loan payment on the “as of” date is the breakage.

(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 investment election on file for the posting date. If there is no investment election on file for the posting date, they will be posted to the default investment fund in effect for the participant.

(d) *Charging breakage.* If the dollar amount posted to the participant’s account is greater than the dollar amount of the makeup or late contribution or late loan payment, the TSP record keeper will charge the agency the additional amount. If the dollar amount posted to the participant’s account is less than the dollar amount of the makeup or late contribution, or late loan payment, the difference between the amount of the contribution and the amount posted will be forfeited to the TSP.

(e) *Posting of multiple contributions.* If the TSP record keeper posts multiple makeup or late contributions or late loan payments with different “as of” dates for a participant on the same business day, the amount of breakage charged to the employing agency or forfeited to the TSP will be determined separately for each transaction, without netting any gains or losses attributable to different “as of” dates. In ad-

dition, gains and losses from different sources of contributions or different TSP core funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, TSP core fund, and source of contributions.

[87 FR 31676, May 24, 2022]

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

(a) The TSP record keeper will calculate and post breakage on date of birth errors that result in default investment in the wrong L Fund, investment election errors, and fund reallocation and fund transfer errors.

(b) The TSP record keeper 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 record keeper that the participant is entitled to breakage.

(c) If a uniformed services participant’s retirement system is misclassified and the error results in default investment in the wrong fund, when the error is corrected pursuant to §1605.14(f)–(g), the TSP record keeper will charge the employing agency for any positive breakage that results from the incorrect default investment. The retirement misclassification correction received from an employing agency will not trigger corrective action other than to update the participant’s retirement system coverage. To initiate a breakage calculation for the uniformed service member, the employing agency must notify the TSP record keeper that the participant is entitled to breakage.

[80 FR 57069, Sept. 22, 2015, as amended at 82 FR 60104, Dec. 19, 2017; 87 FR 31676, May 24, 2022]

Subpart B—Employing Agency Errors

§ 1605.11 Makeup of missed or insufficient contributions.

(a) *Applicability.* This section applies whenever, as the result of an employing agency error, a participant does not receive all of the TSP contributions to which he or she is entitled. This includes situations in which an employing agency error prevents a participant from making an election to contribute to his or her TSP account, in which an employing agency fails to implement a contribution election properly submitted by a participant, in which an employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or in which an employing agency otherwise erroneously contributes less to the TSP for a participant's account than it should have. The corrections required by this section must be made in accordance with this part and the procedures provided to employing agencies by the Board and/or the TSP record keeper in bulletins or other guidance. It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to error correction under this section.

(b) *Employer makeup contributions.* If an employing agency has failed to make agency automatic contributions that are required under 5 U.S.C. 8432(c)(1)(A) and 5 U.S.C. 8440e(e)(3)(A), or agency matching contributions that are required under section 8432(c)(2) and 5 U.S.C. 8440e(e)(3)(B), the following rules apply:

(1) The employing agency must promptly submit all missed contributions to the TSP record keeper on behalf of the affected participant. For each pay date involved, the employing agency must submit a separate payment record showing the “as of” date for the contributions.

(2) The TSP record keeper will calculate the breakage due to the participant and post both the contributions and the associated breakage to the participant's account in accordance with § 1605.2.

(c) *Employee makeup contributions.* Within 30 days of receiving information from his or her employing agency indicating that the employing agency acknowledges that an error has occurred which has caused a smaller amount of employee contributions to be made to the participant's account than should have been made, a participant may elect to establish a schedule to make up the deficient contributions through future payroll deductions. Employee makeup contributions can be made in addition to any TSP contributions that the participant is otherwise entitled to make. The following rules apply to employee makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the dollar amount of the contributions and the type of employee contributions (traditional or Roth) to be made each pay period over the duration of the schedule. The contribution amount per pay period may vary during the course of the schedule, but the total amount to be contributed must be established when the schedule is created. After the schedule is created, a participant may, with the agreement of his or her employing agency, elect to change his or her payment amount (e.g., to accelerate payment) or elect to change the type of employee contributions (traditional or Roth). The length of the schedule may not exceed four times the number of pay periods over which the error occurred.

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions which is less than four times the number of pay periods over which the error occurred. The ceiling may not, however, be less than twice the number of pay periods over which the error occurred.

(3) The employing agency must implement the participant's schedule of makeup contributions as soon as practicable.

(4) For each pay date involved, the employing agency must submit a separate payment record showing the “as of” date for which the employee contribution should have been made.

(5) Employee makeup contributions will be invested in accordance with the

participant's current investment election. The number of shares of each TSP core fund which will be purchased will be determined by dividing the amount of the makeup contributions by the share price of the applicable fund(s) on the posting date.

(6) Employee makeup contributions will be included for purposes of applying the annual limit contained in Internal Revenue Code (I.R.C.) section 402(g) (26 U.S.C. 402(g)(1)). For purposes of applying that limit, employee makeup contributions will be applied against the limit for the year of the "as of" date.

(i) Before establishing a schedule of employee makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions for the same year, would exceed the annual contribution limit(s) contained in I.R.C. section 402(g) for the year(s) with respect to which the contributions are being made.

(ii) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit contained in I.R.C. section 402(g).

(7) A schedule of employee makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

(8) A participant may elect to terminate a schedule of employee makeup contributions at any time, but a termination is irrevocable. If a participant separates from Government service, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck.

(9) At the same time that a participant makes up missed employee contributions, the employing agency must make any agency matching contributions that would have been made had

the error not occurred. Agency matching contributions must be submitted pursuant to the rules set forth in paragraph (b) of this section. A participant may not receive agency matching contributions associated with any employee contributions that are not actually made up. If employee makeup contributions are suspended in accordance with paragraph (c)(7) of this section, the payment of agency matching contributions must also be suspended.

(10) If a participant transfers to an employing agency different from the one by which the participant was employed at the time of the missed contributions, it remains the responsibility of the former employing agency to determine whether employing agency error was responsible for the missed contributions. If it is determined that such an error has occurred, the current agency must take any necessary steps to correct the error. The current agency may seek reimbursement from the former agency of any amount that would have been paid by the former agency had the error not occurred.

(11) Employee makeup contributions may be made only by payroll deduction from basic pay or, for uniformed services participants, from basic pay, incentive pay, or special pay, including bonus pay. Contributions by check, money order, cash, or other form of payment directly from the participant to the TSP, or from the participant to the employing agency for deposit to the TSP, are not permitted.

(12) A participant is not eligible to contribute makeup contributions with an "as of" date occurring prior to May 5, 2012 to his or her Roth balance.

(13) If the "as of" date of a Roth contribution that is submitted as a makeup contribution is earlier than the participant's existing Roth initiation date, the TSP record keeper will adjust the participant's Roth initiation date.

(d) *Missed bonus contributions.* This paragraph (d) applies when an employing agency fails to implement a contribution election that was properly submitted by a uniformed service member requesting that a TSP contribution be deducted from bonus pay. Within 30 days of receiving the employing agency's acknowledgment of the error, a uniformed service member may

§ 1605.12

5 CFR Ch. VI (1–1–23 Edition)

establish a schedule of makeup contributions with his or her employing agency to replace the missed contribution through future payroll deductions. These makeup contributions can be made in addition to any TSP contributions that the uniformed service member is otherwise entitled to make.

(1) The schedule of makeup contributions may not exceed four times the number of months it would take for the uniformed service member to earn basic pay equal to the dollar amount of the missed contribution. For example, a uniformed service member who earns \$29,000 yearly in basic pay and who missed a \$2,500 bonus contribution to the TSP can establish a schedule of makeup contributions with a maximum duration of 8 months. This is because it takes the uniformed service member 2 months to earn \$2,500 in basic pay (at \$2,416.67 per month).

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions. The ceiling may not, however, be less than twice the number of months it would take for the uniformed service member to earn basic pay equal to the dollar amount of the missed contribution.

[68 FR 35498, June 13, 2003, as amended at 70 FR 32210, June 1, 2005; 77 FR 26425, May 4, 2012; 82 FR 60104, Dec. 19, 2017; 87 FR 31676, May 24, 2022]

§ 1605.12 Removal of erroneous contributions.

(a) *Applicability.* This section applies to the removal of funds erroneously contributed to the TSP. This action is called a negative adjustment, and agencies may only request negative adjustments of erroneous contributions made on or after January 1, 2000. Excess contributions addressed by this section include, for example, excess employee contributions that result from employing agency error and excess employer contributions. This section does not address excess contributions resulting from a FERCCA correction; those contributions are addressed in § 1605.14.

(b) *Method of correction.* Negative adjustment records must be submitted by employing agencies in accordance with this part and any other procedures pro-

vided by the Board and/or the TSP record keeper.

(1) To remove money from a participant's account, the employing agency must submit, for each attributable pay date involved, a negative adjustment record stating the attributable pay date and the amount, by source, of the erroneous contribution.

(2) A negative adjustment record may be for any part of the contributions made for the attributable pay date. However, for each source of contributions, the negative adjustment may not exceed the amount of the contributions made for that date, minus any prior negative adjustments for the same date.

(c) *Processing negative adjustments.* To determine current value, a negative adjustment will be allocated among the TSP core funds as it would have been allocated on the attributable pay period (as reported by the employing agency). The TSP record keeper will, for each source of contributions and TSP core fund:

(1) If the attributable pay date for the erroneous contribution is on or before the date TSP accounts were converted to shares (and on or after January 1, 2000), the TSP record keeper will, for each source of contributions and investment fund:

(i) Determine the dollar value of the amount to be removed by using the daily returns for the applicable TSP core fund;

(ii) Determine the number of shares that the dollar value determined in paragraph (c)(1)(i) of this section would have purchased on the conversion date; and

(iii) Multiply the price per share for the date the adjustment is posted by the number of shares calculated in paragraph (c)(1)(ii) of this section.

(2) If the attributable pay date of the negative adjustment is after the date TSP accounts were converted to shares, the TSP record keeper will, for each source of contributions and TSP core fund:

(i) Determine the number of shares that represent the amount of the contribution to be removed using the share price on the attributable pay date; and

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section. If the contribution was erroneously contributed to a Lifecycle fund that is retired on the date the adjustment is posted, the share price of the L Income Fund will be used.

(d) *Employee contributions.* The following rules apply to negative adjustments involving employee contributions:

(1) If, on the posting date, the amount calculated under paragraph (c) of this section is equal to or greater than the amount of the proposed negative adjustment, the full amount of the adjustment will be removed from the participant's account and returned to the employing agency. Earnings on the erroneous contribution will remain in the participant's account. However, positive earnings on an erroneous contribution to the participant's Roth balance will be moved to the participant's traditional balance;

(2) If, on the posting date, the amount calculated under paragraph (c) of this section is less than the amount of the proposed negative adjustment, the amount of the adjustment, reduced by the investment loss, will be removed from the participant's account and returned to the employing agency. However, the employing agency must refund to the participant the full amount of the erroneous contribution;

(3) If an employing agency requests the removal of erroneous employee contributions from a participant's account, it must also request the removal, under paragraph (e) of this section, of any attributable agency matching contributions; and

(4) If all employee contributions are removed from a participant's account under the rules set forth in this section, the earnings attributable to those contributions will remain in the account until the participant removes them with a TSP withdrawal. If the participant is not eligible to maintain a TSP account, the employing agency must submit an employee data record to the TSP record keeper indicating that the participant has separated from Government service (this will allow the TSP-ineligible participant to

make a post-employment distribution election).

(e) *Employer contributions.* The following rules apply to negative adjustments involving erroneous employer contributions:

(1) The amount calculated under paragraph (c) of this section will be removed from the participant's account.

(2) Erroneous employer contributions will be returned to the employing agency only if the negative adjustment record is posted by the TSP record keeper within one year of the date the erroneous contribution was posted. If one year or more has elapsed when the negative adjustment record is posted, the amount computed under paragraph (c) of this section will be removed from the participant's account and used to offset TSP administrative expenses;

(3) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted and the amount computed under paragraph (c) of this section is equal to or greater than the amount of the adjustment, the employing agency will receive the full amount of the erroneous contribution. Any earnings attributable to the erroneous contribution will be removed from the participant's account and used to offset TSP administrative expenses;

(4) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted, and the amount computed under paragraph (c) of this section is less than the amount of the adjustment, the employing agency will receive the amount of the erroneous contribution reduced by the investment loss; and

(5) An employing agency's obligation to submit negative adjustment records to remove erroneous contributions from a participant's account is not affected by the length of time the contributions have been in the account.

(f) *Multiple negative adjustments.* (1) If multiple negative adjustments for the same attributable pay date for a participant are posted on the same business day, the amount removed from the participant's account and used to offset TSP administrative expenses, or returned to the employing agency, will

be determined separately for each adjustment. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. In addition, for a negative adjustment for any attributable pay date, gains and losses from different sources of contributions or different TSP core funds will not be netted against each other. Instead, for each attributable pay date each source of contributions and each TSP core fund will be treated separately for purposes of these calculations. The amount computed by applying the rules in this section will be removed from the participant's account pro rata from all funds, by source, based on the allocation of the participant's account among the TSP core funds when the transaction is posted; and

(2) If there is insufficient money in the same source of contributions to cover the amount to be removed or the amount of the requested adjustment, the negative adjustment record will be rejected.

[70 FR 32210, June 1, 2005, as amended at 75 FR 74608, Dec. 1, 2010; 77 FR 26425, May 4, 2012; 85 FR 40570, July 7, 2020; 87 FR 31677, May 24, 2022]

§ 1605.13 Back pay awards and other retroactive pay adjustments.

(a) *Participant not employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was separated from Government service or was not appointed to a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized:

(1) If the participant is reinstated or retroactively appointed to a high TSP participation is authorized, immediately upon reinstatement or retroactive appointment the employing agency must give the participant the opportunity to submit a contribution election to make current contributions. The contribution election will be effective as soon as administratively feasible, but no later than the first day of the first full pay period after it is received.

(2) The employing agency must give a reinstated or retroactively appointed

participant the following options for electing makeup contributions:

(i) The reinstated or retroactively appointed participant may submit a new contribution election for purposes of makeup contributions if he or she would have been eligible to make such an election but for the erroneous separation or erroneous failure to appoint; or

(ii) If a reinstated participant had a contribution election on file when he or she separated, the contribution election the participant had on file when he or she separated may be reinstated for purposes of makeup contributions.

(3) All contributions made under this paragraph (a) and associated breakage will be invested according to the participant's investment election 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.

(b) *Participant employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was employed in a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized:

(1) The participant will be entitled to make up contributions for the period covered by the back pay award or retroactive pay adjustment only if for that period—

(i) The participant had designated a percentage of basic pay to be contributed to the TSP; or

(ii) The participant had designated a dollar amount of contributions each pay period which equaled the applicable ceiling (FERS or CSRS) on contributions per pay period, and which, therefore, was limited as a result of the reduction in pay that is made up by the back pay award or other retroactive pay adjustment;

(2) The employing agency must compute the amount of additional employee contributions, agency matching contributions, and agency automatic (1%) contributions that would have

been contributed to the participant's account had the reduction in pay leading to the back pay award or other retroactive pay adjustment not occurred; and

(3) All contributions under this paragraph (b) and associated breakage will be posted to the participant's account based on the participant's investment election on the posting date. Breakage will be calculated in accordance with §1605.2.

(c) *Contributions to be deducted before payment or other retroactive pay adjustment.* Employee makeup contributions required under paragraphs (a) and (b) of this section:

(1) Must be computed before the back pay award or other retroactive pay adjustment is paid, deducted from the back pay or other retroactive pay adjustment, and submitted to the TSP record keeper;

(2) Must not cause the participant to exceed the annual contribution limit(s) contained in sections 402(g), 415(c), or 414(v) of the I.R.C. (26 U.S.C. 402(g), 415(c), 414(v)) for the year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year; and

(3) Must be accompanied by attributable agency matching contributions. In any event, regardless of whether a participant elects to make up employee contributions, the employing agency must make all appropriate agency automatic (1%) contributions associated with the back pay award or other retroactive pay adjustment.

(d) *Prior withdrawal of TSP account.* If a participant has received a post-employment distribution in any form other than an annuity, and the separation from Government service upon which the post-employment distribution was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount distributed to his or her TSP account. The right to restore the distributed funds will expire if the participant does not notify the TSP record keeper within 90 days of reinstatement. If the participant returns the funds that were distributed, the number of shares purchased will be determined by

using the share price of the applicable investment fund on the posting date. Restored funds will not incur breakage.

(e) *Reinstating a loan.* Participants who are covered by paragraph (d) of this section and who elect to return funds that were distributed may also elect to reinstate a loan which was previously declared to be a loan foreclosure.

[66 FR 44277, Aug. 22, 2001, as amended at 68 FR 35500, June 13, 2003; 68 FR 74451, Dec. 23, 2003; 70 FR 32211, June 1, 2005; 76 FR 78094, Dec. 16, 2011; 80 FR 57069, Sept. 22, 2015; 85 FR 72914, Nov. 16, 2020; 87 FR 31677, May 24, 2022]

§ 1605.14 Misclassified retirement system coverage.

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected:

(1) Employee contributions that exceed the applicable contribution percentage for the pay period(s) involved may remain in the participant's account. The participant may request the return of excess employee contributions made on or after January 1, 2000; those contributed before January 1, 2000, must remain in the participant's account. If the participant requests a refund of employee contributions, the employing agency must submit a negative adjustment record to remove these funds under the procedure described in §1605.12.

(2) All agency contributions that were made to a CSRS participant's account will be forfeited. An employing agency may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

(b) If a FERS participant is misclassified by an employing agency as a CSRS participant, when the misclassification is corrected:

(1) The participant may not elect to have the contributions made while classified as CSRS removed from his or her account;

(2) The participant may, under the rules of §1605.11, elect to make up contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification;

(3) The employing agency must, under the rules of §1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified;

(4) If the retirement coverage correction is a FERCCA correction, the employing agency must submit makeup employee contributions on late payment records. The participant is entitled to breakage on contributions from all sources. Breakage will be calculated pursuant to §1605.2. If the retirement coverage correction is not a FERCCA correction, the employing agency must submit makeup employee contributions on current payment records; in such cases, the employee is not entitled to breakage. Agency makeup contributions may be submitted on either current or late payment records; and

(5) If employee contributions were made up before the Office of Personnel Management implemented its regulations on FERCCA correction, and the correction is considered to be a FERCCA correction, an amount to replicate TSP lost earnings will be calculated by the Office of Personnel Management pursuant to its regulations and provided to the employing agency for transmission to the TSP record keeper.

(c) If a participant was misclassified as either FERS or CSRS and the retirement coverage is corrected to FICA only, the participant is no longer eligible to participate in the TSP.

(1) Employee contributions in the account are subject to the rules in paragraph (a)(1) of this section.

(2) Employer contributions in the account are subject to the rules in paragraph (a)(2) of this section.

(3) The TSP record keeper will consider a participant to be separated from Government service for all TSP purposes and the employing agency must submit an employee data record to reflect separation from Government service. If the participant has an outstanding loan, it will be subject to the provisions of part 1655 of this chapter. The participant may make a TSP post-employment distribution election pursuant to 5 CFR part 1650, subpart B,

and the distribution will be subject to the provisions of 5 CFR 1650.60(b).

(d) If a FERS or CSRS participant is misclassified by an employing agency as FICA only, when the misclassification is corrected the participant may, pursuant to §1605.11 of this part, elect to make up contributions that he or she would have been eligible to make as a FERS or CSRS participant during the period of misclassification. If the participant makes up employee contributions, the rules in paragraph (b)(5) of this section apply. If the participant is corrected to FERS, the rules in paragraphs (b)(3) and (b)(4) of this section also apply.

(e) The provisions of paragraph (c) of this section shall apply to any TSP contributions relating to a period for which an employee elects retroactive Nonappropriated Fund retirement coverage.

(f) If a BRS participant is misclassified by an employing agency as a non-BRS participant, when the misclassification is corrected:

(1) The participant may not elect to have the contributions made while classified as non-BRS removed from his or her account;

(2) The participant may, under the rules of §1605.11, elect to make up contributions that he or she would have been eligible to make as a BRS participant during the period of misclassification;

(3) The employing agency must, under the rules of §1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified; and

(4) The employing agency must submit makeup employee contributions on current payment records and service makeup contributions may be submitted on either current or late payment records.

(g) If a non-BRS participant is misclassified by an employing agency as a BRS participant, when the misclassification is corrected:

(1) Employee contributions may remain in the participant's account. If the participant requests a refund of employee contributions, the employing

agency must submit a negative adjustment record to remove these funds under the procedure described in §1605.12.

(2) All agency contributions that were made to a non-BRS participant's account will be forfeited. An employing service may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

[66 FR 44277, Aug. 22, 2001, as amended at 68 FR 35500, June 13, 2003; 68 FR 74451, Dec. 23, 2003; 70 FR 32212, June 1, 2005; 72 FR 53414, Sept. 19, 2007; 77 FR 26426, May 4, 2012; 82 FR 60104, Dec. 19, 2017; 87 FR 31677, May 24, 2022]

§ 1605.15 Reporting and processing late contributions and late loan payments.

(a) The employing agency must promptly submit late contributions to the TSP record keeper on behalf of the affected participant on late payment records as soon as the error is discovered. For each pay date involved, the employing agency must submit a separate record showing the "as of" date for the contributions. Breakage for both employee and agency contributions will be calculated, posted, and charged to the agency or forfeited to the TSP in accordance with §1605.2.

(b) If an employing agency deducts loan payments from a participant's pay, but fails to submit those payments to the TSP record keeper for the pay date for which they were deducted (or submits them in a manner that prevents them from being timely credited to the participant's account), the employing agency will be responsible for paying breakage using the procedure described in §1605.2. The loan payment record must contain the "as of" date for which the loan payment was deducted.

(c) All contributions or loan payments on payment records contained in a payroll submission that was received from an employing agency more than 30 days after the pay date associated with the payroll submission (as reported on the appropriate journal voucher), will be subject to breakage calculated, posted, and charged to the employing agency (or forfeited to the TSP) in accordance with §1605.2. The

employing agency will be apprised of the breakage due for each record reported on the late submission.

(d) If the "as of" date of a late Roth contribution is earlier than the participant's existing Roth initiation date, the TSP record keeper will adjust the participant's Roth initiation date.

[68 FR 35501, June 13, 2003, as amended at 77 FR 26426, May 4, 2012; 87 FR 31678, May 24, 2022]

§ 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 record keeper (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 record keeper that the participant is entitled to breakage if the error is discovered within 30 days of either the date the TSP record keeper provides the participant with a notice reflecting the error or the date the TSP or its record keeper makes available on its website 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 record keeper (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 record keeper provides the participant with a notice reflecting the error or the date the TSP or its record keeper makes available on its website a participant statement reflecting the error, whichever is earlier. The employing agency must promptly notify the TSP record keeper 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.

(c) *Retirement system misclassification error.* Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

(d) *Agency procedures.* Each employing agency must establish procedures for participants to submit claims for correction under this subpart. Each employing agency's procedures must include the following:

(1) The employing agency must provide the participant with a decision on any claim within 30 days of its receipt, unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. A decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial, citations to any applicable statutes, regulations, or procedures, a description of any additional material that would enable the participant to perfect the claim, and a statement of

the steps necessary to appeal the denial;

(2) The employing agency must permit a participant at least 30 days to appeal the employing agency's denial of all or any part of a claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial decision or in procedures promulgated by the agency. The participant may include with his or her appeal any documentation or comments that the participant deems relevant to the claim;

(3) The employing agency must issue a written decision on a timely appeal within 30 days of receipt of the appeal, unless the employing agency provides the participant with good cause for requiring a longer period to decide the appeal. The employing agency decision must include the reasons for the decision, as well as citations to any applicable statutes, regulations, or procedures; and

(4) If the agency decision on the appeal is not issued in a timely manner, or if the appeal is denied in whole or in part, the participant will be deemed to have exhausted his or her administrative remedies and will be eligible to file suit against the employing agency under 5 U.S.C. 8477. There is no administrative appeal to the Board of a final agency decision.

[66 FR 44277, Aug. 22, 2001, as amended at 70 FR 32212, June 1, 2005; 80 FR 57070, Sept. 22, 2015; 87 FR 31678, May 24, 2022]

§ 1605.17 Redesignation and re-characterization.

(a) *Applicability.* This section applies to the redesignation of contributions which, due to employing agency error, were contributed to the participant's traditional balance when they should have been contributed to the participant's Roth balance or were contributed to the participant's Roth balance when they should have been contributed to the participant's traditional balance. This section also applies to the recharacterization of contributions which, due to employing agency error, were contributed as tax-deferred contributions when they should have been

contributed as tax-exempt contributions (or vice versa). It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to error correction under this section.

(b) *Method of correction.* The employing agency must promptly submit a redesignation record or a recharacterization record in accordance with this part and the procedures provided to employing agencies by the Board and/or the TSP record keeper in bulletins or other guidance.

(c) *Processing redesignations and recharacterizations.* (1) Upon receipt of a properly submitted redesignation record, the TSP record keeper shall treat the erroneously submitted contribution (and associated positive earnings) as if the contribution had been made to the correct balance on the date that it was contributed to the wrong balance. The TSP record keeper will adjust the participant's traditional balance and the participant's Roth balance accordingly. The TSP record keeper will also adjust the participant's Roth initiation date as necessary.

(2) Upon receipt of a properly submitted recharacterization record or recharacterization request, the TSP record keeper will update the tax characterization of the erroneously characterized contribution.

(3) Agency automatic (1%) contributions and agency matching contributions cannot be redesignated as Roth contributions or recharacterized as tax-exempt contributions.

(4) There is no breakage associated with redesignation or recharacterization actions.

[77 FR 26426, May 4, 2012, as amended at 87 FR 31678, May 24, 2022]

Subpart C—Board or TSP Record Keeper Errors

§ 1605.21 Plan-paid breakage and other corrections.

(a) *Plan-paid breakage.* (1) Subject to paragraph (a)(3) of this section, if, because of an error committed by the Board or the TSP record keeper, a participant's account is not credited or charged with the investment gains or losses the account would have received

had the error not occurred, the account will be credited accordingly.

(2) Errors that warrant the crediting of breakage under paragraph (a)(1) of this section include, but are not limited to:

(i) Delay in crediting contributions or other money to a participant's account;

(ii) Improper issuance of a loan or TSP withdrawal payment to a participant or beneficiary which requires the money to be restored to the participant's account; and

(iii) Investment of all or part of a participant's account in the wrong investment fund(s).

(3) A participant will not be entitled to breakage under paragraph (a)(1) of this section if the participant had the use of the money on which the investment gains would have accrued.

(4) If the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP record keeper's error, the TSP record keeper will compute gains or losses under paragraph (a)(1) of this section for the relevant period based upon the investment funds in which the affected money would have been invested had the error not occurred. If the participant did not have, and should not have had, a TSP account during this period, then the TSP will use the rate of return set forth in § 1605.2(b) for the relevant period and return the money to the participant.

(b) *Other corrections.* The Executive Director may, in his or her discretion and consistent with the requirements of applicable law, correct any other errors not specifically addressed in this section, including payment of breakage, if the Executive Director determines that the correction would serve the interests of justice and fairness and equity among all participants of the TSP.

[87 FR 31678, May 24, 2022]

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

(a) *Filing claims.* Claims for correction of Board or TSP record keeper errors under this subpart may be submitted initially either to the TSP

§ 1605.31

record keeper or the Board. The claim must be in writing and may be from the affected participant or beneficiary.

(b) *Board's or TSP record keeper's discovery of error.* (1) Upon discovery of an error made within the past six months involving a receipt or a disbursement, the Board or TSP record keeper must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the Board or the TSP record keeper may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so.

(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) *Participant's or beneficiary's discovery of error.* (1) If the Board or TSP record keeper fails to discover an error of which a participant or beneficiary has knowledge involving a receipt or a disbursement, the participant or beneficiary may file a claim for correction of the error with the Board or the TSP record keeper without time limit. The Board or the TSP record keeper must promptly correct any such error for which the participant or beneficiary filed a claim within six months of its occurrence; the correction of any such error for which the participant or beneficiary filed a claim after that time is in the sound discretion of the Board or TSP record keeper.

(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

5 CFR Ch. VI (1–1–23 Edition)

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.

(d) *Processing claims.* (1) If the initial claim is submitted to the TSP record keeper, the TSP record keeper may either respond directly to the claimant, or may forward the claim to the Board for response. If the TSP record keeper responds to a claim, and all or any part of the claim is denied, the claimant may request review by the Board within 90 days of the date of the TSP record keeper's response.

(2) If the Board denies all or any part of a claim (whether upon review of a TSP record keeper denial or upon an initial review by the Board), the claimant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the claimant does not submit a request to the Board for review of a claim denial by the TSP record keeper within the 90 days permitted under paragraph (d)(1) of this section, the claimant will be deemed to have accepted the TSP record keeper's decision.

[66 FR 44277, Aug. 22, 2001, as amended at 70 FR 32212, June 1, 2005; 80 FR 57070, Sept. 22, 2015; 87 FR 31679, May 24, 2022]

Subpart D—Miscellaneous Provisions

§ 1605.31 Contributions missed as a result of military service.

(a) *Applicability.* This section applies to employees who meet the conditions specified at 5 CFR 1620.40 and who are eligible to make up employee contributions or to receive employing agency contributions missed as a result of military service.

(b) *Missed employee contributions.* An employee who separates or enters non-pay status to perform military service may be eligible to make up TSP contributions when he or she is reemployed or restored to pay status in the

civilian service. Eligibility for making up missed employee contributions will be determined in accordance with the rules specified at 5 CFR part 1620, subpart E. Missed employee contributions must be made up in accordance with the rules set out in §1605.11(c) and 5 CFR 1620.42.

(c) *Missed agency contributions.* This paragraph (c) applies only to an employee who would have been eligible to receive agency contributions had he or she remained in civilian service or pay status. A FERS employee who separates or enters nonpay status to perform military service is eligible to receive agency makeup contributions when he or she is reemployed or restored to pay status in the civilian service, as follows:

(1) The employee is entitled to receive the agency automatic (1%) contributions that he or she would have received had he or she remained in civilian service or pay status. Within 60 days of the employee's reemployment or restoration to pay status, the employing agency must calculate the makeup agency automatic (1%) contributions and report those contributions to the record keeper, subject to any reduction in agency automatic (1%) contributions required by paragraph (c)(5) of this section.

(2) An employee who contributed to a uniformed services TSP account during the period of military service is also immediately entitled to receive makeup agency matching contributions to his or her civilian account for the employee contributions to the uniformed services account that were deducted from his or her basic pay, subject to any reduction in agency matching contributions required by paragraph (c)(4) of this section. However, an employee is not entitled to receive makeup agency matching makeup contributions on contributions that were deducted from his or her incentive pay or special pay, including bonus pay, while performing military service.

(3) An employee who makes up missed contributions is entitled to receive attributable makeup agency matching contributions (unless the employee has already received the maximum amount of matching contribu-

tions, as described in paragraphs (c)(2) and (4) of this section).

(4) If the employee received uniformed services agency matching contributions, the makeup agency matching contributions will be reduced by the amount of the uniformed services agency matching contributions.

(5) If the employee received uniformed services agency automatic (1%) contributions, the agency automatic (1%) contributions will be reduced by the amount of the uniformed services agency automatic (1%) contributions.

(d) *Breakage.* The employee is entitled to breakage on agency contributions made under paragraph (c) of this section. Breakage will be calculated based on the investment election(s) on file for the participant during the period of military service.

[67 FR 49525, July 30, 2002, as amended at 70 FR 32212, June 1, 2005; 80 FR 57070, Sept. 22, 2015; 82 FR 60105, Dec. 19, 2017; 87 FR 31679, May 24, 2022]

PART 1606 [RESERVED]

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

Subpart A—General

Sec.
1620.1 Application.
1620.2 Definitions.
1620.3 Contributions.
1620.4 Notices.

Subpart B—Cooperative Extension Service, Union, and Intergovernmental Personnel Act Employees

1620.10 Definition.
1620.11 Scope.
1620.12 Employing authority contributions.
1620.13 Retroactive contributions.
1620.14 Payment to the TSP record keeper.

Subpart C—Justices and Judges

1620.20 Scope.
1620.21 Contributions.
1620.22 Withdrawals.
1620.23 Spousal rights.

Subpart D—Nonappropriated Fund Employees

1620.30 Scope.
1620.31 Definition.
1620.32 Employees who move to a NAF instrumentality on or after August 10, 1996.