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**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**5 CFR Part 1605**

**Default Investment Fund Errors**

**AGENCY:** Federal Retirement Thrift Investment Board

**ACTION:** Proposed rule with request for comments.

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

**DATES:** Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments using one of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov> at Docket ID number FRTIB-2015-0003. Follow the instructions for submitting comments.

- Mail: Office of General Counsel, Attn: James Petrick, Federal Retirement Thrift Investment Board, 77 K Street, N.E., Suite 1000, Washington, D.C. 20002.

- **Hand Delivery/Courier:** The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.

- **Facsimile:** Comments may be submitted by facsimile at (202) 942-1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

**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 December 18, 2014, the President signed the Smart Savings Act ("the Act"), Public Law 113-255 (128 Stat. 2920). The Act directed the Agency to invest any sums

available for investment in the TSP for which an election has not been made in an age-appropriate target date asset allocation investment fund. On July 13, 2015, the Agency published a proposed rule to change the TSP's default investment fund from the TSP's Government Securities Investment Fund to the age-appropriate TSP Lifecycle Fund (L Fund) for civilian employees. 80 Fed. Reg. 39974. This proposed regulation would update the TSP's existing error correction rules to address the correction of default investment fund errors caused by erroneous dates of birth.

#### **Default Investment Fund Errors**

Erroneous dates of birth can result from participant error, employing agency error, Agency error, or record-keeper error. A participant's date of birth is used to determine his or her age-appropriate L Fund. An erroneous date of birth might therefore cause a participant's TSP account to be invested in an L Fund that is different from the L Fund his or her account would have been invested in had the participant's correct date of birth been used. This proposed regulation provides that the Agency will pay breakage when an erroneous date of birth caused by Agency or record-keeper error results in default investment in the wrong L Fund.

In addition, the Agency will charge employing agencies

breakage when an erroneous date of birth caused by employing agency error results in default investment in the wrong L Fund. To initiate a breakage calculation for an employee, the employing agency must notify the TSP that the participant is entitled to breakage. A date of birth change received from an employing agency will not trigger corrective action other than to update the date of birth.

Consistent with the existing error correction procedures at 5 CFR 1605.22 for contribution allocation and interfund transfer errors, the participant must file a breakage claim 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 website a participant statement reflecting the error, whichever is earlier.

**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.

**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 proposes to amend 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 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 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 re-designating the text of paragraph (a) as paragraph (a) (1), adding paragraph (a) (2), re-designating the text of paragraph (b) as paragraph (b) (1), and adding paragraphs (b) (2) and (b) (3) 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 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 (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 website 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), (c) (2), and (c) (3) to read as follows:  
§ 1605.22 Claims for correction of Board or TSP record keeper errors; time limitations.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(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) \* \* \*

(1) \* \* \*

(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 website 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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