



**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**5 CFR Parts 1605, 1650 and 1651**

**Correction of Administrative Errors; Required Minimum**

**Distributions**

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

**ACTION:** Direct final rule.

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**SUMMARY:** The Federal Retirement Thrift Investment Board (FRTIB) is amending its regulations to make a non-substantive change to the constructed share price formula for a retired Lifecycle (L) Fund. The FRTIB uses a constructed share price to make error corrections involving a retired L Fund. In addition, due to a recent change in the Internal Revenue Code (Code), the FRTIB is amending its regulations to change the age by which TSP participants must begin receiving distributions from their TSP accounts from 70½ to 72.

**DATES:** Effective [Insert date of publication in the Federal Register]. The change to the constructed share price formula is applicable June 30, 2020, without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, FRTIB will publish a timely withdrawal of the rule in the *Federal Register*. As required by the Code, the change to the age by which TSP participants must begin receiving

distributions from their accounts is effective for distributions required to be made after December 31, 2019, with respect to individuals who will reach age 70½ after that date.

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

- Federal Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

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

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

Since March 23, 2020, the FRTIB has been operating under a mandatory telework status due to the coronavirus pandemic which has severely limited the ability to timely monitor mail and facsimiles. Therefore, we strongly encourage using the Federal Rulemaking Portal to submit comments.

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

**SUPPLEMENTARY INFORMATION:** The FRTIB administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP is a tax-deferred retirement savings plan for Federal civilian

employees and members of the uniformed services. 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)).

### **Lifecycle Funds**

In addition to its five core funds (the G, F, C, S, and I Funds) the TSP offers multiple L Funds, each of which is made up entirely of the five core funds in different, professionally determined, proportions based on a particular time horizon, or target retirement date. Each L fund is "retired" when it reaches its target date.

Currently, the TSP offers L Funds based on a 10-year asset allocation. A 10-year L Fund must, by design, be retired on December 31<sup>st</sup> of year in which it reaches its target date. For example, the L 2010 reached its target date in 2010 and was retired on December 31, 2010.

Beginning July 1, 2020, the TSP will instead offer L Funds based on a 5-year asset allocation to give TSP participants a more targeted window of time to match their intended retirement date with their asset allocation. As a result of the shift from 10-year to 5-year L Funds, L Funds beginning with the L 2020 fund will be retired on June 30<sup>th</sup> of the year in which they reach their respective retirement dates.

### **Correcting Errors Involving Retired L Funds**

Once an L Fund is retired, TSP participants are no longer able to make contributions to that fund. However, the FRTIB is sometimes required to calculate lost earnings (i.e., breakage) on errors involving these retired L Funds. Breakage is the loss incurred (negative earnings) or the gain realized (positive earnings) on late and makeup contributions. Similarly, the FRTIB must sometimes process the removal of erroneous contributions (i.e., a negative adjustment) previously made to a now-retired L Fund. The value of a negative adjustment equals the amount of the erroneous contributions plus earnings (positive or negative) on that amount.

Generally, the FRTIB uses the current share price of the applicable investment fund when calculating breakage or the value of a negative adjustment. Because a retired L Fund no longer exists, the FRTIB instead uses a constructed share price in order to calculate breakage or the value of negative adjustments on errors involving these funds.

The constructed share price for a retired L Fund is calculated using the final posted share price of that L Fund (i.e., the share price posted on the date the L Fund was retired). When the constructed share price formula was created, all L Funds were based on a 10-year asset allocation. Therefore, rather than referring to the L Fund's final posted share price, the FRTIB's existing regulations provide that the

constructed share price for a retired Lifecycle fund is calculated using the share price of the L Fund on December 31 of its retirement year.

To account for the fact that L Funds will no longer be retired on December 31<sup>st</sup> as a result of the shift from 10-year to 5-year L Funds, the FRTIB is updating its regulations to remove the references to December 31<sup>st</sup> in the constructed share price formula. Instead, consistent with the FRTIB's original intent, the regulations will simply refer to the final posted share price. The substance of the formula remains unchanged.

#### **Required Minimum Distributions**

On December 20, 2019, the President signed into law the Setting Every Community Up for Retirement Enhancement (SECURE) Act (Division O pg. H.R. 1865-604), as part of the Further Consolidated Appropriations Act of 2020 (Public Law 116-94). The SECURE Act amended the Code to change the age by which TSP participants must begin receiving distributions (referred to as required minimum distributions (RMDs)) from their accounts from 70½ to 72.

The RMD rules under the Code, which apply to both separated TSP participants and TSP beneficiary participants,<sup>1</sup> set forth the

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<sup>1</sup> A beneficiary participant is a spouse beneficiary of a deceased TSP participant who has a TSP beneficiary participant account established in his or her name. In the case of a beneficiary participant, the age of the deceased participant is used when determining the date by which RMDs must commence.

date by which participants must receive RMDs (*i.e.*, the required beginning date). Prior to the passage of the SECURE Act, the Code required separated TSP participants to receive RMDs beginning on April 1 of the year following the year in which the participant reached age 70½ and annually thereafter. TSP beneficiary participants were required to receive RMDs beginning on the later of the end of the year following the year in which the participant died, or the end of the year in which the participant would have reached age 70½. TSP participants who turned 70½ on or before December 31, 2019 remain subject to these pre-SECURE Act required beginning date rules.

Participants who had not reached age 70 ½ before January 1, 2020 are subject to the new required beginning date rules. Specifically, the Code, as amended by the SECURE Act, requires a separated TSP participant to receive RMDs beginning on April 1 of the year following the year in which he or she reaches age 72 and is separated from service and annually thereafter. TSP beneficiary participants must receive RMDs beginning on the later of the end of the year following the year in which the participant died, or the end of the year in which the participant would have reached age 72.

The FRTIB is updating its regulations by removing the references to age 70½ in the definition of "required beginning date." The updated regulations will instead define this term by

incorporating by reference the Code's definition of required beginning date. This ensures that FRTIB regulations regarding RMDs will always be consistent with the Code's requirements so that future amendments on short notice may be avoided.

**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 employees and members of the uniformed services 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 this regulation does 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. This rule is not a major rule as defined at 5 U.S.C. 804(2).

### **List of Subjects**

#### 5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

#### 5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement

#### 5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board

For the reasons stated in the preamble, the FRTIB 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, 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 section 7202(m) (2) of Public Law 101-508, 104 Stat. 1388.

2. Amend § 1605.2 by revising paragraph (b) (1) (iii) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) 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 constructed share price shall equal the final posted share price of the retired Lifecycle fund, multiplied by the current L Income Fund share price, divided by the L Income Fund share price on the same date that the retired Lifecycle fund posted its final share price. 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 constructed

share price.

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3. Amend § 1605.12 by revising paragraph (c) (2) (ii) to read as follows:

**§ 1605.12 Removal of erroneous contributions.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(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 price per share shall equal the final posted share price of the retired Lifecycle fund, multiplied by the current L Income Fund share price, divided by the L Income Fund share price on the same date that the retired Lifecycle fund posted its final share price.

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**PART 1650 - METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN**

4. The authority citation for Part 1650 continues to read as follows:

**Authority:** 5 U.S.C. 8351, 8432d, 8434, 8435, 8474(b) (5) and

8474(c) (1) .

5. Amend § 1650.1(b) by revising the definition for "Required beginning date" to read as follows:

**§ 1650.1 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Required beginning date* means the required beginning date as defined in Internal Revenue Code section 401(a) (9) and the regulations and guidance promulgated thereunder.

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**PART 1651 - DEATH BENEFITS**

6. The authority citation for Part 1651 continues to read as follows:

**Authority:** Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c) (2), 8474(b) (5) and 8474(c) (1).

7. Amend § 1651.1(b) by revising the definition for "Required beginning date" to read as follows:

**§ 1651.1 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Required beginning date* means the required beginning date as defined in Internal Revenue Code section 401(a) (9) and the regulations and guidance promulgated thereunder.

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