

§ 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 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 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.

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

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

Subpart A—Definitions

Sec.

1605.1 Definitions.

Subpart B—Employing Agency Errors

1605.2 Makeup of missed or insufficient contributions.

1605.3 Removal of erroneous contributions.

1605.4 Back pay awards and other retroactive pay adjustments.

1605.5 Misclassification of retirement coverage.

1605.6 Procedures for claims against employing agencies; time limitations.

Subpart C—Board or TSP Recordkeeper Errors

1605.7 Plan-paid lost earnings and other corrections.

1605.8 Claims for correction of Board or TSP Recordkeeper errors; time limitations.

Subpart D—Miscellaneous Provisions

1605.9 Miscellaneous provisions.

AUTHORITY: 5 U.S.C. 8351 and 8474.

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Subpart A—Definitions

§ 1605.1 Definitions.

The following definitions apply for purposes of this part:

Account or *TSP account* means a participant's account in the Thrift Savings Plan;

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432 (c)(1) or (c)(3);

Agency contributions means agency automatic (1%) contributions and agency matching contributions;

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Basic pay means basic pay as defined in 5 U.S.C. 8331(3), and it is the rate of pay used in computing any amount the individual is required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the CSRS or the FERS, as the case may be;

Board means the Federal Retirement Thrift Investment Board;

Board error means any act or omission by the Board that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants (including, but not limited to, TSP communications materials and other publications);

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by Subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Federal Government retirement plan;

CSRS employee or *CSRS participant* means any employee, member, or participant covered by CSRS, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, or 5 U.S.C. 8440a through 8440d;

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8432(a), 5 U.S.C. 8351 or 5 U.S.C. 8440a through 8440d;

Employer contributions means agency automatic (1%) contributions and agency matching contributions;

Employing agency means any entity that provides or has provided pay to an individual, thereby incurring responsibility for submitting to the Thrift Savings Fund contributions made by or on behalf of that individual; any entity responsible for submitting TSP loan payments on behalf of an individual; or any other entity that has employed an individual and has provided information that affects or has affected that individual's TSP account;

Employing agency error means any act or omission by an employing agency that is not in accordance with all applicable statutes, regulations, or administrative procedures, including internal procedures promulgated by the employing agency and TSP procedures provided to employing agencies by the Board or TSP recordkeeper;

Executive Director means the Executive Director of the Board under 5 U.S.C. 8474;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, U.S.C., and any equivalent Federal Government retirement plans;

FERS employee or *FERS participant* means any employee, member, or participant covered by FERS;

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Interfund transfer means the movement of all or a portion of a participant's existing account balance among the TSP investment funds;

Investment fund means the C Fund, the F Fund, the G Fund, and any other

TSP investment funds created subsequent to December 27, 1996.

Investment fund election means a choice by a participant concerning how TSP contributions shall be allocated among the TSP investment funds;

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings and to determine the investment fund in which money would have been invested had an error not occurred;

Makeup contributions means employee or employer contributions that are made for an earlier period during which they would have been made but for an employing agency error;

Negative adjustment record means a data record submitted by an employing agency to remove money from a participant's account;

Open season means the period during which participants may choose to begin making contributions to the TSP, to change or discontinue the amount currently being contributed to the TSP (without losing the right to recommence contributions the next open season), or to allocate prospective contributions to the TSP among the investment funds;

Participant means any person with an account in the TSP, or who would have an account in the TSP but for an employing agency error;

Recordkeeper error means any act or omission by the TSP recordkeeper that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants (including, but not limited to, TSP communications materials and other publications);

Source of contributions means either employee contributions, agency automatic (1%) contributions, or agency matching contributions;

Thrift Savings Plan, TSP, or Plan means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99-335, 100 Stat. 514, which has been codified, as amended, primarily at 5 U.S.C. 8401-8479; and

TSP Recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the

TSP. As of the effective date of these regulations, the TSP recordkeeper is the National Finance Center, Office of the Chief Financial Officer, United States Department of Agriculture, located in New Orleans, Louisiana.

Subpart B—Employing Agency Errors

§ 1605.2 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 contributions to his or her account to which the participant is entitled. This includes, but is not limited to, situations in which an employing agency error prevents a participant from making an election to contribute to the TSP, the employing agency erroneously fails to implement a contribution election properly submitted by a participant, the employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or the employing agency erroneously contributes less to the TSP than it would have contributed had the error not occurred. The corrections required by this section must be made in accordance with this part and procedures provided to employing agencies, from time to time, by the Board or the TSP recordkeeper 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 correction under this section.

(b) *Missed employer contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required to be made under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required to be made under 5 U.S.C. 8432(c)(2) based on employee contributions that have been made, or contributions required to be made under 5 U.S.C. 8432(c)(3), then:

(1) The employing agency must promptly submit, in a lump sum, all such missed contributions to the TSP record keeper on behalf of the affected participant. Makeup contributions must be allocated by the employing agency among the TSP investment

fund(s) using the participant's current investment fund election at the time the makeup contributions are made. If no such election is on file, the contributions will be reported by the employing agency for investment in the G Fund.

(2) If applicable, the employing agency must also submit any lost earnings records required under 5 CFR Part 1606.

(c) *Missed employee contributions.* Within 30 days of receiving information from his or her employing agency that indicates that the employing agency acknowledges that an error has occurred that has caused less employee contributions to be made to the participant's account than would have been made had the error not occurred, a participant may elect to establish a schedule of makeup contributions to replace the missed contributions through future payroll deductions, in addition to any regular TSP contributions that the participant is entitled to make. The following rules apply to makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the amount of contributions 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 amounts to be contributed should be established when the schedule is created. The schedule may not exceed four times the number of pay periods over which the errors occurred.

(2) The employing agency may, but need not, set a ceiling on the length of the schedule of makeup contributions which is less than four times the number of pay periods over which the errors being corrected occurred. The ceiling may not, however, be less than twice the number of pay periods over which the errors being corrected occurred.

(3) The employing agency must implement the schedule of makeup contributions as soon as practicable after the participant has made an election to implement a makeup schedule.

(4) Makeup contributions will not be considered in applying the maximum amount per pay period that a participant is permitted to contribute to the TSP (e.g., 5% of basic pay for CSRS