

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

participants, 10% of basic pay for FERS participants), but will be included for purposes of applying the annual limits contained in 26 U.S.C. 402(g)(1) and 26 U.S.C. 415.

(5) When establishing a schedule of 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, would exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made.

(i) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit(s) contained in I.R.C. 402(g) and 415.

(ii) A schedule of 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.

(6) A participant may elect to terminate a schedule of makeup contributions at any time, but may not elect to make partial payments under the schedule. Any such termination is irrevocable. If a participant separates from employment that makes the participant eligible to contribute to the TSP, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck. No contributions may be made other than by payroll deduction from pay that constitutes basic pay.

(7) To the extent a participant makes up missed employee contributions, the employing agency must contribute any agency matching contributions that would have been made had the employing agency error that caused the missed employee contributions not been made. The agency matching contributions must be made in installments over the course of the schedule

of makeup contributions. The participant may not receive matching contributions associated with any employee contributions that are not made up. If the makeup contributions are suspended in accordance with paragraph (c)(5) of this section, the payment of agency matching contributions must also be suspended.

(8) Makeup contributions must be reported by the employing agency for investment 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 must be reported by the employing agency for investment in the G Fund.

(9) Where a participant has transferred to a different employing agency from the one at which the participant was employed at the time of the missed contributions, it remains the responsibility of the former employing agency to determine whether an employing agency error is 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.

(10) Makeup employee contributions may be made only by payroll deduction from pay that constitutes basic 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.

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

[61 FR 68472, Dec. 27, 1996, as amended at 63 FR 24380, May 1, 1998]

§ 1605.3 Removal of erroneous contributions.

(a) *Applicability.* This section applies whenever, as a result of an employing agency error, a TSP account contains money that should not have been contributed to the account and which, therefore, must be removed from the