

§ 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 employment:

(1) If the participant is reinstated to Government employment, immediately upon reinstatement 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 the participant the following options for electing makeup contributions:

(i) If the participant had a contribution election on file when he or she separated, upon the participant's reinstatement to Government employment, that election will be reinstated for purposes of the makeup contributions; or

(ii) Instead of making contributions for the period of separation in accordance with the reinstated contribution election, the participant may submit a new contribution election for any open season(s) that occurred during the period of separation;

(3) All makeup contributions under this section will be invested based on the participant's contribution allocation of record at the time the makeup contributions are posted to the account; and

(4) The employing agency must submit lost earnings records pursuant to 5 CFR part 1606. Lost earnings will be calculated and credited to a participant's account in accordance with 5 CFR part 1606 using the rates of return for the G Fund unless otherwise requested by the agency (with the concurrence of the participant), or as ordered by a court or other tribunal with jurisdiction over the participant's 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 not

separated from Government employment:

(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) If the participant is entitled to lost earnings pursuant to 5 CFR part 1606, the employing agency must also submit lost earnings records.

(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) and 415(c) of the I.R.C. (26 U.S.C. 402(g) and 415(c)) 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 withdrawn his or her TSP account, other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal 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 withdrawn to his or her TSP account. The right to restore the withdrawn funds will expire if notice is not provided by the participant to the Board within 90 days of reinstatement. If the participant returns the funds that were withdrawn, they will be posted to the participant's account based on his or her contribution allocation of record at the time of separation. If no contribution allocation is on file, the contributions will be invested in the G Fund. No lost earnings will be paid on any restored funds.

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

§ 1605.14 Misclassified retirement 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. However, the participant may choose to have such employee contributions or all of the employee contributions made during the period of misclassification removed from his or her account and refunded to the participant. If the participant requests a refund of employee contributions, the employing agency must submit negative adjustment records, under the procedures of § 1605.12, to request removal of these funds;

(2) The employing agency must, under the procedures of § 1605.12, remove all employer contributions made to the participant's account during the

period of misclassification. Employer contributions that have been in the account for less than one year will be returned to the employing agency; employer contributions that have been in the participant's account for one year or more will be removed from the account and used to offset TSP administrative expenses; and

(3) If the employing agency fails to submit a negative adjustment record under the procedures of § 1605.12(b) to remove employer contributions, after all such contributions have been in the participant's account for more than one year the TSP recordkeeper will remove them from the account and use such amounts to offset TSP administrative expenses.

(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) The employing agency must submit lost earnings records for makeup employer contributions pursuant to 5 CFR part 1606; and

(5) If the retirement coverage correction is a FERCCA correction, the participant is entitled to lost earnings on makeup employee contributions and the employing agency must submit lost earnings records pursuant to 5 CFR part 1606. However, if employee contributions were made up before the Office of Personnel Management implements its regulations on FERCCA corrections, the amount of lost earnings will be calculated by the Office of Personnel Management, pursuant to its