

§ 1605.12

5 CFR Ch. VI (1–1–03 Edition)

complete the schedule of makeup contributions.

(8) A participant may elect to terminate a schedule of employee makeup contributions at any time, but a termination is irrevocable. If a participant separates from Government service, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck.

(9) At the same time that a participant makes up missed employee contributions, the employing agency must make any agency matching contributions that would have been made had the error not occurred. Agency matching contributions must be submitted pursuant to the rules set forth in paragraph (b) of this section. A participant may not receive matching contributions associated with any employee contributions that are not actually made up. If employee makeup contributions are suspended in accordance with paragraph (c)(7) of this section, the payment of agency matching contributions must also be suspended.

(10) If a participant transfers to an employing agency different 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 employing agency error was 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.

(11) Employee makeup contributions may be made only by payroll deduction from 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.

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

(d) *Late contributions.* If, as a result of agency error, the TSP posts a late con-

tribution to a participant's account more than 30 calendar days after the "as of" date that is reported by the employing agency on the payment record, the employing agency must submit any lost earnings records pursuant to 5 CFR part 1606. Late contributions will be invested in accordance with the participant's contribution allocation of record on the posting date.

§ 1605.12 Removal of erroneous contributions.

(a) *Applicability.* This section applies to negative adjustments. These include situations in which, because of an employing agency error, employee contributions in excess of the amount elected by a participant are contributed to a participant's account, employee contributions (and any attributable agency matching contributions) are made on behalf of a participant who did not elect to make contributions, or excess employer contributions are made to a participant's account. Negative adjustments resulting from a FERCCA correction are addressed in § 1605.14.

(b) *Method of correction.* Negative adjustment records must be submitted by employing agencies in accordance with this part and with any other procedures provided by the Board.

(1) To remove money from a participant's account, the employing agency must submit, for each attributable pay date involved, a negative adjustment record stating the amount of the erroneous contribution being removed, the attributable pay date with respect to which the erroneous contribution was made, and the source(s) of the contributions. The TSP record keeper will derive the investment of the negative adjustment from the allocation of any contribution which was reported for the attributable pay date. If no contribution was submitted for the attributable pay date, the negative adjustment will not be processed.

(2) A negative adjustment record may be for all or a part of the contributions made for the attributable pay date and source of contributions; however, for each source of contributions, the negative adjustment may not exceed the amount of contributions made for that

date, less any prior negative adjustments for the same date.

(c) *Processing negative adjustments.* Negative adjustments will be processed in accordance with the following rules:

(1) Negative adjustment records received and accepted by the TSP record keeper by the second-to-last business day of a month will be processed effective as of the end of that month. Negative adjustment records accepted by the TSP record keeper after the second-to-last business day of a month will be processed effective as of the end of the following month; and

(2) For each negative adjustment record, the TSP record keeper will determine attributable earnings on the amount of the adjustment by source of contribution and investment fund. Thus, earnings and losses from different sources will not be netted against each other, and earnings and losses from different investment funds will not be netted against each other. Further, interfund transfers occurring between the attributable pay date of the negative adjustment and the date the adjustment is processed by the TSP record keeper will not be considered.

(d) *Employee contributions.* The following rules apply to negative adjustments involving employee contributions:

(1) If, on the posting date, the amount calculated under paragraph (c) of this section is greater than the amount of the proposed negative adjustment, the full amount of the adjustment will be returned to the employing agency. Subject to paragraph (d)(4) of this section, the earnings on the erroneous contribution will remain in the participant's account;

(2) If, on the posting date, the amount calculated under paragraph (c) of this section is less than the amount of the proposed negative adjustment, the amount of the adjustment, reduced by the investment loss, will be returned to the employing agency. However, an investment loss will not affect the employing agency's obligation to refund to the participant the full amount of the erroneous contribution;

(3) If an employing agency removes erroneous employee contributions from a participant's account, it must also remove, under paragraph (e) of this sec-

tion, any attributable agency matching contributions; and

(4) If all employee contributions are removed from a participant's account under the rules set forth in this section, the participant may choose to leave any earnings in the account unless he or she was not eligible to have an account in the TSP at the time earnings were credited to the account, and remains ineligible. If the participant was ineligible for a TSP account (and remains ineligible), the earnings will be paid to the participant. If earnings remain in the account, upon the participant's separation from Government service, they will be subject to the same withdrawal rules as apply to any other funds in a participant's account.

(e) *Employer contributions.* The following rules apply to negative adjustments involving erroneous employer contributions:

(1) Erroneous employer contributions will be returned to the employing agency only if the negative adjustment record is posted by the TSP record keeper within one year of the date the erroneous contribution was posted. If one year or more has elapsed when the negative adjustment record is posted, the amount computed under paragraph (c) of this section will be removed from the participant's account and used to offset TSP administrative expenses;

(2) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted and the amount computed under paragraph (c) of this section is greater than the amount of the adjustment, the employing agency will receive the full amount of the erroneous contribution. Any earnings attributable to the erroneous contribution will be removed from the participant's account and used to offset TSP administrative expenses;

(3) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted and the amount computed under paragraph (c) of this section is less than the amount of the adjustment, the employing agency will receive the amount of the erroneous contribution reduced by the investment loss; and

(4) An employing agency's obligation to submit negative adjustment records to remove erroneous contributions from a participant's account is not affected by the length of time the contributions have been in the account.

(f) *Each negative adjustment to be processed separately.* For purposes of paragraphs (d) and (e) of this section—

(1) If multiple negative adjustments for a participant are posted on the same business day, the amount removed from the participant's account and/or returned to the employing agency will be determined separately for each adjustment, for each source of contributions, and for each investment fund. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. Instead, each source of contributions and each fund will be treated as separate for purposes of these calculations;

(2) The amount computed by application of the rules in this section will be removed from the participant's account pro rata from all investment funds, by source, based on the allocation of the participant's most recent month-end valued account balance; and

(3) If there is insufficient money in the same source of contributions to cover the amount to be removed, the negative adjustment record will be rejected.

§ 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