account by the TSP because the payment record on which they were submitted contained errors;

(3) Agency matching contributions attributable to employee contributions referred to in paragraphs (1) or (2) of this definition; and

(4) Delayed agency automatic (1%) contributions.

Makeup contributions are employee contributions that should have been deducted from a participant's basic pay or employer contributions that should have been charged to an employing agency on an earlier date, but were not deducted or charged and, consequently, are being deducted or charged currently.

Negative adjustment means the removal of money from a participant's TSP account by an employing agency.

Negative adjustment record means a data record submitted by an employing agency to remove from a participant's TSP account money that the agency had previously submitted in error.

Pay date means the date established by an employing agency for paying its employees or service members.

Payment record means a data record submitted by an employing agency to report contributions or loan payments to a participant's TSP account.

Record keeper error means any act or omission by the TSP record keeper, which is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants.

[68 FR 35497, June 13, 2003]

§ 1605.2 Calculating, posting, and charging breakage.

(a) Breakage will be calculated on makeup agency contributions that are reported on current payment records, and on makeup and late contributions from all sources that are reported on late payment records.

(b) *Calculating breakage.* The TSP will calculate breakage as follows:

(1) *For contributions with ''as of'' dates on or after January 1, 2000,* the TSP will use three steps to calculate breakage:

(i) The TSP will use the participant's contribution allocation on file for the ''as of'' date to determine how the contributions would have been invested. If there is no contribution allocation on file, or one cannot be derived based on the investment of contributions, the TSP will consider the contributions to have been invested in the G Fund;

(ii) The TSP will then determine the number of shares of the applicable investment funds the participant would have received had the contributions been made on time. If the ''as of'' date is before TSP account balances were converted to shares, this determination will be the number of shares the participant would have received on the conversion date, and will include the monthly earnings the participant would have received had the contributions been made on the ''as of'' date; and

(iii) The TSP will next determine the dollar value on the posting date of the number of shares the participant would have received had the contributions been made on time. The difference between the dollar value of the contribution on the posting date and the dollar value of the contribution on the ''as of'' date is the breakage.

(2) *For contributions with an ''as of'' date before January 1, 2000,* the TSP will use two steps to calculate breakage:

(i) The TSP will value the contributions from the ''as of'' date through the date TSP accounts were converted to shares, by using the greater of either the G Fund monthly rate of return or the average monthly rate of return for all TSP investment funds; and

(ii) The TSP will determine the dollar value of the contributions on the posting date by using the greater of either the G Fund share price or the average share price for all five TSP investment funds. The difference between the dollar value of the contribution on the posting date and the dollar value of the contribution on the ''as of'' date is the breakage.

(c) *Posting contributions.* Makeup and late contributions, as well as breakage, will be posted to the participant's account according to his or her contribution allocation on file for the posting date. If there is no contribution allocation on file for the posting date, they will be posted to the G Fund.

(d) *Charging breakage.* If the dollar amount posted to the participant's account is greater than the dollar amount of the makeup or late contribution (*i.e.,* the value of the shares is higher on the posting date), the agency will be charged the additional amount. If the dollar amount posted to the participant's account is less than the dollar amount of the makeup or late contribution (*i.e.,* the value of the shares is lower on the posting date), the difference between the amount of the contribution and the amount posted will be forfeited to the TSP.

(e) *Posting of multiple contributions.* If the TSP posts multiple makeup or late contributions with different ''as of'' dates for a participant on the same business day, the amount of breakage charged to the employing agency or forfeited to the TSP will be determined separately for each contribution, without netting any gains or losses attributable to different ''as of'' dates. In addition, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, investment fund, and source of contributions.

[68 FR 35498, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

Subpart B—Employing Agency Errors

§ 1605.11 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 TSP contributions to which he or she is entitled. This includes situations in which an employing agency error prevents a participant from making an election to contribute to his or her TSP account, in which an employing agency fails to implement a contribution election properly submitted by a participant, in which an employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or in which an employing agency otherwise erroneously contributes less to the TSP for a participant's account than it should have. The corrections required by this section must be made in accordance with this part and the procedures provided to employing agencies by the Board 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 error correction under this section.

(b) *Employer makeup contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required under section 8432(c)(2), or matching contributions that are authorized under 37 U.S.C. 211(d), the following rules apply:

(1) The employing agency must promptly submit all missed contributions to the TSP record keeper on behalf of the affected participant. For each pay date involved, the employing agency must submit a separate payment record showing the ''as of'' date for the contributions.

(2) The TSP will calculate the breakage due to the participant and post both the contributions and the associated breakage to the participant's account in accordance with § 1605.2.

(c) *Employee makeup contributions.* Within 30 days of receiving information from his or her employing agency indicating that the employing agency acknowledges that an error has occurred which has caused a smaller amount of employee contributions to be made to the participant's account than should have been made, a participant may elect to establish a schedule to make up the deficient contributions through future payroll deductions. Employee makeup contributions can be made in addition to any TSP contributions that the participant is otherwise entitled to make. The following rules apply to employee makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the dollar amount of the 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 total amount to be contributed must be established when the schedule is created. After the schedule is created, a participant may, with the agreement of his or her agency, elect to change his or her payment