

§ 1604.10

unless the court order or legal process directs otherwise.

(c) *Trustee-to-trustee transfers.* The current or former spouse of a TSP participant can request the TSP to transfer a court-ordered payment to a traditional IRA or eligible employer plan. If the payee requests the TSP to transfer all or a portion of the court-ordered payment to an IRA or plan, the share of the payment attributable to combat zone contributions (if any) can be transferred only if the IRA or plan accepts such funds.

(d) *Transfer to a TSP account.* If the TSP maintains an account for a court order payee who is the current or former spouse of the participant, the payee can request the TSP to transfer the court-ordered payment to the payee's TSP account; the *pro rata* share attributable to combat zone contributions (if any) cannot be transferred.

[66 FR 50713, Oct. 4, 2001, as amended at 70 FR 32209, June 1, 2005]

§ 1604.10 Loans.

A service member may be eligible for a TSP loan as described at 5 CFR part 1655, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual:

(1) A separate loan application must be made for each account;

(2) A participant may have no more than two loans outstanding from each account at any time; one loan from each account may be a loan for the purchase of a primary residence;

(3) The Internal Revenue Code maximum loan amount test, which is described in 5 CFR part 1655, will be applied using the combined balances in both TSP accounts.

(b) *Spousal rights.* Before a loan agreement is approved for a service member account, the participant's spouse must consent to the loan by signing the loan agreement. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(c) *Combat zone contributions.* The portion of a loan that is attributable to combat zone contributions (if any) will be determined when the loan is declared a taxable distribution, and that

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portion will not be reported as taxable income to the participant as a result of the declaration.

[66 FR 50713, Oct. 4, 2001, as amended at 70 FR 32209, June 1, 2005]

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

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AUTHORITY: 5 U.S.C. 8351, 8432a, and 8474(b)(5)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104-106, 110 Stat. 186 and sec. 7202(m)(2) of Public Law 101-508, 104 Stat. 1388.

SOURCE: 66 FR 44277, Aug. 22, 2001, unless otherwise noted.

Subpart A—General

§ 1605.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

“*As of*” date means the date on which a TSP contribution or other transaction entailing acquisition of investment fund shares should have taken place. Employing agencies use this

date on payment records to report makeup or late contributions or late loan payments.

Attributable pay date ordinarily means the pay date of an erroneous contribution for which a negative adjustment is being made or, in the case of the uniformed services, the pay date of a contribution that is being recharacterized from tax-deferred to tax-exempt, or vice versa. However, if the erroneous contribution was a makeup or late contribution, the attributable pay date is the “as of” date of the erroneous makeup or late contribution.

Breakage means the loss incurred or the gain realized on makeup or late contributions. It is the difference between the value of the shares of the applicable investment fund(s) that would have been purchased had the contribution been made on the “as of” date and the value of the shares of the same investment fund(s) on the date the contribution is posted to the account.

Error means any act or omission by the Board, the TSP Record Keeper, or the participant’s employing agency that is not in accordance with applicable statutes, regulations, or administrative procedures that are made available to employing agencies and/or TSP participants. It does not mean an act or omission caused by events that are beyond the control of the Board, the TSP Record Keeper, or the participant’s employing agency.

FERCCA correction means the correction of a retirement coverage error pursuant to the Federal Erroneous Retirement Coverage Corrections Act, title II, Public Law 106-265, 114 Stat. 770.

Late contributions means:

(1) Employee contributions that were timely deducted from a participant’s basic pay but were not timely reported to the TSP record keeper for investment;

(2) Employee contributions that were timely reported to the TSP but were not timely posted to the participant’s 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.

[68 FR 35497, June 13, 2003, as amended at 70 FR 32209, June 1, 2005]

§ 1605.2 Calculating, posting, and charging breakage.

(a) The TSP will calculate breakage on late contributions, makeup agency contributions, and loan payments as described by §1605.15(b). This breakage calculation is subject to the following rules:

(1) The TSP will not calculate breakage if contributions or loan payments are posted within 30 days of the “as of” date, or if the total amount on a late payment record or the total agency contributions on a current payment record is less than \$1.00; and

(2) The TSP will not take the participant’s interfund transfers into account when determining breakage.

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

(1) For contributions or loan payments with “as of” dates on or after January 1, 2000, the TSP will:

(i) Use the participant’s contribution allocation on file for the “as of” date to determine how the funds 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