

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

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funds to have been invested in the G Fund;

(ii) Determine the number of shares of the applicable investment funds the participant would have received had the contributions or loan payments 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 or loan payments been made on the “as of” date; and

(iii) Determine the dollar value on the posting date of the number of shares the participant would have received had the contributions or loan payments been made on time. The difference between the dollar value of the contribution or loan payment on the posting date and the dollar value of the contribution or loan payment on the “as of” date is the breakage.

(2) For contributions and loan payments with an “as of” date before January 1, 2000, the TSP will:

(i) Value the contributions and loan payments 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 Funds;

(ii) Determine the number of shares the participant would have received at conversion; and

(iii) Determine the dollar value of those shares on the posting date by using the greater of either the G Fund share price or the average share price for all of the TSP Funds. The difference between the dollar value of the contribution or loan payment on the posting date and the dollar value of the contribution or loan payment on the “as of” date is the breakage.

(c) *Posting contributions and loan payments.* Makeup and late contributions, late loan payments, and 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 or late loan payment, the TSP will charge the agency 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, or late loan payment, 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 or late loan payments 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 transaction, without netting any gains or losses attributable to different “as of” dates. In addition, gains and losses from different sources of contributions or different TSP Funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, TSP Fund, and source of contributions.

[70 FR 32209, June 1, 2005]

**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