

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1605, 1606, and 1655

Employee Elections To Contribute to the Thrift Savings Plan, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Loans

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice of proposed rulemaking, and request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to revise the Board's regulations to permit the making of catch-up contributions by TSP participants who are age 50 and over, and to reflect the processes of the Thrift Savings Plan's new record keeping system.

DATES: Comments must be received on or before April 25, 2003.

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Board's FAX is (202) 942-1676.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942-1660.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP participant's account are held in trust for the participant.

In 1996, Congress amended FERSA by enacting the Thrift Savings Plan Act of

1996, Public Law 104-208, 110 Stat. 3009, which permitted the Executive Director to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system.

On June 25, 2002, the Board published a proposed rule with request for comments in the **Federal Register** (67 FR 42856), proposing to amend the TSP regulations that will be affected by the new record keeping system.

The Executive Director proposes further amendments to the Board's regulations to implement a recent amendment to FERSA, and to explain how the Board will compute lost earnings and administer the TSP loan program when the new system is implemented.

Description of Subjects and Issues Involved

On November 27, 2002, Congress enacted Public Law 107-304, Section 1 of the Act, which will be codified at 5 U.S.C. 8351(b)(2)(C), 8432(a)(3), and 8440f, authorizes a program of additional "catch-up" contributions for TSP participants age 50 and over who are already contributing to the TSP the maximum amount or percentage of basic pay they are permitted by statute to contribute. The maximum allowable amount for catch-up contributions for 2003 is \$2,000. This dollar limitation will increase in \$1,000 yearly increments until it reaches \$5,000 in 2006. Eligible participants will be able to elect catch-up contributions beginning in July 2003 (for 2003), or thereafter (for subsequent years). The Executive Director proposes to add a new provision to part 1600 of the Board's regulations to explain how eligible participants can elect to make these contributions.

Under 5 U.S.C. 8432a(a)(1) and (b), the Board is required to issue regulations to govern how the TSP will credit late contributions, and in some cases makeup contributions, with the investment gains and losses they would have earned had the contributions been timely made. The loss incurred or the gain realized on late or makeup contributions is called "breakage," and it is computed under the rules codified at 5 CFR parts 1605 and 1606. The

Board's June 25, 2002, proposed rule explains how breakage will be computed after implementation of the new record keeping system, with one exception. Specifically, the proposed rule states that late contributions (and some makeup contributions) will be credited with breakage based on the contributions allocation for the participant's account at the time the contributions should have been made. However, when the new record keeping system is implemented, it will contain only three years of converted contribution allocation history and contribution records for each participant. Therefore, if the TSP corrects an error that occurred more than three years before implementation of the new system, the TSP will compute breakage based on a calculated rate of investment return derived by the record keeping system, instead of basing breakage on the participant's actual investment experience. The calculated rate of return will be either the Government Securities Investment Fund (G Fund) rate, or the average of the rates of return for all of the TSP investment funds, whichever rate is greater. The Executive Director proposes to amend 5 CFR parts 1605 and 1606 to reflect this practice.

The Board has developed a loan program, as required by 5 U.S.C. 8433(g), and the Board's loan regulations are codified at 5 CFR part 1655. Although retirement plan loans are offered by 401(k) plans, which are the private-sector equivalent of the TSP, the Board did not base the TSP loan program on the private sector model. However, the Board has built its new record keeping system around a widely used commercial-off-the-shelf (COTS) software package, and some elements of the current TSP loan program are incompatible with the capabilities of the COTS program. Specifically, a participant who misses loan payments in the current system is given 90 days to recommence loan payment to avoid defaulting on the loan. No interest accrues on the missed loan payments during that 90 day period, and, when payments recommence, the period of missing payments is added onto the length of the loan. In contrast, the COTS software package incorporates the requirements of Treasury Department regulations by requiring a participant who misses loan payments to