



***United States  
Office of Personnel Management  
Retirement and Insurance Service***

**Benefits Administration Letter**

Number: 97-114

Date: December 11, 1997

**SUBJECT: Notice of Change to the Rules on Correction of Administrative Errors Affecting Thrift Savings Plan Accounts**

**Purpose**

This Benefits Administration Letter (BAL) explains that a change in Federal Retirement Thrift Investment Board rules may affect certain members of the Federal Employees Retirement System (FERS) who have previous service in a nonappropriated fund instrumentality (NAFI). The amendment may affect employee decisions about electing retroactive NAFI retirement coverage.

**Background**

Public Law 104-106 created an election opportunity for members of the FERS who met criteria in the law to elect to receive FERS credit for prior NAFI service. Public Law 104-106 also provided an alternative for affected employees to retroactively elect retirement coverage they previously held as a NAFI employee. BAL 96-108, September 6, 1996, provides detailed information about this election opportunity.

**Change in Thrift Savings Plan Rules**

The Board previously determined that a FERS employee's election to retroactively return to NAFI coverage would disqualify the employee from Thrift Savings Plan (TSP) participation. Under the Board's old rules, an employee who elects retroactive NAFI retirement coverage would receive a taxable refund of his or her own TSP contributions and could not receive the agency's TSP contributions or the accrued earnings on either the employee's own contributions or the agency's contributions.

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***Civil Service  
Retirement  
System***

***Federal Employees  
Group Life  
Insurance***

***Federal Employees  
Health Benefits  
Program***

***Federal Employees  
Retirement  
System***

The Board amendment to the final rules on *Correction of Administrative Errors* affecting TSP accounts may directly impact a FERS employee's decision to elect retroactive NAFI retirement coverage. Under the Board's amended rules, earnings on TSP contributions made by an employee who is found ineligible to participate will be returned to the employee rather than be forfeited and used to pay administrative expenses of the TSP. Therefore, a FERS employee who elects retroactive coverage under a NAFI retirement plan will receive a taxable refund of his or her own TSP contributions plus the accrued earnings attributable to those contributions, less any outstanding loan amounts. The employee will not receive the agency's matching TSP contributions or the accrued earnings on the agency's contributions.

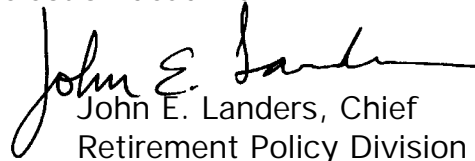
A copy of the Board's amended rule is attached to this Benefits Administration Letter.

### **Computer Program**

The computer program distributed earlier this year that estimates an employee's future civil service and/or NAFI retirement benefits contains a User's Guide that will be updated to reflect the change in the Board's rules. OPM will distribute new copies of the diskette with the computer program User's Guide and make the new information available on our website as soon as it is updated.

### **Conditions for Waiver of August 11, 1997, Deadline**

Public Law 104-106 requires that all employees eligible to make an election receive timely notice of the election opportunity as well as any information or assistance needed to make the election. Section 847.304 of title 5, Code of Federal Regulations, grants agencies the authority to waive the election deadline if an employee did not receive timely notice or counselling concerning the election opportunity. Any employee who declined to make an election because of the Board's previous determination regarding TSP contributions should be granted a waiver of the election deadline if he or she now wishes to exercise an election right in light of the change in the Board's rules. See also BAL 97-105, June 18, 1997, for information on waiver of the election deadline.

  
John E. Landers, Chief  
Retirement Policy Division

Attachment

BAL 97-114, Dated December 11, 1997

**Attachment**

[Federal Register: September 18, 1997 (Volume 62, Number 181)]

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## **FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

### **5 CFR Part 1605**

#### **Correction of Administrative Errors**

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Final rule; amendment.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing an amendment to final rules on correction of administrative errors affecting Thrift Savings Plan (TSP) accounts. The effect of the amendment will be that earnings on contributions made to the TSP by a person who is ineligible to participate will be returned to that person and not used to offset TSP administrative expenses.

**EFFECTIVE DATE:** This amendment is effective December 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** John J. O'Meara, (202) 942-1661.

**SUPPLEMENTARY INFORMATION:** A final rule governing the correction of administrative errors affecting Thrift Savings Plan accounts was published in the Federal Register on December 27, 1996 (61 FR 68464). That rule revised the final regulations that were published in the Federal Register on December 4, 1987 (52 FR 46314). In both sets of regulations the Board provided that when an individual who was not eligible to participate in the TSP nevertheless contributed funds to the TSP, the individual's contributions would be returned, but the earnings on those contributions would be forfeited and used to pay administrative

expenses of the TSP. Upon review of this matter, the Board has decided that in promulgating this regulation insufficient emphasis was placed on the ineligible participant's equitable claim to these earnings.

For this reason, Sec. 1605.9(a)(1) of the error correction regulations is being amended to provide that these earnings will be paid to the ineligible participant. Because the equity interest in these earnings by the ineligible participant is so substantial, this amendment is being given retroactive effect to the effective date (December 27, 1996) of the current error correction regulations.

### **Regulatory Flexibility Act**

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will only affect Thrift Savings Plan participants.

### **Paperwork Reduction Act**

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

### **Unfunded Mandates Reform Act of 1995**

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Public Law 104-4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments, and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

### **Submission to Congress and the General Accounting Office**

Under 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before the publication of this rule in today's Federal Register. This rule is not a major rule as defined in section 804(2).

**List of Subjects in 5 CFR Part 1605**

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

**Roger W. Mehle,**

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, part 1605 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

**PART 1605--CORRECTION OF ADMINISTRATIVE ERRORS**

1. The authority citation for Part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351 and 8474.

2. Section 1605.9 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

**Sec. 1605.9 Miscellaneous provisions.**

(a)(1) \* \* \* In that case, the earnings will be removed from the account and paid to the ineligible participant. \* \* \*

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[Federal Register: September 18, 1997 (Volume 62, Number 181)]

[Rules and Regulations]

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