

# Rules and Regulations

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## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1601

#### Participants' Choices of TSP Funds

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

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** The Agency is amending its interfund transfer regulations to provide that the Executive Director may adopt a policy of setting limits on the number of interfund transfer requests. In the near term, this amendment will allow the Executive Director to immediately address and, if necessary, restrict the activity of frequent traders, who have disrupted management of the Funds and whose activity has resulted in increased costs to participants.

**DATES:** This interim rule is effective January 7, 2008.

**ADDRESSES:** Comments may be sent to Thomas K. Emswiler, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's Fax number is (202) 942-1676.

**FOR FURTHER INFORMATION CONTACT:** Tracey Ray on (202) 942-1665.

**SUPPLEMENTARY INFORMATION:** The Agency 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 are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

#### Interfund Transfer Requests

The Agency is amending its regulations pertaining to interfund transfers. While most private-sector defined contribution plans, record keepers and/or investment managers, e.g., Vanguard, Federated, ING, Janus, and Royce, have adopted policies designed to limit frequent trading, the Agency currently places no limit on its participants regarding the number or frequency of interfund transfers.

Recently, however, this policy has been called into question as excessive trading caused costs borne by TSP participants to more than double from 2005 to 2006 (from \$6.7 million in 2005 to \$15 million in 2006), and this pattern of frequent trading has continued in 2007. These costs, which have resulted largely from the activities of approximately 3,000 of the TSP's 3.8 million participants, increase expenses for all TSP participants. In 2006, the unrestricted trading in the I Fund resulted in trades of \$12 billion of securities with associated trading costs of \$13.8 million or 8 basis points (\$.80 per \$1,000); nearly three times the TSP's net administrative expense of 3 basis points (\$.30 per \$1,000).

Because the Board and Executive Director have a fiduciary duty to manage the TSP prudently, for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Thrift Savings Fund, the Agency must respond to this abusive and costly investment activity. 5 U.S.C. 8477(b).

As mentioned, the Agency studied the policies of other funds as well as regulatory guidance from the Securities and Exchange Commission (SEC). Vanguard, for example, limits its participants to one repurchase every sixty days, and the SEC recommends that, under certain circumstances, plans charge trading fees. Other investment vehicles limit participants to a fixed number of trades per year or charge fees on certain redemptions.

The Agency desires to stop this excessive trading immediately and also, after continued analysis, to design an interfund transfer policy that provides for administrative efficiency, investment flexibility, retirement security, as well as reduced trading costs.

To that end, in the near term, the Agency is adopting a regulation to grant

the Executive Director the authority to notify the small percentage of participants who are driving up costs through their excessive trading and request that they cease their practices. Otherwise, these participants will be required to request interfund transfers by mail. It is the Agency's hope that this swift and direct action will inform such participants of the unreasonable expenses associated with their trading and persuade them to voluntarily curb their trading, thereby curtailing the excessive trading costs borne by all participants who hold the C, F, S, I, and L Funds.

Further, upon continued inquiry, including an analysis of the actions that can be taken on an automated basis, the Agency likely will amend its regulations (via a separate publication in the **Federal Register**) to permit two interfund transfers per calendar month with subsequent unlimited interfund transfers only into the G Fund. The Agency believes this policy, when compared to others adopted in the private sector, provides the desired level of administrative simplicity, investment flexibility and security, and control over excessive trading.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

#### Paperwork Reduction Act

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

#### Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501-1571, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

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

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency 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 publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

#### List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

**Gregory T. Long,**

*Executive Director, Federal Retirement Thrift Investment Board.*

■ For the reasons set forth in the preamble, the Agency amends 5 CFR chapter VI as follows:

#### **PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS**

■ 1. The authority citation for part 1601 continues to read as follows:

**Authority:** 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

■ 2. Amend § 1601.32, by revising paragraph (b) to read as follows:

#### **§ 1601.32 Timing and Posting Dates.**

\* \* \* \* \*

(b) *Limit.* There is no limit on the number of contribution allocation or interfund transfer requests that may be made by a participant. In order to mitigate excessive trading expenses, the Executive Director may write to any participant who engages in excessive trading and ask the participant to stop this practice. If the participant continues to engage in excessive trading, the participant may be required to request interfund transfers by mail.

[FR Doc. E7-25007 Filed 12-26-07; 8:45 am]

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## **DEPARTMENT OF AGRICULTURE**

### **Rural Housing Service**

#### **7 CFR Part 3550**

RIN 0575-AC59

#### **Single Family Housing Loans, Payment Assistance**

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This Final Rule implements a change in the regulations for the Rural Housing Service (RHS) 502 Direct Single Family Housing Loans by amending the formula that calculates payment assistance for which a borrower qualifies. This action is being taken to improve the distribution of program benefits, simplify the application process and improve customer service.

This Final Rule follows the publication of the Proposed Rule on February 17, 2006, and takes into consideration the public comments received in response to the Proposed Rule.

**EFFECTIVE DATE:** April 1, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Michael S. Feinberg, Chief, Loan Origination Branch, Rural Housing Service, USDA, Ag Box 0783, Room 2214, 1400 Independence Avenue, SW., Washington, DC 20250-0783, Telephone: 202-720-1474.

#### **SUPPLEMENTARY INFORMATION:**

##### **Classification**

This rule has been determined to be significant by the Office of Management and Budget (OMB) under Executive Order 12866 and has been reviewed by OMB.

##### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for individual loans.

##### **Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

##### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the

Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Executive Order 13132**

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### **Programs Affected**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410, Low Income Housing Loans.

#### **Intergovernmental Consultation**

For the reasons set forth in the final rule to 7 CFR part 3015, subpart V, and related notice (48 FR 29115) this program is excluded from the scope of Executive Order (E.O.) 12372, which requires intergovernmental consultation with State and local officials.

#### **Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule.

#### **Paperwork Reduction Act**

The information collection requirements contained in these regulations have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575-0172 in accordance with the Paperwork Reduction Act. This rule does not revise or impose any new information collection requirements.