

# 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

recommence those payments by the end of the next calendar quarter, and make up all missed payments (rather than add them to the end of the loan term). In addition, interest accrues on missed loan payments. The use of the COTS software package will permit the Board to quickly adapt the administration of the TSP to the ever-changing legal and programmatic requirements affecting the TSP and defined contribution plans. Therefore, to more fully benefit from this adaptability and to minimize the need for customization of the COTS package, the Executive Director proposes to conform the loan program to the private-sector model and to amend the Board's regulations to codify these changes.

#### **Authority Under Which the Rule Is Proposed**

The rule proposed in this notice will be issued under the authority of 5 U.S.C. 8351(e), 8432(a)(3), 8432a(a)(1), 8432a(b), 8433(g)(2), 8433(h)(4), 8474(b)(5), and 8474(c)(1).

#### **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 and former 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 of 1980.

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

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104-4, section 201, 109 Stat. 48, 64, 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 section 202, 109 Stat. 48, 64-65, is not required.

**James B. Petrick,**

*Executive Director (Acting), Federal Retirement Thrift Investment Board.*

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**BILLING CODE 6760-01-P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Parts 702, 704, 712, and 723**

#### **Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** NCUA is proposing to amend its member business loan (MBL) regulation by: changing certain requirements for construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs; revising and clarifying provisions regarding MBL aggregate loan limits, loan-to-value requirements, loans to credit unions and credit union service organizations (CUSOs), experience requirements, and MBL documentation requirements; and simplifying or removing confusing or unnecessary provisions in the MBL regulation. In addition, NCUA proposes to amend the prompt corrective action (PCA) rule regarding the risk weighting of MBLs and the CUSO rule to permit CUSOs to originate business loans.

**DATES:** Comments must be received on or before June 3, 2003.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. E-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Please send comments by one method only.

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

David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone (703) 518-6360; or Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

NCUA adopted its first MBL rule in April 1987 and has subsequently amended the rule, including the most recent, substantive amendments made to conform to the limitations imposed by the Credit Union Membership Access Act (CUMAA). 12 U.S.C. 1757a, Pub. L. 105-219, 112 Stat. 913 (1998). Under the current rule, the Board may exempt federally insured, state-chartered credit unions (FISCUs) in a state from NCUA's MBL rule if the Board determines the state has developed an MBL rule that minimizes risk and accomplishes the

overall objectives of NCUA's rule. 12 CFR 723.20. The Board has approved seven state MBL rules. 7 Tex. Admin. Code § 91.709; Mo. Code Regs. Ann. tit. 4, § 100-2.045; Wash. Admin. Code § 208-460-010 to -170; Md. Regs. Code tit. 9, § 09.03.01.14; Wis. Admin. Code § 72.01-.18; Conn. Agencies Regs. § 59; Or. Admin. R. § 441-720-0300 to -0380.

In reviewing state rules, the Board has approved some rule provisions that relaxed some of NCUA's requirements, concluding that they did not create an undue risk to the National Credit Union Share Insurance Fund (NCUSIF). The Board believes it should amend NCUA's MBL rule in three areas it liberalized in approving state rules: construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs. The Board believes that, by incorporating these provisions and adopting certain other proposed amendments, NCUA's rule will allow credit unions greater opportunities to meet the small business loan needs of their members without creating undue risk to the NCUSIF. The NCUA Board will continue to be responsive to changes in the MBL marketplace, either by approving state specific rules or considering future changes to this rule.

The Board is proposing several amendments to revise and clarify certain provisions that have caused confusion or created unnecessary regulatory burden. These amendments relate to: the dollar amount that triggers compliance with the rule, the loans to one borrower limit, the aggregate MBL limit, loan-to-value requirements, MBL documentation requirements, and the loan loss reserve requirements. The Board also proposes that credit unions that purchase participation interests in MBLs made to credit union members need not count the purchase against the credit union's own limit.

In addition, the Board is proposing an amendment to the PCA rule related to business lending. The Board proposes to expand the current standard risk-based net worth component for MBLs in Part 702.

Finally, the Board proposes to amend the CUSO rule to permit CUSOs to make business loans. During prior rulemakings, commenters asked the Board to authorize business loan origination as a permissible CUSO activity. 66 FR 40575, Aug. 3, 2001; 63 FR 10743, Mar. 3, 1998. Previously, the Board believed that permitting CUSOs to offer business loans, a core credit union function, could negatively affect affiliated credit union services. The Board has reconsidered its position and believes that, by authorizing CUSOs to engage in business loan origination,