

# Proposed Rules

Federal Register

Vol. 63, No. 104

Monday, June 1, 1998

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 Part 1631

#### Availability of Records

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing proposed amendments to the Board's Freedom of Information Act rules to implement the Electronic Freedom of Information Act Amendments of 1996. The proposed amendments provide for expedited processing of certain requests and enlarge the time for responding to initial requests. The proposed amendments also provide the address for the Board's electronic reading room and add a category of documents to be made available in the reading room. The proposed amendments also update the fees charged to search for records.

**DATES:** Comments must be received by July 1, 1998.

**ADDRESSES:** Comments may be sent to Thomas L. Gray, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Gray, (202) 942-1662, FAX (202) 942-1676.

**SUPPLEMENTARY INFORMATION:** Section 4 of the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pubic Law 104-231, section 4, 110 Stat. 3048, 3049, amended 5 U.S.C. 552(a)(2) to require Federal agencies to make documents available in electronic form. In accordance with this requirement, the Board proposes to amend 5 CFR 1631.4 to provide the address of its electronic reading room. The Board maintains a reading area with paper documents that is open to the public. The Board also maintains a business Web site at <http://www.frtib.gov>

which contains, in addition to business information, its electronic reading room. The Board maintains a Web site at <http://www.tsp.gov> to provide program information about the Thrift Savings Plan, and that site is linked to the business site. Both Web sites contain documents in readily accessible electronic form which can be downloaded by the requester. In accordance with the EFOIA, the Board will add to its reading area and Web site those records that it determines are repeatedly requested under the Freedom of Information Act Amendments (FOIA). A list of such records will be maintained on the Board's business Web site.

Section 3 of the EFOIA, 110 Stat. at 3051-52, amended 5 U.S.C. 552(a)(E)(6) to require Federal agencies to promulgate rules on expedited processing of FOIA requests in cases of compelling need or in other cases determined by the agency. To implement this requirement, the Board is proposing to add new paragraphs (f) and (g) to 5 CFR 1631.6 to set forth the circumstances under which the Board will honor a request for expedited processing and establish procedures for expediting requests. Proposed amendments to 5 CFR 1631.8(a) advise that a determination whether to provide expedited processing of a request will be made within 10 work days. The Board normally processes FOIA requests on a first-in, first-out basis. If a request for expedited processing is approved, that request will be processed ahead of other requests. In addition, the Board proposes to amend 5 CFR 1631.8(b) and (c) to implement the new 20-day time limit for responding to initial requests for records and to provide procedures the Board will follow if additional time is needed to process a request for records.

Proposed amendments to 5 CFR 1631.10 provide procedures for processing appeals of requests for expedited processing, distinguish procedures for handling a request for expedited processing from procedures for processing an appeal of a request for records, and state that an appeal from the denial of a request for expedited processing will be handled within five work days of receipt in the Office of General Counsel.

The Board also proposes to amend 5 CFR 1631.11 and 1631.14 to increase the benefits factor which, along with the employee's salary, determines the amount the Board will charge to search for records. Sections 1631.11 and 1631.14 currently provide for charging the salary rate of the employee who conducts the search plus 16 percent for benefits. The benefits factor was set at 16 percent based on an Office of Management and Budget FOIA fee schedule and guidelines published in the **Federal Register** on March 27, 1987 (52 FR 10012, 10013), and it has not been revised since that time. For Board employees, the current benefits rate is 23.5 percent. Included in this rate are retirement contributions, Social Security taxes, health and life insurance premiums, and lump sum awards and bonuses.

Finally, 5 CFR 1631.18 is amended to address the new annual reporting requirement imposed by section 10 of the EFOIA, 110 Stat. at 3053-54, which will be codified at 5 U.S.C. 552(e).

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They require the Board to disclose information in certain instances and to address when and the form in which information will be disclosed.

#### 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

Under 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. These regulations 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.

**List of Subjects in 5 CFR Part 1631**

Administrative practice and procedure, Freedom of information, Records.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons set out in the preamble, the Federal Retirement Thrift Investment Board proposes to revise 5 CFR Part 1631 to read as follows:

**PART 1631—AVAILABILITY OF RECORDS**

1. The authority citation for part 1631 is revised to read as follows:

**Authority:** 5 U.S.C. 552.

2. Section 1631.4 is amended by revising paragraph (a) to read as follows:

**§ 1631.4 Public reference facilities and current index.**

(a) The Board maintains a public reading area located in room 4308 at 1250 H Street, NW, Washington, DC. Reading area hours are from 9:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of Federal holidays. Electronic reading room documents are available through <http://www.frtib.gov>. In the reading area and through the Web site, the Board makes available for public inspection, copying, and downloading materials required by 5 U.S.C. 552(a)(2), including documents published by the Board in the **Federal Register** which are currently in effect.

\* \* \* \* \*

3. Section 1631.6 is amended by adding new paragraphs (f) and (g) to read as follows:

**§ 1631.6 How to request records—form and content.**

\* \* \* \* \*

(f) When a person requesting expedited access to records has demonstrated a compelling need, or when the Board has determined that it is appropriate to expedite its response, the Board will process the request ahead of other requests.

(g) To demonstrate compelling need in accordance with paragraph (f) of this section, the requester must submit a written statement that contains a certification that the information provided therein is true and accurate to the best of the requester's knowledge and belief. The statement must demonstrate that:

(1) The failure to obtain the record on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is a person primarily engaged in the dissemination of

information, and there is an urgent need to inform the public concerning an actual or alleged Federal Government activity that is the subject of the request.

4. Section 1631.8 is revised to read as follows:

**§ 1631.8 Prompt response.**

(a)(1) When the FOIA Officer receives a request for expedited processing, he or she will determine within 10 work days whether to process the request on an expedited basis.

(2) When the FOIA Officer receives a request for records which he or she, in good faith, believes is not reasonably descriptive, he or she will so advise the requester within 5 work days. The time limit for processing such a request will not begin until receipt of a request that reasonably describes the records being sought.

(b) The FOIA Officer will either approve or deny a reasonably descriptive request for records within 20 work days after receipt of the request, unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from other establishments that are separate from the office processing the request (e.g., the record keeper);

(2) It is necessary to search for, collect, and examine a voluminous amount of records which are demanded in a single request;

(3) It is necessary to consult with another agency which has a substantial interest in the determination of the request or to consult with two or more offices of the Board which have a substantial subject matter interest in the records; or

(4) It is necessary to devote resources to the processing of an expedited request under § 1631.6(f) of this part.

(c) When additional time is required for one of the reasons stated in paragraph (b) of this section, the FOIA Officer will extend this time period for an additional 10 work days by written notice to the requester. If the Board will be unable to process the request within this additional time period, the requester will be notified and given the opportunity to—

(1) Limit the scope of the request, or

(2) Arrange with the FOIA Officer an alternative time frame for processing the request.

5. Section 1631.10 is revised to read as follows:

**§ 1631.10 Appeals to the General Counsel from initial denials.**

(a) When the FOIA Officer has denied a request for expedited processing or a request for records, in whole or in part,

the person making the request may, within 30 calendar days of receipt of the response of the FOIA Officer, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005, and be clearly labeled as a "Freedom of Information Act Appeal."

(b)(1) The General Counsel will act upon the appeal of a denial of a request for expedited processing within 5 work days of its receipt.

(2) The General Counsel will act upon the appeal of a denial of a request for records within 20 work days of its receipt.

(c) The General Counsel will decide the appeal in writing and mail the decision to the requester.

(d) If the appeal concerns an expedited processing request and the decision is in favor of the person making the request, the General Counsel will order that the request be processed on an expedited basis. If the decision concerning a request for records is in favor of the requester, the General Counsel will order that the subject records be promptly made available to the person making the request.

(e) If the appeal of a request for expedited processing of records is denied, in whole or in part, the General Counsel's decision will set forth the basis for the decision. If the appeal of a request for records is denied, in whole or in part, the General Counsel's decision will set forth the exemption relied on and a brief explanation of how the exemption applies to the records withheld and the reasons for asserting it, if different from the reasons described by the FOIA Officer under § 1631.9. The denial of a request for records will state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in Federal court. (A Federal court does not have jurisdiction to review a denial of a request for expedited processing after the Board has provided a complete response to the request.)

(f) No personal appearance, oral argument, or hearing will ordinarily be permitted in connection with an appeal of a request for expedited processing or an appeal for records.

(g) On appeal of a request concerning records, the General Counsel may reduce any fees previously assessed.

**§ 1631.11 [Amended]**

6. In § 1631.11 amend paragraph (a)(4) by removing the phrase "plus 16 percent" in the second sentence and adding the phrase "plus 23.5 percent" in its place.

**§ 1631.13 [Amended]**

7. In section 1631.13 amend paragraph (c) by removing the number "10" and adding in its place the number "20".

**§ 1631.14 [Amended]**

8. In § 1631.14 amend the first sentence of paragraph (a) and the first sentence of paragraph (b) by removing the phrase "plus 16 percent" and adding the phrase "plus 23.5 percent" in its place.

9. Section 1631.18 is revised to read as follows:

**§ 1631.18 Annual report.**

The Executive Director will submit annually, on or before February 1, a Freedom of Information report covering the preceding fiscal year to the Attorney General of the United States. The report will include matters required by 5 U.S.C. 552(e).

[FR Doc. 98-14358 Filed 5-29-98; 8:45 am]

BILLING CODE 6760-01-U

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1655

#### Thrift Savings Plan Loans

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed revision to regulations concerning Thrift Savings Plan (TSP) loans. The amendment will affect participants who are alleged to have submitted false information in support of their request for a TSP loan. The amendment establishes a process for investigating written allegations of such fraudulent activity. When the Board finds that the evidence suggests the participant provided false information to the TSP during the loan process, the Board will refer the case to the appropriate authorities for criminal prosecution and, in the appropriate case, administrative action.

**DATES:** Comments must be submitted on or before July 1, 1998.

**ADDRESSES:** Comments may be sent to Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth S. Woodruff, (202) 942-1661.

**SUPPLEMENTARY INFORMATION:** A final rule governing TSP loans was published in the **Federal Register** on April 14, 1997 (62 FR 18019). That rule revised interim regulations that were published in the **Federal Register** on November 18, 1996 (61 FR 58754). Current regulations require participants who are applying for a loan from their TSP accounts to provide certain information and certify the truth of the information on the application. The terms and conditions of a TSP loan are then reflected in a Loan Agreement/Promissory Note which the participant signs, thereby certifying, under penalty of perjury, the truth of all statements made and documentation provided with this signed document.

Before the TSP will permit a loan to a TSP participant, the participant must indicate his or her marital status on the Loan Application and, if married, the spouse's name. In the case of a married Federal Employees' Retirement System (FERS) participant, the participant must obtain the signature of his/her spouse on the Loan Agreement/Promissory Note to show that the spouse has consented to the loan. In the case of a married Civil Service Retirement System (CSRS) participant, the consent of the spouse is not required; however, the TSP must send a notice to the spouse. The CSRS participant is therefore required to provide the spouse's address on the loan application. These consent and notice requirements can be waived upon application to the TSP pursuant to 5 CFR 1655.18.

This regulation adds paragraph (f) to § 1655.18 to provide that, if the Board receives a written allegation from the spouse stating that a participant misrepresented his/her marital status or the address of the spouse of a CSRS participant, or that the participant submitted a Loan Agreement/Promissory Note with a forged signature of the spouse of a FERS participant, the Board will submit the questioned document to the spouse and request that the allegation of fraud or forgery be affirmed. If the allegation is affirmed and the loan has been disbursed, the Board will give the participant an opportunity to repay the loan within a 60-day period. This will permit the participant to return the account to the status quo, thus restoring the spouse's interest in the account.

The notice will also advise that if the participant does not repay the loan in full within the 60 days provided, the Board will conduct an investigation into the allegation. The Board will not give this repayment opportunity to a participant who has received a final

divorce from his/her spouse before the funds are received by the TSP. In such a case, the Board will immediately begin its investigation.

Where the Board finds evidence to suggest that the participant misrepresented his/her marital status or spouse's address or that the signature of the spouse was forged, the Board will refer the case to the Department of Justice for criminal prosecution and, where the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action. The Board will also freeze the participant's account and will not permit a withdrawal or another loan until the loan is repaid, the Board receives assurance from the spouse in writing that the notice or consent requirements have been met, the participant is divorced, or the Board's investigation does not yield persuasive evidence to support the allegation.

#### Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities because the regulations will only affect TSP 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.

#### List of Subjects in 5 CFR Part 1655

Credit, Government employees, Pensions, Retirement.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons set forth in the preamble, part 1655 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows: