

# 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 1630 and 1631

#### Privacy Act and Freedom of Information Act Requests

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

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

**SUMMARY:** The Federal Retirement Thrift Investment Board (Agency) proposes to amend its Privacy Act and FOIA regulations to reflect the Agency's current organizational structure and to transfer responsibility for reviewing Privacy Act and FOIA requests from the Agency's Office of Resource Management (formerly known as the Office of Administration) to the Office of General Counsel.

**DATES:** Comments must be received on or before May 22, 2014.

**ADDRESSES:** You may submit comments using one of the following methods:

- Mail: Office of General Counsel, Attn: James B. Petrick, Federal Retirement Thrift Investment Board, 77 K Street NE., Washington, DC 20002.
- Hand Delivery/Courier: The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- Facsimile: Comments may be submitted by facsimile at (202) 942-1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

**FOR FURTHER INFORMATION CONTACT:** Laurissa Stokes at 202-942-1645.

**SUPPLEMENTARY INFORMATION:** The Agency administers the Thrift Savings Plan (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)).

The Agency has eleven organizational offices: The Office of the Executive Director, the Office of Participant Operations and Policy, the Office of General Counsel, the Office of Investments, the Office of Communications and Education, the Office of Enterprise Planning, the Office of Enterprise Risk Management, the Office of External Affairs, the Office of Financial Management, the Office of Resource Management, and the Office of Technology Services. This proposed regulation would update the list of Agency offices contained in section 1631.3.

The Office of Resource Management (formerly known as the Office of Administration) currently has responsibility for reviewing, processing, and responding to initial requests for disclosure and initial requests to amend non-TSP records covered under the Privacy Act of 1974, 5 U.S.C. 552a. The Executive Director currently considers appeals of initial decisions to deny access to or amendment of records in consultation with the General Counsel.

This proposed regulation would transfer the responsibility for reviewing, processing, and responding to initial requests for disclosure and initial requests to amend non-TSP records covered under the Privacy Act to the Office of General Counsel by defining "Privacy Act Officer" to mean "the Board's General Counsel or his or her designee." The Executive Director would retain responsibility for making a final decision on appeal of an initial decision to deny access to or amendment of records. However, the Executive Director would no longer be required to consult the General Counsel before making a final determination.

#### Freedom of Information Act

The Office of Resource Management (formerly known as the Office of Administration) currently has responsibility for making initial determinations to approve or deny requests received pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552. The General Counsel

currently considers appeals of initial decisions to deny requests for records under the Freedom of Information Act.

This proposed regulation would transfer the responsibility for making initial determinations to approve or deny FOIA requests to the Office of General Counsel by defining "FOIA Officer" to mean "the Board's General Counsel or his or her designee." In order to retain the opportunity for fair review on appeal, this proposed regulation would also transfer the responsibility for deciding appeals from the General Counsel to the Executive Director.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, and which is administered by the Agency.

#### 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 section 1532 is not required.

#### List of Subjects

5 CFR Part 1630

Privacy.

## 5 CFR Part 1631

Courts, Freedom of information, Government employees.

**Gregory T. Long,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons stated in the preamble, the Agency proposes to amend 5 CFR chapter VI as follows:

## PART 1630—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 1630 continues to read as follows:

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

■ 2. In § 1630.2, redesignate paragraphs (g) through (r) as paragraphs (h) through (s), and add new paragraph (g) to read as follows:

### § 1630.2 Definitions.

\* \* \* \* \*

(g) *Privacy Act Officer* means the Board's General Counsel or his or her designee;

\* \* \* \* \*

■ 3. Amend § 1630.14, by revising the first sentence of paragraph (a) to read as follows:

### § 1630.14 Appeals process.

(a) Within 20 work days of receiving the request for review, the Executive Director will make a final determination on appeal. \* \* \*

\* \* \* \* \*

### § 1630.16 [Amended]

■ 4. In § 1630.16, paragraph (d), remove the words and punctuation "Head, TSP Service Office", and add, in their place, the words "Executive Director".

## PART 1631—AVAILABILITY OF RECORDS

### Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

■ 5. The authority for part 1631, subpart A, continues to read as follows:

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

■ 6. Amend § 1631.1, by revising paragraph (e) to read as follows:

### § 1631.1 Definitions.

\* \* \* \* \*

(e) *FOIA Officer* means the Board's General Counsel or his or her designee.

\* \* \* \* \*

■ 7. Amend § 1631.3, by revising paragraph (a) to read as follows:

### § 1631.3 Organization and functions.

(a) The Federal Retirement Thrift Investment Board was established by the Federal Employees' Retirement System Act of 1986 (Pub. L. 99-335, 5 U.S.C. 8401 *et seq.*). Its primary function is to manage and invest the Thrift Savings Fund for the exclusive benefit of its participants (e.g., participating Federal employees, Federal judges, and Members of Congress). The Board is responsible for investment of the assets of the Thrift Savings Fund and the management of the Thrift Savings Plan. The Board consists of:

(1) The five part-time members who serve the Board;

(2) The Office of the Executive Director;

(3) The Office of Participant Operations and Policy;

(4) The Office of General Counsel;

(5) The Office of Investments;

(6) The Office of Communications and Education;

(7) The Office of Enterprise Planning;

(8) The Office of Enterprise Risk Management;

(9) The Office of External Affairs;

(10) The Office of Financial Management;

(11) The Office of Resource Management; and

(12) The Office of Technology Services.

\* \* \* \* \*

■ 8. Amend § 1631.4, by revising the first sentence of paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) The FOIA officer shall also maintain a file open to the public, which shall contain copies of all grants or denials of FOIA requests, appeals, and appeal decisions by the Executive Director. \* \* \*

■ 9. Amend § 1631.9, by revising paragraph (b)(5) to read as follows:

### § 1631.9 Responses—form and content.

\* \* \* \* \*

(b) \* \* \*

(5) A statement that the denial may be appealed to the Executive Director within 30 calendar days of receipt of the denial or partial denial.

\* \* \* \* \*

■ 10. Revise § 1631.10 to read as follows:

### § 1631.10 Appeals to the Executive Director 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 Executive Director. The appeal must be in writing, addressed to the Executive Director, Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002, and be clearly labeled as a "Freedom of Information Act Appeal."

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

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

(c) The Executive Director 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 Executive Director 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 Executive Director 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 Executive Director'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 Executive Director'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 Executive Director may reduce any fees previously assessed.

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