

with respect to the Folder in accordance with regulations, practices, and procedures promulgated or published by the Office of Personnel Management.

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Subpart C—Official Personnel Folder

3. Revise § 293.303 to read as follows:

§ 293.303 The roles of the Office and custodians.

(a) The OPF of each employee in a position subject to civil service rules and regulations and of each former employee who held such a position is part of the records of the Office of Personnel Management (the Office). The Office has Governmentwide responsibility for developing regulations, practices and procedures for the establishment, maintenance, and transfer of OPFs.

(b) An agency is the legal custodian of an employee's OPF during the period of the employee's employment at that agency. An agency is responsible for the establishment of the OPF for a new appointee or a new employee for whom no OPF has previously been established and is similarly responsible for the maintenance of a previously existing OPF during the period any new appointee or employee remains in the agency's employ. An agency is also the custodian of an OPF it requests from the National Personnel Records Center (NPRC) for any other temporary use, during the period the agency holds the OPF and until the OPF is returned to the NPRC.

(c) Once an employee separates from federal service, the agency must transfer the OPF to the NPRC in accordance with established procedures for maintaining OPFs as indicated in OPM's Guide to Personnel Recordkeeping.

(d) Once NPRC has approved the transfer, the Office is the legal custodian of the OPF and is responsible for the maintenance of the OPF until the destruction date established for the file pursuant to the National Archive and Records Administration's General Records Schedule unless another agency requests the OPF from the NPRC in the interim. In the event another agency requests the OPF from the NPRC, that agency becomes the custodian from the date that the OPF is transmitted by the NPRC until the date that the NPRC receives the OPF back from the agency.

4. Amend § 293.307 by adding new paragraphs (c) and (d) as follows:

§ 293.307 Disposition of folders of former Federal employees.

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(c) Agencies are responsible for all costs associated with the establishment

and maintenance of OPFs, and transfer of OPFs to the National Personnel Records Center.

(d) Agencies are responsible for all costs associated with agency-initiated requests for OPFs or services from the National Personnel Records Center.

[FR Doc. 2010-809 Filed 1-15-10; 8:45 am]

BILLING CODE 6325-39-P

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 Federal Retirement Thrift Investment Board (Agency) proposes to amend its regulations on availability of records to establish the manner of service for administrative subpoenas issued by the Agency and to delegate authority to the Agency's General Counsel to issue administrative subpoenas. These changes implement section 107 of the Thrift Savings Plan Enhancement Act of 2009, which gave the Agency authority to issue subpoenas *duces tecum* in order to carry out the Agency's functions.

DATES: Comments must be received on or before February 18, 2010.

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

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Office of General Counsel, Attn: Thomas Emswiler, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

- *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. We will post all substantive comments (including any personal information provided) without change (with the exception of redaction of SSNs, profanities, *et cetera*) on www.regulations.gov.

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)).

Issuance of Subpoenas

Section 107 of the Thrift Savings Plan Enhancement Act of 2009 ("the Act"), Public Law 111-31 (123 Stat. 1776, 1853) (codified at 5 U.S.C. 8480) authorizes the Agency to issue administrative subpoenas to compel production of designated books, documents, records, electronically stored information, or tangible things. This proposed regulation would establish three means by which the Agency may serve an administrative subpoena: (1) Certified or registered mail, return receipt requested, (2) fax or electronic transmission, provided the subpoenaed party gives prior approval, or (3) personal delivery at the principal place of business or the last known residential address of the subpoenaed party. This proposed regulation would also delegate authority to the General Counsel to issue administrative subpoenas.

The Agency, like other financial institutions, has been the subject of fraudulent withdrawals from its participants' accounts. The Agency anticipates using its subpoena authority to obtain information necessary to prevent or investigate fraudulent or otherwise improper routing of participants' money to financial institutions. The Agency, therefore, needs an expeditious means to obtain information from financial institutions to which participants' money is transferred. Prompt action and cooperation from financial institutions is the best way to recover or deter fraudulent or improper routing of participants' money.

Allowing the use of several alternative means to accomplish service is intended to facilitate expeditious cooperation between the Agency and financial institutions in an effort to prevent or investigate fraudulent withdrawals and transfers. Delegation to the General Counsel of the authority to issue administrative subpoenas is intended to expedite the issuances of subpoenas,

e.g. by removing the need for the staff of the Office of General Counsel to seek Executive Director approval for issuances that are routine or urgent.

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. Although it will also occasionally require financial institutions to provide information, such entities rarely constitute small entities. Additionally, this regulation provides the Agency with no new authority; it merely provides guidance on existing statutory authority.

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.

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. 804(2).

List of Subjects in 5 CFR Part 1631

Government employees, Courts, Freedom of information.

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 1631—AVAILABILITY OF RECORDS

1. Remove the existing authority citation for part 1631.

Subpart A—[Amended]

2. Add an authority citation to subpart A of part 1631 to read as follows:

Authority: 5 U.S.C. 552.

Subpart B—[Amended]

3. Add an authority citation to subpart B of part 1631 to read as follows:

Authority: 5 U.S.C. 552.

4. Add subpart C to subpart 1631 to read as follows:

Subpart C—Administrative Subpoenas

Sec.
1631.40 Subpoena authority.
1631.41 Production of records.
1631.42 Service.
1631.43 Enforcement.

Subpart C—Administrative Subpoenas

Authority: 5 U.S.C. 8480.

§ 1631.40 Subpoena authority.

The Executive Director or General Counsel may issue subpoenas pursuant to 5 U.S.C. 8480. The General Counsel may delegate this authority to a Deputy General Counsel, Associate General Counsel, or Assistant General Counsel.

§ 1631.41 Production of records.

A subpoena may require the production of designated books, documents, records, electronically stored information, or tangible materials in the possession or control of the subpoenaed party when the individual signing the subpoena has determined that production is necessary to carry out any of the Agency's functions.

§ 1631.42 Service.

(a) *Return of service.* Each subpoena shall be accompanied by a Return of Service certificate stating the date and manner of service and the names of the persons served.

(b) *Methods of service.* Subpoenas shall be served by one of the following methods:

(1) Certified or registered mail, return receipt requested to the principal place of business or the last known residential address of the subpoenaed party.

(2) Fax or electronic transmission to the subpoenaed party or the subpoenaed party's counsel, provided the subpoenaed party gives prior approval.

(3) Personal delivery at the principal place of business or residence of the subpoenaed party during normal business hours.

§ 1631.43 Enforcement.

Upon the failure of any party to comply with a subpoena, the General Counsel shall request that the Attorney General seek enforcement of the subpoena in the appropriate United States district court.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AD56

Incorporating Employee Compensation Criteria Into the Risk Assessment System

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The FDIC is seeking comment on ways that the FDIC's risk-based deposit insurance assessment system (risk-based assessment system) could be changed to account for the risks posed by certain employee compensation programs. Section 7 of the Federal Deposit Insurance Act (FDI Act) sets forth the risk-based assessment authorities underlying the FDIC's deposit insurance system. The FDIC seeks comment on all aspects of this ANPR.

DATES: Comments must be submitted on or before February 18, 2010.

ADDRESSES: You may submit comments on the advance notice of proposed rulemaking by any of the following methods:

- *Agency Web Site:* <http://www.FDIC.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the Agency Web Site.

- *E-mail:* Comments@FDIC.gov. Include RIN #3064-AD56 on the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.