

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

KAIQI XIONG,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2020-0403
	)	
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On May 21, 2021, the Presiding Officer submitted her Recommended Order to the State Board of Administration (“SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Kaiqi Xiong, and upon counsel for the Respondent. Both parties timely made post-hearing filings. Neither party filed exceptions to the Recommended Order which were due on June 5, 2021. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request to be allowed to transfer from the Florida Retirement System (FRS) Investment Plan to the FRS Pension Plan effective August 1, 2020, even though his second election form was not received by the Plan Choice Administrator until August 3,

2020, hereby is denied. Petitioner had been clearly advised that if he wanted his second election to be effective August 1, 2020, he would have needed to submit his second election form no later than 4:00 p.m. on July 31, 2020.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 17<sup>th</sup> day of June 2021, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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**Daniel Beard**  
Chief of Defined Contribution Programs  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.

  
\_\_\_\_\_  
Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent to Kaiqi Xiong, *pro se*, both by email transmission to [REDACTED] and by U.P.S. to [REDACTED] and by email transmission to Deborah Minnis, Esq. ([dminnis@ausley.com](mailto:dminnis@ausley.com)) and Ruth Vafek ([rvafek@ausley.com](mailto:rvafek@ausley.com)) and [jmcvaney@ausley.com](mailto:jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 17<sup>th</sup> day of June, 2021.

  
\_\_\_\_\_  
Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

KAIQI XIONG,

Petitioner,

vs.

CASE NO. 2020-0403

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on March 30, 2021, with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

**APPEARANCES**

For Petitioner: Kaiqi Xiong, *pro se*

For Respondent: Ruth Vafek  
Ausley McMullen, P.A.  
123 S. Calhoun Street  
Tallahassee, FL 32302

**STATEMENT OF THE ISSUE**

The issue is whether Respondent's election to transfer from the Florida Retirement System (FRS) Investment Plan to the FRS Pension Plan is effective August 1, 2020 or September 1, 2020. Petitioner asserts that it should be August 1, 2020, which would result in his owing approximately \$5,000.00 less to buy into the Pension Plan.

### **PRELIMINARY STATEMENT**

Petitioner testified on his own behalf and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-8A were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on April 12, 2021. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed, and both made post-hearing filings. The following recommendation is based on my consideration of the complete record in this case and all materials submitted by the parties.

### **UNDISPUTED MATERIAL FACTS**

1. Petitioner began employment with the University of South Florida, an FRS-participating employer, in August of 2015.
2. During Petitioner's initial choice period, he elected to enroll in the FRS Investment Plan.
3. Some five years later, in June and July of 2020, Petitioner called the MyFRS Financial Guidance Line (Guidance Line) multiple times and spoke at length with various advisers regarding the option of switching to the FRS Pension Plan, the details of how to do so, and the potential advantages, disadvantages, and costs for such a change.
4. During Petitioner's calls to the MyFRS Financial Guidance Line in that time period, advisers told Petitioner that he would need to submit his second election form no later than 4:00

p.m. EST on Friday, July 31, 2020 in order to achieve an effective date of August 1, 2020 for Pension Plan enrollment.

5. At the end of July 2020, the Florida Department of Management Services, Division of Retirement (“Division”), via the MyFRS Financial Guidance system, provided Petitioner an estimate of the amount he would be required to pay in order to finalize and effectuate his transfer to the Pension Plan. This form stated: “This is your estimated buy in amount and is valid until August 1, 2020.”

6. On Saturday, August 1, 2020, Petitioner filled out and electronically submitted a second election form from Petitioner, seeking to transfer from the Investment Plan to the Pension Plan.

7. On Monday, August 3, 2020, the Plan Choice Administrator received and processed Petitioner’s second election form.

8. Based on the Plan Choice Administrator’s August 3, 2020 receipt of Petitioner’s second election form, the effective date of the transfer was September 1, 2020.

9. On or about October 11, 2020, Petitioner submitted a Request for Intervention (RFI) raising a number of issues, most of which concern the buyback calculations from and communication with the Division, and are not within Respondent’s authority to address. The RFI does appear to claim that Petitioner’s second election form was processed “late.” Petitioner’s RFI was denied, and Respondent suggested Petitioner contact the Division.

10. On or about November 18, 2020, Petitioner filed a Petition for Hearing (PFH) requesting, among other things, that the effective date for his transfer to the Pension Plan be August 1, 2020 rather than September 1, 2020. That is the only issue over which Respondent SBA has jurisdiction in this administrative proceeding.

## CONCLUSIONS OF LAW

1. In order for Petitioner to have had an August 1, 2020 effective date of transfer from the Investment Plan to the Pension Plan, the Plan Choice Administrator needed to have received his second election form by 4:00 p.m. EST on the last business day prior to the desired effective date, which was Friday, July 31, 2020. Instead, Petitioner's second election form was submitted on the MyFRS.com website on Saturday, August 1, 2020, and received and processed by the Plan Choice Administrator on Monday, August 3, 2020.

2. Section 121.4501(4)(f), Florida Statutes, provides in relevant part:

...the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, **such elections are effective on the first day of the month following the receipt of the election by the third-party administrator** and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator.

(Emphasis added.)

3. Pursuant to the express terms of the governing statute, Petitioner's Pension Plan election must have been received by the Plan Choice Administrator in the month prior to August 1, 2020 (i.e., the month of July, 2020) in order for his election to have an effective date of August 1, 2020.

4. Rule 19-11.007(3)(i), F.A.C., which applies to second elections, provides in pertinent portion:

The second election will become final at 4:00 p.m. (Eastern Time) on the day it is received by the Plan Choice Administrator. Elections received after 4:00 p.m. (Eastern Time) will be considered as being received on the

next business day. Elections received on a Saturday, Sunday or holiday will be considered as being received on the next business day.

Again, the test is when the election is received and processed by the Plan Choice Administrator, but since Petitioner did not even submit his second election form until August 1, 2020, Respondent is constrained by statute and cannot change the effective date of such election to August 1, 2020.

5. Movement from the FRS Investment Plan to the Pension Plan, and the financial ramifications thereof, are governed by 121.4501(4)(f)2. and 3., Florida Statutes. These sections states, in pertinent part:

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation.... The [DMS Division of Retirement] must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a ... local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability....

§ 121.4501(4)(f)3., Fla. Stat. (emphasis added).

6. The Florida Department of Management Services (DMS) is the entity charged with administering the FRS Pension Plan. §§ 121.011 et seq., Fla. Stat. The Division of Retirement within DMS, pursuant to the statutory sections quoted above, is responsible for preparing "buy-in"



calculations when FRS members elect to transfer from the Investment Plan to the Pension Plan. Respondent SBA has no authority or jurisdiction over Petitioner's requests as they pertain to those buy-in amounts. Any dispute in that regard would have to be addressed by DMS, which is not a party here.

7. Petitioner appears to allege that an employee of the Division provided him with inaccurate information regarding the timing of elections and regarding details of the buy-in calculations. There is no indication that Respondent SBA provided Petitioner with any incorrect information, and Respondent's agents, during Petitioner's calls to the MyFRS Financial Guidance Line, told Petitioner that he would need to submit his second election form no later than 4:00 p.m. EST on Friday, July 31, 2020 in order to achieve an effective date of August 1, 2020 for Pension Plan enrollment.

8. Petitioner appears to allege that the language quoted in paragraph five above erroneously states that the deadline for submitting a valid second election using the included estimate is August 1, 2020. But I note that this language does not even refer to the effective date of any second election. The estimate is valid only if the second election is effectuated by the cited date. It is unfortunate that this is a potentially confusing set of requirements emanating from two separate agencies, but Respondent SBA has not misled Petitioner or given him erroneous information.

9. The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System. Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

10. Respondent SBA does not have the authority either to grant Petitioner an effective Pension Plan enrollment date of August 1, 2020, or to alter the Division's buy-in calculations.

**RECOMMENDATION**

Having considered the law and undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying Petitioner's request for relief.

DATED this 21<sup>st</sup> day of May 2021.

s/ Anne Longman  
Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, FL 32301-1872

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
[Tina.joanos@sbafla.com](mailto:Tina.joanos@sbafla.com)  
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COPIES FURNISHED via mail and electronic mail to:

Mr. Kaiqi Xiong



Petitioner

and via electronic mail only to:

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