

(b) *Time limit for filing claims.* (1)(i) Upon discovery of administrative errors, employing agencies are required to promptly correct those errors under this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the employing agency, the affected participant may file a claim for correction with his or her employing agency. The claim must be filed within one year of the earlier of:

(A) Receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(B) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error.

(ii) For purposes of paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section, in the case of a participant who has been improperly classified as to retirement coverage, the receipt of a document indicating the participant's retirement code classification is not, in and of itself, sufficient to notify the participant that his or her retirement classification is incorrect. However, receipt of a document indicating a change in retirement code classification, in addition to a written notice to the participant that the change may have implications for his or her TSP account, may be deemed by an employing agency to be sufficient to advise the participant that his or her retirement classification had been incorrect prior to the change. The one-year time limit will not commence with respect to retirement coverage misclassification errors unless and until the participant receives a written notice of the error that specifically mentions the TSP.

(2) If a participant fails to file a claim for correction of an administrative error in a timely manner (or fails to appeal a denial of a claim in a timely manner) under paragraph (b)(1) of this section, the agency may still correct any administrative error that is brought to or comes to its attention.

**Subpart C—Board or TSP  
Recordkeeper Errors**

**§ 1605.7 Plan-paid lost earnings and other corrections.**

(a) *Plan-paid lost earnings.* (1) Subject to paragraph (a)(2) of this section, if, because of an error committed by the Board or the TSP recordkeeper, a participant's account does not receive credit for earnings (which may be positive or negative) that it would have received had the error not occurred, the account will be credited with the difference between the earnings (if any) it actually received and the earnings it would have received had the error not occurred. The errors that warrant crediting of lost earnings under this paragraph (a) include, but are not limited to:

(i) Board or TSP recordkeeper delay in crediting contributions or other monies to a participant's account;

(ii) Improper issuance of a loan or withdrawal payment to a participant or beneficiary which requires the money to be restored to the participant's account; and

(iii) Investment of all or part of a participant's account in the wrong TSP investment fund(s) (e.g., improper processing or failure to process an interfund transfer request).

(2) A participant's TSP account will not be credited with earnings under paragraph (a)(1) of this section if, during the period the participant's account received credit for less earnings than it would have received but for the Board or recordkeeper error, the participant had the use of the money on which the earnings would have accrued.

(3) In the case of an error described in paragraph (a)(1)(iii) of this section, the affected participant will, upon discovery of the error, be given a choice whether or not to have the error corrected. If the participant chooses correction, the account will be placed in the position it would have attained had the error not occurred, including crediting of earnings (positive or negative as the case may be) that would have accrued had the error not occurred and

reallocation of the account balance among the investment funds in the proportions that would have existed had the error not occurred.

(4) Where the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP recordkeeper error, earnings under paragraph (a)(1) of this section will be computed for the relevant period based upon the investment funds in which the affected monies would have been invested had the error not occurred. If the period for which lost earnings are paid is a period for which the participant did not, and should not, have had an account in the TSP, then the earnings will be computed using the G Fund rate of return for the relevant period.

(b) *Reversal of loan distributions.* If, because of Board or TSP recordkeeper error, a TSP loan is declared a taxable distribution under circumstances that make such declaration inconsistent with FERSA, 5 CFR Part 1655, with the provisions of the documents (including instructions) signed by or provided to the participant in connection with the application for or issuance of the loan, or with other procedures established by the Board or TSP recordkeeper in connection with the TSP loan program, the taxable distribution will be reversed. The participant will be provided an opportunity to reinstate or repay in full the outstanding balance on the loan.

(c) *Other corrections.* The Executive Director may, in his discretion and consistent with the requirements of applicable law, correct any other errors not specifically addressed in this section or provide any other relief to a participant, including payment of lost earnings from the TSP, if the Executive Director determines that the correction or relief would serve the interests of justice, fairness, and equity among the participants of the TSP.

**§ 1605.8 Claims for correction of Board or TSP Recordkeeper errors; time limitations.**

(a) *Filing claims.* Claims for correction under this subpart may be submitted initially either to the TSP recordkeeper or the Board. The claim must be in writing and may be from the af-

ected participant or beneficiary or from a representative of the participant or beneficiary. The written claim must state the basis for the claim.

(b) *Processing claims.* (1) If the initial claim is submitted to the TSP recordkeeper, the TSP recordkeeper may either respond directly to the participant or the person making the claim on behalf of the participant, or may forward the letter to the Board for response. The decision whether the TSP recordkeeper should respond directly or forward the claim to the Board will be made in accordance with guidance and procedures established by the Board or, if no such specific guidance is available, in consultation with the Board's staff. If the TSP recordkeeper responds to a participant's claim, and all or any part of the participant's claim is denied, the participant may request review by the Board within 90 days of the date of the recordkeeper's response.

(2) If the Board denies all or any part of a participant's claim (whether upon review of a TSP recordkeeper denial or upon an initial review by the Board), the participant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the participant does not submit to the Board a request for review of a claim denial by the TSP Recordkeeper within the 90 days permitted under paragraph (b)(1) of this section, the participant shall not be deemed to have exhausted his or her administrative remedy.

(c) *Time limits for filing claims.* (1)(i) Upon discovery of errors subject to correction under this subpart, the Board or TSP recordkeeper will promptly correct such errors in accordance with this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the Board or TSP recordkeeper, the affected participant must file a claim for correction within one year of the earlier of:

(A) His or her receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(B) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error.

(ii) For purposes of paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this section, in the case of a participant whose retirement coverage has been improperly classified, the receipt of a document indicating the participant's retirement code classification is not, in and of itself, sufficient to notify the participant that his or her retirement code classification is incorrect.

(2) If a participant fails in a timely manner to file a claim for correction (or fails in a timely manner to request reconsideration of a claim) under paragraph (c)(1) of this section, the Board or TSP recordkeeper may still correct any administrative error that is brought to or comes to its attention.

**Subpart D—Miscellaneous Provisions**

**§ 1605.9 Miscellaneous provisions.**

(a)(1) If all employee contributions are removed from a participant's account under the rules set forth in this part, but earnings on any of those employee contributions or other residual amounts are left in the account, the earnings will remain in the account unless the participant was ineligible to have an account in the TSP at the time the earnings were credited to the account and remains ineligible. In that case, the earnings will be removed from the account and used to offset TSP administrative expenses. If earnings remain in the account under this paragraph (a), they will be subject to withdrawal from the participant's account upon separation from Federal employment under the same withdrawal rules as apply to any other money in a participant's account.

(2) If any residual earnings on employer contributions remain in a participant's account after all employer have been removed from the account, those residual earnings will be removed from the account and used to offset TSP administrative expenses.

(b) If a participant fails to participate in the TSP due to circumstances beyond his or her control but not due to circumstances attributable to employing agency, Board, or TSP recordkeeper error, the participant will be entitled to elect to participate effective not later than the first pay period

after the participant submits a contribution election form (Form TSP-1), regardless of whether the form is submitted during an election period. Such belated elections will be permitted on a prospective basis only; no makeup contributions will be permitted under this part.

(c) If TSP contributions are invested in the wrong investment fund(s) because of employing agency error, that error may be corrected only in accordance with 5 CFR 1606.7. Such errors may not be corrected under this part.

(d)(1) The address for the TSP recordkeeper is: National Finance Center, TSP Service Office, Post Office Box 61500, New Orleans, LA 70161-1500.

(2) The address for the Board is: Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, DC 20005.

**PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS**

**Subpart A—General Provisions**

- Sec.
- 1606.1 Purpose.
- 1606.2 Definitions.
- 1606.3 General rule.
- 1606.4 Applicability.

**Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions**

- 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.
- 1606.6 Agency delay in paying employee.
- 1606.7 Contribution to incorrect investment fund.
- 1606.8 Late payroll submissions.

**Subpart C—Lost Earnings Not Attributable to Delayed or Erroneous Contributions**

- 1606.9 Loan allotments.
- 1606.10 Miscellaneous lost earnings.

**Subpart D—Lost Earnings Records**

- 1606.11 Agency submission of lost earnings records.
- 1606.12 Agency responsibility.

**Subpart E—Processing Lost Earnings Records**

- 1606.13 Calculation and crediting of lost earnings.