

Subpart D—Lost Earnings Records**§ 1606.11 Agency submission of lost earnings records.**

(a) All lost earnings records required to be submitted pursuant to this part must be submitted to the TSP Recordkeeper in the manner and format prescribed in instructions provided to employing agencies by the Board or TSP recordkeeper.

(b) Where this part requires submission of lost earnings records, the employing agency must submit a separate lost earnings record for each pay period affected by the error. A lost earnings record may include all three sources of contributions, or it may include loan allotments, but may not include both loan allotments and contributions.

(c) Where this part requires the employing agency to indicate on a lost earnings record the investment fund to which a contribution would have been deposited had an employing agency error not occurred, that determination must be made solely on the basis of a properly completed allocation election on a Form TSP-1 that was accepted by the employing agency *before* the date the contribution should have been made, and that was still in effect as of that date. Where no such allocation election was in effect as of the date the contribution would have been made had the error not occurred, the lost earnings record submitted by the employing agency must indicate that the contributions should have been made to the G Fund. Under no circumstances may a participant or employing agency choose, after the date a contribution should have been made or the date that it was made to an erroneous investment fund, the investment fund to which the contribution would have been made had the employing error not occurred.

(d) With respect to employing agency errors that cause money not to be invested in the Thrift Savings Fund, lost earnings records may not be submitted until the money to which the lost earnings relate has been invested in the Thrift Savings Fund. Where the employing agency error involved delayed TSP contributions, not lost earnings shall be payable unless and until the associated payment records are sub-

mitted in accordance with the provisions of 5 CFR part 1605. Lost earnings records and the delayed payment records to which they relate may be submitted simultaneously;

(e) Where an employing agency erroneously submits a lost earnings record that is processed by the TSP recordkeeper, the employing agency must subsequently submit a lost earnings record indicating that the previous lost earnings transaction should be reversed.

§ 1606.12 Agency responsibility.

(a) The employing agency whose error caused the delayed or erroneous investment of money in the Thrift Savings Fund shall, in a manner consistent with paragraph (b) of this section, be ultimately responsible for payment of any lost earnings resulting from that error.

(b) The employing agency that submitted payment records or loan allotments that are subject to lost earnings shall be responsible for submitting lost earnings records relating to those submissions, and any lost earnings calculated shall be charged to that employing agency. Where another employing agency committed the error that caused the delayed or erroneous submission by the first employing agency, the employing agency that was charged for the lost earnings may seek reimbursement from the other employing agency.

Subpart E—Processing Lost Earnings Records**§ 1606.13 Calculation and crediting of lost earnings.**

(a) Lost earnings records submitted or generated pursuant to this part shall be processed by the TSP recordkeeper during a mid-month processing cycle;

(b) Lost earnings records received, edited, and accepted by the TSP recordkeeper by the next-to-last business day of a month shall be processed in the next month's mid-month processing cycle. Lost earnings records that are received, edited, and accepted on the last business day of a month shall be processed in the second mid-

month processing cycle following acceptance;

(c) In calculating lost earnings for a participant's account attributable to any lost earnings record, investment gains and losses calculated in different investment funds but within one source of contributions shall be offset against each other to obtain a net investment gain or loss for that source of contributions. Gains and losses for different sources of contributions shall not be offset against each other;

(d) Where the *de minimis* rule of paragraph (d)(1) of §1606.3 of this part is met with regard to delayed contributions or loan allotments, the calculation of lost earnings shall commence with the pay date for the pay period for which the contributions would have been made had the employing agency error not occurred. With regard to lost earnings not related to delayed contributions or loan allotments, lost earnings shall commence with the month during which the employing agency error caused the failure to invest in the Thrift Savings Fund money that would have been invested had the employing agency error not occurred, or with the month that the money was invested in an incorrect investment fund. Lost earnings calculations shall conclude as of the end of the month prior to the month during which the lost earnings records are processed;

(e) *Negative lost earnings.* Notwithstanding any other provision of this part, where the net lost earnings computed in accordance with this part on any lost earnings record are less than zero within a source of contributions, the employing agency account shall not be charged or credited with respect to that source of contributions. The amount of the negative lost earnings shall be removed from the participant's account and applied against TSP administrative expenses;

(f) With respect to the period prior to December 31, 1990, in calculating lost earnings or determining the investment fund in which money would have been invested had an employing agency error not occurred, the TSP recordkeeper shall take into account the investment restrictions that were effective under 5 U.S.C. 8438 prior to the effective

date of section 3 of the TSPTAA.

(g) In calculating lost earnings or determining the investment fund in which money would have been invested had an employing agency error not occurred, the TSP recordkeeper shall take into account interfund transfers processed on or subsequent to the date the error affected the participant's account, and which were effective prior to the end of the month preceding the month during which the lost earnings record is processed.

Subpart F—Participant Claims For Lost Earnings

§ 1606.14 Employing agency procedures.

(a) Each employing agency must provide procedures for participants to file claims for lost earnings under this part. The employing agency procedures must include the following provisions:

(1) The employing agency shall review each claim and provide the participant with a decision within 30 days of its receipt of the participant's written claim. The employing agency's decision to deny a claim in whole or in part shall be in writing and shall contain the following information—

(i) The employing agency's determination on the claim and the reasons for it, including any appropriate references to applicable statutes or regulations;

(ii) A description of any additional material or information which, if provided to the employing agency, would enable the employing agency to grant the participant's claim; and

(iii) A description of the steps the participant must take if he or she wishes to appeal and initial denial of the claim, including the name and title of the employing agency official to whom the appeal may be taken;

(2) Within 30 days of receipt of the employing agency decision denying the claim, a participant may appeal the employing agency decision. The appeal must be in writing and must be addressed to the employing agency official designated in the initial employing agency decision. The appeal may contain any documents and comments