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by the TSP recordkeeper in a manner consistent with this part 1606, that is required to restore to the TSP account of the participant or participants involved earnings lost as a result of an employing agency error. Where lost earnings are required, the employing agency must, in accordance with this part 1606 and any instructions provided by the Board or the TSP recordkeeper, submit to the TSP recordkeeper all information and certification that is required to enable the TSP recordkeeper to compute the amount of lost earnings payable by the employing agency, and to charge that amount to the appropriate employing agency.

§ 1606.4 Applicability.

(a) *In general.* Except as otherwise provided, the provisions of this part 1606 apply in any case where, due to employing agency error, the Thrift Savings Fund has not invested or had the use of money that would have been invested in the Thrift Savings Fund had the employing agency error not occurred, or where the money would have been invested in a different investment fund had the error not occurred.

(b) *Back pay awards and other retroactive pay adjustments.* The application of this part 1606, as described in paragraph (a) of this section, includes TSP contributions derived from payments associated with back pay awards or other retroactive pay adjustments that are based on a determination that the employing agency paid a participant less than the full amount of basic pay to which the participant was entitled.

(c) *Timing of errors.* This part 1606 applies regardless of whether the employing agency error that caused the effects described in paragraph (a) of this section occurred prior to, at, or after the inception of the TSP.

(d) *De minimis rules.* Notwithstanding paragraphs (a) through (c) of this section or any other provision of this part 1606:

(1) Lost earnings shall not be payable where the amount of money for a source of contributions in a participant's account that is not invested in the Thrift Savings Fund due to an employing agency error, or that is invested in the wrong investment fund due to an employing agency error, is

less than one dollar (\$1.00) for that source of contributions. Where the employing agency error caused delayed or erroneous contributions for more than one pay period, this paragraph shall apply separately to each pay period involved.

(2) Where the employing agency error caused delay in submission of TSP payment records or loan allotments, lost earnings shall not be payable unless the belated contributions or loan allotments were received by the TSP recordkeeper more than 30 days after the pay date associated with the pay period for which the contributions or loan allotments would have been submitted had the employing agency error not occurred.

(3) For employing agency errors not covered by paragraph (d)(2) of this section, lost earnings shall not be payable unless, as the result of an employing agency error, money was not invested in the Thrift Savings Fund for a period extending more than 30 days after the date it would have been invested had the error not occurred.

(4) The 30-day requirements contained in paragraphs (d)(2) and (d)(3) of this section do not apply where, due to employing agency error, money in a participant's account has been invested in an incorrect investment fund.

(e) *Contributions for pre-1987 service.* This part does not apply to errors involving employing agency delay in submitting contributions required by 5 U.S.C. 8432(c)(3).

(f) *Contributions for service in January through March 1987.* Notwithstanding any other provision of this section, lost earnings shall be payable with respect to contributions made pursuant to 5 U.S.C. 8432(c)(1) (B) or (C) if the payment records containing those contributions were received by the TSP recordkeeper after April 30, 1987.

Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions

§ 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.

(a) If a participant receives pay, but as the result of an employing agency error all or any part of the Agency

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Automatic (1%) Contributions associated with that pay to which the participant is entitled are not timely received by the TSP recordkeeper, then the belated contributions shall be subject to lost earnings. In such cases:

(1) The employing agency must, for each pay period involved, submit to the TSP recordkeeper a lost earnings record indicating the pay date for which the belated contribution would have been made had the error not occurred, the investment fund to which the belated contribution would have been deposited had the error not occurred, the amount of the belated contribution, and the pay date for which the belated contribution was actually made. If the belated contribution was actually deposited to an investment fund different from the investment fund to which it would have been deposited had the contribution been timely submitted, then the employing agency must submit an additional lost earnings record indicating the amount of the belated contribution, the pay date for which it was actually made, the investment fund to which it would have been deposited had the error not occurred, and the investment fund to which it was actually deposited;

(2) The TSP recordkeeper shall compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency pursuant to paragraph (a)(1) of this section, and shall also determine the investment fund or funds in which the belated contributions and associated earnings would currently be invested had the error not occurred. In performing the computation of lost earnings and determining the appropriate investment fund or funds, the TSP recordkeeper must take into consideration any interfund transfers made effective on or after the pay date for which the belated contribution would have been made if the error had not occurred, and which were made effective prior to the end of the month preceding the month during which the lost earnings record is processed. With respect to the period prior to December 31, 1990, the TSP recordkeeper shall also 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.

(3) Where the lost earnings computed in accordance with paragraph (a)(2) of this section are positive, the TSP recordkeeper shall charge the amount of lost earnings computed to the appropriate employing agency and shall credit that amount to the TSP account of the participant involved. If the lost earnings computed are negative, the amount computed will be removed from the participant's account and used to offset TSP administrative expenses;

(4) The TSP recordkeeper shall adjust the participant's account to reflect the investment funds in which the belated contributions and associated earnings would currently be invested if the error had not occurred, as determined in accordance with paragraph (a)(2) of this section.

(b) If a participant receives pay from which Employee Contributions were properly deducted, but as the result of an employing agency error all or any part of the associated Agency Matching Contributions to which the participant is entitled were not timely received by the TSP recordkeeper, then the belated contributions will be subject to lost earnings. In such cases, the procedures described in paragraphs (a)(1) through (a)(4) of this section will apply to the belated Agency Matching Contributions.

(c) If a participant receives pay from which Employee Contributions were properly deducted, but as the result of an employing agency error all or any part of those Employee Contributions were not timely received by the TSP recordkeeper, the belated contributions will be subject to lost earnings. In such cases, the procedures described in paragraphs (a)(1) through (a)(4) of this section will apply to the belated Employee Contributions.

(d) If a participant receives pay from which Employee Contributions should have been deducted, but as the result of employing agency error all or any part of those deductions were not made, then even if the participant makes up those Employee Contributions pursuant to part 1605, the belated Employee Contributions shall not be subject to

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lost earnings. However, where the participant does make up the Employee Contributions pursuant to part 1605, the Agency Matching Contributions associated with those belated Employee Contributions (which must be made in accordance with part 1605) will be subject to lost earnings. With respect to such belated Agency Matching Contributions the procedures described in paragraphs (a)(1) through (a)(4) of this section shall apply.

§ 1606.6 Agency delay in paying employee.

Where, as the result of an employing agency error, a participant does not timely receive all or any part of the basic pay to which he or she is entitled, and as a result of that delay in receiving pay all or any part of the Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions are not submitted when they would have been had the employing agency error not occurred, all such belated Employee Contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions shall be subject to lost earnings. The procedures described in paragraphs (a)(1) through (a)(4) of § 1606.5 shall apply to all such belated contributions.

§ 1606.7 Contributions to incorrect investment fund.

(a) Where, as the result of an employing agency error, money was deposited to a participant's TSP account in an incorrect investment fund(s), the erroneous contribution shall be subject to lost earnings. In such cases:

(1) The employing agency must submit a lost earnings record indicating the amount of the contributions submitted to the incorrect investment fund(s), the pay date for which it was submitted, the investment fund(s) to which it would have been deposited had the employing agency error not occurred, and the investment fund(s) to which it was actually deposited. If the employing agency has, prior to January 1, 1991 or in contravention of paragraph (b) of this section, removed the contribution from the incorrect investment fund(s) using a negative adjustment record and redeposited the money to the investment fund(s) in which it

would have been invested had the error not occurred, the employing agency must also indicate on the lost earnings record when these actions were taken.

(2) The TSP recordkeeper shall compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency pursuant to paragraph (a)(1) of this section, and shall also determine the investment fund or funds in which erroneously invested contributions and associated earnings would currently be invested had the error not occurred. In computing lost earnings and determining the appropriate investment fund or funds, the TSP recordkeeper shall take into consideration any interfund transfers that were made effective on or subsequent to the date erroneous contribution was made, and that were made effective prior to the end of the month preceding the month during which the lost earnings record is processed. With respect to the period prior to December 31, 1990, the TSP recordkeeper shall also 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;

(3) Where the lost earnings computed in accordance with paragraph (a)(2) of this section are positive, the TSP recordkeeper shall charge the amount of lost earnings computed to the appropriate employing agency and shall credit that amount to the account of the participant involved. If the lost earnings computed are negative, the amount computed shall be removed from the participant's account and used to offset TSP administrative expenses;

(4) The TSP recordkeeper shall adjust the participant's account to reflect the investment funds in which the erroneous contributions and associated earnings would currently be invested had the error not occurred, as determined in accordance with paragraph (a)(2) of this section.

(b) The provisions of part 1605 notwithstanding, effective January 1, 1991, where employing agency error had caused money to be deposited to a TSP account in an incorrect investment fund, the employing agency may not remove the erroneously invested