

unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. A decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial, citations to any applicable statutes, regulations, or procedures, a description of any additional material that would enable the participant to perfect the claim, and a statement of the steps necessary to appeal the denial;

(2) The employing agency must permit a participant at least 30 days to appeal the employing agency's denial of all or any part of a claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial decision or in procedures promulgated by the agency. The participant may include with his or her appeal any documentation or comments that the participant deems relevant to the claim;

(3) The employing agency must issue a written decision on a timely appeal within 30 days of receipt of the appeal, unless the employing agency provides the participant with good cause for requiring a longer period to decide the appeal. The employing agency decision must include the reasons for the decision, as well as citations to any applicable statutes, regulations, or procedures; and

(4) If the agency decision on the appeal is not issued in a timely manner, or if the appeal is denied in whole or in part, the participant will be deemed to have exhausted his or her administrative remedies and will be eligible to file suit against the employing agency under 5 U.S.C. 8477. There is no administrative appeal to the Board of a final agency decision.

### **Subpart C—Board or TSP Record Keeper Errors**

#### **§ 1605.21 Plan-paid lost earnings and other corrections.**

(a) *Plan-paid lost earnings.* (1) Subject to paragraph (a)(3) of this section, if, because of an error committed by the Board or the TSP record keeper, a participant's account is not credited or charged with the earnings or losses that he or she would have received had

the error not occurred, the participant's TSP account will be credited (or charged) with the difference between the earnings (or losses) it actually received and the earnings (or losses) it would have received had the error not occurred.

(2) Errors that warrant the crediting of earnings or charging of investment losses under paragraph (a)(1) of this section include, but are not limited to:

(i) 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 investment fund(s).

(3) A participant will not be entitled to 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 Board or record keeper error, the participant had the use of the money on which the earnings would have accrued.

(4) If the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP record keeper error, earnings or losses 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 participant did not have, and should not have had, an account in the TSP during this period, then the earnings will be computed using the G Fund rate of return for the relevant period and the monies returned to the participant.

(b) *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, including payment of lost earnings, if the Executive Director determines that the correction would serve the interests of justice and fairness and equity among all participants of the TSP.