

responds to a claim, and all or any part of the claim is denied, the claimant may request review by the Board within 90 days of the date of the record keeper's response.

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

Subpart D—Miscellaneous Provisions

§ 1605.31 Contributions missed as a result of military service.

(a) *Applicability.* This section applies to employees who meet the conditions specified at 5 CFR 1620.40 and who are eligible to make up employee contributions or to receive employing agency contributions missed as a result of military service.

(b) *Missed employee contributions.* An employee who separates or enters nonpay status to perform military service may be eligible to make up TSP contributions when he or she is reemployed or restored to pay status in the civilian service. Eligibility for making up missed employee contributions will be determined in accordance with the rules specified at 5 CFR part 1620, subpart E. Missed employee contributions must be made up in accordance with the rules set out in §1605.11(c) and the following procedures:

(1) The employing agency will use the contribution election on file for the employee at the time he or she separated or was placed in nonpay status. If an employee terminated TSP contributions within two months before entry into military service, he or she may make a retroactive election to resume contributions for the first open season following the termination. The employee may also make retroactive contribution elections for any open season that occurred during the period of mili-

tary service, as described at 5 CFR 1620.42.

(2) The pay used to determine the amount of contributions eligible for makeup is the pay the employee would have earned had he or she remained continuously employed in the position held immediately before the separation or placement in nonpay status.

(3) If the employee contributed to a uniformed services TSP account during the period of military service, the amount of employee contributions available for makeup will be reduced by the total amount of employee contributions made to the uniformed services TSP account. (This includes contributions from basic pay, incentive pay, and special pay, including bonus pay.)

(c) *Missed agency contributions.* This paragraph (c) applies only to an employee who would have been eligible to receive agency contributions had he or she remained in civilian service or pay status. A FERS employee who separates or enters nonpay status to perform military service is eligible to receive agency makeup contributions when he or she is reemployed or restored to pay status in the civilian service, as follows:

(1) The employee is entitled to receive the agency automatic (1%) contributions that he or she would have received had the employee remained in civilian service or pay status. Within 60 days of the employee's reemployment or restoration to pay status, the employing agency must calculate the agency automatic (1%) makeup contributions and report those contributions to the record keeper. After the contribution has been reported, the agency must submit lost earnings records for the contribution.

(2) An employee who contributed to a uniformed services TSP account during the period of military service is also immediately entitled to receive agency matching makeup contributions to his or her civilian account for the employee contributions to the uniformed services account that were deducted from his or her basic pay, subject to any reduction in matching contributions required by paragraph (c)(4) of this section. However, an employee is

not entitled to receive agency matching makeup contributions on contributions that were deducted from his or her incentive pay or special pay, including bonus pay, while performing military service.

(3) An employee who makes up missed contributions is entitled to receive attributable agency matching makeup contributions (unless the employee has already received the maximum amount of matching contributions, as described in paragraphs (c)(2) and (c)(4) of this section).

(4) If the employee received uniformed services matching contributions, the agency matching makeup contributions will be reduced by the amount of the uniformed services matching contributions.

(d) *Lost earnings.* The employee is entitled to lost earnings on missed agency contributions made under paragraph (c) of this section. The employee will elect to have the lost earnings calculated using either the rates of return based on the contributions allocation(s) on file for the participant during the period of military service or using the rates of return for the G Fund; the participant must make this election at the same time his or her makeup schedule is established pursuant to § 1605.11(c).

[67 FR 49525, July 30, 2002]

PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS

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AUTHORITY: 5 U.S.C. 8432a, 8474(b)(3), and (c)(1). Section 1606.5 also issued under Title II, Pub. L. 106–265, 114 Stat. 770.

SOURCE: 56 FR 606, Jan. 7, 1991, unless otherwise noted.

Subpart A—General Provisions

§ 1606.1 Purpose.

The purpose of this part 1606 is to implement section 2 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), Public Law 101–335, enacted July 17, 1990. The TSPTAA amended chapter 84 of title 5, United States Code by inserting section 8432a, authorizing the Executive Director to prescribe regulations pursuant to which employing agencies shall be required to pay to the Thrift Savings Fund amounts representing lost earnings caused by employing agency errors relating to the Thrift Savings Plan (TSP) described in subchapter III of chapter 84.

§ 1606.2 Definitions.

As used in this part:

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3).

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2).

“As of” date means the date on which TSP contributions or other transactions should have been made.