

## § 1605.15

records; in such cases, the employee is not entitled to breakage. Agency makeup contributions may be submitted on either current or late payment records; and

(5) If employee contributions were made up before the Office of Personnel Management implemented its regulations on FERCCA correction, and the correction is considered to be a FERCCA correction, an amount to replicate TSP lost earnings will be calculated by the Office of Personnel Management pursuant to its regulations and provided to the employing agency for transmission to the TSP record keeper.

(c) If a participant was misclassified as either FERS or CSRS and the retirement coverage is corrected to FICA only, the participant is no longer eligible to participate in the TSP.

(1) Employee contributions in the account are subject to the rules in paragraph (a)(1) of this section.

(2) Employer contributions in the account are subject to the rules in paragraphs (a)(2) and (a)(3) of this section.

(3) The participant will be deemed to be separated from Federal service for all TSP purposes. If the participant has an outstanding loan, it will be subject to the provisions of 5 CFR 1655.13. The participant may make a TSP post-employment withdrawal election pursuant to 5 CFR part 1650, subpart B, and the withdrawal will be subject to the provisions of 5 CFR 1650.60(b).

(d) If a FERS or CSRS participant is misclassified by an employing agency as FICA only, when the misclassification is corrected the participant may, pursuant to §1605.11 of this part, elect to make up contributions that he or she would have been eligible to make as a FERS or CSRS participant during the period of misclassification. If the participant makes up employee contributions, the rules in paragraph (b)(5) of this section apply. If the participant is corrected to FERS, the rules in paragraphs (b)(3) and (b)(4) of this section also apply.

[66 FR 44277, Aug. 22, 2001, as amended at 68 FR 35500, June 13, 2003; 68 FR 74451, Dec. 23, 2003]

## 5 CFR Ch. VI (1–1–05 Edition)

### § 1605.15 Reporting and processing late contributions and late loan payments.

(a) The employing agency must promptly submit late contributions to the TSP record keeper on behalf of the affected participant on late payment records as soon as the error is discovered. For each pay date involved, the employing agency must submit a separate record showing the “as of” date for the contributions. Breakage for both employee and agency contributions will be calculated, posted, and charged to the agency or forfeited to the TSP in accordance with §1605.2.

(b) If an employing agency deducts loan payments from a participant’s pay, but fails to submit those payments to the TSP for the pay date for which they were deducted (or submits them in a manner that prevents them from being timely credited to the participant’s account), the employing agency will be responsible for paying breakage using the procedure described in §1605.2. The loan payment record must contain the “as of” date for which the loan payment was deducted.

(c) All contributions or loan payments on payment records contained in a payroll submission that was received from an employing agency more than 30 days after the pay date associated with the payroll submission (as reported on the appropriate journal voucher), will be subject to breakage calculated, posted, and charged to the employing agency (or forfeited to the TSP) in accordance with §1605.2. The employing agency will be apprised of the breakage due for each record reported on the late submission.

[68 FR 35501, June 13, 2003]

### § 1605.16 Claims for correction of employing agency errors; time limitations.

(a) *Agency’s discovery of error.* (1) Upon discovery of an error made within the past six months involving the correct or timely remittance of payments to the TSP (other than a contribution allocation error as covered in paragraph (a)(2) of this section or a retirement system misclassification error, as covered in paragraph (c) of this section), an employing agency must promptly correct the error on its own

initiative. If the error was made more than six months before its discovery, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) An employing agency must promptly correct a contribution allocation error that occurred before May 1, 2001, on its own initiative if it is discovered within 30 days of its first occurrence. No contribution allocation error that occurred before May 1, 2001, may be corrected if it is not the subject of a timely discovery.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of a payment to the TSP (other than a contribution allocation error as covered by paragraph (b)(2) of this section, or a retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim for correction of the error with his or her employing agency without a time limit. The agency must promptly correct any such error for which the participant files a claim within six months of its occurrence; the correction of any such error for which the participant files a claim after that time is in the agency's sound discretion.

(2) A participant may file a claim for correction of a contribution allocation error made before May 1, 2001, with his or her employing agency no later than 30 days after the participant receives a TSP participant statement first reflecting the error. The agency must promptly correct such errors.

(3) If a participant fails to file a claim for correction of an error described in paragraph (b)(2) of this section in a timely manner, the error will not be corrected.

(c) *Retirement system misclassification error.* Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

(d) *Agency procedures.* Each employing agency must establish procedures for participants to submit claims for correction under this subpart. Each

employing agency's procedures must include the following:

(1) The employing agency must provide the participant with a decision on any claim within 30 days of its receipt, 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,