AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

under paragraph (b)(1) of this section, the participant shall not be deemed to have exhausted his or her administrative remedy.

(c) *Time limits for filing claims.* (1)(i) Upon discovery of errors subject to correction under this subpart, the Board or TSP recordkeeper will promptly correct such errors in accordance with this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the Board or TSP recordkeeper, the affected participant must file a claim for correction within one year of the earlier of:

(A) His or her receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(B) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error.

(ii) For purposes of paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this section, in the case of a participant whose retirement coverage has been improperly classified, the receipt of a document indicating the participant's retirement code classification is not, in and of itself, sufficient to notify the participant that his or her retirement code classification is incorrect.

(2) If a participant fails in a timely manner to file a claim for correction (or fails in a timely manner to request reconsideration of a claim) under paragraph (c)(1) of this section, the Board or TSP recordkeeper may still correct any administrative error that is brought to or comes to its attention.

Subpart D—Miscellaneous Provisions

§ 1605.9 Miscellaneous provisions.

(a)(1) If all employee contributions are removed from a participant's account under the rules set forth in this part, but earnings on any of those employee contributions or other residual amounts are left in the account, the earnings will remain in the account unless the participant was ineligible to have an account in the TSP at the time the earnings were credited to the account and remains ineligible. In that case, the earnings will be removed from the account and paid to the ineligible participant. If earnings remain in the account under this paragraph (a), they will be subject to withdrawal from the participant's account upon separation from Federal employment under the same withdrawal rules as apply to any other money in a participant's account.

(2) If any residual earnings on employer contributions remain in a participant's account after all employer have been removed from the account, those residual earnings will be removed from the account and used to offset TSP administrative expenses.

(b) If a participant fails to participate in the TSP due to circumstances beyond his or her control but not due to circumstances attributable to employing agency, Board, or TSP recordkeeper error, the participant will be entitled to elect to participate effective not later than the first pay period after the participant submits a contribution election form (Form TSP–1), regardless of whether the form is submitted during an election period. Such belated elections will be permitted on a prospective basis only; no makeup contributions will be permitted under this part.

(c) If TSP contributions are invested in the wrong investment fund(s) because of employing agency error, that error may be corrected only in accordance with 5 CFR 1606.7. Such errors may not be corrected under this part.

(d)(1) The address for the TSP recordkeeper is: National Finance Center, TSP Service Office, Post Office Box 61500, New Orleans, LA 70161–1500.

(2) The address for the Board is: Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, DC 20005.

[61 FR 68472, Dec. 27, 1996, as amended at 62 FR 48936, Sept. 18, 1997]

PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS

Subpart A—General Provisions

Sec.

1606.1 Purpose.
1606.2 Definitions.
1606.3 General rule.
1606.4 Applicability.

Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions

1606.5 Failure to timely make or deduct TSP contributions when participant received pay.
1606.6 Agency delay in paying employee.
1606.7 Contributions to incorrect investment fund.
1606.8 Late payroll submissions.

Subpart C—Lost Earnings Not Attributable to Delayed or Erroneous Contributions

1606.9 Loan allotments.
1606.10 Miscellaneous lost earnings.

Subpart D—Lost Earnings Records

1606.11 Agency submission of lost earnings records.
1606.12 Agency responsibility.

Subpart E—Processing Lost Earnings Records

1606.13 Calculation and crediting of lost earnings.

Subpart F—Participant Claims for Lost Earnings

1606.14 Employing agency procedures.
1606.15 Time limits on participant claims.

AUTHORITY: 5 U.S.C. 8432a, 8474 (b)(5) and (c)(1).

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.

The following definitions apply for purposes of this part:

Agency Automatic (1%) Contributions means any contributions made under 5 U.S.C. 8432(c)(1);

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

Board means the Federal Retirement Thrift Investment Board;

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by Subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Federal Government retirement plan;

CSRS employee or *CSRS participant* means any employee, member, or participant covered by CSRS or an equivalent Federal Government retirement plan, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, under 5 U.S.C. 8440a, or under 5 U.S.C. 8440b.

Employee Contributions means any contributions made under 5 U.S.C. 8432(a), under 5 U.S.C. 8351, under 5 U.S.C. 8440a(a), or under 5 U.S.C. 8440b(a);

Employer Contributions means Agency Automatic (1%) Contributions and Agency Matching Contributions;

Employing agency means any entity that provides or has provided pay to an employee or member, thereby incurring responsibility for submitting to the Thrift Savings Fund contributions or loan payments made by or on behalf of that employee or member, or any other entity that has employed an employee or member and has provided information that affects or has affected that employee's or member's TSP account;

Employing agency error means any act or omission by an employing agency that is not in accordance with all applicable statutes, regulations, or administrative procedures, including TSP procedures provided to employing agencies by the Board or TSP recordkeeper;

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, U.S.C., and any equivalent Federal Government retirement plan;

FERS employee or *FERS participant* means any employee, member, or participant covered by FERS or an equivalent Federal Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Interfund transfer means the movement of all or a portion of a participant's existing account balance among the three TSP investment funds;

Investment fund means the C Fund, the F Fund, or the G Fund;

Loan allotment means TSP loan payments that are deducted from a participant's paycheck to be deposited to that participant's TSP account;

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings and to determine the investment fund in which money would be invested had an error not occurred;

Negative adjustment record means a data record submitted by an employing agency indicating money to be removed from a participant's account;

Open season means the period during which participants may choose to begin making contributions to the Thrift Savings Plan, to change or discontinue (without losing the right to recommence contributions the next open season) the amount currently being contributed to the Thrift Savings Plan, or to allocate prospective contributions to the Thrift Savings Plan among the investment funds;

Participant means any person with an account in the Thrift Savings Fund, or who would have an account in the Thrift Savings Fund but for an employing agency error;

Payment record means a data record submitted by an employing agency indicating contributions to be deposited to a participant's account;

Payroll submission means an entire submission of one or more TSP payment records (whether submitted on magnetic tape, diskette, or paper forms such as Form TSP–5, Employee Data/Payment/Adjustment Record Input Form), accompanied by a Form TSP–2, Certification of Transfer of Funds and Journal Voucher;

Received, with respect to TSP records or information provided by an employing agency, means receipt by the TSP recordkeeper of records or information that can be accepted and processed. For purposes of this definition, TSP records that are received by the TSP recordkeeper, but subsequently are deleted by the TSP recordkeeper because an error in the data prevented the record from processing, will not be deemed to have been received by the TSP recordkeeper;

Source of contributions means either Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions;

Submission or *submitted* means a transfer of data which has been received by the TSP recordkeeper;

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan, *TSP*, or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*;

Timely, with respect to loan allotments or TSP contributions other than those made pursuant to 5 U.S.C. 8432(c)(1) (B) or (C), means receipt of TSP payment records or loan allotments by the TSP recordkeeper no later than 12 days after the end of the pay period for which the contribution should have been made. With respect to TSP contributions made pursuant to 5 U.S.C. 8432(c)(1)(B) and (C), timely means receipt of TSP payment records by the TSP recordkeeper on or before April 16, 1987;

TSP Recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. As of the date of publication of this part 1606, the TSP recordkeeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

§1606.3 General rule.

Except as otherwise provided, employing agencies shall pay to the Thrift Savings Fund any amount, computed

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 paragarph (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

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

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 money from the incorrect investment

fund(s) using a negative adjustment record and redeposit the money in the investment fund(s) in which it would have been invested had the error not occurred. Rather, the correction must be accomplished solely through the procedures described in paragraph (a) of this section.

§1606.8 Late payroll submissions.

(a) *Payroll submissions received on or after January 1, 1991.* All contributions on payment records contained in a payroll submission received from an employing agency by the TSP Recordkeeper on or after January 1, 1991 and more than 30 days after the pay date associated with the payroll submission (as reported on Form TSP–2, Certification of Transfer of Funds and Journal Voucher), shall be subject to lost earnings, as follows:

(1) The TSP Recordkeeper shall generate a lost earnings record for each payment record contained in the late payroll submission. The lost earnings records generated by the TSP Recordkeeper shall reflect that the contributions on the payment records should have been made on the pay date associated with the payroll submission, that the contributions should have been deposited to the investment funds(s) indicated on the payment records, and that the contributions were actually made on the date the late payroll submission was processed.

(2) The procedures applicable to lost earnings records submitted by employing agencies set forth in paragraphs (a)(2) through (a)(4) of §1606.5, shall be applied to lost earnings records generated by the TSP Recordkeeper pursuant to paragraph (a)(1) of this section.

(b) *Payroll submissions received before January 1, 1991.* All contributions on payment records contained in a payroll submission received from an employing agency by the TSP Recordkeeper before January 1, 1991 but more than 30 days after the pay date associated with the payroll submission (as reported on Form TSP–2, Certification of Transfer of Funds and Journal Voucher), shall be subject to lost earnings, as follows:

(1) The employing agency shall, pursuant to instructions provided to employing agencies by the Board, submit to the TSP recordkeeper authorization for lost earnings to be computed on all contributions on the payment records contained in the payroll submission;

(2) The procedures set forth in paragraphs (a)(1) and (a)(2) of this section shall apply.

Subpart C—Lost Earnings Not Attributable to Delayed or Erroneous Contributions

§1606.9 Loan allotments.

(a) Loan allotments deducted from a participant's pay but not timely received by the TSP recordkeeper due to employing agency error shall be subject to lost earnings. In such cases:

(1) The employing agency must submit a lost earnings record indicating the amount of the loan allotment, the pay date for which the loan allotment was actually submitted, and the pay date for which the loan allotment should have been submitted;

(2) The TSP recordkeeper shall compute lost earnings on the belated loan allotment using the G Fund rates of return for each month of the calculation;

(3) The amount of lost earnings calculated shall be deposited in the participant's account pro rata among the three investment funds on the basis of the balances of the three investment funds in the participant's account as of the end of the second month preceding the month during which the lost earnings record is processed.

(b) Loan allotments not deducted from a participant's pay due to employing agency error will not be subject to lost earnings.

§1606.10 Miscellaneous lost earnings.

Where lost earnings result from employing agency errors not specifically covered by this subpart or subpart B, the employing agency must consult with the Board or TSP Recordkeeper to determine the manner in which the employing agency shall submit lost earnings records or other data necessary to facilitate the payment of lost earnings.

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 submitted 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 that the employee deems relevant to the claim;

(3) The employing agency must take a decision on the participant's appeal not later than 30 days after it receives the appeal. The agency's decision on the appeal must be written in an understandable manner and must include the reasons for the decision as well as any appropriate references to applicable statutes and regulations. If the decision on the employee's appeal is not made within this 30-day time period, or if the appeal is denied in whole or in part, the participant will have exhausted his or her administrative remedy and will be eligible to file suit against the employing agency in the appropriate Federal district court pursuant to 5 U.S.C. 8477. There is no administrative appeal to the Board of an agency final decision.

(b) Where it is determined that lost earnings resulted from an employing agency error, nothing in this part shall be deemed to preclude an employing agency from paying lost earnings in the absence of a claim from the employee.

§ 1606.15 Time limits on participant claims.

(a) Participant claims for lost earnings pursuant to § 1606.14 of this part must be filed within one year of the later of:

(1) January 1, 1991, or

(2) The participant's receipt of the earliest of the TSP Participant Statement, TSP Loan Statement, employing agency earnings and leave statement, or any other document that indicates that the employing agency error has affected the participant's TSP account;

(b) Nothing in this section changes the provision of paragraph (d) of § 1606.11 that no lost earnings shall be payable with respect to delayed contributions unless and until the contributions are submitted to the TSP recordkeeper in accordance with 5 CFR part 1605, nor does anything in this section extend any time limits for correcting contributions under 5 CFR part 1605. Thus, notwithstanding paragraph (a) of this section, if a participant is unable to have contributions corrected due to time limits contained in 5 CFR part 1605, no lost earnings shall be payable with respect to those contributions.

PART 1620—CONTINUATION OF ELIGIBILITY

Subpart A—House Cafeteria Employees

Sec.
1620.1 Continuation of eligibility to participate in the Thrift Savings Plan.

Subpart B—Cooperative Extension Service Employees

1620.10 Scope.
1620.11 Definitions.
1620.12 Contributions by employing authority.
1620.13 Prior employer contributions.
1620.14 Deadline for employing authority to begin employee contributions.
1620.15 Initial election period for employees.
1620.16 Computing percentage of basic pay.
1620.17 Retroactive employer and employee contributions.
1620.18 Payment to the recordkeeper; notice.
1620.19 Other regulations.

Subpart C—Union Employees and Intergovernmental Personnel Act Employees

1620.30 Scope.
1620.31 Definitions.
1620.32 Contributions by employing authority.
1620.33 Deadline for employing authority to begin employee contributions.
1620.34 Initial election period for employees.
1620.35 Computing percentage of basic pay.
1620.36 Employee make-up contributions.
1620.37 Make-up contributions by employing authority.
1620.38 Payment to the recordkeeper.
1620.39 Notices.
1620.40 Other regulations.

Subpart D—Certain Civil Service Retirement System Employees

1620.50 Scope.
1620.51 Definitions.
1620.52 Deadline for employing authority to begin employee contributions; notice to Board.
1620.53 Initial election period for employees.
1620.54 Retroactive employee contributions.
1620.55 Computing percentage of basic pay.
1620.56 Payment to the recordkeeper.
1620.57 Other regulations.

Subpart E—Bankruptcy Judges and Magistrates

1620.70 Scope.
1620.71 Definitions.
1620.72 Plan contributions after choosing judges' annuity.