

§ 1605.5

contributions must be reported by the employing agency for investment in the G Fund.

(d) The employing agency must pay any lost earnings on TSP contributions derived from back pay awards or other retroactive pay adjustments that are required to be paid under 5 CFR Part 1606.

(e) If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, then the participant will have the option, which must be exercised by notice to the Board within 90 days of reinstatement, to restore to his or her TSP account the amount withdrawn. The right to restore the withdrawn funds will expire if the notice is not provided to the Board within 90 days of reinstatement. No earnings will be paid on any restored funds.

[61 FR 68472, Dec. 27, 1996, as amended at 63 FR 24381, May 1, 1998]

§ 1605.5 Misclassification of retirement coverage.

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected—

(1) The employing agency must, under § 1605.3, remove all employee contributions that exceeded 5% of basic pay for the pay period(s) involved, and refund to the participant the amount contributed. In addition, the employing agency must submit negative adjustment records to remove all employer contributions made to the participant's account during the period of misclassification that have been in the account for less than one year. The participant may choose whether or not he or she wishes to have the remainder of the employee contributions made during the period of misclassification removed from his or her account and refunded to the participant; and

(2) If the participant's account at any time contains no employer contributions that have been in the account for less than one year, the TSP record-keeper will remove from the account any employer contributions that have

5 CFR Ch. VI (1–1–01 Edition)

been in the account for one year or more (and associated earnings), and will use such amounts to offset TSP administrative expenses.

(b) If a FERS participant is misclassified as a CSRS participant, when the misclassification is corrected he or she may not elect to have the contributions made while classified as CSRS removed from his or her account. The employing agency must make in a lump sum payment, pursuant to § 1605.2(b)(1), the appropriate agency automatic (1%) contributions and agency matching contributions on the employee contributions that were made while the participant was misclassified as CSRS. The participant may also elect to make, under § 1605.2(c), additional contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification. If such contributions are made, the employing agency must also submit any associated agency matching contributions and any lost earnings records required under 5 CFR Part 1606.

§ 1605.6 Procedures for claims against employing agencies; time limitations.

(a) *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 will provide the participant with a decision on any claim within 30 days of receipt of the claim unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. Any decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial (including citations to any applicable statutes, regulations or procedures), a description of any additional material that would enable the participant to perfect his or her claim, and a statement of the steps to be taken 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 his or her claim for

correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial denial 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 filed appeal within 30 days of receipt of the appeal unless the employing agency provides the participant with good cause for taking 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.

(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 remedy 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.

(b) *Time limit for filing claims.* (1)(i) Upon discovery of administrative errors, employing agencies are required to promptly correct those errors under this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the employing agency, the affected participant may file a claim for correction with his or her employing agency. The claim must be filed within one year of the earlier of:

(A) 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 (b)(1)(i)(A) and (b)(1)(i)(B) of this section, in the case of a participant who has been improperly classified as to retirement coverage, 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

classification is incorrect. However, receipt of a document indicating a change in retirement code classification, in addition to a written notice to the participant that the change may have implications for his or her TSP account, may be deemed by an employing agency to be sufficient to advise the participant that his or her retirement classification had been incorrect prior to the change. The one-year time limit will not commence with respect to retirement coverage misclassification errors unless and until the participant receives a written notice of the error that specifically mentions the TSP.

(2) If a participant fails to file a claim for correction of an administrative error in a timely manner (or fails to appeal a denial of a claim in a timely manner) under paragraph (b)(1) of this section, the agency may still correct any administrative error that is brought to or comes to its attention.

Subpart C—Board or TSP Recordkeeper Errors

§ 1605.7 Plan-paid lost earnings and other corrections.

(a) *Plan-paid lost earnings.* (1) Subject to paragraph (a)(2) of this section, if, because of an error committed by the Board or the TSP recordkeeper, a participant's account does not receive credit for earnings (which may be positive or negative) that it would have received had the error not occurred, the account will be credited with the difference between the earnings (if any) it actually received and the earnings it would have received had the error not occurred. The errors that warrant crediting of lost earnings under this paragraph (a) include, but are not limited to:

(i) Board or TSP recordkeeper 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 TSP investment fund(s) (e.g., improper