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Part VIII

Federal Retirement Thrift Investment Board

5 CFR Parts 1600, 1601, et al.
Employee Elections To Contribute To the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds From the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1650, 1651, 1653, 1655, 1690

Employee Elections To Contribute To the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds From the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is adopting as final the interim rule the Board published in June 2003 to implement the new Thrift Savings Plan (TSP) record keeping system and to permit the making of catch-up contributions by TSP participants who are age 50 and over.

EFFECTIVE DATE: This final rule is effective December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest or Merritt A. Willing on (202) 942-1684.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP participant's account are held in trust for the participant.

Congress amended FERSA in 1996 by enacting the Thrift Savings Plan Act of 1996, Public Law 104-208, 110 Stat. 3009, which permitted the Executive Director of the Board to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system.

On June 25, 2002, the Board published a proposed rule with request for comments in the **Federal Register** (67 FR 42856). The proposed rule explained how the Board planned to amend TSP regulations to reflect the processes and terminology of the new record keeping system. On April 4, 2003, the Board published a notice of proposed rulemaking in the **Federal Register** (68 FR 16449). That notice explained that the Board also planned to amend TSP regulations to permit participants who are age 50 or older to make catch-up TSP contributions. The notice also proposed additional changes to the TSP regulations to accommodate further the operation of the new record keeping system.

On June 13, 2003, the Board published an interim rule with request for comments in the **Federal Register** (68 FR 35492). The interim rule adopted the June 25, 2002, proposed rule with the changes discussed in the April 4 notice.

The Board received no comment on the proposed rule, the notice of proposed rulemaking, or the interim rule. Accordingly, the Board is adopting the interim rule as a final rule with several minor changes. These changes are described below.

Part 1640

Interim § 1640.6 requires the TSP to mail quarterly account statements and twice-yearly investment fund information to each participant, unless the participant elects to receive that information via the TSP Web site. The Board has determined that it is more cost effective to furnish account and investment fund information to the 3.2 million TSP participants by posting it on the TSP Web site and to mail costly paper copies of that information only to participants who request them. Therefore, final § 1640.6 establishes the TSP Web site as the primary source for TSP account statements and investment fund information.

Part 1650

A participant can qualify for a hardship withdrawal if his or her monthly income is insufficient to pay monthly expenses or the participant cannot pay certain specified extraordinary expenses. Interim § 1650.32(f) states that a participant cannot receive a hardship withdrawal while he or she is a debtor in a chapter 13 bankruptcy action. The Board adopted this policy because the bankruptcy court establishes a plan for a chapter 13 debtor to repay creditors while preserving sufficient monthly income for the debtor's support.

However, a participant who is a chapter 13 debtor is not necessarily protected from hardship based on an extraordinary expense. Therefore, final § 1650.32(f) provides that a participant cannot receive a hardship withdrawal based solely on negative monthly cash flow while he or she is a debtor in a chapter 13 bankruptcy action.

Parts 1651 and 1653

Parts 1651 and 1653 concern the payment of death benefits and court ordered payments to TSP beneficiaries. When the TSP informs a beneficiary that he or she will receive a payment from the TSP, it also provides each beneficiary with information concerning TSP payment options, the tax treatment of a payment from the TSP and the forms the beneficiary needs to elect tax withholding, electronic funds transfer, or a transfer of the payment to an individual retirement account or eligible employer plan. The TSP schedules the payment to occur 60 days after the information and forms are mailed to the beneficiary. If the TSP does not receive any of the election forms from the beneficiary by the scheduled payment date, or if the beneficiary does not request additional time to complete the forms, the TSP pays the beneficiary directly by United States Treasury check.

The TSP expects a beneficiary to review the tax and payment information, and return, in a timely manner, the appropriate forms to the TSP to request additional tax withholding or to elect a payment option. Therefore, if the TSP pays a beneficiary directly, he or she cannot return the funds to the TSP with an untimely request to reissue the payment in a different form. The current TSP regulations do not inform participants of this policy; therefore, the final rule explains that a beneficiary cannot return a properly paid court order or death benefit payment, once issued, to the TSP.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees and former employees of the Federal government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104-4, section 201, 109 Stat. 48, 64, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. These rules are not major rules as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Parts 1600, 1601, 1603, 1606, 1645, 1650, 1651, 1653, 1690

Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Parts 1604, 1655

Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1605

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1640

Employee benefit plans, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

Gary A. Amelio,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons set out in the preamble, the Executive Director of the Federal Retirement Thrift Investment Board adopts as a final rule the interim rule amending 5 CFR parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1560, 1651, 1653, 1655 and 1690, which was published at 68 FR 35492 on June 13, 2003, with the following changes:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 1. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5) and (c)(1).

■ 2. Amend § 1605.2 by removing “after December 31, 2000” from paragraph (b)(1) and adding in its place “on or after January 1, 2000”.

■ 3. Amend § 1605.12 as follows:

■ a. By removing “after December 31, 2000” from paragraphs (a) and (c)(1) and adding in its place “on or after January 1, 2000”.

■ b. By removing “on or before December 31, 2000” from paragraph (a) and adding in its place “before January 1, 2000”.

■ 4. Amend § 1605.13 as follows:

■ a. By removing “after December 31, 2000” from paragraph (b)(3)(i) and adding in its place “on or after January 1, 2000”.

■ b. By removing “on or before December 31, 2000” from paragraph (b)(3)(ii) and adding in its place “before January 1, 2000”.

■ 5. Amend § 1605.14 as follows:

■ a. By removing “after December 31, 2000” from paragraph (a)(1) and adding in its place “on or after January 1, 2000”.

■ b. By removing “on or before December 31, 2000” from paragraph (a)(1) and adding in its place “before January 1, 2000”.

PART 1640—PERIODIC PARTICIPANT STATEMENTS

■ 6. The authority citation for Part 1640 continues to read as follows:

Authority: 5 U.S.C. 8439(c)(1) and (c)(2), 5 U.S.C. 8474(b)(5) and (c)(1).

■ 7. Revise § 1640.6 to read as follows:

§ 1640.6 Methods of providing information.

The TSP will furnish the information described in this part to participants by making it available on the TSP Web site. A participant can request paper copies of that information from the TSP by calling the ThriftLine, submitting a request through the TSP Web site, or by writing to the TSP record keeper.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 8. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

Subpart D—In-Service Withdrawals

■ 9. Amend § 1650.32 by revising paragraph (f) to read as follows:

§ 1650.32 Financial hardship withdrawals.

* * * * *

(f) A participant is not eligible for an in-service hardship withdrawal based solely on monthly negative cash flow (as described in paragraph (b)(1) of this section) during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code (11 U.S.C. chapter 13).

PART 1651—DEATH BENEFITS

■ 10. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 11. Amend § 1651.14 by adding a new paragraph (h) to read as follows:

§ 1651.14 How payment is made.

* * * * *

(h) A properly paid death benefit payment cannot be returned to the TSP.

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 12. The authority citation for Part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e)(3), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—Retirement Benefits Court Orders

■ 13. Amend § 1653.5 by adding a new paragraph (l) after paragraph (k) to read as follows:

§ 1653.5 Payment.

* * * * *

(l) A properly paid court order payment cannot be returned to the TSP.

PART 1655—LOAN PROGRAM

■ 14. The authority citation for Part 1655 continues to read as follows:

Authority: 5 U.S.C. 8433(g) and 8474.

■ 15. Amend § 1655.15 by removing the word “because” from paragraph (a)(7) and adding in its place the word “became”.

■ 16. Amend § 1655.18 by removing the citation “1650.64 and 1650.65” from paragraph (c) and adding in its place the citation “part 1650, subpart G”.

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