

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1650

#### Methods of Withdrawing Funds From the Thrift Savings Plan

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend the regulations on methods of withdrawing funds from the Thrift Savings Plan (TSP) to eliminate the option to transfer a financial hardship in-service withdrawal to an individual retirement account (IRA) or other eligible retirement plan. This is consistent with the Internal Revenue Code's rules for similar distributions from private sector plans. The proposed amendment also incorporates administrative changes in calculating the amount of a financial hardship withdrawal.

**DATES:** Comments must be received on or before August 13, 2001.

**ADDRESSES:** Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Salomon Gomez on (202) 942-1661; Merritt A. Willing on (202) 942-1666; or Patrick J. Forrest on (202) 942-1659. FAX (202) 942-1676.

**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, which has 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 employees, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (I.R.C.) (26 U.S.C. 401(k)). The TSP is qualified under section

7701(j) of the I.R.C. (26 U.S.C. 7701(j)). Sums in the TSP are held in trust for the TSP participant.

#### Analysis

Part 1650 was published in final form in the **Federal Register** on September 18, 1997 (62 FR 49112), and was subsequently amended by a final rule published in the **Federal Register** on June 9, 1999 (64 FR 31052). This proposed rule further amends the final rule.

The Board proposes to revise § 1650.42(b) to provide that a financial hardship withdrawal may no longer be transferred to an IRA or other eligible retirement plan. The Board proposes to eliminate this option to transfer because transfer is available only for distributions which meet the Internal Revenue Service (IRS) requirements for an eligible rollover distribution. However, the IRS no longer considers a financial hardship withdrawal to be an eligible rollover distribution. See 26 U.S.C. 402(c)(4). Instead, a financial hardship withdrawal is treated as a nonperiodic payment.

Section 402(c)(4) applies to plans qualified under section 401(k) of the I.R.C. (26 U.S.C. 401(k)); this does not include the TSP, which is a plan qualified under section 7701(j) (26 U.S.C. 7701(j)). Nevertheless, the Board proposes to follow the IRC rule that applies to private sector plans. (An age-based in-service withdrawal continues to be eligible for transfer to an IRA or other qualified plan.)

As a consequence of this change, the Board also proposes to eliminate § 1650.31(b) which allows a participant to elect additional tax withholding from a financial hardship in-service withdrawal to ensure that he or she receives an amount adequate to cover the entire financial hardship, after withholding. However, unlike an eligible rollover distribution, a participant can avoid withholding (or can increase withholding) on a nonperiodic distribution by submitting an IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments. Since the participant can obtain the full amount of the withdrawal by submitting this form to the TSP record keeper, the option to increase the amount of the withdrawal is no longer necessary.

Other changes to § 1650.31 include changes to (b)(2) to clarify that the

documentation supporting a financial hardship withdrawal request based upon an extraordinary expense must be dated within 45 days of the request. Proposed § 1650.31 also includes a new paragraph (d). The new paragraph explains that a participant who has a pending Chapter 13 bankruptcy action is not eligible for a financial hardship withdrawal because the TSP presumes that the bankruptcy court is providing adequate funds for the participant's living expenses.

#### 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 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, 2 U.S.C. 602, 632, 653, and 1501-1571, 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 1532 is not required.

#### List of Subjects in 5 CFR Part 1650

Alimony, Claims, Employment benefit plans, Government employees, Pensions, Retirement.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons set out in the preamble, the Board proposes to amend 5 CFR part 1650 as follows:

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

1. 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).

2. Section 1650.31 is revised to read as follows:

**§ 1650.31 Financial hardship withdrawals.**

(a) A participant who has not separated from Government employment and who can demonstrate financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal must be at least \$1,000.

(b) A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) Based on TSP calculations, the participant's monthly cash flow is negative (*i.e.*, net income is less than ordinary monthly household expenses).

(2) The participant has incurred, or will incur within the next six months, extraordinary expenses which the participant has not paid, for which he or she has not been and will not be reimbursed, and which cannot be met by his or her monthly cash flow over a period of six months. Documentation of the expenses must be dated within 45 days of the date of the withdrawal request. Extraordinary expenses are limited to the following four types:

(i) Medical expenses payable by the participant and related to the treatment of the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductibility. However, the following expenses that are allowed by the IRS are not eligible TSP medical expenses: health insurance premiums and expenses associated with household improvements required as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. These items are already taken into account elsewhere in the TSP financial hardship calculations.

(ii) The cost of household improvements required as a result of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents which is eligible for deduction as a medical expense for Federal income tax purposes, but without regard to the IRS income limitations on deductibility or the fair market value of the property. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to

accommodate the circumstances of the incapacitated person.

(iii) The cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(iv) Legal expenses for attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested;

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings; or

(3)(i) The amount which would both:

(A) Make up the participant's negative cash flow, if any, for a period of six months; and

(B) Pay documented extraordinary expenses, if any.

(ii) If the TSP calculates that the participant has a negative cash flow and extraordinary expenses, the amount of the disbursement is equal to six times the amount of the negative monthly cash flow plus the amount of the extraordinary expenses. If the TSP calculates that the participant has a positive cash flow, the amount of the disbursement is equal to the amount of the documented extraordinary expenses minus six times the amount of the positive monthly cash flow.

(d) A participant is not eligible for an in-service hardship withdrawal during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code.

3. Section 1650.42 is revised to read as follows:

**§ 1650.42 Taxes related to in-service withdrawals.**

(a) When an in-service withdrawal is paid directly to a participant from the TSP, the money is taxable income in the year in which the payment is made. However, a participant does not pay taxes on money that the TSP transfers directly to an IRA or other eligible retirement plan until the money is withdrawn from the IRA or plan.

(b) A financial hardship in-service withdrawal from the TSP is not an eligible rollover distribution, and a participant therefore may not request the TSP to transfer a financial hardship in-service withdrawal to an IRA or other eligible retirement plan. A financial hardship in-service withdrawal is subject to 10% withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting an IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments, to the TSP record keeper.

(c) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to an IRA or other eligible retirement plan, consistent with paragraph (d) of this section. If the withdrawal is not transferred, it is subject to mandatory 20% withholding. (The participant may increase the amount of withholding by submitting an IRS Form W-4P to the TSP record keeper.)

(d) A transfer or rollover may be requested by filing with the TSP record keeper a TSP Form 75-T. An eligible retirement plan is a plan defined in the Internal Revenue Code, 26 U.S.C. 402(c)(8). There are four types of eligible retirement plans: an individual retirement account (IRA), an individual retirement annuity (other than an endowment contract), a qualified pension, profit-sharing, or stock bonus plan, and an annuity plan described in 26 U.S.C. 403(a). An eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 274**

[Amendment No. 392]

RIN 0584-AC37

**Food Stamp Program, Regulatory Review: Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer (EBT) Systems**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.