

# Rules and Regulations

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## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Parts 1600 and 1650

#### Employee Elections To Contribute to the Thrift Savings Plan and Methods of Withdrawing Funds From the Thrift Savings Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the regulations on employee elections to contribute to the Thrift Savings Plan (TSP) to permit participants to transfer into their TSP accounts tax-deferred balances from an expanded group of eligible retirement plans. The Executive Director is also amending the regulations on loans and withdrawals from the TSP to specify that a participant who is seeking an exception to the spousal signature and notification requirements on the ground that the spouse's whereabouts are unknown must demonstrate that he or she made a good faith effort to locate the spouse in the 90 days preceding submission of the request to the TSP.

**EFFECTIVE DATE:** April 11, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Thomas L. Gray on (202) 942-1662; Merritt Willing on (202) 942-1666; or Patrick J. Forrest on (202) 942-1659. The Board's Fax number is (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. Sums in a TSP participant's account are held in trust for that participant.

#### Analysis of the Amendment to Part 1600

The Board's rules concerning the procedures governing employee contributions to the TSP were first published in the **Federal Register** (52 FR 45802) as interim rules on December 2, 1987. The final rule was published in the **Federal Register** (59 FR 55331) on November 4, 1994. On October 27, 2000, Congress passed Public Law 106-361, which amended FERSA to permit the TSP to accept into the Plan any eligible rollover distribution, as that term is defined in section 402(c)(8) of the Internal Revenue Code (I.R.C.), that a qualified trust could accept. 5 U.S.C. 8432(j). Accordingly, on May 2, 2001 (66 FR 22088), the Board amended the final rule to permit participants to transfer into their TSP accounts funds from certain qualified retirement plans and conduit individual retirement accounts (IRAs). On February 27, 2002, the Executive Director published in the **Federal Register** (67 FR 8908) a proposed rule that, in general, expanded the types of plans into and from which an eligible TSP distribution can be made.

The amendment permits the transfer into existing TSP accounts of certain distributions from eligible retirement plans. The rule, consistent with the Internal Revenue Code (I.R.C.) and the changes made by the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001, defines eligible retirement plans broadly, to include an individual retirement account described at I.R.C. section 408(a); an individual retirement annuity described at I.R.C. section 408(b); a qualified trust; an I.R.C. section 403(a) annuity plan; an I.R.C. section 403(b) tax-sheltered annuity; and an eligible I.R.C. section 457(b) plan maintained by a governmental employer.

In discussing EGTRRA's changes to the Code, the IRS divides these types of plans into "traditional IRAs" (i.e., individual retirement accounts described at I.R.C. section 408(a) and individual retirement annuities described at I.R.C. section 408(b)) and "eligible employer plans" (i.e., qualified

trusts, I.R.C. section 403(a) annuity plans, I.R.C. section 403(b) tax-sheltered annuities, and eligible I.R.C. section 457(b) plans). The Executive Director has revised §§ 1600.1 and 1600.31(a) by redefining eligible retirement plan to take these definitions into account and by including definitions of eligible employer plan and traditional IRA.

In order to be eligible for transfer, distributions from a traditional IRA must meet the requirements for a rollover contribution, set forth at I.R.C. section 408(d)(3) (26 U.S.C. 408(d)(3)). Distributions from an eligible employer plan must meet the requirements for an eligible rollover distribution, set forth at I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)). The distinctions between these requirements were not set forth in the proposed regulation. Therefore, in the final rule, the Executive Director has revised § 1600.32(c) to make clear the different requirements that distributions from eligible employer plans and traditional IRAs must meet in order to be accepted by the TSP. Participants will have to certify that their transfers meet these requirements before the funds will be accepted by the TSP.

The Executive Director also revised § 1600.31(b) to clarify that the TSP will not transfer any tax-exempt balances from a uniformed services TSP account into a civilian TSP account. Tax-exempt balances arise from contributions from combat zone pay and are not subject to taxation.

The Board received one comment on the proposed rule. The commenter questioned whether a distribution of the tax-deferred portion of the Voluntary Contributory Program (VCP) available to CSRS employees (5 U.S.C. 8343) can be transferred to the TSP. Contributions to the VCP are made from after-tax money; however, the earnings (interest) on those contributions are tax-deferred until they are paid to the employee. The IRS has stated that that portion of a distribution from the VCP that represents earnings is eligible for transfer and thus, under this final rule, may be transferred to the TSP.

With the changes discussed above, the Executive Director is adopting the proposed rule as final.

#### Analysis of the Amendment to Part 1650

The Board's rules concerning withdrawals are set forth in 5 CFR part 1650. Those rules require that the spouse of a FERS participant or

uniformed services member consent to an in-service withdrawal and waive his or her entitlement to a joint and survivor annuity in the case of a different post-employment withdrawal election; the spouse of a CSRS participant is entitled to be given notice when the participant applies for a withdrawal. The requirements can be waived by the Executive Director if a participant can establish that the spouse's whereabouts cannot be determined. On February 27, 2002, the Executive Director published in the **Federal Register** (67 FR 8908) a proposed rule that requires a participant's efforts to locate the spouse must have been made within the 90 days preceding submission to the TSP of a request for an exception to the spousal signature or notice requirements.

The Board received no comments on the proposed rule. Accordingly, the Executive Director adopts the provisions of the proposed rule as the final rule.

#### 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.

#### Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule 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**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

#### List of Subjects

##### 5 CFR Part 1600

Employment benefit plans, Government employees, Pensions, Retirement.

##### 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, title 5, chapter VI, Code of Federal Regulations, is amended as set forth below:

#### PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

1. The authority citation for part 1600 is revised to read as follows:

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

2. Section 1600.1 is amended by adding in alphabetical order new definitions to read as follows:

##### § 1600.1 Definitions.

\* \* \* \* \*

*Eligible employer plan* means a qualified trust; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

*Eligible retirement plan* means an eligible employer plan or a traditional IRA.

\* \* \* \* \*

*Traditional IRA* means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract).

\* \* \* \* \*

3. Section 1600.31 is revised to read as follows:

##### § 1600.31 Accounts eligible for transfer.

(a) A participant who is entitled to receive (or receives) an eligible rollover distribution, within the meaning of I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)), from an eligible employer plan or a rollover contribution, within the meaning of I.R.C. section 408(d)(3) (26 U.S.C. 408(d)(3)), from a traditional

IRA may cause to be transferred (or transfer) that distribution into his or her existing TSP account. This option is not available to participants who have already made a full withdrawal of their TSP account after separation from service or who are receiving monthly payments.

(b) The only balances that the TSP will accept are balances that would otherwise be includible in gross income if the distribution were paid to the participant. The TSP will not accept any balances that have already been subjected to Federal income tax (after-tax monies) or balances from a uniformed services TSP account that will not be subject to Federal income tax (tax-exempt monies).

4. Section 1600.32 is revised to read as follows:

##### § 1600.32 Methods for transferring eligible rollover distribution to TSP.

(a) *Trustee-to-trustee transfer.*

Participants may request that the administrator or trustee of their eligible retirement plan transfer any or all of their account directly to the TSP by executing and submitting a Form TSP-60 or TSP-U-60, Request for a Transfer Into the TSP, to the administrator or trustee. The administrator or trustee must complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper.

(b) *Rollover by participant.*

Participants who have already received a distribution from an eligible retirement plan may roll over all or part of the distribution into the TSP in accordance with the following requirements:

(1) The participant must complete Form TSP-60 or TSP-U-60, Request for a Transfer Into the TSP.

(2) The administrator or trustee of the eligible retirement plan must certify on the Form TSP-60 or TSP-U-60 the amount and date of the distribution.

(3) The participant must submit the completed Form TSP-60 or TSP-U-60, together with a certified check, cashier's check, cashier's draft, money order, or treasurer's check from a credit union, made out to the "Thrift Savings Plan," for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of Federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from his or her eligible retirement plan. The transaction is not complete until the

TSP record keeper receives the Form TSP-60 or TSP-U-60, executed by both the participant and administrator, trustee, or custodian, together with the guaranteed funds for the amount to be rolled over.

(c) *Participant's certification.* When transferring a distribution to the TSP by either a trustee-to-trustee transfer or a rollover, the participant must certify that the distribution is eligible for transfer into the TSP, as follows:

(1) *Distribution from an eligible employer plan.* The participant must certify that the distribution:

(i) Is not one of a series of substantially equal periodic payments made over the life expectancy of the participant (or the joint lives of the participant and designated beneficiary, if applicable) or for a period of 10 years or more;

(ii) Is not a minimum distribution required by I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9));

(iii) Is not a hardship distribution;

(iv) Is not a plan loan that is deemed to be a taxable distribution because of default;

(v) Is not a return of excess elective deferrals; and

(vi) If not transferred or rolled over, would be includible in gross income for the tax year in which the distribution is paid.

(2) *Distribution from a traditional IRA.* The participant must certify that the distribution:

(i) Is not a minimum distribution required under I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9)); and

(ii) If not transferred or rolled over, would be includible in gross income for the tax year in which the distribution is paid.

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

5. 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).

#### **§§ 1650.60, 1650.61 and 1650.62 [Amended]**

6. Sections 1650.60(b), 1650.61(b) and (c)(1)(ii), and 1650.62(b) and (c) are amended by removing the words "one year" and adding in their place the words "90 days".

7. Section 1650.63(a)(3) and (b) are revised to read as follows:

#### **§ 1650.63 Executive Director's exception to the spousal notification requirement.**

(a) \* \* \*

(3) Statements by the participant and two other persons that meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days preceding submission to the TSP of the request for an exception. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address. Negative statements, such as, "I have not seen nor heard from him" or, "I have not had contact with her", are not sufficient.

(ii) The statements from two other persons must support the participant's statement that the participant has made attempts within the preceding 90 days to locate the spouse and that the participant does not know the spouse's whereabouts.

(iii) All statements must be signed and dated and must include the following certification: "I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both."

(b) A withdrawal election received within 90 days of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

#### **§ 1650.64 [Amended]**

8. Section 1650.64(c) is amended by removing the words "one-year period" and adding in their place the words "90-day period".

[FR Doc. 02-8606 Filed 4-10-02; 8:45 am]

**BILLING CODE 6760-01-P**

### **DEPARTMENT OF AGRICULTURE**

#### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 53**

**[Docket No. 01-126-1]**

#### **Infectious Salmon Anemia; Payment of Indemnity**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations regarding the control and eradication of certain communicable diseases of livestock or poultry to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to infectious salmon anemia. Because depopulation is required to control infectious salmon anemia, a successful control program will require indemnification for depopulated fish to gain producer support. This action will, therefore, increase the effectiveness of our efforts to control infectious salmon anemia in Maine and prevent further outbreaks of the disease.

**DATES:** This interim rule was effective April 5, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by June 10, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01-126-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-126-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01-126-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Otis Miller, Jr., National Aquaculture Coordinator, Planning, Certification, and Monitoring, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1231; (301) 734-8715.

**SUPPLEMENTARY INFORMATION:**