

# Rules and Regulations

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## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1653

#### Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts

**AGENCY:** Federal Retirement Thrift Investment Board

**ACTION:** Final rule.

**SUMMARY:** The Executive Director, Federal Retirement Thrift Investment Board (Agency) is adopting as final, the Agency's proposed rule amending the Thrift Savings Plan's (TSP's) regulations to improve processing of court orders that seek to divide a TSP account pursuant to a divorce. The final rule limits the types of court orders the Agency will accept to either one that requires payment of a specific dollar amount or that requires payment of a stated percentage or fraction of the account. The Agency will no longer accept formula court orders.

**EFFECTIVE DATE:** This final rule is effective January 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Merritt Willing on (202) 942-1660.

**SUPPLEMENTARY INFORMATION:** The Agency 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 are codified, as amended, largely at 5 U.S.C. sections 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On August 9, 2006, the Agency published a proposed rule with request for comments in the **Federal Register**

(71 FR 45437). The Agency received no comments on the proposed rule.

The rule limits acceptable court orders that divide a TSP account to those that either require payment of a specific dollar amount or that require payment of a stated percentage or fraction of the account. The Agency will no longer accept formula-based court orders because they are overly complex and often are not acceptable by the Agency or, if acceptable, would result in payments that were not anticipated by either party to the order. As a consequence, the parties must return to court and obtain an amended order. Additionally, the formula court order requires the Agency to interpret the order and results in considerable administrative expense. These expenses are borne by all TSP participants.

The rule will make it easier for the parties in a divorce to ensure that the Agency will divide a TSP account in accordance with their wishes. The rule simplifies the types of court orders the Agency will accept. The rule also contains model paragraphs that attorneys can use to ensure that, in drafting orders, the language they select will both produce the intended result and meet the Agency's processing requirements.

The rule will ensure accuracy of court order payments and will ensure that the administrative expenses of the court order program are reasonable for a retirement savings plan.

#### 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.

#### Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. sections 602, 632, 653, 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 § 1532 is not required.

#### Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Agency 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

#### List of Subjects in 5 CFR Part 1653

Alimony, Child support, Claims, Government employees, Pensions, Retirement.

**Gary A. Amelio,**

*Executive Director, Federal Retirement Thrift Investment Board.*

■ For the reasons set forth in the preamble, the Agency amends 5 CFR chapter VI as follows:

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

■ 1. The authority citation for part 1653 continues to read as follows:

**Authority:** 5 U.S.C. 8435, 8436(d), 8437(e), 8439(a)(3), 8474(b)(5), and 8474(c)(1).

■ 2. Amend § 1653.2 by revising paragraphs (a)(3)(ii), (iii), and (iv) to read as follows:

#### § 1653.2 Qualifying retirement benefits court order.

(a) \* \* \*

(3) \* \* \*

(i) \* \* \*

(ii) A stated percentage or fraction of the account; or

(iii) A survivor annuity as provided in 5 U.S.C. 8435(d).

(iv) The following examples would qualify to require payment from the TSP, although ambiguous or conflicting language used elsewhere could cause the order to be rejected.

Example (1). ORDERED: [payee's name, Social Security number (SSN), and address] is awarded \$\_\_\_\_\_ from the [civilian or uniformed services] Thrift Savings Plan account of [participant's name, SSN, and address].

Example (2). ORDERED: [payee's name, SSN, and address] is awarded \_\_\_\_\_% of the [civilian and/or uniformed services] Thrift Savings Plan account[s] of [participant's name, SSN, and address] as of [date].

Example (3). ORDERED: [payee's name, SSN, and address] is awarded [fraction] of the [civilian and/or uniformed services] Thrift Savings Plan account[s] of [participant's name, SSN, and address] as of [date].

**Note:** The following optional language can be used in conjunction with any of the above examples. FURTHER ORDERED: Earnings will be paid on the amount of the entitlement under this ORDER until payment is made.

\* \* \* \* \*

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## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service, USDA

#### 7 CFR Part 3411

RIN 0524-AA32

#### National Research Initiative Competitive Grants Program— Revisions to Administrative Provisions

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) is updating and making technical corrections to the administrative provisions for the National Research Initiative Competitive Grants Program (NRICGP). In addition, CSREES is revising 7 CFR 3411.3(d), the "Eligibility requirements" for NRICGP Postdoctoral Fellowships, New Investigator Awards, and Strengthening Awards, and 7 CFR 3411.4(c)(8), the Agency instructions to applicants preparing project budgets for NRICGP conference grants and postdoctoral fellowships. CSREES anticipates the changes to the eligibility requirements will increase the impact of the Agricultural Research Enhancement Awards, while the changes to the budget instructions will facilitate additional conference and postdoctoral fellowship awards.

**DATES:** *Effective date:* September 20, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gail McLean at (202) 401-6060 or via electronic mail at [gmclean@csrees.usda.gov](mailto:gmclean@csrees.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Overview

The Cooperative State Research, Education, and Extension Service

(CSREES) revises the administrative provisions for the National Research Initiative Competitive Grants Program (NRICGP), which was authorized in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), (7 U.S.C. 450i(b)). Some of the revisions are mere technical corrections, including updates to the Agency's name. Other revisions reflect the Agency's developing capabilities to exchange proposal and grant data electronically. Finally, CSREES is substantively revising the eligibility requirements for Agricultural Research Enhancement Awards (7 CFR 3411.3(d)) and the Agency's instructions to applicants preparing project budgets for NRICGP conference grants and postdoctoral fellowships (7 CFR 3411.4(c)(8)).

CSREES published a Proposed Rule (71 FR 32479, June 6, 2006) on this topic and received three comments from the public by the August 7, 2006 deadline. The Agency is not revising the Proposed Rule based on these comments. Two of the comments supported the proposed changes, agreeing they would create additional flexibility for, and increase the competitiveness and continuity of funding at small and minority serving university research programs. The third comment was an expression of concern that the Agency might fund illegal aliens with NRICGP funds, which the Proposed Rule neither suggests nor encourages.

The Agricultural Research Enhancement Awards are intended to help institutions develop competitive research programs and to attract scientists to research in agriculture, food, and environmental sciences. To increase the impact of the Agricultural Research Enhancement Awards, CSREES is changing the eligibility requirements for Postdoctoral Fellowships, New Investigator Awards, and Strengthening Awards. Anticipated impacts include, (1) for Postdoctoral Fellowships, improved funding continuity and potentially more postdoctoral scientists entering into an agricultural research career; (2) for New Investigator Awards, improved project design and increased probability of a successful agricultural research program; and (3) for Strengthening Awards, improved research project continuity and more incentive for researchers to stay at USDA-Experimental Program for Stimulating Competitive Research (EPSCoR) or small/mid-sized institutions. The revisions to Agency instructions regarding the preparation of project budgets apply narrowly and should

optimize the use of NRICGP funds for scientific meetings and for postdoctoral researchers.

#### Postdoctoral Fellowships

Previously, provisions indicated a postdoctoral fellowship applicant should not have received a doctoral degree before January 1 of the fiscal year three years prior to the submission of the proposal and not later than June 15 of the fiscal year during which the proposal is submitted (7 CFR 3411.3(d)(1)(i)). In the past, NRICGP proposal submission dates were grouped together and occurred within an approximate range of three to four months. As a result, applicants had similar amounts of time from the date they submitted their proposals until they were notified of awards. This was important because applicants used the time to arrange for postdoctoral positions and ensure continuity of funding for their postdoctoral research.

Now, however, NRICGP proposal submission dates are spread throughout the year. The old provisions put at a disadvantage postdoctoral fellowship applicants to NRICGP programs with proposal submission dates that are later in the fiscal year than the doctoral degree cutoff date of June 15. In order to ensure the availability of their awards, applicants to these programs may wait a year between receiving their doctoral degrees and applying for the postdoctoral fellowships. The gap in funding can result in postdoctoral researchers leaving agricultural research because they cannot find a laboratory with sufficient funding to support them during this interim.

CSREES is revising the provisions for NRICGP postdoctoral fellowships to base cutoff dates for receipt of doctoral degrees on proposal due dates for specific NRICGP programs. This change adds equity to the process and allows applicants sufficient time to make arrangements for financial support of their postdoctoral research prior to graduation. In doing so, it should further the engagement of the best and brightest young scientists in agricultural research.

#### New Investigator Awards

The previous provisions required that, in addition to the Project Director, all co-Project Directors must meet NRICGP New Investigator Award eligibility requirements (7 CFR 3411.3(d)(2)). When evaluating the scientific merit of a proposal, reviewers frequently suggest that New Investigators work with established investigators. Established investigators can provide valuable expertise on scientific subjects and