

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**5 CFR Part 1653****Domestic Relations Orders Affecting Thrift Savings Plan Accounts**

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the Board's regulations governing payments from the Thrift Savings Plan (TSP) pursuant to retirement benefits court orders and in response to legal process for the enforcement of a participant's legal obligations to provide child support or make alimony payments. This final rule amends Board regulations to provide for elimination of the mandatory 30-day tax notification period.

EFFECTIVE DATE: These final rules are effective April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, Assistant General Counsel for Administration. (202) 942-1662. FAX (202) 942-1676.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP) pursuant to the Federal Employees' Retirement System Act of 1986, Pub. L. 99-335, 100 Stat. 514 (codified primarily at 5 U.S.C. 8401-8479 (1994)).

Under 5 U.S.C. 8467(a) and 8435(c), a court decree of divorce, annulment, or legal separation, or a court order or court-approved property settlement agreement incident to such a court decree can award benefits from a TSP participant's account to someone other than the participant, such as the participant's spouse or former spouse. The Board refers to these court orders as retirement benefits court orders, and final regulations governing them were published by the Board at 60 FR 13604 (1995) (to be codified at 5 CFR part 1653, subpart A).

Under 8437(e)(3), sums in the TSP also are subject to legal process for the enforcement of a participant's or beneficiary's past-due legal obligations to provide child support or make alimony payments. The final regulations governing such legal process were published at 60 FR 66061 (1995) (to be codified at 5 CFR part 1653, subpart B). This final rule amends both the final rule governing retirement benefits court orders and the final rule governing legal process.

Existing regulations at section 1653.5, Procedures for payment pursuant to retirement benefits court orders, and section 1653.25, Payment pursuant to qualifying legal process, provide that payment will be made no sooner than 30 days after the Board's decision has been issued and the appropriate tax withholding notification has been provided. This minimum waiting period is provided because under Internal Revenue Code provisions the payee will often have the right to elect to transfer the payment to an Individual Retirement Account (IRA) or other eligible retirement plan, or to make a tax withholding election. The existing regulations do not permit the taxpayer to shorten this period. This rule change allows the taxpayer to waive this period and receive a TSP payment sooner. Accordingly, following the Board's decision, the payee will be provided Form TSP-13-S, Notice of Pending Court-Order Thrift Savings Plan Payment and Tax Withholding Information. The taxpayer may waive the notice period by submitting the waiver statement on that form or by submitting a letter containing an explicit waiver statement.

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 internal Board procedures for payments pursuant to court orders and in response to legal process and provide an opportunity to waive the tax notification period, and thus, shorten the period for receipt of these payments.

Paperwork Reduction Act

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

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The purpose of these changes is to provide an opportunity to shorten the time for payments pursuant to domestic relations court orders. The Board believes this opportunity should be made available without delay.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104-4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

List of Subjects in 5 CFR Part 1653

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.
Roger W. Mehle,
Executive Director.

For the reasons set out in the preamble, 5 CFR part 1653 is to be amended as set forth below:

PART 1653—DOMESTIC RELATIONS ORDERS AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

1. 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).

2. Section 1653.5 is amended by revising paragraph (a) to read as follows:

§ 1653.5 Procedures for payment pursuant to retirement benefits court orders.

(a) If a qualifying court order creates an entitlement to a portion of a TSP account under this part, payment will be made after the Board's decision has been issued and the 30-day tax withholding notification period has ended. The taxpayer may receive the payment sooner by waiving the tax notification period.

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3. Section 1653.25 is amended by revising paragraph (a) to read as follows:

§ 1653.25 Payment pursuant to qualifying legal process.

(a) Payment will be made pursuant to qualifying legal process after the Board's decision has been issued and the 30-day tax withholding notification period has ended. The taxpayer may receive the payment sooner by waiving the tax notification period.

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