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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 Federal Retirement Thrift Investment Board (Agency) is amending its regulations at 5 CFR part 1653. Based on the Agency's memorandum of understanding and data match program with the Department of Health and Human Services, Administration for Children and Families, Federal Office of Child Support Enforcement (OCSE), as well as a legislative amendment which subjects TSP accounts to orders issued pursuant to the Mandatory Victims Restitution Act (MVRA), the Agency's court order volume has significantly increased and will likely continue to increase significantly.

In order to promote efficiency and equity in light of this current and likely future increase in the Agency's court order workload, the Agency is amending its regulations to shorten the time period in which child support orders and MVRA orders are payable. The amendments clarify that these payments are subject to Federal income tax withholding and that tax withholding cannot be waived. Further, the amendments provide that when payment of a qualifying retirement benefits order is to be made to a participant's current or former spouse, the payee may request to have the payment made as early as 30 days after the date of the TSP decision letter.

The Agency considers these amendments to be procedural in character. As a result, no notice and comment period is required by the

Administrative Procedure Act. See 5 U.S.C. 553(b)(A).

**DATES:** This rule is effective on June 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Megan Grumbine at 202-942-1644.

**SUPPLEMENTARY INFORMATION:** The Agency administers the Thrift Savings Plan (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. 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)).

As authorized by section 466 of the Social Security Act and 5 U.S.C. 8437(e), the Agency entered into a data-sharing agreement with the Department of Health and Human Services, Administration for Children and Families, Federal Office of Child Support Enforcement (OCSE). As a result of this agreement and two recent data matches, the number of child support orders submitted to the Agency has increased significantly. Year-to-date, the Agency has received more than 7,000 child support orders, which is over thirty-six times the amount the Agency processed in total in 2010. This number is nearly certain to increase even further as several states involved in the data match have yet to submit orders corresponding to matched participant accounts.

Further, in 2009, Congress amended the Agency's statute to provide that TSP accounts are subject to enforcement orders issued pursuant to the Mandatory Victims Restitution Act (MVRA). See 5 U.S.C. 8437(e) as well as Public Law 111-31, The Thrift Savings Plan Enhancement Act of 2009. Pursuant to this authority, the Agency and the Department of Justice are working collaboratively to finalize the process by which TSP accounts may be garnished efficiently—consistent with law and regulation. At this point, the Agency does not have statistics as to the number of MVRA orders it may receive, but it is highly likely that the Agency will receive a significant number of backlogged MVRA orders.

Currently, 5 CFR 1653.5(a)(2) provides that payments of child support orders and similar orders (like MVRA) are generally made 60 days after the date of the TSP decision letter determining the parties' rights in the account. This 60 day period is intended to permit the payee sufficient time to consider decisions about tax withholding, payment by EFT, and transfer options. Though a participant may request an expedited payment, the earliest an expedited payment can be made is 31 days after the date of the TSP decision letter. Given that the Agency is currently processing more than 7,000 child support orders, a 31 to 60 day window for processing child support orders is unduly burdensome, expensive, and inequitable. Indeed, a 31 to 60 day window will likely backlog the Agency's processing of child support orders, thereby increasing the costs of administering the TSP. In addition, a 31 to 60 day window will prevent the Agency from timely processing all child support orders. Consequently, similarly situated child support orders (*i.e.*, orders received by the Agency on the same day) may be treated differently: While some orders may be timely processed, others orders will not be processed for more than 60 days and, as a result, not all participants' accounts will receive equal treatment.

Thus, in order to promote efficiency and equity, the Agency amends its regulations to provide that payments of child support orders and similar orders (like MVRA) are generally payable within 30 days of the date of the TSP decision letter.

Further, the Agency is amending 5 CFR 1653.5(e) to provide that the Agency will withhold Federal income tax from payments for child support orders and similar orders in accordance with Internal Revenue Code section 3405(b) (which provides for 10 percent withholding unless the taxpayer elects no withholding). Paragraph (e) will also provide that a participant cannot elect zero withholding on such payments. Allowing a participant to elect zero withholding would delay the Agency's processing of these payments, thereby causing inefficiency and inequity. Moreover, it is unlikely that a participant would request zero withholding from payments not received by the participant because

withholding on such payments is in a participant's best interest. That is, since the participant will be taxed on the full amount of the payment, it is in the participant's interest that 10 percent of the payment be directed toward satisfying the participant's tax liability.

The Agency considers these amendments to be procedural in character. As a result, no notice and comment period is required by the Administrative Procedure Act (APA). See 5 U.S.C. 553(b)(A). However, if any part of these amendments is held to be substantive in character, the Agency has "good cause," within the meaning of 5 U.S.C. 553(b)(B), to promulgate the amendments without a notice and comment period. Specifically, it would be impracticable for the Agency to comply with the APA's notice and comment period—and hence the Agency has "good cause"—because doing so would preclude the Agency from executing its statutory duties and carrying out its mission. See 5 U.S.C. 553(b).

Pursuant to statute, the Agency's Executive Director and the members of the Board must act "solely in the interest of the [TSP's] participants and beneficiaries" and for the exclusive purpose of providing benefits to participants and their beneficiaries and "defraying reasonable expenses of administering the [TSP]." 5 U.S.C. 8477(b)(1). Currently, the Agency effectively faces an emergency situation by virtue of the fact that it is trying to process more than 7,000 child support orders. If the Agency processes these orders in accordance with the 31 to 60-day time period prescribed in the current version of 5 CFR 1653.5, then the TSP will incur significant administrative expenses. However, these administrative expenses can be greatly defrayed if the Agency amends 5 CFR 1653.5 to reduce processing time to 30 days. Consequently, any meaningful delay in amending 5 CFR 1653.5 could cause the Agency to incur unreasonably large administrative expenses. Thus, the Agency's compliance with the notice and comment period would be impracticable. As a result, no notice and comment period is required. See 5 U.S.C. 553(b).

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan. It will also affect their legal dependents.

#### 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. 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 section 1532 is not required.

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

Pursuant to 5 U.S.C. 810(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. 814(2).

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

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

#### Gregory T. Long,

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons stated in the preamble, the Agency amends 5 CFR part 1653 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(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5), and 8474(c)(1).

- 2. Amend § 1653.5 paragraphs (a) and (e)(2) to read as follows:

##### § 1653.5 Payment.

(a) *Payment date.* Payment pursuant to a qualifying retirement benefits court order will generally be made:

(1) 60 days after the date of the TSP decision letter when the payee is the current or former spouse of the participant. The payee can request to receive the payment sooner than 60 days, but in no event earlier than 30 days after the date of the TSP decision letter, if:

(i) The payee makes a tax withholding election, requests payment by EFT, or

requests a transfer of all or a portion of the payment to a traditional IRA or eligible employer plan (the TSP decision letter will provide the forms a payee must use to choose one of these payment options); and

(ii) Either the court order does not make an award to multiple payees or, if it does, each of the multiple payee requests expedited payment.

(2) Within 30 days of the date of the TSP decision letter when the payee is someone other than the current or former spouse of the participant.

\* \* \* \* \*

(e) \* \* \*

(2) If the payment is made to anyone other than the current or former spouse of the participant, the payment is taxable to the participant and is subject to 10 percent Federal income tax under Internal Revenue Code section 3405(b). The participant cannot elect to change the amount of Federal income tax withholding. The tax withholding will be taken from the payee's entitlement and the gross amount of the payment (i.e., the net payment distributed to the payee plus the amount withheld from the payment for taxes) will be reported to the IRS as income to the participant.

\* \* \* \* \*

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BILLING CODE 6760–01–P

#### NATIONAL CREDIT UNION ADMINISTRATION

#### 12 CFR Parts 704, 741 and 750

RIN 3133–AD73

#### Golden Parachute and Indemnification Payments

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is issuing a final rule to prohibit, in certain circumstances, a Federally insured credit union (FICU) from making golden parachute and indemnification payments to an institution-affiliated party (IAP). The rule will help safeguard the National Credit Union Share Insurance Fund (NCUSIF) by preventing the wrongful or improper disposition of FICU assets and inhibit unwarranted rewards to IAPs that can contribute to an FICU's troubled condition.

**DATES:** This rule is effective June 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Pamela Yu, Staff Attorney, or Ross Kendall, Special Counsel to the General