



**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**5 CFR Part 1650**

**Temporary Waiver of Notarization Requirement for Spousal Consent**

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

**ACTION:** Interim rule.

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**SUMMARY:** In light of emergency stay-at-home and shelter-in-place orders issued all over the country, the Federal Retirement Thrift Investment Board (FRTIB) is temporarily waiving the requirement to notarize a spouse's signature on withdrawal election forms.

**DATES:** This interim rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and shall remain effective until withdrawn. The FRTIB will consider public comments regarding the duration of time that this rule should remain effective. Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments using one of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- Mail: Office of General Counsel, Attn: Megan G. Grumbine, Federal Retirement Thrift Investment Board, 77 K Street, N.E., Suite 1000, Washington, D.C. 20002.

- **Facsimile:** Comments may be submitted by facsimile at (202) 942-1676.

Since March 23, 2020, the FRTIB has been operating under a mandatory telework status due to the coronavirus pandemic which has severely limited the ability to timely monitor mail and facsimiles. Therefore, we strongly encourage using the Federal Rulemaking Portal to submit comments.

**FOR FURTHER INFORMATION CONTACT:** *For press inquiries, contact Kim Weaver at (202) 942-1641. For information about how to comment on this interim rule, contact Laurissa Stokes at (202) 942-1645.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The FRTIB 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 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)).

A spouse of a FERS or uniformed services TSP participant has an automatic legal entitlement to a survivor annuity. Annuities are purchased with the balance of the participant's TSP account, and such purchases are made pursuant a withdrawal

election. Consequently, the default TSP withdrawal election is a joint life annuity with the 50% survivor benefit. The participant cannot make any other type of withdrawal unless the participant's spouse signs a written statement waiving his or her entitlement to a survivor annuity. This signed, written waiver ("spousal consent") is a statutory requirement. 5 U.S.C. 8435(b) and (c). The statute does not, however, require spousal consent to be notarized.

The FRTIB Executive Director has the authority to issue regulations to administer the TSP. 5 U.S.C. 8474(b)(5). In 2003, the Executive Director published a regulation requiring spousal consent to be notarized. 68 FR 74450 (December 23, 2003).

#### **Necessity and Effect of this Interim Rule**

The coronavirus pandemic has disrupted day-to-day life in an unprecedented way. These disruptions, which include mandatory business and school closures, stay-at-home/shelter-in-place orders, and quarantines have made it difficult and unsafe to have forms notarized in-person.

States are increasingly permitting remote online notarization. As of January 1, 2020, twenty-two states had already adopted laws that enable notaries to perform remote notarizations. In response to the coronavirus pandemic, at least 21 states have issued emergency orders that accelerate the

effective dates of laws that would permit remote notarization or temporarily waive certain provisions of law that would otherwise impede the availability of remote notarization.

The FRTIB recognizes that many TSP participants will confront extraordinary uncertainty due to rapid evolution of state laws and unfamiliarity with the technology used for remote notarization. In addition, the TSP does not currently have the technological workflow to allow participants to submit remotely notarized forms electronically. Although the FRTIB is diligently working to add this capability, it is not yet available.

Under these conditions, the regulation requiring spousal consent to be notarized has become an extraordinary hurdle for married TSP participants who need to request a withdrawal during this difficult time. Therefore, the Executive Director has determined that it is necessary to temporarily waive the notarization requirement for spousal consent.

Only the notarization requirement is waived. Married participants must still obtain their spouse's consent. The consent must be evidenced by the spouse's signature (or any electronic signature alternative that the TSP has deemed sufficient to constitute written consent). Participants are reminded that any intentional false statement or willful misrepresentation concerning their marital status or provision of their spouse's consent is punishable by fine or imprisonment

of up to 5 years, or both. 18 U.S.C. 1001.

### **Type of Rulemaking**

The Administrative Procedure Act, Public Law 79-404, 60 Stat. 237, generally requires that an agency publish an adopted rule in the Federal Register at least 30 days before it becomes effective in order to provide an opportunity for public comment. This requirement does not apply, however, if the agency "for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). Given the significant and immediate impact of the coronavirus pandemic on TSP participants, as discussed above, the FRTIB finds that good cause exists to dispense with notice and comment as impracticable and unnecessary, and to act immediately to amend 5 CFR part 1650. The FRTIB will, however, consider public comments regarding the duration of time that this rule shall remain effective.

### **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, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, and which is

administered by the Agency.

**Paperwork Reduction Act**

I certify that this regulation does 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.

List of Subjects in 5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director,

Federal Retirement Thrift Investment Board

For the reasons stated in the preamble, the FRTIB amends 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, 8432d, 8433, 8434, 8435, 8474(b)5 and 8474(c) (1) .

2. Amend § 1650.61 by revising paragraph (c) (4) to read as follows:

**§ 1650.61 Spousal rights applicable to post-employment withdrawals.**

\* \* \* \* \*

(c) \* \* \*

(4) Unless the TSP granted the participant an exception under this subpart to the spousal notification requirement within 90 days of the date the withdrawal form is processed by the TSP, to show that the spouse has consented to a different total or partial withdrawal election or installment payment change and waived the right to this annuity with respect to the applicable amount, the participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse. If the TSP granted the participant an exception to the signature requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form.

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3. Amend § 1650.62 by revising paragraph (c) to read as follows:

**§ 1650.62 Spousal rights applicable to in-service withdrawals.**

\* \* \* \* \*

(c) Unless the participant was granted an exception under this subpart to the signature requirement within 90 days of the date the withdrawal form is processed by the TSP, before obtaining an in-service withdrawal, a participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse and waiver of the spouse's right to a joint and survivor annuity described in § 1650.61(c) with respect to the applicable amount. To show the spouse's consent and waiver, a participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse. Once a form containing the spouse's consent and waiver has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

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