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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds from the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Direct final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is amending its regulations to remove certain restrictions with respect to the election of installment payments calculated based on life expectancy.

DATES: This rule is effective without further action on [INSERT DATE 40 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, the FRTIB will publish a timely withdrawal of the rule 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: Dharmesh Vashee, 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 in mandatory telework status due to the coronavirus pandemic, which has 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: Austen Townsend at (202) 864-8647.

SUPPLEMENTARY INFORMATION: The FRTIB 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)).

Post-Separation Withdrawals

TSP participants who have separated from service have three basic methods of withdrawing money from their TSP accounts: (1) installment payments; (2) single withdrawals; and (3) annuity purchases. A separated participant who elects to receive all or a portion of his or her account balance in the form of installment payments must choose the frequency of those payments (monthly, quarterly, or annual) and whether to receive fixed dollar payments or payments calculated based on life expectancy.

Restrictions on Life-Expectancy-Based Installment Payments

Currently, a separated TSP participant may change the amount and frequency of his or her fixed dollar installment payments at any time throughout the year. This includes the ability of a participant to make a one-time election to change from installment payments calculated based on life expectancy to fixed dollar installment payments. However, under existing rules, once a participant makes an election to receive fixed dollar installment payments, he or she may not switch to life-expectancy-based installment payments. In addition, although a TSP participant receiving installment payments may stop these payments at any time, if he or she stops life-expectancy-based installment payments, the participant may not elect to restart life-expectancy-based installment payments at a later date.

Need for Removal of Restrictions

Internal Revenue Service ("IRS") rules regarding required minimum distributions ("RMDs") apply to TSP participants. Under these rules, a TSP participant must receive RMDs beginning on April 1 of the year following the year in which the participant reaches age 72 and is separated from service and annually thereafter. However, on March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136 (134 Stat. 281). Among other things, the CARES Act waives the requirement for any RMD that is required to be paid in 2020.

The COVID-19 pandemic caused a steep and sudden decline in the stock markets and put a severe strain on many household budgets. In order to give time for TSP account balances to recover, as authorized by the CARES Act, the TSP will not send any automatic RMD payments for 2020. However, the TSP will continue to send elected installment payments in 2020 unless the participant makes an affirmative election to stop installment payments.

Many separated TSP participants who are required to receive RMDs elect to receive life-expectancy-based installment payments as a way to ensure they satisfy this requirement. The existing restrictions on life-expectancy-based installment payments put these participants in an untenable situation--they must either continue to receive payments and forego the chance to let their account balances recover, or stop their payments and forego the ability to restart life-expectancy-based payments in the future. Moreover, over the years, separated participants of all ages have expressed a desire for more flexibility to change between fixed dollar and life-expectancy-based installment payments. Therefore, effective January 1, 2021, the FRTIB is removing the restrictions on life-expectancy-based installment payments described above.

The removal of these restrictions allows TSP participants who are eligible for installment payments to elect to receive payments based on life expectancy whether or not they previously started and then stopped installment payments. In order for a TSP participant who is currently receiving fixed dollar installment payments to receive installment payments calculated based on life expectancy, the participant must first stop his or her existing installment payments. The participant can then make a new withdrawal election to receive life-expectancy-based installment payments. (Participants who are currently receiving payments based on life expectancy will continue to have the ability to switch to fixed dollar payments simply by requesting a specific dollar amount.) This new withdrawal election is subject to the spousal consent rules set forth at 5 U.S.C. 8435(a)(1)(B).

Tax Implications

The FRTIB recognizes the value of giving TSP participants more flexibility with respect to installment payments. However, TSP participants should be aware of potential tax consequences mandated by the Internal Revenue Code (Code) that may result from stopping installment payments calculated based on life expectancy.

TSP participants who separate from service before the age of 55 and choose to receive installment payments may be subject to a 10% early withdrawal penalty under Code section 72(t). Installment payments based on life expectancy are an exception to the rule. However, the penalty can be applied retroactively if the participant does any of the following within five years of beginning payments or before reaching age 59½: (1) stopping life-expectancy-based payments; (2) switching life-expectancy-based payments to payments of a fixed dollar amount; or (3) withdrawing money in addition to the life-expectancy based payments. Doing any of these things in that period of time will make the participant liable for the penalty tax on the payments he or she previously received. These tax consequences are mandated by the Code and are **not** eliminated by this FRTIB rule change.

Direct Final Rulemaking

The FRTIB is publishing this regulation as a direct final rule. In a direct final rulemaking, an agency publishes its rule in the *Federal Register* along with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period.

The content of this direct final rule relieves a restriction on a TSP participant's ability to make a post-separation withdrawal election to receive installment payments based on life expectancy. Therefore, pursuant to 5

U.S.C. 553, notice and comment are not required, and this rule may become effective after publication in the Federal Register without public comment.

Nevertheless, the FRTIB appreciates that members of the public may have perspectives or information that could impact the FRTIB's views with respect to the removal of these restrictions. The FRTIB, therefore, is providing a 30-day public comment period, and intends to consider all comments submitted during that period. The FRTIB will withdraw the rule if it receives significant adverse comment. Comments that are not adverse may be considered for modifications to part 1650 at a future date. If no significant adverse comment is received, the rule will become effective 40 days after publication, without additional notice.

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 FRTIB.

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 FRTIB 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 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 Chapter VI 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 § 1650.13 by revising paragraph (b) to read as follows:

§ 1650.13 Installment Payments.

* * * * *

(b) A participant can make the following changes at any time as described in §1650.17(c):

(1) A participant receiving installment payments calculated based on life expectancy can elect to change to fixed dollar installment payments;

(2) A participant receiving installment payments based on a fixed dollar amount can elect to stop these payments and make a new election to receive installment payments calculated based on life expectancy;

(3) A participant receiving installment payments based

on a fixed dollar amount can elect to change the amount of his or her fixed payments; and

(4) A participant receiving fixed dollar installment payments can elect to change the frequency of his or her installment payments.

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[FR Doc. 2020-26339 Filed: 11/25/2020 11:15 am; Publication Date: 11/30/2020]