



**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**5 CFR Part 1653**

**Methodology for Calculating Earnings on Court-Ordered Payments**

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Retirement Thrift Investment Board (FRTIB) adopts as final, without changes, a proposed rule concerning the methodology used to calculate earnings and losses in connection with court-ordered payments to spouses, former spouses, children, or dependents (*i.e.*, payees) of Thrift Savings Plan (TSP) participants.

**DATES:** The effective date is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:**

*For press inquiries:* James Kaplan, Office of External Affairs, (202) 864-7150.

*For information about this final rule:* Laurissa Stokes, Office of General Counsel, (202) 308-7707.

**SUPPLEMENTARY INFORMATION:** 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 retirement savings plan for Federal civilian employees and members of the uniformed services. It 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)). The provisions of FERSA that govern the TSP are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79.

Section 8435(c) of FERSA requires the FRTIB to obey certain domestic relations court orders requiring payments from a TSP participant's account to the participant's spouse, former spouse, child, or dependent. A TSP account can be divided by means of a court decree of divorce, annulment, or legal separation; or a court order or court-approved property settlement agreement resulting from such a decree. A court order to divide a TSP account may be issued at any stage of a divorce, annulment, or legal separation proceeding.

Court orders sometimes award the participant's spouse, former spouse, child, or dependent (*i.e.*, the payee) earnings that accrue between the date used to calculate the payee's entitlement and the date payment is made. Currently, when a court order awards earnings, the FRTIB calculates the amount to which the payee is entitled by determining the payee's award amount (*e.g.*, the percentage or fraction of the participant's account awarded by the court) and, based on the participant's investment allocation as of the date used to calculate the payee's entitlement, the number and composition of shares that the payee's award amount would have purchased as of that date. The FRTIB then multiplies the price per share as of the payment date by the calculated number and composition of shares to determine the payee's entitlement.

The FRTIB contracts with Accenture Federal Services to provide, maintain, and operate the technology platforms necessary to deliver retirement plan record keeping services to TSP

participants. These services include processing retirement benefits court orders. The FRTIB updates its methodology for calculating court ordered earnings to align with the methodology used by Accenture Federal Services. Accenture Federal Services calculates earnings by using a money-weighted return commonly referred to in the financial industry as the internal rate of return. This methodology considers the influence of cash flows (for example, contributions, withdrawals, loans, and loan payments) on asset allocation, and the resulting effect on investment performance.

Specifically, the FRTIB will calculate earnings by (i) identifying the beginning balance, ending balance, and the cash flows between the two balances over the period of time between the entitlement date and the payment date, (ii) calculating the rate of return that increases (or reduces in the case of a loss) the balance at the beginning of the period, accounting for all cash flows, to equal the balance at the end of the period; and then (iii) multiplying the payee's award amount by the resulting rate of return.

The methodology ensures that the payee's entitlement consists of an award component and an earnings component that each reflects the percentage or fraction specified in the court order. The award component reflects the percentage or fraction of the participant's account on the entitlement date as specified in the order. The earnings component is based on the rate of return experienced on the participant's account during the period from the entitlement date to the payment date.

On November 26, 2024, the FRTIB published a proposed rule with request for public comments in the **Federal Register** (89 FR 93223, November 26, 2024). We received no comments. For the reasons explained above, the FRTIB is adopting the proposed rule as final, without any substantive changes.

#### **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 Accountability Office**

Pursuant to 5 U.S.C. 801(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 Government Accountability Office 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, 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 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. 8432d, 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

2. Amend § 1653.1 in paragraph (b) by adding in alphabetical order the definition of "Entitlement date" and revising the definition of "Payment date" to read as follows:

**§ 1653.1 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Entitlement date* means the date determined in accordance with § 1653.4(b) and (c).

*Payment date* refers to the date on which a temporary account is established for the payee in the Thrift Savings Plan (TSP).

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3. Amend § 1653.3 by revising paragraph (f)(4)(ii) to read as follows:

**§ 1653.3 Processing retirement benefits court orders.**

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(f) \*\*\*

(4) \*\*\*

(ii) The anticipated payment date;

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4. Amend § 1653.4 by revising paragraphs (a), (c), (d)(2), and (f) to read as follows:

**§ 1653.4 Calculating entitlements.**

(a) For purposes of computing the amount of a payee's entitlement under this section, a participant's TSP account balance will include any loan balance outstanding as of the entitlement date unless the court order provides otherwise.

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(c) If the court order awards a percentage of an account but does not contain a specific date as of which to apply that percentage, the TSP record keeper will use the effective date of the court order.

(d) \*\*\*

(2) The vested account balance on the payment date.

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(f) The payee's entitlement will be credited with TSP investment earnings as described:

(1) The entitlement calculated under this section will not be credited with TSP investment earnings unless the court order specifically provides otherwise. The court order may not specify a rate for earnings.

(2) If earnings are awarded, the TSP record keeper will calculate earnings by:

(i) Identifying the beginning balance, ending balance, and the cash flows between the two balances over the period of time between the entitlement date and the payment date;

(ii) Calculating the rate of return that increases (or reduces in the case of a loss) the balance at the beginning of the period, accounting for all cash flows, to equal the balance at the end of the period; and

(iii) Multiplying the payee's award amount by the resulting rate of return.

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5. Amend § 1653.5 by revising paragraphs (d) and (h) to read as follows:

**§ 1653.5 Payment.**

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(d) Payment will be made pro rata from the participant's traditional and Roth balances. The distribution from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all payments will be distributed pro rata from all TSP core funds

in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the payment date. The TSP record keeper will not honor provisions of a court order that require payment to be made from a specific TSP core fund, source of contributions, or balance.

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(h) If the payee dies before a payment is disbursed from the TSP, payment will be made to the estate of the payee, unless otherwise specified by the court order. A distribution to the estate of a deceased court order payee will be reported as income to the decedent's estate. If the participant dies before the payment date, the order will be honored so long as it is submitted to the TSP record keeper before the TSP account has been closed.

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6. Revise § 1653.14 to read as follows:

**§ 1653.14 Calculating entitlements.**

A qualifying legal process can only require the payment of a specified dollar amount from the TSP. Payment pursuant to a qualifying legal process will be calculated in accordance with § 1653.4(a), (d), (f), and (g), except that the term "payment date" shall mean the date the payment is disbursed from the TSP.

7. Revise § 1653.15 to read as follows:

**§ 1653.15 Payment.**

Payment pursuant to a qualifying legal process will be made in accordance with § 1653.5, except the term "payment date" shall mean the date the payment is disbursed from the TSP.

8. Amend § 1653.34 by revising paragraph (d)(4)(ii) to read as follows:

**§ 1653.34 Processing Federal tax levies and criminal restitution orders.**

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(d) \*\*\*

(4) \*\*\*

(ii) The anticipated date of disbursement.

[FR Doc. 2025-04913 Filed: 3/21/2025 8:45 am; Publication Date: 3/24/2025]