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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: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations concerning methods of withdrawing funds from the Thrift Savings Plan (TSP). These regulations reflect changes made to eligibility requirements for the withdrawal of accounts from the Thrift Savings Plan resulting from the enactment of section 9 of the Federal Workforce Restructuring Act of 1994. That law provides that all of the withdrawal methods formerly reserved for persons retiring from Government employment, and all related spousal rights, would become available to all Thrift Savings Plan participants who separates from Government employment, regardless of the person's length of service or retirement eligibility at the time of separation.

EFFECTIVE DATE: These rules are effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942-1661.

SUPPLEMENTARY INFORMATION: The TSP was originally established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335. FERSA set forth provisions, found in subchapter III of chapter 84 of title 5, United States Code, for the administration of the TSP. Provisions concerning TSP withdrawals were found primarily in sections 8433 and 8434 of title 5. Provisions concerning spousal rights relating to withdrawals

were found primarily in section 8435 of title 5.

As originally enacted, FERSA conditioned eligibility for the various withdrawal methods upon eligibility for basic retirement benefits. Consequently, persons without such eligibility upon separation from Government employment (generally less than 5 years of service) were not permitted to leave their accounts in the TSP and were only permitted to withdraw them by transferring them to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. They could not receive a cash payment of their account. Persons with 5 or more years of service could leave their accounts in the TSP and had more withdrawal options, but cash payment options were only available to them when they reached retirement age. Spousal rights were also conditioned upon the retirement eligibility of the participant at time of separation.

These rules proved confusing to participants and difficult to administer, requiring, for example, various withdrawal forms depending upon the participant's retirement eligibility. As a result of Public Law 103-226, which was enacted on March 30, 1994, all TSP participants who separate from Government employment will now have the same withdrawal options available to them.

Spousal rights rules were also simplified by Public Law 103-226. Under the new rules, spouses of all FERS participants who separate from Government service with an account balance of more than \$3,500 have the right to a survivor annuity, unless the spouse waives that right. The required annuity is a joint life annuity with the spouse with 50 percent survivor benefits, level payments, and no cash refund feature. Spouses of Civil Service Retirement System (CSRS) participants are entitled to notice whether or not the participant separated from Federal service with eligibility for basic retirement benefits. Public Law 103-226 eliminated the requirement to notify former spouses of FERS and CSRS participants who separated from Federal service without eligibility for basic retirement benefits that the participant is withdrawing his or her TSP account.

On December 28, 1994, the Board published a proposed rule in the **Federal Register** (59 FR 66796)

proposing a new subpart 1650 reflecting the new simplified TSP withdrawal rules. Previously, on September 13, 1994, the Board had published amendments to spousal rights regulations in the **Federal Register** (59 FR 46934) reflecting the changes in spousal rights rules made by the new legislation. Additionally, the September 13, 1994 proposed amendments also amended the rules for obtaining an exception to the spousal waiver and notice requirements to allow participants seeking such an exception to submit copies of documents rather than originals or certified copies and to use statements instead of affidavits and declarations. Further, those amendments provided that a withdrawal form received within one year of an approved exception may be processed without obtaining a new exception.

The Board is now issuing both sets of regulations in this final rule promulgating new Part 1650. The Board did not receive any comments on the proposed rule issued on December 28, 1994. However, the Board did receive one comment on the proposed changes to spousal rights rules published on September 13, 1994. The comment concurred with the proposed revisions to the spousal rights rules, including the elimination of the word "current" when referring to the spouse. The comment recommended that the word "current" be included in the title to the subpart dealing with spousal rights because subpart A includes a definition of "current spouse." However, in accordance with the changes made by Public Law 103-226, the definitions of both "former spouse" and "current spouse" have been removed from the definitions section of part 1650 and have been replaced by a definition of "spouse." Thus, it is no longer necessary to include the term "current spouse" in the title to the subpart dealing with spousal rights.

The comment also recommended that the title to 5 CFR 1650.17 be revised to replace the word "notification" with the word "notice" to align with title with other changes made to subpart G. This change has been made in the final rule.

The Board has made a number of other changes to the proposed rule published on September 13, 1994. Based upon the experience gained in rewriting the remainder of part 1650, as issued on