



[BILLING CODE 6760-01-P]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1655

TSP Loan Eligibility During Government Shutdowns

AGENCY: Federal Retirement Thrift Investment Board

ACTION: Interim rule.

SUMMARY: This interim rule amends the Thrift Savings Plan (TSP) regulations to allow certain TSP participants to request a loan during government shutdowns without regard to whether they are in pay status.

DATES: This interim rule is effective [INSERT DATE OF PUBLICATION]. Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: *For press inquiries, contact Kim Weaver at (202) 942-1641. For information about commenting on this interim rule, contact Laurissa Stokes at (202) 942-1645. For information about how to request a TSP loan, contact 1-TSP-YOU-FRST (1-877-968-3778).*

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.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

SUPPLEMENTARY INFORMATION:

Type of Rulemaking

Generally, Federal regulations are first published in proposed form to allow the public to make comments before the rule becomes effective. An interim rule is a way to make a rule effective immediately, without public comment, when doing so is necessary to respond to an emergency situation. Interim rules are usually followed by a more permanent rulemaking which confirms that the interim rule will be adopted as final. Although this rule is effective immediately, the FRTIB will consider public comments before publishing the final rule.

Background

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 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)).

The Internal Revenue Code (*i.e.*, the tax code) offers tax subsidies to people who save for their own retirement. For example, investment earnings on retirement savings are allowed to accrue tax-free while they remain in a retirement account. The tax code establishes restrictions on loans and withdrawals from retirement accounts in order to ensure that those tax subsidies are used for retirement savings.

TSP's Loan Program Prior to This Interim Rule

Subject to restrictions imposed by the tax code and Internal Revenue Service (IRS) regulations, the TSP has, for several decades, offered a loan program that allows participants to borrow from their retirement accounts. The FRTIB is required to report loans to the IRS as taxable income subject to a 10% penalty after a certain number of loan payments are missed. Like many 401(k) plans, the TSP's technology systems and business processes are designed to accept loan payments primarily through payroll deductions

to ensure that participants do not suffer the tax consequences of defaulting on their loans. Obviously, loan payments cannot be made through payroll deduction if the participant is not receiving a paycheck. For this reason, the FRTIB regulations contain a provision that makes loan eligibility contingent on pay status.

Necessity of this Interim Rule

Federal employees recently experienced the longest partial government shutdown in United States history. Prolonged shutdowns risk damaging the overall long-term financial well-being of TSP participants and their families. Congress passed a continuing resolution on January 25, 2019 which temporarily ended the shutdown. The continuing resolution only provides funding for 3 weeks which places roughly 800,000 Federal employees under the threat of being furloughed again in the near future.

The FRTIB's loan program was not designed to replace the salaries of Federal employees. A TSP loan is not a costless alternative to paying Federal employees for their work. TSP participants who take loans may miss out on the investment earnings that would have accrued if that money had remained their retirement accounts. A TSP loan will still have to be repaid in order to avoid the loan being declared a taxable distribution. Nevertheless, the FRTIB is

publishing this interim rule in the hopes that it might provide some assistance to TSP participants in the event of another government shutdown.

Effect of this Interim Rule

This interim rule amends the TSP regulations to allow certain TSP participants to request a loan during government shutdowns without regard to whether they are in pay status. To address the risk of loan payment default, the FRTIB will permit participants to request a suspension of loan payments to the extent a suspension is permitted under the IRS's interpretation of the Internal Revenue Code.

This interim rule applies only to participants who are furloughed or excepted from furlough (*i.e.*, continuing to work and earn pay, but their pay is delayed until appropriations are authorized) due to a government shutdown. The FRTIB's staff and contractors have designed manual workarounds to highly automated business processes in order to make this interim rule effective immediately so these participants will have access TSP loans in the event of another government shutdown.

Participants who are not receiving pay for other reasons (*e.g.*, administrative furlough, voluntary leave of absence, seasonal work, sabbatical, disciplinary

suspension) remain ineligible to request a loan. The FRTIB is considering whether to allow these participants to request loans in nonpay status and will address this subject in the final rule. The FRTIB invites comments on this subject.

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

5 CFR Part 1655

Credit, 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 1655-LOAN PROGRAM

1. The authority citation for Part 1655 continues to read as follows:

Authority:

5 U.S.C.8432d, 8433(g), 8439(a)(3) and 8474.

2. Revise § 1655.2 to read as follows:

§ 1655.2 Eligibility for loans.

A participant can apply for a TSP general purpose or residential loan if:

(a) More than 60 calendar days have elapsed since the participant has repaid in full a TSP loan of the same type.

(b) The participant is in pay status;

(c) The participant is eligible to contribute to the TSP (or would be eligible to contribute but for the suspension of the participant's contributions because he or she obtained a financial hardship in-service withdrawal);

(d) The participant has at least \$1,000 in employee contributions and attributable earnings in his or her account; and

(e) The participant has not had a TSP loan declared a taxable distribution within the last 12 months for any reason other than a separation from Government service.

Paragraph (b) of this section shall not apply to loan requests made during a Government shutdown by participants who are furloughed or excepted from furlough due to the Government shutdown.

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