

Rules and Regulations

Federal Register

Vol. 75, No. 144

Wednesday, July 28, 2010

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1604 and 1651

Uniformed Services Accounts and Death Benefits

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is making several changes to its death benefits regulations. In particular, it is expanding the requirements necessary in order for a designation of beneficiary form to be valid. This change will also allow participants holding both a uniformed services and civilian account to submit a single designation of beneficiary form which can be used to designate beneficiaries for both accounts. The Agency is also amending its death benefit regulations to allow participants to designate a custodian under the Uniform Transfers to Minors Act as a beneficiary, permit the Agency to defer to state law when a potential beneficiary is implicated in the death of a participant and is subsequently found not guilty by reason of insanity, and require a notary to witness disclaimers of death benefits.

DATES: This rule is effective August 1, 2010.

FOR FURTHER INFORMATION CONTACT: Megan G. Grumbine at (202) 942-1644 or Laurissa Stokes at (202) 942-1645.

SUPPLEMENTARY INFORMATION: The Agency 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 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)).

On June 18, 2010, the Agency published a proposed rule with request for comments in the **Federal Register** (75 FR 34654, June 18, 2010). The Agency received comments from one Federal employees' union, two participants, and three other parties.

The Federal employees' union endorsed the proposed changes. The union expressed concern that the complexity of the Form TSP-3, Beneficiary Designation, and the multiplicity of its requirements will cause a large number of forms to be rejected as invalid. The union, however, noted with approval that the Agency stated in its proposed regulation that Agency staff will act quickly to review beneficiary designation forms and to alert participants of the need to correct any omissions or errors. The Agency intends to keep this commitment by assigning sufficient staff to this task.

The Federal employees' union also specifically noted its approval of the Agency's proposal to permit a participant to designate a custodian under the Uniform Transfers to Minors Act (UTMA) as the beneficiary of his or her TSP account. With respect to the requirement that the UTMA custodianship be established under the laws of the District of Columbia, the union asked the TSP to provide guidance to assure compliance with District of Columbia laws. Finally, the union suggested that the Form TSP-3 instructions be revised to explain the designation of a custodian under the UTMA and include an example to illustrate this fact pattern.

The Agency considered including an explanation of the designation of a custodian under the UTMA in the instructions to the Form TSP-3. But due to the complex financial and tax consequences of designating a custodian under the UTMA, the Agency wishes to discourage participants from making this decision without first obtaining expert advice. Moreover, the process of designating a custodian under UTMA requires a lengthy explanation, which the Agency believes would make the Form TSP-3 overly complex. Therefore, in response to this comment, the Agency created a special form for

designating an UTMA custodian. This form will be made available on the TSP website and will include instructions to ensure that the designation is valid under the District of Columbia Uniform Transfers to Minors Act.

One participant commented simply to express his support for the proposed changes. Another participant commented to express frustration with unspecified aspects of the current rules for designating beneficiaries, as well as his hope that the revised rules will be less frustrating.

One commenter objected to the requirement to link the contingent beneficiary to a primary beneficiary because he believes the requirement is not clear. In response to this comment, the Agency is clarifying the language proposed for 5 CFR 1651.3(c)(7). The language in the proposed rule required a participant to "Match each contingent beneficiary to a primary beneficiary." This final rule replaces that language with the following: "For each contingent beneficiary, identify the primary beneficiary whose share the contingent beneficiary is to receive in the event the primary beneficiary dies before payment is made."

One commenter suggested that the proposed rule be changed to allow participants to designate one or more charities as a primary or contingent beneficiary. The Agency's regulations currently allow participants to designate one or more charities as a primary or contingent beneficiary. 5 CFR 1651.3(b). This proposed rule does not affect the participant's ability to designate a charity as a beneficiary.

Two of the commenters also objected to including the beneficiary's date of birth or social security number on the Form TSP-3. The proposed rule does not specifically require the participant to include the beneficiary's date of birth or social security number on the Form TSP-3. It does, however, require the participant to designate each primary and each contingent beneficiary in a manner so that the Agency can identify the individual or entity. The preamble to the proposed rule gave the date of birth or social security number as examples of information that would allow the TSP to identify the participant's beneficiary. The TSP needs sufficient information to identify the participant's beneficiary to ensure accurate processing and payment and to

reduce the processing time and resources necessary to identify beneficiaries.

One commenter requested clarification on whether the TSP will accept the designation of a testamentary trust. This commenter also requested that the TSP permit a per stirpital designation. These comments are outside the scope of the proposed rule under consideration.

The Agency appreciates the opportunity to review and respond to comments from participants who take an active interest in the TSP and offer suggestions. The comment process allowed the Agency to address any potential misunderstandings about the proposed changes, to consider unanticipated legal or policy impediments to the proposed changes, and to hear suggestions about how better to implement the proposed changes. Although the comments caused the Executive Director to make only one change to the text of the proposed rule, he did carefully consider each comment and addressed some of the concerns through other Agency guidance. Therefore, the Agency is publishing the proposed rule as final with a modification to the language proposed for 5 CFR 1651.3(c)(7).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

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 § 1532 is not required.

Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency 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. 814(2).

List of Subjects

5 CFR Part 1604

Military personnel, Pensions, Retirement.

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons set forth in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1604—UNIFORMED SERVICES ACCOUNTS

■ 1. The authority citation for part 1604 continues to read as follows:

Authority: 5 U.S.C. 8440e, 8474(b)(5) and (c)(1).

§ 1604.8 [Amended]

■ 2. Amend § 1604.8, by removing the second sentence of paragraph (a).

PART 1651—DEATH BENEFITS

■ 3. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 4. Amend § 1651.3, by adding a fourth sentence to paragraph (b), and revising paragraph (c) to read as follows:

§ 1651.3 Designation of beneficiary.

* * * * *

(b)* * * A participant may designate a custodian under the Uniform Transfers to Minors Act provided that the custodianship is established under the laws of the District of Columbia and that the participant designates the custodianship using the Agency's designation of custodian form.

(c) *Validity requirements.* To be valid and accepted by the TSP record keeper, a TSP designation of beneficiary form must:

(1) Be received by the TSP record keeper on or before the date of the participant's death;

(2) Identify the participant in such a manner so that the Agency can locate his or her TSP account;

(3) Be signed and properly dated by the participant and signed and properly dated by two witnesses;

(i) The participant must either sign the form in the presence of the witnesses or acknowledge his or her signature on the form to the witnesses;

(ii) All submitted and attached pages must be signed by the participant, dated

by the participant, and witnessed in the same manner (by the same witnesses) as the form itself and must follow the format of the TSP designation of beneficiary form;

(iii) A witness must be age 21 or older; and

(iv) A witness designated as a beneficiary will not be entitled to receive a death benefit payment; if a witness is the only named beneficiary, the designation of the beneficiary is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries pro rata.

(4) Designate primary beneficiary shares which when summed equal 100%;

(5) Contain no substantive alterations (e.g., struck-through shares or scratched-out names of beneficiaries);

(6) Designate each primary and each contingent beneficiary in such a manner so that the Agency can identify the individual or entity; and

(7) For each contingent beneficiary, identify the primary beneficiary whose share the contingent beneficiary is to receive in the event the primary beneficiary dies before payment is made.

* * * * *

■ 5. Amend § 1651.12, by revising the second sentence to read as follows:

§ 1651.12 Homicide.

* * * If the beneficiary is implicated in the death of the participant and the beneficiary would be precluded from inheriting under state law, the beneficiary will not be entitled to receive any portion of the participant's account. * * *

■ 6. Amend § 1651.17, by revising paragraph (b)(2) to read as follows:

§ 1651.17 Disclaimer of benefits.

* * * * *

(b) * * *

(2) Signed or acknowledged, in the presence of a notary, by the person (or legal representative) disclaiming the benefit; and

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[FR Doc. 2010-18436 Filed 7-27-10; 8:45 am]

BILLING CODE 6760-01-P