




FEDERAL RETIREMENT THRIFT INVESTMENT BOARD  
1250 H Street, NW Washington, DC 20005

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TO: EMPLOYEE THRIFT ADVISORY COUNCIL

FROM: GREGORY T. LONG  
EXECUTIVE DIRECTOR 

SUBJECT: ONGOING ACTIVITIES

We continue moving forward to implement the provisions of the Thrift Savings Plan Enhancements Act of 2009. The next major statutory provision to be implemented is automatic enrollment, which is scheduled for rollout in August.

Agency staff has been working very closely with staff from the employing agencies of government to ensure a smooth implementation. While automatic enrollment does not affect current employees, when it is effective each and every employee entering service (who does not opt out) will automatically begin contributing 3 percent of basic pay (and begin receiving 3 percent Agency Matching and 1 percent Agency Automatic contributions) for investment in the G Fund. This new "front end" will clearly be a game changer for the TSP of the future.

Attached are draft regulations regarding automatic enrollment. ETAC members who wish to provide pre-publication comments are asked to provide those comments in the next two weeks. Comments also will be welcome during the comment period after the regulations are published.

Additionally, the Agency is revising its regulations on designation of beneficiaries as well as the designation form, Form TSP-3. In particular, the Agency proposes to expand the requirements necessary in order for a designation of beneficiary form to be valid. This change would 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 also proposes to amend 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. Attached is a copy of the regulations for prepublication comment and a draft of what the new Form TSP-3, Designation of Beneficiary, will look like.

Veteran Council members may recall that periodically there are efforts by aggrieved parties to reach into participants' funds held in trust in the TSP. Wherever supported by applicable law, the Agency has resisted these efforts in order to protect and preserve participants' retirement savings. Protecting TSP assets during bankruptcy proceedings is one example where we were able, through statutory language, to ensure that TSP accounts and loans were provided the same protections as 401(k) plan accounts and loans.

The Federal Employees' Retirement System Act (FERSA), the TSP's enabling legislation, permits garnishment for child support, alimony, and enforcement a judgment for the physical or emotional abuse of a child. It also allows a court to divide a TSP account pursuant to a divorce or a court-approved property settlement. Additionally, FERSA allows forfeiture to the TSP of the Agency Automatic (1%) contributions, Matching contributions, and attributable earnings (but not employee contributions or their earnings) of an employee who is convicted of a national security offense. FERSA was recently amended to permit enforcement of a judgment under the Mandatory Victims Restitution Act of 1996. When expressly authorized by FERSA, the Agency has cooperated in resolving these cases.

We have not, however, cooperated with efforts by the Internal Revenue Service (IRS) to levy the TSP funds of individuals who have not paid their Federal income taxes. Heretofore our legal view has been that anti-alienation language in our enabling legislation protected accounts from such levies. Additionally, we have long been concerned that compliance with tax levies could open the door for other claimants looking for a "deep pocket."

Recently, the IRS brought this issue before the Office of Legal Counsel (OLC) in the Department of Justice, which serves as a referee within the Executive branch regarding legal disagreements between agencies. Attached is a copy of our argument supporting our position along with findings (to the contrary) by the OLC.

Although the OLC findings are not binding, after careful consideration they have caused me to reconsider our position. Their essential finding that the "notwithstanding" language in the Internal Revenue Code trumps the "except" language in Title 5 (along with the fact that 401(k) plans are, in fact, subject to IRS levies) warrants this reconsideration.

I am considering asking Congress to amend FERSA to make the TSP subject to IRS levies. However, I remain concerned that this may become the proverbial "slippery slope" as additional claimants try to follow the IRS and gain access to TSP funds. In order to prevent this, I am further considering asking the Congress to enact "notwithstanding" language in Title 5 to ensure that any additional effort to gain access to TSP funds would also need to be authorized expressly in Title 5. The idea would be that the committees responsible for the program would only approve access to TSP funds in appropriate circumstances, whereas legislation emanating from other committees could

well reflect their committee's institutional interests rather than the interests of the participants. I would welcome any comments you wish to provide on either the situation I have described and/or the solution we are considering seeking.

Finally, I am attaching a copy of our current "Free Yourself from High Fees" poster. We have seen a noticeable increase in funds being transferred from IRAs and other plans into the TSP, and felt this is a good time to remind all participants that they may consolidate their retirement savings in the low-cost, highly regarded TSP.

Attachments