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U.S. DEPARTMENT OF LABOR
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND LABOR POLICY
UNITED STATES HOUSE OF REPRESENTATIVES

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Introductory Remarks

Thank you for inviting the Department of Labor to provide a statement for the record for the Committee on Oversight and Government Reform Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy's hearing entitled, "The Thrift Savings Plan: Helping Federal Employees Achieve Retirement Security." I am Alan Lebowitz, the Deputy Assistant Secretary for Program Operations of the Employee Benefits Security Administration, U.S. Department of Labor. My statement today will present information about the Federal Employee Retirement System (FERS), the Thrift Savings Plan (TSP), and the Department of Labor's activities in this area.

The Employee Benefits Security Administration

Before describing the Department's activities with the TSP, I would like to provide you with some background information specifically about the Employee Benefits Security Administration and our responsibilities.

EBSA oversees more than 718,000 private-sector retirement plans, 2.6 million private-sector health plans, and similar numbers of other welfare plans that are subject to the Employee Retirement Income Security Act of 1974 (ERISA). The retirement plans under our jurisdiction hold over $6.5 trillion in assets and cover more than 86 million active participants. EBSA employs a comprehensive, integrated approach encompassing programs for enforcement, compliance assistance, interpretive guidance, legislation, and research to protect and advance the retirement security of our nation's workers and retirees.

Title I of ERISA consists of provisions that establish standards of fiduciary conduct for persons who are responsible for the administration and management of pension and other benefit plans (including group health plans, life insurance, disability, dental plans, etc.). In addition, it establishes standards for the reporting of plan related financial and benefit information to the Department, and the disclosure of essential plan related information to participants and beneficiaries.

Under ERISA, fiduciaries are required to discharge their duties solely in the interest of plan participants and beneficiaries for the exclusive purpose of providing benefits and defraying reasonable expenses of plan administration. In discharging their duties, fiduciaries must act prudently and in accordance with the documents governing the plan. Certain transactions between an employee benefit plan and "parties in interest," including fiduciaries and others who may be in a position to exercise improper influence over the plan, are prohibited by ERISA. If a fiduciary's conduct fails to meet ERISA's standards, the fiduciary is personally liable for plan losses attributable to such failure.

Because of the Department of Labor's experience and expertise in the administration and enforcement of Title I of ERISA as it relates to private sector employee benefit plans, Congress charged the Department with administering substantially similar provisions of law governing fiduciary conduct for the TSP under the Federal Employees' Retirement System Act of 1986 (FERSA).

The Federal Employees Retirement System

In FERSA, Congress created a retirement program for federal employees that generally followed the private sector model of large employers in providing retirement benefits through the combination of Social Security, a defined benefit, and a 401(k)-like tax advantaged savings plan, the TSP. For Federal workers hired after January 1, 1984, FERS takes the place of the Civil Service Retirement System. Within FERS, the Labor Department's formal responsibilities are limited to the TSP.

The Thrift Savings Plan

Employing agencies contribute one percent of pay to an individual account for each worker covered by FERS. In addition, covered workers can choose to make pre-tax employee contributions to the TSP that are matched by employer contributions up to certain limits. CSRS employees and uniformed service members may also make pre-tax and tax-exempt contributions to the TSP, though there is no employer match for these contributions. Contributing employees direct the investment of contributions to their individual account into four separate index funds, a U.S. government securities fund, and five "Lifecycle" funds. Assets of the TSP are maintained in the Thrift Savings Fund.

The TSP is available to federal and postal workers, Members of Congress, Congressional employees, members of the Judicial Branch, and uniformed service members. Since its inception 25 years ago, the TSP has grown into a large, complex system. For example:

- There are currently nearly 4.5 million participants in the Thrift Savings Plan. The fund balances total over $289 billion.

- Members of the uniformed services, in addition to federal employees, now participate in the TSP.

- Participant investment options now include four index funds and five Lifecycle funds (or "L" Funds), in addition to the original sole investment fund, the Government Securities Investment Fund ("G" Fund). In 2005, the Board began five Lifecyle funds. The L Funds' strategy is to invest in an appropriate mix of the four index funds and the G Fund for a particular time horizon, or target retirement date. The investment mix of each L Fund becomes more conservative as its target date approaches.

- Participant recordkeeping has moved from monthly to daily account valuation, and from a paper to a mostly Web based transaction system.

- New participants are now automatically enrolled and contributions immediately begin equal to 3% of salary.

- Private sector firms rather than a single government agency now provide all key TSP computer, recordkeeping, and participant support activities.

In enacting FERSA, Congress established the Federal Retirement Thrift Investment Board (the Board) to administer the TSP. The Board is an independent agency of the Executive Branch. It has five members appointed by the President with the advice and consent of the Senate, and an Executive Director, appointed by the Board. The Board's principal statutory duties are to set policies for investment of the Thrift Savings Fund's assets and for administration of the TSP within the requirements of the Act. The Board selects appropriate indexes for the four index investment funds, but does not select specific investments. The Executive Director then carries out the policies established by the Board.

The Board contracts with Blackrock Institutional Trust Company, N.A (BTC) to provide investment management operations for the TSP's four index funds: (1) the Fixed Income Investment Fund ("F" Fund), (2) the Common Stock Index Investment Fund ("C" Fund), (3) the Small Capitalization Stock Index Investment Fund ("S" Fund), and the International Stock Index Investment Fund ("I" Fund). As investment manager, BTC is responsible for safeguarding F, C, S and I Fund investments, for ensuring that these funds closely track the performance of the investment indices selected by the Board, and for ensuring that these investments and related operations comply with FERSA and the provisions of the contract between the Board and BTC.

To ensure the integrity of the TSP, FERSA established rules concerning fiduciary responsibility, prohibited transactions, and bonding requirements. These standards are substantially similar to rules governing private sector pension plans under ERISA. The statute specifies that the Board members and the Executive Director are fiduciaries of the Thrift Savings Fund. They and other fiduciaries must discharge their responsibilities prudently and solely in the interest of the participants and beneficiaries. Certain types of transactions that may create potential for abuse are prohibited unless they fall within an exemption provided in the statute or specifically granted by the Secretary of Labor. As in ERISA, the Secretary of Labor has broad investigative and auditing authority concerning the activities of the Board and other fiduciaries.

Legislative Changes to the Thrift Savings Plan

The “Thrift Savings Plan Enhancement Act of 2009” (P.L. 111-31, Division B, Title I), signed into law June 22, 2009, included a number of TSP changes. The Board is implementing these changes and the Department will review the implementation. Among the changes implemented in 2010 were provisions authorizing automatic enrollment for new Federal civilian employees and enabling spouse beneficiaries, and surviving spouses who are not designated, to maintain a TSP account if the TSP participant dies. Previously, spouse beneficiaries had to take a distribution or transfer the benefit.

The Board is working to establish a qualified Roth contribution program in the TSP. This will permit participants to contribute after-tax dollars, similar to a Roth 401(k) plan feature, and the contributions will grow tax-free. Both the contributions and earnings are tax-free when withdrawn.

The 2009 law also authorizes the Board to include a mutual fund window, but only if the Board determines the addition would be in the best interests of participants and beneficiaries. The mutual fund window would allow TSP participants to invest in a range of mutual funds through a provider selected by the Board. The Department has been informed that the Board is studying this issue.

The Thrift Savings Plan Audit Program

Section 8477(g) of FERSA specifically directs the Secretary of Labor to establish a program to carry out audits to determine the level of compliance with the Act's fiduciary standards and prohibitions on certain types of transactions. Under the statute, the Secretary may either contract with a qualified non-government organization, or may conduct the audit in cooperation with the Comptroller General of the United States. The Department has always elected to contract with a reputable accounting firm. Currently, KPMG LLP conducts the audits under supervision of the EBSA Chief Accountant.

The Labor Department's program for fiduciary compliance audits of the TSP is designed to determine: (1) whether the plan's fiduciaries are acquiring, protecting, and using plan resources prudently, efficiently, and solely in the interest of participants and beneficiaries; (2) whether the fiduciaries have complied with FERSA and applicable laws and regulations; (3) whether the desired results or benefits established by FERSA are being achieved; (4) whether the plan program activities, functions, and organization are cost effective and efficient; and (5) whether the Department's previous plan compliance and control audit recommendations have been adequately addressed.

To guide the auditors, the Department has developed a strategic Fiduciary Oversight Program that uses detailed guides to test for compliance. These audit program guides cover all significant activities of the TSP, including the Board's policy formulation and administration; agency payroll record keeping functions handled by the Agriculture Department's National Finance Center that affect participant accounts; and functions of Federal agencies related to contributions and employee participation programs.. The audits include on-site reviews of the TSP's principal service providers.

The Fiduciary Oversight Program includes provisions for testing and commenting on the controls in place at the TSP Investment Manager, BTC, that ensure the accuracy of financial information, compliance with FERSA, and operational efficiency and management effectiveness. The Department also examines whether BTC complied with provisions of the contract under which it was retained. The BTC management fee is reviewed for consistency with fees charged by other similar institutions and to ensure that such fees conform to contractual agreements.

At the conclusion of each audit, the Department issues a report for formal response by the Executive Director on behalf of the Board. The Department's representative and the contract auditor meet with the Board members at least once a year to highlight significant issues from the audit, to present the Department's future compliance audit schedule, and to answer Board members' questions.

The Department’s audit recommendations range from statutory matters related to FERSA fiduciary compliance to economy and efficiency issues that may provide cost-saving opportunities for the TSP. Most significantly, the Department communicated six recommendations over several years addressing computer access control weaknesses, the area of greatest risk to the TSP system. The Department’s TSP audit plan includes ongoing reviews that will report on this very significant area of overall risk to the TSP.

Although FERSA does not require the Board and Executive Director to adopt the Department's recommendations, disagreements are rare and generally are due to the timing or the form of implementation rather than to outright refusal. Since the inception of the audit program, the Department's recommendations have been accepted almost completely. This high rate is due in large part to the longstanding and positive working relationship between the Department and the TSP service providers and fiduciaries throughout all phases of the FERSA compliance audit program.

Security of Participant Accounts

Since inception, TSP recordkeeping and transactions have moved markedly away from paper to electronic media. This movement has favorably decreased TSP costs and increased participant support, operating efficiencies, and data processing volumes and speed. This new information processing era has also been accompanied by new risks to TSP never originally envisioned. During the past several years, institutions within the financial services industry have been subjected to cyber attacks. We anticipate our ongoing audits of IT security will begin to result in "best practice" IT recommendations to the Board for maintaining the security of participant accounts.

We are working very cooperatively with Chairman Saul, and Executive Director Long and the members of the Board. We anticipate continuing a free and candid exchange of views that should benefit the TSP participants and beneficiaries, and help us to fulfill our oversight responsibility.

Conclusion

Thank you for the opportunity to provide my written statement for the record regarding this important matter.