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GAO

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Health, Education and Human Services Division

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November 14, 1995

The Honorable Constance A. Morella
House of Representatives

Dear Ms. Morella:

Thank you for the opportunity to discuss our recent report with you. In that report, Federal Pensions: Thrift Savings Plan Has Key Role in Retirement Benefits (GAO/HEHS-96-1, Oct. 19, 1995), we addressed how many federal employees contribute to the Thrift Savings Plan (TSP) and the amounts they contribute, how well TSP's educational materials inform participants, and whether additional investment options were desirable.

This letter responds to two questions you raised in discussions with us. First, you asked us to amplify our discussion of the reasons that the Congress replaced the Civil Service Retirement System (CSRS) with the Federal Employees Retirement System (FERS) in 1986. Second, you asked for our assessment of the Federal Retirement Thrift Investment Board's (the Board) recent response to our recommendation that the Board include in its educational materials an explanation of how much participants need to contribute to their TSP retirement accounts to achieve particular retirement income goals.

Consideration of a new system to replace the CSRS pension program began after the Social Security Amendments of 1983 mandated Social Security coverage for all new federal employees hired after December 31, 1983. Until that time, federal employees in CSRS were not covered by Social Security. Without some change in CSRS, most new federal employees would have been covered by and contributed to both Social Security and CSRS--a situation that would have been very expensive for employees and the government. The combination of both these pension programs would not only have been very costly, it would have provided combined retirement benefits that exceeded the salary levels of many employees. To avoid the increase in pension costs, a new retirement program to supplement Social Security was needed. The Congress replaced the CSRS pension system with FERS for new employees hired after December 1986. FERS was devised to provide a retirement benefit that comprises

three components: a Social Security payment, a basic FERS annuity, and payments from amounts accumulated in a TSP account.

Your second question was based on our report's recommendation that the Federal Retirement Thrift Investment Board, which manages TSP, include in the educational materials that it distributes to TSP participants (1) an explanation of the pivotal role of TSP in enabling federal employees under FERS to achieve their retirement income goals and (2) explicit illustrations of the effects of TSP deferral rates on total FERS benefits.

In commenting on a draft of our report, the Board said that the law creating TSP and the Board prevented it from complying with this recommendation. We continue to disagree with the Board's interpretation of the law. More specifically, the requirement that the Board provide people with information to facilitate "informed decisionmaking" concerning their TSP participation, in our view, gives it sufficient authority to carry out our recommendation. We did, however, modify the recommendation to say that the Board should act in collaboration with the Office of Personnel Management (OPM).

The Board has now renewed and elaborated on its original objections. In essence, it says that OPM has the responsibility for educating participants about anything other than TSP itself and that for the Board to provide information about TSP in the context of FERS retirement would be a violation of its fiduciary duty to participants and a misuse of funds. We continue to disagree. (A fuller discussion of the legal issues is enclosed.)

The Board also suggested that we redirect our recommendation to OPM. We disagree with this suggestion because, in our view, the Board is better situated than OPM to provide the educational materials. The Board already contacts TSP participants by mail, making periodic mailings of informational and educational materials. Our recommendation has to do with enhancing the content of these materials to make this important information more useful to participants. It would be a small burden to add the information we recommend to these mailings. For OPM to make a separate mailing to the same FERS participants would be a costly duplication of effort.

The Board remains convinced that it lacks legal authority to provide information that participants should have in order to make informed decisions about the appropriate

contributions (deferral rates) to meet their retirement income goals. Absent the Board accepting our legal interpretation, it would appear a legislative clarification may be needed to get the Board to act on our recommendation.

We hope this information has been responsive to your questions. If you have any questions, please call Donald C. Snyder, under whose direction this correspondence was prepared, at (202) 512-7204. We will also, on request, make copies of this letter available to other interested parties.

Sincerely yours,

Jane L. Ross
Director, Income Security Issues

Enclosure

RESPONSIBILITY FOR PROVIDING INFORMATION TO TSP PARTICIPANTS

Informed decisionmaking about TSP participation requires information that puts a FERS participant's TSP contribution and allocation of funds among investments in the context of the other two elements of his or her retirement income: Social Security and the FERS annuity. For example, as our report points out, because Social Security replaces a higher proportion of income for lower-paid workers, mid- to higher-pay workers must contribute to TSP at a higher rate than lower-paid workers in order to achieve retirement income goals. Workers who do not take this into account may underinvest in TSP.

The law governing the FERS program gives the Board legal authority to carry out our recommendation. We find that authority in the requirement that the Board provide information to each TSP participant to "facilitate informed decisionmaking" with respect to what level of contributions to make to TSP and how to invest those contributions.[1]

Similar language--"designed to promote fully informed retirement decisions by employees"--is used elsewhere in the law to refer to OPM's responsibility to provide training for retirement counselors in federal agencies.[2] The Board relies on this reference, together with another provision of the law that says that OPM is to administer all provisions of the law not specifically required to be performed by the Board or some other agency,[3] to conclude that OPM, and not the Board, is authorized to provide information about FERS to TSP participants. The Board's position, in effect, is that when the law tells OPM to provide information "to promote fully informed retirement decisions by employees," OPM can tell employees about both TSP and FERS, but that when the law tells the Board to provide information to "facilitate informed decisionmaking" by the same employees about TSP investment, the Board is precluded from mentioning FERS.

We do not believe the language of the statute supports the distinction the Board seeks to make between its responsibility and that of OPM. The requirement cited previously, for the Board to provide information to TSP participants to "facilitate informed decisionmaking," makes clear that the responsibility for educating

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[1]5 U.S.C. 8439(c). The Board is required to prescribe regulations under which each participant will receive such information at least 30 calendar days before each election period.

[2]5 U.S.C. 8350(c)(1).

[3]5 U.S.C. 8461(b).

participants is not solely OPM's and that the Board also has an educational mission.

The legislative history does not contradict our conclusion that the responsibility for education is shared by OPM and the Board. In the Senate bill, responsibility for providing information about TSP was assigned to OPM in the context of information about FERS retirement (S. Rep. No. 99-166, 69 (1985)). The Board had no comparable responsibility in that bill. However, the Senate scheme was dropped in conference in favor of the House version. The latter incorporated the two provisions cited previously, under which both OPM and the Board are responsible for providing information that contributes to informed decisionmaking by FERS participants. This change is consistent with our conclusion that OPM and the Board share responsibility for explaining the impact of TSP investments on total FERS retirement income than with the Board's conclusion that the law assigns that responsibility exclusively to OPM.

The Board's reading, while it may be a permissible one, implies that "informed decisionmaking" by an employee about how much to contribute to TSP can take place without consideration of what role those contributions may play in meeting the employee's retirement goals under FERS. We believe that a better reading is that "informed decisionmaking" concerning how much to contribute to TSP should be made in the context of information about how different TSP deferral rates affect total FERS benefits.

The Board also suggests that its fiduciary duty prevents it from spending monies contributed by participants "to explain and educate federal employees on the FERS system as a whole, not only the TSP component of FERS," and that its funds are not available for that purpose. In our view, the law authorizes the Board to provide this information to participants. Thus, there can be no breach of duty or misuse of funds in doing so. Moreover, as noted above, treating TSP as separate from and independent of FERS is artificial and unrealistic. We do not believe the Board is compelled to interpret its fiduciary responsibility to TSP participants as precluding it from providing them with information that is necessary for them to make informed decisions about their participation in TSP.

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