

## SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

### PART 2582—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

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AUTHORITY: 5 U.S.C. 8478 and 8478 note; Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003).

#### Subpart A—Temporary Bonding Rules

##### § 2582.8478-1 Temporary bonding requirements.

(a) *General.* Pending the issuance of permanent regulations under section 8478 of the Federal Employees' Retirement System Act of 1986 (FERSA), any fiduciary with respect to the Thrift Savings Fund (Fund) established under FERSA or any person who handles funds or other property of the Fund, shall be deemed to be in compliance with the bonding requirements of section 8478 of FERSA if he or she is bonded in compliance with the temporary bonding regulations under section 412 of the Employee Retirement Income Security Act of 1974 (ERISA) set forth in part 2580 of title 29 of the Code of Federal Regulations.

(b) *Application of ERISA temporary bonding rules.* For purposes of this section:

(1) Any reference to section 13 of the Welfare and Pension Plans Disclosure Act, as amended (WPPDA), or any section thereof in the ERISA temporary bonding regulations shall be deemed to refer to section 8478 of FERSA or the corresponding subsection thereof;

(2) Where the particular phrases set forth in FERSA are not identical to the phrases in the WPPDA, ERISA or

the ERISA temporary bonding regulations, the phrases appearing in FERSA shall be substituted by operation of law; and

(3) Where the phrases are identical but the meaning is different, the meaning given such phrases by FERSA shall govern. For example, the phrase "every administrator, officer and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan" which appears in the WPPDA and in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "each fiduciary and each person who handles funds or property of the Thrift Savings Fund," which is the term appearing in section 8478 of FERSA; the terms "employee benefit plan" and "plan" which appear in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "Thrift Savings Fund"; and the term "reporting year of the plan" which appears in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "fiscal year of the Thrift Savings Fund."

(c) *Effectiveness.* This section is effective until the earlier of the date of issuance by the Secretary of Labor of permanent regulations under section 8478 of FERSA or December 31, 1989.

[52 FR 35866, Sept. 23, 1987]

##### § 2582.8478-2 Amount of the bond.

(a) *General.* Under the authority of section 8478(b)(1) of the Federal Employees' Retirement System Act of 1986 (FERSA), the amount of a bond for each person, group or class to be bonded shall not be less than 10 percent of the amount of funds handled by such person, group or class with respect to any fiscal year of the Fund. In no case shall such bond be less than \$1,000 nor more than \$500,000. However, the Secretary of Labor reserves the authority under section 8478(b)(1) of FERSA to prescribe an amount in excess of

\$500,000, after due notice and opportunity for hearing to all interested parties, and other consideration of the record.

(b) *Effectiveness.* This section shall remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA, but in no event shall this section remain in effect beyond December 31, 1989.

[52 FR 35866, Sept. 23, 1987, as amended at 54 FR 53609, Dec. 29, 1989]

### Subpart B—Permanent Bonding Rules

#### § 2582.8478-3 Permanent bonding requirements.

(a) *General.* Any fiduciary with respect to the Thrift Savings Fund (Fund) established under the Federal Employees' Retirement System Act of 1986 (FERSA) or any person who handles funds or other property of the Fund shall be deemed to be in compliance with the bonding requirements of section 8478 of FERSA if he or she is bonded in compliance with the temporary bonding regulations under section 412 of the Employee Retirement Income Security Act of 1974 (ERISA) set forth in part 2580 of title 29 of the Code of Federal Regulations.

(b) *Application of ERISA temporary bonding rules.* For purposes of this section:

(1) Any reference to section 13 of the Welfare and Pension Plans Disclosure Act, as amended (WPPDA), or any section thereof in the ERISA temporary bonding regulations shall be deemed to refer to section 8478 of FERSA or the corresponding subsection thereof;

(2) Where the particular phrases set forth in FERSA are not identical to the phrases in the WPPDA, ERISA or the ERISA temporary bonding regulations, the phrases appearing in FERSA shall be substituted by operation of law; and

(3) Where the phrases are identical but the meaning is different, the meaning given such phrases by FERSA shall govern. For example, the phrase "every administrator, officer and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan" which ap-

pears in the WPPDA and in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section "each fiduciary and each person who handles funds or other property of the Thrift Savings Fund," which is the term appearing in section 8478 of FERSA; the terms "employee benefit plan" and "plan" which appear in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "Thrift Savings Fund"; and the term "reporting year of the plan" which appears in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "fiscal year of the Thrift Savings Fund."

(c) *Effective date.* This section is effective January 1, 1990.

[54 FR 53609, Dec. 29, 1989]

#### § 2582.8478-4 Permanent amount of the bond.

(a) *General.* Under the authority of section 8478(b)(1) of the Federal Employees' Retirement System Act of 1986 (FERSA), the amount of a bond for each person, group or class to be bonded shall not be less than 10 percent of the amount of funds handled by such person, group or class with respect to any fiscal year of the Fund. In no case shall such bond be less than \$1,000 nor more than \$500,000. However, the Secretary of Labor reserves the authority under section 8478(b)(1) of FERSA to prescribe an amount in excess of \$500,000, after due notice and opportunity for hearing to all interested parties, and other consideration of the record.

(b) *Effective date.* This section shall become effective January 1, 1990, and remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA.

[54 FR 53609, Dec. 29, 1989]

### PART 2584—RULES AND REGULATIONS FOR THE ALLOCATION OF FIDUCIARY RESPONSIBILITY

Sec.

2584.8477(e)-1 General.

2584.8477(e)-2 Allocation of fiduciary duties.

2584.8477(e)-3 Procedures for allocation.

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2584.8477(e)-4 Revocation and termination of allocation.

2584.8477(e)-5 Effect of allocation.

2584.8477(e)-6 Definitions.

2584.8477(e)-7 Effective date.

AUTHORITY: 5 U.S.C. 8477(e)(1)(E) and Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003).

SOURCE: 53 FR 52687, Dec. 29, 1988, unless otherwise noted.

**§ 2584.8477(e)-1 General.**

5 U.S.C. 8477(e)(1)(E) provides that any fiduciary with respect to the Thrift Savings Fund of the Federal Employees Retirement System who allocates a fiduciary responsibility to another person pursuant to procedures prescribed by the Secretary of Labor shall not be liable for an act or omission of such person except in specified circumstances. This part sets forth the procedures which have been prescribed by the Secretary of Labor for the allocation of fiduciary responsibilities.

**§ 2584.8477(e)-2 Allocation of fiduciary duties.**

(a) The fiduciary duties of the Board as set forth at 5 U.S.C. 8472 may not be allocated to any person other than a member or members of the Board.

(b) The Executive Director may allocate authority and responsibility for the investment and management of the Fixed Income Investment Fund to a qualified professional asset manager(s).

(c) The Executive Director may allocate authority and responsibility for the investment and management of the Government Securities Investment Fund, the Common Stock Index Investment Fund, the International Stock Index Investment Fund and the Small Capitalization Stock Index Investment Fund to an investment manager(s).

(d) Notwithstanding any other provision of this part, no allocation may be made which would constitute:

(1) A violation of an express policy of the Board; or

(2) An invalid delegation according to the Act or any other law.

(e) Except as provided in this part, no person who has or may acquire fiduciary responsibility in connection with

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the Thrift Savings Fund may allocate such responsibility to another person.

[53 FR 52687, Dec. 29, 1988, as amended at 65 FR 34394, May 30, 2000]

**§ 2584.8477(e)-3 Procedures for allocation.**

(a) Any allocation made by the Board must—

(1) Be authorized by the concurring vote of a majority of the total membership of the Board;

(2) Be made in writing, signed by the Chairman of the Board and acknowledged in writing by the receiving Board member or members;

(3) Set forth the duties and responsibilities allocated, either in the body of the document or by reference to another document existing at the time of the allocation; and

(4) Be communicated in an appropriate written form to the Executive Director, the participants and the beneficiaries of the Thrift Savings Fund.

(b) Any allocation made by the Executive Director must—

(1) Be made in writing, signed by the Executive Director and acknowledged in writing by the receiving fiduciary;

(2) Set forth the duties and responsibilities allocated, either in the body of the document or by reference to another document existing at the time of the allocation; and

(3) Be communicated in an appropriate written form to the participants and beneficiaries of the Thrift Savings Fund.

**§ 2584.8477(e)-4 Revocation and termination of allocation.**

(a) Any allocation made pursuant to this part must be revocable at will by the allocating fiduciary, subject only to notice which is reasonable under the circumstances.

(b) Any revocation by the allocating fiduciary or termination of an allocation by the fiduciary to whom duties have been allocated must set forth in writing the duties and responsibilities as to which the revocation or termination is effective, either in the body of the document or by reference to another document existing at the time of the revocation or termination.

(c) Any revocation of an allocation must—

(1) In the case of an allocation which was made by the Board, be authorized by the concurring vote of a majority of the total membership of the Board and be signed by the Chairman of the Board, or

(2) In the case of an allocation which was made by the Executive Director, be signed by the Executive Director.

(d) Any termination of an allocation, to be effective, must—

(1) In the case of an allocation which was made by the Board, be signed by the terminating fiduciary and acknowledged in writing by the Chairman of the Board, or

(2) In the case of an allocation which was made by the Executive Director, be signed by the terminating fiduciary and acknowledged in writing by the Executive Director.

(e) Any revocation or termination of an allocation must be communicated by the Executive Director in an appropriate written form to the participants and beneficiaries of the Thrift Savings Fund in a manner which identifies the person(s) assuming the responsibilities which were the subject of the revocation or termination.

#### § 2584.8477(e)-5 Effect of allocation.

Where fiduciary responsibility has been allocated to another person or persons pursuant to the procedures contained in this part, the allocating fiduciary shall not be liable for any act or omission of such person or persons unless:

(a) The allocating fiduciary has violated 5 U.S.C. 8477(b) with respect to—

(1) The allocation or the continuation of the allocation,

(2) The implementation of these procedures, or

(3) The duty to monitor the performance of such person or persons in a reasonable manner during the life of the allocation, or

(b) The allocating fiduciary would otherwise be liable in accordance with 5 U.S.C. 8477(e)(1)(D).

#### § 2584.8477(e)-6 Definitions.

As used in this part:

(a) *Act* means the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8401 *et seq.* (Supp. III 1997);

(b) *Board* means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472;

(c) *Common Stock Index Investment Fund* means the fund established under 5 U.S.C. 8438(b)(1)(C);

(d) *Executive Director* means the executive director of the Federal Retirement Thrift Investment Board as appointed pursuant to 5 U.S.C. 8474;

(e) *Fiduciary duty* and *fiduciary responsibility* mean any duty or responsibility which involves the exercise of discretionary authority or discretionary control over—

(1) The management or disposition of the assets of the Thrift Savings Fund, or

(2) The administration of the Thrift Savings Fund;

(f) *Fixed Income Investment Fund* means the fund established under 5 U.S.C. 8438(b)(1)(B);

(g) *Government Securities Investment Fund* means the fund established under 5 U.S.C. 8438(b)(1)(A);

(h) *International Stock Index Investment Fund* means the fund established under 5 U.S.C. 8438(b)(1)(E);

(i) *Investment manager* means any fiduciary who—

(1) Has the power to manage, acquire or dispose of any asset of the plan,

(2) Is:

(i) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1),

(ii) Not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act (15 U.S.C. 80b-3a) but is registered as an investment adviser under the laws of the state (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such state in order to maintain the fiduciary's registration under the laws of such state, also filed a copy of such form with the Secretary of Labor,

(iii) A bank, as defined in that Act, or

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(iv) An insurance company qualified to perform services described in paragraph (i)(1) of this section under the laws of more than one state, and

(3) Has acknowledged in writing that he or she is a fiduciary with respect to the Thrift Savings Fund;

(j) *Qualified professional asset manager* has the meaning which is prescribed at 5 U.S.C. 8438(a)(7);

(k) *Small Capitalization Stock Index Investment Fund* means the fund established under 5 U.S.C. 8438(b)(1)(D);

(l) *Thrift Savings Fund* means the fund established under 5 U.S.C. 8437.

[53 FR 52687, Dec. 29, 1988, as amended at 65 FR 34394, May 30, 2000]

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**§ 2584.8477(e)-7 Effective date.**

This section is effective December 29, 1988, and liability for any transaction which occurs on or after this date will be governed by this section only. In accordance with section 114(a) of Pub. L. 99-556, the interim regulations promulgated by the Board appearing at title 5, CFR, chapter VI, §§ 1660.1 through 1660.5 will no longer be effective as of December 29, 1988. Liability for transactions which occur before the effective date of this regulation, however, will continue to be governed by allocations made both during the statutorily defined effective period of the previously cited interim regulations and pursuant to the requirements of those regulations.