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

MINUTES OF THE MEETING OF THE BOARD MEMBERS

May 17, 2010

Andrew M. Saul, Chairman of the Federal Retirement Thrift Investment Board, convened a meeting of the Board members on May 17, 2010, at 9:05 a.m., Eastern Time. The meeting was open to the public at the Board's offices at 1250 H Street, N.W., Washington, D.C. In attendance were Thomas A. Fink of Alaska, member; Alejandro M. Sanchez of Florida, member; Gordon J. Whiting of New York, member; Gregory T. Long, Executive Director; Thomas K. Emswiler, Secretary and General Counsel; Mark A. Hagerty, Chief Information Officer; Pamela-Jeanne Moran, Director, Participant Services; James B. Petrick, Chief Financial Officer; Tracey A. Ray, Chief Investment Officer; and Thomas J. Trabucco, Director, External Affairs.

1. Approval of the minutes of the April 19, 2010 Board member meeting.

Chairman Saul entertained a motion for approval of the minutes of the April 19, 2010 Board member meeting. The following motion was made, seconded, and adopted without objection:

> MOTION: That the minutes of the Board member meeting that was held on April 19, 2010, be approved.

2. Thrift Savings Plan activity report by the Executive Director.

a. Web Site Update

Mr. Long informed the Board that the Agency has procured load testing services in anticipation of the launch of the new web site in the first half of June. Load testing is intended to ensure that the new web site is capable of handling the substantially higher volume of web traffic the new web site is expected to generate. The Agency intends to refrain from publicizing the exact date on which the new web site will go live in order to avoid excessive volume and to keep the web site operating at maximum capacity during its debut.

Chairman Saul asked how the participants will be directed to the new web site. Mr. Long explained that the new web site will use the same URL as the old web site.

b. Monthly Participant Activity Report

Mr. Long reviewed the report on TSP statistics. See "Thrift Savings Fund Statistics" (attached). Mr. Long informed the Board members that the total fund balance is approximately $257 billion, which is a $3 billion increase over the prior month.

The number of TSP participants continues to grow. Over 4.3 million participants now depend upon the TSP for a portion of their retirement income. The total FERS participation rate is 82.7%. The population of CSRS participants continues to shrink and the population of uniformed services participants continues to increase. The total active uniformed services participation rate has grown to 38.8%. Among the branches of uniformed services, the Army continues to have the lowest participant rate (27.8%) while the Navy maintains the highest participation rate (57.6%).

Mr. Sanchez asked Mr. Long if he thinks it might be time to lobby high ranking officials in the Army. Mr. Long explained that the Agency continues to try to persuade the Army to encourage its members to take advantage of the TSP.

Mr. Whiting asked whether the individual Secretaries of the uniformed services branches have the discretion to decide whether the uniformed services members under their authority should be automatically enrolled in the TSP. Mr. Long explained that the legislation authorizing automatic enrollment was originally drafted to give the Secretaries of the uniformed services branches the discretion to opt out of automatic enrollment for their members. After brief discussion, the senior staff concluded from recollection that the final language of the automatic enrollment legislation excluded uniformed services members from the automatic enrollment program. Senior staff agreed to confirm their conclusion at the next Board meeting.

c. Monthly Investment Performance Report

Ms. Ray reviewed the May 10, 2010 memorandum, entitled "April 2010 Performance Review" (attached). BlackRock Funds closely tracked their underlying indices for the month and the year-to-date, except the International Fund had a tracking error of negative 53 basis points for the month and negative 56 basis points for the year as a result of fair value adjustments.

Trading costs remained low in terms of dollar amounts in April. In terms of basis points, the I Fund's trading costs rose to almost 10 basis points and the S Fund's trading costs rose to above 4 basis points.

The G Fund rate for the month of May is 3.25%. This rate may decrease in June because the 10-year and 30-year bonds are 30 to 40 basis points lower this month.

The total returns of the TSP funds are all positive for the month and year-to-date, except for the I Fund. The I Fund is down 8.25% just in the month of May, which brings its performance to negative 9.65% for the year-to-date. Ms.

Ray explained that the I Fund has been negatively impacted by fiscal problems in Greece and the broader Euro zone. She further explained that the I Fund's underperformance is largely attributable to precipitous declines in the Euro currency. The problems in the Euro zone have led to recent declines in other markets as well.

The C Fund is down over 4% in May but is up still 2.5% for the year. The S Fund is down almost 4% for the month but is up almost 11% for the year-to-date.

Chairman Saul asked how the F Fund is performing. Ms. Ray replied that the F Fund is up .75% this month and is up 3.67 percent for the year-to-date, due to declines in U.S. Treasury interest rates.

Last month, participants made over 125,000 interfund transfers moving $1.3 billion out of the G Fund for the second month in a row. This trend has reversed in May. So far this month, participants have made 88,000 interfund transfers moving $860 million back into the G Fund.

d. Legislative Report

Mr. Trabucco directed the Board members' attention to a memorandum from Mr. Long to members of the Employee Thrift Advisory Council dated May 14, 2010 (attached), addressing efforts by the Internal Revenue Service (IRS) to levy against the TSP accounts of individuals with unpaid Federal income taxes.

Mr. Trabucco explained that the Agency has a longstanding position that the anti-alienation provision in the Agency's enabling legislation protects TSP accounts from IRS levies, and that the only permissible alienations of TSP funds are those which are explicitly permitted in Title 5 of the United States Code. The Agency has not cooperated with IRS efforts to levy TSP funds because the Agency's anti-alienation provision specifically prohibits honoring levies, and the Agency interprets that language to include IRS levies.

Mr. Trabucco informed the Board that the IRS requested an opinion on this matter from the Department of Justice Office of Legal Counsel (OLC). The OLC issued an opinion on May 3, 2010 (attached) agreeing with the position taken by the IRS. The OLC determined that language in the Internal Revenue Code which says the IRS may levy property "notwithstanding" any other law trumps the language in the Agency's enabling legislation that says "except as provided in this provision" no alienation may occur. The OLC opinion has been sent to the Employee Thrift Advisory Council for input.

Mr. Long informed the Board that he is considering asking Congress to amend the Agency's enabling legislation to make the TSP subject to

IRS levies in a manner that prevents further decay of the TSP's anti-alienation protections. Mr. Long welcomed guidance from the Board on this matter.

Mr. Long expressed concern that honoring tax levies could open the door for other claimants looking for a "deep pocket." In order to prevent this, Mr. Long is considering asking Congress to enact "notwithstanding" language in Title 5 to ensure that any additional effort to gain access to TSP funds would require explicit authority under Title 5.

Mr. Whiting asked whether the Agency would have to honor levies retroactively and whether the IRS could enforce a levy against a deceased participant's heir. Mr. Emswiler explained that these issues would need to be studied.

Mr. Fink asked whether private sector plans are subject to IRS levies. Mr. Emswiler replied that they are. Mr. Whiting pointed out that the National Railroad Retirement Investment Trust is exempt from IRS levy.

Mr. Fink questioned whether it is appropriate or necessary for the Agency to ask Congress to amend the Agency's enabling legislation. He perceives the issue as a political question for Congress to decide. He suggested the Agency might seek clarification from Congress without requesting an amendment to FERSA.

Chairman Saul asked whether it is Congress' or the Judiciary's role to clarify the law. Mr. Long said that pursuing the matter in Federal court may be an option. Mr. Emswiler noted that it is the Judiciary's role to interpret the law and that an OLC opinion is not binding on a district court judge. Mr. Trabucco noted that the OLC serves as an arbiter in Executive Branch disputes to avoid the spectacle of one Federal agency suing another Federal agency in Federal court.

Mr. Emswiler explained that asking Congress to intervene would entail requesting a change in the law. The Agency's congressional committees of jurisdiction (the House Committee on Oversight and Government Reform and Senate Government Affairs Committee) likely cannot act unilaterally to foment a change because the House Ways and Means Committee has jurisdiction over matters relating to the Internal Revenue Code.

Chairman Saul asked if the Agency receives many tax liens on TSP accounts. Ms. Moran explained that, as a result of the Agency's longstanding position that it will not honor IRS levies, the Agency does not receive many tax liens on TSP accounts.

Chairman Saul asked whether state governments can levy against TSP accounts. Ms. Moran replied that they cannot. Mr. Emswiler explained that Federal law would preempt the state levies.

Mr. Whiting asked if the IRS can levy upon social security payments. Mr. Trabucco responded affirmatively, and further explained that the Social Security Act's language is quite different from the Agency's statute.

Mr. Sanchez asked whether there is a procedure by which the Agency can petition a Federal court to clarify the Agency's obligations. Mr. Emswiler granted it is possible, but cautioned that an unresolved issue is whether the Agency has independent litigating authority.

Mr. Fink reiterated his position that Congress should make this decision and that the Agency should be neutral. Mr. Whiting replied that there is an argument that Congress already made a decision and that the Agency and the IRS are confronted with two conflicting interpretations of what Congress already decided.

Mr. Fink said that it is the Agency's responsibility to invest the Thrift Savings Fund and to make distributions to participants. It is Congress' job to set tax policy. He also questioned whether TSP participants should receive more favorable treatment than participants of private sector plans. Mr. Whiting countered by asking why individuals covered under the Railroad Unemployment Insurance Act are not subject to levies.

Mr. Whiting asked Mr. Emswiler his opinion whether the law exempts the TSP from levies. Mr. Emswiler explained that the Agency and the IRS are confronted with conflicting statutes. The Agency has a good-faith legal argument that TSP accounts are not subject to levies, but it would also not be unreasonable for a court to conclude that TSP accounts are in fact subject to levies.

Chairman Saul noted that honoring TSP levies would be a substantial change in policy. Mr. Long said that the Agency does not intend to change its policy until it gets clarification from Congress.

Chairman Saul asked if the Agency receives any other liens against TSP accounts. Mr. Trabucco and Mr. Emswiler explained that the Agency receives garnishments for items expressly listed in Title 5, such as child support, alimony, and enforcement of judgments for physical or emotional abuse of a child.

Chairman Saul suggested that going to Congress might well be the most appropriate course of action. Mr. Trabucco explained that there are two different approaches that the Agency could take when asking Congress for clarification. The Agency can take a passive, neutral approach and simply ask Congress to "tell us what the law is." Alternatively, the Agency can actively seek statutory language ensuring that all exceptions to the anti-alienation provision are explicitly listed in the statute.

Mr. Whiting asked how many levy requests the TSP has declined to honor. Ms. Moran said that the Agency only receives a small number of such requests per month. Mr. Emswiler speculated that the Agency receives few requests because the IRS Enforcement Manual specifically states that the Agency will not honor levies. Mr. Long predicted that the Agency will receive significantly more levy requests if the Agency starts honoring them.

Chairman Saul and Mr. Fink recommended that the Agency take the more passive, neutral approach in seeking clarification from Congress. Mr. Whiting, conversely, recommended that the Agency take a proactive stance with Congress. He considers the passive approach as tantamount to conceding to the IRS position. Mr. Fink argued that the passive, neutral approach is not a concession. He pointed out that members of Congress may well support the Agency's position in order to avoid upsetting the TSP's 4.3 million participants who may also be constituents.

Chairman Saul asked what would happen if this issue went to court. Mr. Emswiler replied that, due to conflicting statutory direction, it is hard to predict how a district court would rule.

Mr. Emswiler proposed that the Agency inform Congress that, "We have historically opposed this and we are seeking your guidance. If you conclude we are not subject to IRS levy, we request that you amend FERSA to specifically so state. But if you conclude that we are subject to levy, we also request that you amend FERSA to specifically so state and make [the anti-alienation provision] stronger."

Chairman Saul, Mr. Sanchez, Mr. Whiting, Mr. Fink, and Mr. Long concurred with Mr. Emswiler's approach. Mr. Long said he does not intend to take any action, however, until he receives feedback from the Employee Thrift Advisory Council.

Chairman Saul observed that the memorandum to the Employee Thrift Advisory Council also addresses the automatic enrollment program. He asked Ms. Moran and Mr. Long to update him on the status of automatic enrollment. Mr. Long explained that, beginning in August, all newly hired civilian federal employees will be automatically enrolled in the TSP. Employing agencies will defer 3% of new hires' salaries unless they opt out of making TSP contributions.

Mr. Whiting asked how many employing agencies are not ready to implement automatic enrollment. Ms. Moran replied that she is not aware of any agencies that will not be ready to implement automatic enrollment in August.

Chairman Saul inquired about the automatic enrollment status of individuals who have been hired since the automatic enrollment legislation became law. Ms. Moran replied that those government employees will not be automatically enrolled retroactively.

Chairman Saul asked how many civilian employees the government hires in a year. Ms. Moran responded that the Government hires approximately 300,000 people per year. Chairman Saul noted that, with 300,000 new hires per year, the automatic enrollment program will have a significant impact on the TSP's participation rate. He added that the extent of impact will depend on the rate at which participants opt out of automatic enrollment.

Mr. Trabucco then directed the discussion toward legislation pending in Congress that would allow contributions to the TSP from terminal annual leave. He reported that the Congressional Budget Office released a cost estimate for the legislation on Friday predicting that the proposal will reduce revenues to the Federal government by $317 million over 2010 to 2020 period. This diminishes the legislation's prospects for enactment because Congressional budget rules require that legislation reducing revenues be offset by accompanying legislation reducing spending in equal amounts, or increasing revenues in other areas.

Mr. Trabucco also reported on the status of the two Board nominations sent by the President to the Senate. The committee of jurisdiction approved the nominations following a hearing. However, there is currently a hold on all nominations in the Senate. Mr. Trabucco expects the hold to be resolved in the next two weeks and he predicts that the full Senate will vote to confirm both nominees before the Memorial Day recess.

Chairman Saul requested a 10-minute break, whereupon the meeting recessed at 10:05 a.m. The Board reconvened at 10:15 a.m.

Mr. Trabucco returned to the earlier discussion regarding whether the individual Secretaries of the uniformed services branches have discretion over automatic enrollment for their members. He confirmed that the automatic enrollment legislation specifically states that "members of the Uniformed Services shall not be eligible for purposes of automatic enrollment."

e. Mid-Year Budget Review

Mr. Petrick reviewed the May 10, 2010 memorandum, entitled "Fiscal Year 2010 Mid-Year Budget Review" (attached). He explained that each year at mid-year, each of the Agency's Office Directors determines whether his or her office's expenditures have been consistent with budget projections approved by the Board. He was pleased to report that the Agency currently expects to be $1.9 million below the FY 2010 budget of $130.3 million that the Board approved.

Chairman Saul inquired about the Agency's expense ratio. Mr. Petrick explained that the expense ratio is determined on a calendar year basis and the budget is determined on a fiscal year basis. Mr. Long said that if the Agency spends $130 million, as budgeted for this year, and the TSP assets are $250 billion, as they are now, the expense ratio would be 5 basis points. In 2009, gross expenses were 5.19 basis points. Mr. Sanchez commended the Agency's senior staff for striving to come in below the budget.

f. Closing Discussions

Mr. Whiting asked whether the staff is maintaining a binder containing the Board's policy decisions. Mr. Emswiler responded affirmatively and assured him that the Office of General Counsel keeps the binder current. Mr. Whiting also asked what kind of training or training materials the Agency provides to new Board members. Mr. Long explained that the new Board members will receive a full day of training in July on the Agency's operations and fiduciary ethics.

Mr. Sanchez asked Mr. Long to provide a historical summary of the Agency's military participation rates over the past seven years at the July Board meeting.

3. Recognition of Outstanding Service by Board Members Fink and Whiting.

The Board members and the senior staff thanked Mr. Thomas Fink and Mr. Gordon J. Whiting for their outstanding service to the Thrift Savings Plan and its participants and beneficiaries as Members of the Board. Mr. Long presented Mr. Fink and Mr. Whiting each with a plaque in recognition of their contributions to the tremendous progress made by the Thrift Savings Plan in terms of growth and organization over the course of their terms on the Board.

Whereupon, there being no further business, the following motion was made, seconded, and adopted without objection and Chairman Saul adjourned the meeting at 10:39 a.m.

MOTION: That this meeting be adjourned.

Thomas K. Emswiler
Secretary

Attachments
1 Thrift Savings Fund Statistics
2. April 2010 Performance Review – G, F, C, S, I, and L Fund
3. "Ongoing Activities," Memorandum from the Executive Director to the Employee Thrift Advisory Council (May 14, 2010).
4. Fiscal Year 2010 Mid-Year Budget Review