Thrift Savings Plan

FACT SHEET

Statutory Exemption of the Thrift Savings Plan from Levy

Upon occasion, the Thrift Savings Plan (TSP) receives tax or other levies from government and other entities. These levies cannot be honored, as explained below.

The Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. No. 99-335, 100 Stat. 514 (which is codified as amended primarily at 5 U.S.C. §§ 8401-8479) provides that "[e]xcept as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process…." (*See* 5 U.S.C. § 8437 (e) (2) (emphasis added).) Paragraph (3) of § 8437 (e) excepts from this provision only court orders for child support, alimony, and enforcement of a judgment for physical, sexual, or emotional abuse of a child. (*See* Id. § 8437 (e) (3).) FERSA contains one other exception to the anti-alienation prohibition outside of paragraph (3) for a court ordered property settlement in connection with a divorce, legal separation, or annulment. (*See* Id. § 8467 (a) (1).)

Congress subsequently amended FERSA to allow for forfeiture of the U.S. Government contributions (and attributable earnings) to the TSP of an employee who was convicted of a national security offense. (*See* Intelligence Authorization Act for Fiscal Year 1996, P.L. 104-93, § 304, 109 Stat. 961, 965.) Even so, Congress continued to protect employee contributions and attributable earnings from forfeiture. That Congress determined it necessary to amend FERSA in order to allow such a forfeiture is additional proof that Congress intended that TSP funds were, and are, to be alienated only pursuant to the express exceptions set forth in FERSA.

The legislative history of FERSA also demonstrates Congress' intent that a participant's TSP account not be subject to other levies. The Senate and House bills that were the basis for FERSA contained anti-alienation provisions. The Senate version prohibited the alienation of TSP accounts "except as otherwise provided in a Federal law…." (*See* S. 1527, 99th Cong., 1st Sess. § 101 (a) (October 30, 1985) (proposed § 8434 (d) (1)).) The parallel section in the House version contained no exception for other Federal law. H.R. 3660, 99th Cong., 1st Sess. § 101 (a) (November 14, 1985) (proposed § 8434 (d) (1)). The phrase "except as otherwise provided in a Federal law" was deleted from the bill in conference committee. (*See* H.R. Conf. Rep. No. 606, 99th Cong., 1st Sess. 125, reprinted in 1986 U.S.C.C.A.N. 1508.)

The exclusion of the applicability of "other Federal laws" to the alienation of TSP funds — although included in the statutes treating alienation of FERS and CSRS annuities — makes clear that Congress intended that TSP funds were, and are, to be alienated only pursuant to the express exceptions set forth in FERSA.

The TSP's named fiduciaries (i.e., the Executive Director and the five Presidentially appointed Board members) are required to discharge their responsibilities with respect to TSP accounts "solely in the interests of the participants and beneficiaries." (*See* 5 U.S.C. § 8477 (b) (1).) Honoring a levy not specifically allowed by law, in light of the history of FERSA, would be a breach of their fiduciary duty.

Consequently, except as specifically authorized by FERSA, the TSP will not honor a levy against the account of a TSP participant.