

Pension and Welfare Benefits Admin., Labor

§ 2584.8477(e)-4

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AUTHORITY: 5 U.S.C. 8477(e)(1)(E) and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

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

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.

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(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