

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1651

#### Death Benefits

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed amendment to the Board's death benefit regulations. Under the proposed amendment, if a participant dies with any portion of his or her Thrift Savings Plan (TSP) account in an investment fund other than the G Fund, the Board would transfer the entire account into the G Fund after receiving notice of the participant's death.

**DATES:** Comments must be received on or before April 12, 1999.

**ADDRESSES:** Comments may be sent to Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth S. Woodruff, (202) 942-1661.

**SUPPLEMENTARY INFORMATION:** The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99-335, 100 Stat. 514. The provisions governing the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code (1994). The TSP is a tax-deferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a participant's TSP account are held in trust for that participant. 5 U.S.C. 8437(g).

The disbursement of death benefits from the TSP is governed by the provisions of 5 U.S.C. 8433(e) and 8424(d). Under section 8433(e), if a TSP

participant dies before he or she has completed a withdrawal election, the account is to be disbursed in accordance with the order of precedence set forth at section 8424(d). Final regulations governing the payment of the TSP account to a beneficiary were published in the **Federal Register** on June 13, 1997 (62 FR 32426).

These regulations do not address how the account will be invested between the participant's death and disbursement of the account to the beneficiary(ies). In the past, the Board has maintained the account as it was invested upon the participant's death; the Board will not maintain a separate account for a beneficiary and will not permit a beneficiary to direct how the account should be invested. However, it may take several months before the Board can identify and locate the appropriate beneficiary(ies) of an account and pay the account balance to the beneficiary(ies). During this time, monies in some investment funds can experience significant changes in value as a result of fluctuations in the market.

FERSA permits a participant to elect to invest all or any portion of his or her contributions in several investment options. At present, all investment options except the Government Securities Investment (G) Fund are invested in securities that fluctuate in value as market conditions change. In contrast, monies in the G Fund are invested in short-term Government securities backed by the full faith and credit of the United States and do not fluctuate in value.

Before a participant can invest in an investment fund other than the G Fund, he or she must provide a one-time acknowledgment that the investment is made at the participant's risk, that the participant is not protected by the United States Government or by the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment. FERSA does not grant to beneficiaries the right to own or control the TSP account of a deceased participant; instead, the account is paid out to them as quickly as administratively feasible. Thus, beneficiaries are not solicited to acknowledge the risk of investment in market securities pending payout to them.

Because monies in investment funds other than the G Fund remain subject to market risk even after a participant's death, however, and because beneficiaries have neither acknowledged nor have any control over that risk, the Board proposes to transfer the entire TSP account into the G Fund after receiving written notice of the participant's death if a participant dies with any portion of his or her account in an investment fund other than the G Fund. The account will continue to accrue earnings at the G Fund rate in accordance with part 1645 until the account is paid in accordance with the order of precedence set forth in paragraph (a) of this section. This action will eliminate the market risk to the beneficiary and will preserve the value of a deceased participant's account until it can be paid out.

#### Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will affect only TSP participants and beneficiaries.

#### Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

#### Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104-4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

#### List of Subjects in 5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Retirement.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons set forth in the preamble, part 1651 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

**PART 1651—DEATH BENEFITS**

1. The authority citation for part 1651 continues to read as follows:

**Authority:** 5 U.S.C. 8424(d), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

2. Section 1651.1 is amended by adding in alphabetical order the definitions of "C Fund", "F Fund", "G Fund", and "Investment fund", to read as follows:

**§ 1651.1 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

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

*Investment fund* means the C Fund, the F Fund, the G Fund, or any other TSP investment fund created subsequent to December 27, 1986;

\* \* \* \* \*

3. Section 1651.2 is amended by adding a new paragraph (c) to read as follows:

**§ 1651.2 Entitlement to benefits.**

\* \* \* \* \*

(c) If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the Board will transfer the entire account into the G Fund after receiving written notice of the participant's death. The account will continue to accrue earnings at the G Fund rate in accordance with part 1645 until it is paid in accordance with the order of precedence set forth in paragraph (a) of this section.

[FR Doc. 99-3324 Filed 2-10-99; 8:45 am]

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**FEDERAL HOUSING FINANCE BOARD****12 CFR Part 910**

[No. 99-5]

RIN 3069-AA78

**Allocation of Joint and Several Liability on Consolidated Obligations Among the Federal Home Loan Banks**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is proposing a

rule to establish a framework for the orderly allocation of joint and several liability among the Federal Home Loan Banks (FHLBank or Bank) on consolidated obligations, *i.e.*, bonds, notes or debentures issued by the Finance Board pursuant to section 11 of the Federal Home Loan Bank Act (Bank Act). The proposed rule is intended to protect holders of consolidated obligations to the greatest extent practical by providing a framework to ensure the continued timely payment of all principal and interest on consolidated obligations in the unlikely event of a projected inability of a Bank to meet its debt service payment obligations. The proposed rule in no way would limit, restrict or diminish the joint and several liability of the FHLBanks on the consolidated obligations issued by the Finance Board.

**DATES:** The Finance Board will accept comments on the proposed rule in writing on or before April 12, 1999.

**ADDRESSES:** Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at [bakere@fhfb.gov](mailto:bakere@fhfb.gov) or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Joseph McKenzie, Deputy Chief Economist, Office of Policy, Research and Analysis, by telephone at (202) 408-2845 or by electronic mail at [mckenziej@fhfb.gov](mailto:mckenziej@fhfb.gov), or Charlotte A. Reid, Special Counsel, Office of General Counsel, by telephone at (202) 408-2510, by electronic mail at [reidc@fhfb.gov](mailto:reidc@fhfb.gov), or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:****I. Introduction**

The Bank Act, *see* 12 U.S.C. 1421 *et seq.*, provides plenary authority to the Finance Board in connection with the issuance of bonds, debentures and notes (consolidated obligations or COs) for which the FHLBanks are jointly and severally liable.<sup>1</sup> Section 11 of the Bank

<sup>1</sup> A bond, note or debenture represents a loan made to the FHLBanks by a lender ("bondholder"). When the Finance Board issues a bond, note or debenture on behalf of the FHLBanks, the FHLBanks become legally obligated by the terms of the instrument to repay a specific amount of money, at a specific point in time, at a specified rate of interest. In practice, the FHLBanks receiving the proceeds of the issuance assume the obligation to service the principal and interest payments for that issuance on behalf of all of the FHLBanks. Interest payments on bonds usually are made twice a year. Because the Bank Act specifies that the FHLBanks are jointly and severally liable on the consolidated obligations issued by the Finance Board for the

Act authorizes the Finance Board to issue rules and regulations governing the issuance of COs. *See* 12 U.S.C. 1431(a). Finance Board regulations governing the issuance of COs are set forth in 12 CFR Parts 910 and 941.

The FHLBanks finance their operations principally with the proceeds from COs issued by the Finance Board on their behalf. As of September 30, 1998, there were approximately \$336.3 billion in consolidated obligations outstanding. In the history of the FHLBank System, no FHLBank has ever been delinquent or defaulted on a principal or interest payment on any consolidated obligation issued by the Finance Board or the Federal Home Loan Bank Board, its predecessor agency (FHLBB).

Neither the Finance Board nor the FHLBB adopted regulations to establish the manner in which the joint and several liability of the FHLBanks would operate in the event of impending default or delinquency on a consolidated obligation. Although the FHLBank System remains financially healthy and strong, and no such default or delinquency is expected, the joint and several liability has become a matter of interest in recent years for other reasons. The municipal bankruptcy and resulting receivership of the County of Orange, California (Orange County), and the ensuing litigation brought by the receiver for Orange County against the FHLBanks, Office of Finance and United States (among others),<sup>2</sup> raised issues concerning liability allocation arising from issuing and servicing consolidated obligations. Additionally, new initiatives and activities undertaken by the FHLBanks, such as the Mortgage Partnership Finance™, pilot program

benefit of the FHLBanks, each FHLBank is liable for the repayment of the entire debt, including the interest payments, for each consolidated obligation. Consolidated obligations are sold in book entry form. The owner of the bond, note or debenture has no certificate, and there is no trust indenture associated with the issuance. Standard & Poors and Moody's are the two primary rating services that rate bonds. The rating services have developed a letter ranking system to indicate their assessment of the likelihood of default of the instruments rated. Bonds rated AAA by Standard & Poors and Aaa by Moody's are the highest quality debt obligations. All consolidated obligation bonds are rated AAA or Aaa.

<sup>2</sup> *See County of Orange, et al. v. Federal Home Loan Bank of Boston, et al.*, Case No. SA VC 97-122-GLT (C.D. Cal.). *See also County of Orange et al. v. Bear Stearns, & Co., et al.*, Case No. SA CV 98-0527-GLT, *et al.* (C.D. Cal.) (Order granting good faith settlement determinations entered November 30, 1998.) (Orange County agreed to drop all claims against the FHLBank System in connection with a settlement reached with Merrill, Lynch & Co. The FHLBanks, Office of Finance, and United States deny any wrongdoing and will not pay any amount in connection with the settlement.)