



United States  
General Accounting Office  
Washington, D.C. 20548

Accounting and Financial  
Management Division

B-227344

January 5, 1988

The Honorable James C. Miller III  
Director, Office of Management and Budget

Dear Mr. Miller:

In a May 29, 1987, letter (enclosed) to Representative Willis D. Gradison, Jr., we stated that transactions of the Thrift Savings Fund should not be considered transactions of the federal government and, therefore, should not be included in the budget's totals. We reaffirm our position and suggest that the Fund's amounts be excluded from the fiscal year 1989 budget's totals.

As we stated in our letter to Representative Gradison, we believe that the Fund's amounts should be excluded on the grounds that the monies in the Fund are owned and controlled by the program participants, not the federal government. Thus, the government's principal function is to operate in a fiduciary capacity to safeguard the Fund's assets and invest them prudently.

Both the President's budget and the congressional budget resolution for fiscal year 1988 included the Fund's amounts in the budgetary totals. The Congressional Budget Office (CBO) has subsequently agreed with us and excluded the Fund from its calculations of budgetary totals, including those in its sequestration reports for fiscal year 1988 made under the Balanced Budget and Emergency Deficit Control Act of 1985. These include CBO's August 1987 sequestration report, prepared jointly with the Office of Management and Budget (OMB), and CBO's October and November 1987 reports.

OMB, however, has continued to treat the Fund as an on-budget account. In its August 1987 joint sequestration report with CBO, and later in its October and November 1987 reports, OMB treated the Fund as an on-budget but exempt (from sequestration) account. In its October report, OMB noted that

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its treatment differed from CBO's and stated that it would address the Fund's budget treatment in its 1989 budget submission.

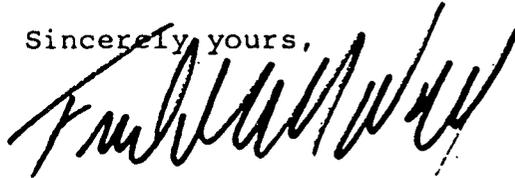
While OMB's treatment of the Fund as an on-budget account had no impact on the 1988 sequester percentages, it could have an impact on future sequester percentages. In accordance with the act, fiscal year 1988 deficit reductions were set at \$23 billion. Using this target reduction, the sequester percentages were determined based on the level of sequestrable resources and related outlays. OMB excluded the Fund from the base of sequestrable resources on the grounds that the account was exempt. Therefore, even though OMB treated the Fund as an on-budget account, the treatment of the Fund did not affect the sequestration calculations.

However, in fiscal year 1990 and subsequent years, deficit reductions under the 1985 act will be based on the amount by which deficit estimates exceed specified deficit target amounts. If the Fund continues to accumulate assets, keeping it on-budget would decrease the deficit estimates which, in turn, would affect the required deficit reductions and sequester percentages.

Furthermore, since the Department of the Treasury is also using OMB's on-budget treatment of the Fund in its financial reporting, Treasury's totals for the government are affected by this on-budget treatment.

Because of their interest in this matter, we are sending copies of this letter to Representative Gradison, congressional committees, the Director of the Congressional Budget Office, and the Secretary of the Department of the Treasury. Copies will also be made available to other interested parties upon request.

Sincerely yours,



Frederick D. Wolf  
Director

Enclosure

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bc: Mr. Havens, OCG  
Mr. Goldbeck, AFMD  
Mr. Cherbini, AFMD  
Mr. Kirkman, AFMD  
Mr. Jenney, AFMD ✓  
Mr. Sexton, AFMD  
Ms. Kleeman, GGD



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May 29, 1987

The Honorable Willis D. Gradison, Jr.  
House of Representatives

Dear Mr. Gradison:

This is in response to your request for GAO's opinion concerning the budget treatment of the Thrift Savings Fund created by the Federal Employees' Retirement System Act of 1986 (5 U.S.C. 8401 et seq.). The issue is whether the Fund's receipts and expenditures should be included in the budget's totals. Based on the following, it is our view that the Fund's transactions should not be considered transactions of the federal government and, therefore, should not be included in the budget's totals.

The fiscal year 1988 budget contains a new trust fund budget account--the Thrift Savings Fund--which includes, as receipts, employee and employer contributions to the Fund and earnings on investments and, as expenditures, employee retirement withdrawals and other expenses. The government administers the Fund through the Federal Retirement Thrift Investment Board, whose members are appointed by the President.

The inclusion of the Fund's receipt and expenditure transactions in the budget can have a significant effect each year upon the reported budget surplus or deficit. If the Fund's receipts are greater than its expenditures, the effect will be to increase the surplus or reduce the deficit. For example, the President's budget for fiscal year 1988 projects an excess of such receipts over expenditures of about \$3.3 billion. Including the Fund in the budget lowers the projected deficit by this \$3.3 billion.

We have long supported the principle of the unified budget, believing that the budget should be a comprehensive statement of receipts and expenditures of activities of the federal government. In applying this principle to the Fund, it is necessary to ask whether the Fund's transactions should be thought of as transactions of the government. If so, they should be included in the budget; if not, they should be excluded. The following factors, taken together, led us to conclude that the government, through the Federal Retirement Thrift Investment Board, administers the Fund's monies only in a fiduciary capacity and that the Fund's receipts are owned by the individual participants.

Several sections of the Federal Employees' Retirement System Act explicitly provide for a fiduciary role for the Board and its employees in administering the Fund. Each member of the Board, the Executive Director, or any person who has discretionary authority or control over the management of or disposition of the assets of the Fund is defined as a "fiduciary." The act (5 U.S.C. 8477(b)(1)) provides that:

"...a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of the participants and beneficiaries...."

Subsection 8437(e) states that:

"...sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter."

In addition, subsection 8437(g) states that:

"All sums contributed to the Thrift Savings Fund by an employee or Member or by an employing agency for the benefit of such employee or Member and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such employee or Member."

The accompanying committee conference report contains similar statements that further clarify the Congress' intent. It also clearly states that the Fund's receipts are owned by the participants. It states that:

"...the employees own the money. The money, in essence, is held in trust for the employee and managed and invested on the employee's behalf until the employee is eligible to receive it. This arrangement confers upon the employee property and other legal rights to the contributions and their earnings. Whether the money is invested in Government or private securities is immaterial with respect to employee ownership. The employee owns it, and it cannot be tampered with by any entity including Congress."  
(House Report No. 99-606, page 137.)

We also think that the following features of the Fund, as provided by law, restrict the government's control over the Fund to that of a fiduciary.

- Employee participation in the Fund is voluntary.
- In contrast to compulsory contributions made to the Civil Service Retirement and Disability Fund, or compulsory taxes paid into certain accounts classified as trust funds within the unified budget, participant contributions to the Fund are voluntary.
- Each participant has his or her own account and, within statutory limits, determines the level of both his or her contributions and those of the federal government.
- The level of benefits paid to participants is not predetermined by law or regulation--each participant's benefits are determined instead by his or her choices on the level of contributions and mix of investment choices.
- A participant may borrow from his or her contribution for specified purposes, such as to purchase a primary residence or to meet educational expenses.
- Each participant has immediate, 100 percent vesting in his or her contributions, and also in the federal contributions (except for the 1 percent automatic

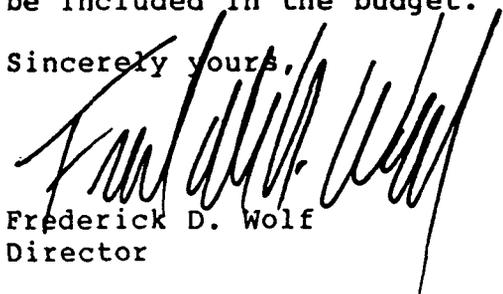
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federal contributions for the first 2 years for political appointees, and the first 3 years for other employees).

-- The employee's Fund account balance is portable in that, if the employee leaves government service before retiring, he or she, depending on length of service, may transfer the balance to an IRA or other qualified pension plan, receive an immediate or deferred annuity, or elect to receive a lump-sum payment at retirement age.

Although we continue to hold that excluding a federal program's receipts and expenditures from the budget totals is undesirable, the provisions and features of this particular account establish a unique governmental role that is limited to contributing to employee Fund accounts and exercising a strictly fiduciary role for the benefit of the employee. In summary, the limitations on the government's role are sufficiently clear and stringent to lead us to conclude that this account's balances should not be considered government amounts and, therefore, should not be included in the budget.

Sincerely yours,



Frederick D. Wolf  
Director