

§ 1651.15

they will not be credited with investment returns.

(6) *Proper payments.* A properly paid death benefit payment cannot be returned to the TSP.

[87 FR 31686, May 24, 2022]

§ 1651.15 Claims referred to the Board.

(a) *Contested claims.* Any challenge to a proposed death benefit payment must be filed in writing with the TSP record keeper before payment. All contested claims will be referred to the Board. The Board may also consider issues on its own.

(b) *Payment deferred.* No payment will be made until the Board has resolved the claim.

§ 1651.16 Missing and unknown beneficiaries.

(a) *Locate and identify beneficiaries.* (1) The TSP record keeper will attempt to identify and locate all potential beneficiaries.

(2) If a beneficiary is not identified and located, and at least one year has passed since the date of the participant's death, the beneficiary will be treated as having predeceased the participant and the beneficiary's share will be paid in accordance with § 1651.10

(b) *Payment to known beneficiaries.* If all potential beneficiaries are known but one or more beneficiaries (and not all) appear to be missing, payment of part of the participant's account may be made to the known beneficiaries. The lost or unidentified beneficiary's share may be paid in accordance with paragraph (a) of this section at a later date.

(c) *Abandoned account.* If no beneficiaries of the account are located, the account will be considered abandoned and the funds will revert to the TSP. If there are multiple beneficiaries and one or more of them refuses to cooperate in the TSP record keeper's search for the missing beneficiary, the missing beneficiary's share will be considered abandoned. In such circumstances, the account can be reclaimed if the missing beneficiary is found at a later date. However, earnings will not be credited from the date the account is abandoned. The TSP may require the beneficiary to apply for the death benefit in the form and manner prescribed

5 CFR Ch. VI (1-1-25 Edition)

by the TSP record keeper and submit proof of identity and relationship to the participant.

[62 FR 32429, June 13, 1997, as amended at 70 FR 32217, June 1, 2005; 87 FR 31687, May 24, 2022]

§ 1651.17 Disclaimer of benefits.

(a) *Right to disclaim.* The beneficiary of a TSP account may disclaim his or her right to receive all or part of a TSP death benefit. If the disclaimant is a minor, the parent or guardian of the minor must sign the disclaimer.

(b) *Valid disclaimer.* The disclaimer must expressly state that the beneficiary is disclaiming his or her right to receive either all or a stated percentage of the death benefit payable from the TSP account of the named participant and must be:

(1) Submitted in writing;

(2) Signed or acknowledged, in the presence of a notary, by the person (or legal representative) disclaiming the benefit; and

(3) Received before the TSP pays the death benefit.

(c) *Invalid disclaimer.* A disclaimer is invalid if it:

(1) Is revocable;

(2) Directs to whom the disclaimed benefit should be paid; or

(3) Specifies which balance (traditional, Roth, or tax-exempt) is to be disclaimed.

(d) *Disclaimer effect.* The disclaimed share will be paid as though the beneficiary predeceased the participant, according to the rules set forth in § 1651.10. Any part of the death benefit which is not disclaimed will be paid to the disclaimant pursuant to § 1651.14.

[68 FR 35510, June 13, 2003, as amended at 75 FR 44066, July 28, 2010; 77 FR 26428, May 4, 2012]

§ 1651.18 Payment to one bars payment to another.

Payment made to a beneficiary(ies) in accordance with this part, based upon information received before payment, bars any claim by any other person.

§ 1651.19 Beneficiary participant accounts.

(a) *Initial investment allocation.* Each beneficiary participant account, once

established, will be allocated to the TSP core funds in which the deceased participant's account balance was invested on his or her date of death. A beneficiary participant may redistribute his or her beneficiary participant account balance among the TSP core funds by making a fund reallocation or fund transfer request described in part 1601, subpart C, of this chapter. A beneficiary participant may move a portion of his or her beneficiary account balance from the TSP core funds to the mutual fund window by making a fund transfer request described in part 1601, subpart F.

(b) *Contributions.* A beneficiary participant may not make contributions or rollovers to his or her beneficiary participant account. The TSP record keeper will not accept an investment election request described in part 1601, subpart B, of this chapter for a beneficiary participant account.

(c) *Required minimum distributions.* (1) A beneficiary participant must receive required minimum distributions from his or her beneficiary participant account commencing no later than the required beginning date and, for each year thereafter, no later than December 31.

(2) A beneficiary participant may elect to withdraw from his or her account or to begin receiving payments before the required beginning date, but is not required to do so.

(3) In the event that a beneficiary participant does not withdraw from his or her beneficiary participant account an amount sufficient to satisfy his or her required minimum distribution for the year, the TSP record keeper will automatically distribute the necessary amount on or before the applicable date described in paragraph (c)(1) of this section.

(4) The TSP record keeper will disburse required minimum distributions described in paragraph (c)(3) of this section pro rata from the beneficiary participant's traditional balance and the beneficiary participant's Roth balance.

(d) *Withdrawal elections.* A beneficiary participant may elect any withdrawal option is available to separated participants. The provisions of § 1650.12, § 1650.13, and § 1650.14 shall apply as if

all references to a participant are references to a beneficiary participant and all references to an account balance are references to a beneficiary participant account balance.

(e) *Ineligibility for certain withdrawals.* A beneficiary participant is ineligible to request the following types of withdrawals from his or her beneficiary participant account: Age-based withdrawals described in § 1650.31 of this chapter, financial hardship withdrawals described in § 1650.32 of this chapter, or loans described in part 1655 of this chapter.

(f) *Spousal rights.* The spousal rights described in 5 U.S.C. 8351, 5 U.S.C. 8435, and § 1650.61 of this chapter do not apply to beneficiary participant accounts.

(g) *Rollovers.* A beneficiary participant may request that the TSP record keeper roll over all or a portion of an eligible rollover distribution (within the meaning of I.R.C. section 402(c)) from his or her beneficiary participant account to a traditional IRA, Roth IRA or eligible employer plan (including a civilian or uniformed services TSP account other than a beneficiary participant account) in the form and manner prescribed by the TSP record keeper.

(h) *Periodic statements.* The TSP or its record keeper will furnish beneficiary participants with periodic statements in a manner consistent with part 1640 of this chapter.

(i) *Privacy Act.* Part 1630 of this chapter shall apply with respect to a beneficiary participant as if the beneficiary participant is a TSP participant.

(j) *Error correction.* If, because of an error committed by the Board or the TSP record keeper, a beneficiary participant's account is not credited or charged with the investment gains or losses the account would have received had the error not occurred, the account will be credited subject to and in accordance with the rules and procedures set forth in § 1605.21. A beneficiary participant may submit a claim for correction of Board or TSP record keeper error pursuant to the procedures described in § 1605.22.

(k) *Court orders.* Court orders relating to a civilian beneficiary participant account or uniformed services beneficiary participant account shall be

Pt. 1653**5 CFR Ch. VI (1-1-25 Edition)**

processed pursuant to the procedures set forth in part 1653 of this chapter as if all references to a TSP participant are references to a beneficiary participant and all references to a TSP account or account balance are references to a beneficiary participant account or beneficiary participant account balance. Notwithstanding any provision of part 1653, a payee of a court-ordered distribution from a beneficiary participant account cannot request a rollover of the court-ordered distribution to an *eligible employer plan or IRA*.

(l) *Death of beneficiary participant.* To the extent it is not inconsistent with this § 1651.19, a beneficiary participant account shall be disbursed upon the death of the beneficiary participant in accordance with part 1651 as if any reference to a participant is a reference to a beneficiary participant. For example, a beneficiary participant may designate a beneficiary for his or her beneficiary participant account in accordance with §§ 1651.3 and 1651.4. No individual who is entitled to a death benefit from a beneficiary participant account shall be eligible to keep the death benefit in the TSP or request that the TSP record keeper roll over all or a portion of the death benefit to an IRA or eligible employer plan.

(m) *Uniformed services beneficiary participant accounts.* Uniformed services beneficiary participant accounts are subject to the following additional rules and procedures:

(1) Uniformed services beneficiary participant accounts are established and maintained separately from civilian beneficiary participant accounts. Beneficiary participants who have a uniformed services beneficiary participant account and a civilian beneficiary participant account will be issued two separate TSP account numbers. A beneficiary participant must submit separate fund allocation, fund transfer, and/or TSP withdrawal requests for each account and submit separate beneficiary designations for each account;

(2) A uniformed services beneficiary participant account and a civilian beneficiary participant account cannot be combined;

(3) If a uniformed services beneficiary participant account contains tax-ex-

empt contributions, any payments or withdrawals from the account will be distributed pro rata from the tax-deferred balance and the tax-exempt balance;

(4) A beneficiary participant may roll over all or any portion of an eligible rollover distribution (within the meaning of I.R.C. section 402(c)) from a uniformed services beneficiary participant account into a civilian or uniformed services TSP participant account. However, tax-exempt money attributable to combat zone contributions cannot be rolled over from a uniformed services beneficiary participant account to a civilian TSP participant account.

(n) *Multiple beneficiary accounts.* Each beneficiary participant account is maintained separately from all other beneficiary participant accounts. If an individual has multiple beneficiary participant accounts, each of the individual's beneficiary participant accounts will have a unique account number. A beneficiary participant must submit separate fund reallocation, fund transfer, and/or TSP withdrawal requests and submit separate beneficiary designations for each beneficiary participant account that the TSP maintains for him or her. A beneficiary participant account cannot be combined with another beneficiary participant account.

[75 FR 78879, Dec. 17, 2010, as amended at 77 FR 26428, May 4, 2012; 80 FR 52174, Aug. 28, 2015; 84 FR 46423, Sept. 4, 2019; 87 FR 31687, May 24, 2022]

**PART 1653—COURT ORDERS AND
LEGAL PROCESSES AFFECTING
THRIFT SAVINGS PLAN AC-
COUNTS****Subpart A—Retirement Benefits Court
Orders**

Sec.

1653.1 Definitions.

1653.2 Qualifying retirement benefits court orders.

1653.3 Processing retirement benefits court orders.

1653.4 Calculating entitlements.

1653.5 Payment.

Federal Retirement Thrift Investment Board**§ 1653.2**

1653.6 Fees.

Subpart B—Legal Process for the Enforcement of a Participant’s Legal Obligation To Pay Child Support or Alimony Currently

1653.11 Definitions.

1653.12 Qualifying legal processes.

1653.13 Processing legal processes.

1653.14 Calculating entitlements.

1653.15 Payment.

1653.16 Fees.

Subpart C—Child Abuse Court Orders

1653.21 Definitions.

1653.22 Purpose.

1653.23 Processing and payment.

Subpart D—Process for the Enforcement of a Participant’s Legal Obligation To Pay a Federal Tax Levy or Criminal Restitution Order

1653.31 Definitions.

1653.32 Qualifying Federal tax levy.

1653.33 Qualifying criminal restitution order.

1653.34 Processing Federal tax levies and criminal restitution orders.

1653.35 Calculating entitlement.

1653.36 Payment.

AUTHORITY: 5 U.S.C. 8432d, 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

SOURCE: 68 FR 35510, June 13, 2003, unless otherwise noted.

Subpart A—Retirement Benefits Court Orders**§ 1653.1 Definitions.**

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Court means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3).

Effective date of a court order means the date it was entered by the clerk of the court or, if the order does not show a date entered, the date it was filed by the clerk of the court or, if the order does not contain a date entered or a date filed, the date it was signed by the judge.

Payment date refers to the date on which earnings are determined and is generally two business days prior to the date of an award’s disbursement.

Retirement benefits court order or *order* means a court decree of divorce, annulment or legal separation, or a court order or court-approved property settlement agreement incident to such a decree. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding.

TSP investment earnings or earnings means both positive and negative fund performance attributable to differences in TSP core fund share prices.

[68 FR 35510, June 13, 2003, as amended at 74 FR 63063, Dec. 2, 2009; 87 FR 31688, May 24, 2022]

§ 1653.2 Qualifying retirement benefits court orders.

(a) To be qualifying, and thus enforceable against the TSP, a retirement benefits court order must meet the following requirements:

(1) The order must expressly relate to the Thrift Savings Plan account of a TSP participant. This means that:

(i) The order must expressly refer to the “Thrift Savings Plan” or describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits;

(ii) The order must be written in terms appropriate to a defined contribution plan rather than a defined benefit plan. For example, it should generally refer to the participant’s TSP account or TSP account balance rather than a benefit formula or the participant’s eventual benefits; and

(iii) If the participant has a civilian TSP account and a uniformed services TSP account, the order must expressly identify the account to which it relates.

(2) The order must either require the TSP to freeze the participant’s account to preserve the *status quo* pending final resolution of the parties’ rights to the participant’s TSP account, or to make a payment from the participant’s account to a permissible payee.

(3) If the order requires a payment from the participant’s account, the award must be for:

(i) A specific dollar amount;

§ 1653.3

(ii) A stated percentage of the account; or
(iii) A survivor annuity as provided in 5 U.S.C. 8435(d).

(iv) The following examples would qualify to require payment from the TSP, although ambiguous or conflicting language used elsewhere could cause the order to be rejected.

(A) *Example 1.* ORDERED: [payee's name, Social Security number (SSN), and address] is awarded \$____ from the [civilian or uniformed services] Thrift Savings Plan account of [participant's name, account number or SSN, and address].

(B) *Example 2.* ORDERED: [payee's name, SSN, and address] is awarded ____ % of the [civilian and/or uniformed services] Thrift Savings Plan account[s] of [participant's name, account number or SSN, and address] as of [date].

NOTE 1 TO PARAGRAPH (A)(3)(IV): The following optional language can be used in conjunction with any of the above examples. FURTHER ORDERED: Earnings will be paid on the amount of the entitlement under this ORDER until payment is made.

(4) A court order can require a payment only to a spouse, former spouse, child or dependent of a participant.

(b) The following retirement benefits court orders are not qualifying and thus are not enforceable against the TSP:

(1) An order relating to a TSP account that has been closed;

(2) An order relating to a TSP account that contains only nonvested money;

(3) An order requiring the return to the TSP of money that was properly paid pursuant to an earlier court order;

(4) An order requiring the TSP to make a payment in the future, unless the present value of the payee's entitlement can be calculated, in which case the TSP will make the payment currently;

(5) An order that does not specify the account to which the order applies, if the participant has both a civilian TSP account and a uniformed services TSP account;

(6) An order that requires the TSP to calculate the payee's entitlement or earnings in a manner that is inconsistent with § 1653.4 of this part; and

5 CFR Ch. VI (1-1-25 Edition)

(7) An order that designates the TSP core fund, source of contributions, or balance (e.g., traditional, Roth, or tax-exempt) from which the payment or portions of the payment shall be made.

[68 FR 35510, June 13, 2003, as amended at 69 FR 29851, May 26, 2004; 71 FR 54893, Sept. 20, 2006; 72 FR 51354, Sept. 7, 2007; 76 FR 78095, Dec. 16, 2011; 77 FR 26428, May 4, 2012; 87 FR 31688, May 24, 2022]

EDITORIAL NOTE: At 87 FR 31688, May 25, 2022, § 1653.2 was amended by revising paragraph (b)(1); however, the amendment could not be incorporated because no revised text for paragraph (b)(1) was provided.

§ 1653.3 Processing retirement benefits court orders.

(a) The payment of a retirement benefits court order from the TSP is governed solely by FERSA and by the terms of this subpart. The TSP record keeper will honor retirement benefits court orders properly issued and certified by a court (as defined in § 1653.1). However, those courts have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying domestic relations proceedings.

(b) The TSP record keeper will review a retirement benefits court order to determine whether it is enforceable against the TSP only after the TSP record keeper has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP record keeper. Retirement benefits court orders should be submitted to the TSP record keeper at the current address as provided at <https://www.tsp.gov>. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a court order must be written in English or be accompanied by a certified English translation and contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's account number or Social Security number (SSN);

(2) The name and last known mailing address of each payee covered by the order; and

(3) The payee's SSN and state of legal residence if he or she is the current or former spouse of the participant.

(c) As soon as practicable after the TSP record keeper receives a document that purports to be a qualifying retirement benefits court order, whether or not complete, the participant's account will be frozen. After the account is frozen, no withdrawals or loan disbursements (other than a required minimum distribution pursuant to section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)) will be allowed until the account is unfrozen. All other account activity will be permitted.

(d) The following documents do not purport to be qualifying retirement benefits court orders, and accounts of participants to whom such orders relate will not be frozen:

(1) A court order relating to a TSP account that has been closed;

(2) A court order dated before June 6, 1986;

(3) A court order that does not award all or any part of the TSP account to someone other than the participant; and

(4) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the TSP record keeper will review the document further to determine if it is complete; if the document is not complete, it will be rejected, the account will be unfrozen, all parties will be notified, and no further action will be taken with respect to the document.

(f) The TSP record keeper will review a complete copy of an order to determine whether it is a qualifying retirement benefits court order as described in § 1653.2. The TSP record keeper will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the court order is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the court order has on the participant's TSP account; and

(4) If the qualifying order requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment;

(iii) Tax and withholding information to the person responsible for paying Federal income tax on the payment;

(iv) Information on how to roll over the payment to an eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)), traditional IRA, or Roth IRA (if the payee is the current or former spouse of the participant); and

(v) Information on how to receive the payment through an electronic funds transfer (EFT).

(g)[Reserved]

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen in response to an order issued to preserve the status quo pending final resolution of the parties' rights to the participant's TSP account, the account will be unfrozen if the TSP record keeper receives a court order that vacates or supersedes the previous order (unless the order vacating or superseding the order itself qualifies to place a freeze on the account). A court order that purports to require a payment from the TSP supersedes an order issued to preserve the status quo, even if it does not qualify to require a payment from the TSP;

(2) If the account was frozen in response to an order purporting to require a payment from the TSP, the freeze will be lifted:

(i) Once payment is made, if the court order is qualifying; or

(ii) Eighteen (18) months after the date of the decision letter if the court order is not qualifying. The 18-month period will be terminated, and the account will be unfrozen, if both parties submit to the TSP record keeper a written request for such a termination.

(i) The TSP record keeper will hold in abeyance the processing of a court-ordered payment if the TSP record keeper is notified in writing that the underlying court order has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the order.

(1) In the notification, the TSP record keeper must be provided with proper documentation of the appeal and citations to legal authority, which address the effect of the appeal on the

§ 1653.4

enforceability of the underlying court order.

(i) If the TSP record keeper receives proper documentation and citations to legal authority which demonstrate that the underlying court order is not enforceable, the TSP record keeper will inform the parties that the payment will not occur until resolution of the appeal, and the account will remain frozen for loans and withdrawals.

(ii) In the absence of proper documentation and citations to legal authority, the TSP record keeper will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The TSP record keeper must be notified in writing of the disposition of the appeal before the freeze will be removed from the participant's account or a payment will be made. The notification must include a complete copy of an order from the appellate court explaining the effect of the appeal on the participant's account.

(j) Multiple qualifying court orders relating to the same TSP account and received by the TSP record keeper will be processed as follows:

(1) If the orders make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP record keeper will only honor the order bearing the latest effective date.

(2) If the orders relate to different former spouses of the participant and award survivor annuities, the TSP record keeper will honor them in the order of their effective dates.

(3) If the orders relate to different payees and award fixed dollar amounts, percentages of an account, or portions of an account calculated by the application of formulae, the orders will be honored:

(i) In the order of their receipt by the TSP record keeper, if received by the TSP record keeper on different days; or

(ii) In the order of their effective dates, if received by the TSP record keeper on the same day.

(4) In all other cases, the TSP record keeper will honor multiple qualifying court orders relating to the same TSP

5 CFR Ch. VI (1-1-25 Edition)

account in the order of their receipt by the TSP record keeper.

[87 FR 31688, May 24, 2022]

§ 1653.4 Calculating entitlements.

(a) For purposes of computing the amount of a payee's entitlement under this section, a participant's TSP account balance will include any loan balance outstanding as of the date used for calculating the payee's entitlement, unless the court order provides otherwise.

(b) If the court order awards a percentage of an account as of a specific date, the payee's entitlement will be calculated based on the account balance as of that date. If the date specified in the order is not a business day, the TSP record keeper will use the participant's account balance as of the last preceding business day.

(c) If the court order awards a percentage of an account but does not contain a specific date as of which to apply that percentage, the TSP record keeper will use the liquidation date.

(d) If the court order awards a specific dollar amount, the payee's entitlement will be the lesser of:

(1) The dollar amount stated in the court order; or

(2) The vested account balance on the date of disbursement.

(e) If a court order describes a payee's entitlement in terms of a fixed dollar amount and a percentage or fraction of the account, the TSP will pay the fixed dollar amount, even if the percentage or fraction, when applied to the account balance, would yield a different result.

(f) The payee's entitlement will be credited with TSP investment earnings as described:

(1) The entitlement calculated under this section will not be credited with TSP investment earnings unless the court order specifically provides otherwise. The court order may not specify a rate for earnings.

(2) If earnings are awarded and a rate is specified, the rate must be expressed as an annual percentage rate or as a *per diem* dollar amount added to the payee's entitlement.

(3) If earnings are awarded, the TSP record keeper will calculate the amount to be awarded by:

Federal Retirement Thrift Investment Board**§ 1653.5**

(i) Determining the payee's award amount (e.g., the percentage of the participant's account);

(ii) Determining, based on the participant's investment allocation as of the date used to calculate the entitlement, the number and composition of shares that the payee's award amount would have purchased as of the date used to calculate the entitlement.

(iii) Multiplying the price per share as of the payment date by the number and composition of shares calculated in paragraph (f)(3)(ii) of this section.

(g) The TSP record keeper will estimate the amount of a payee's entitlement when it prepares the decision letter and will recalculate the entitlement at the time of payment. The recalculation may differ from the initial estimation because:

(1) The estimation of the payee's entitlement includes both vested and nonvested amounts in the participant's account. If, at the time of payment, the nonvested portion of the account has not become vested, the recalculated entitlement will apply only to the participant's vested account balance;

(2) After the estimate of the payee's entitlement is prepared, the TSP record keeper may process account transactions that have an effective date on or before the date used to compute the payee's entitlement. Those transactions will be included when the payee's entitlement is recalculated at the time of payment; and

(3) The amount available for payment from the account may be reduced due to changes in share price (*i.e.*, investment losses).

[68 FR 35510, June 13, 2003, as amended at 74 FR 63063, Dec. 2, 2009; 76 FR 78095, Dec. 16, 2011; 87 FR 31689, May 24, 2022]

§ 1653.5 Payment.

(a) *Payment date.* Payment pursuant to a qualifying retirement benefits court order will generally be made:

(1) As soon as administratively practicable after the date of the decision letter when the payee is the current or former spouse of the participant, but in no event earlier than 30 days after the date of the decision letter.

(2) As soon as administratively practicable after the date of the decision

letter when the payee is someone other than the current or former spouse of the participant.

(b) In no case will payment exceed the participant's vested account balance, minus any outstanding loan balance.

(c) The entire amount of a court order payee's entitlement must be disbursed at one time. A series of payments will not be made, even if the court order provides for such a method of payment. A payment pursuant to a court order extinguishes all rights to any further payment under that order, even if the entire amount of the entitlement cannot be paid. Any further award must be contained in a separate court order.

(d) Payment will be made pro rata from the participant's traditional and Roth balances. The distribution from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all payments will be distributed pro rata from all TSP core funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the disbursement is made. The TSP record keeper will not honor provisions of a court order that require payment to be made from a specific TSP core fund, source of contributions, or balance.

(e) Payment will be made only to the person or persons specified in the court order. However, if the court order specifies a third-party mailing address for the payment, the TSP record keeper will mail to the address specified any portion of the payment that is not rolled over to a traditional IRA, Roth IRA, or eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)).

(f) Payment will not be made jointly to two or more persons. If the court order requires payments to more than one person, the order must separately indicate the amount to be paid to each.

(g) If there are insufficient funds to pay each court order payee, payment will be made as follows:

§ 1653.6

(1) If the order specifies an order of precedence for the payments, the TSP record keeper will honor it.

(2) If the order does not specify an order of precedence for the payments, the TSP record keeper will pay a current or former spouse first and a dependent second.

(h) If the payee dies before a payment is disbursed, payment will be made to the estate of the payee, unless otherwise specified by the court order. A distribution to the estate of a deceased court order payee will be reported as income to the decedent's estate. If the participant dies before payment is made, the order will be honored so long as it is submitted to the TSP record keeper before the TSP account has been closed.

(i) If the parties to a divorce or annulment have remarried each other, or a legal separation is terminated, a new court order will be required to prevent payment pursuant to a previously submitted qualifying retirement benefits court order.

(j) Payment to a person (including the estate of the payee) pursuant to a qualifying retirement benefits court order made in accordance with this subpart bars recovery by any other person claiming entitlement to the payment.

(k) If a court ordered payment is returned as undeliverable, the TSP record keeper will attempt to locate the payee by writing to the address provided on the court order. If the payee does not respond within 90 days, the funds will be forfeited to the TSP. The payee can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(m) A payee who is a current or former spouse of the participant may elect to roll over a court-ordered payment to a traditional IRA, eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)), or Roth IRA. Any election permitted by this paragraph (m) must be made pursuant to the rules described in 5 CFR 1650.25.

(n) If a court order payee who is the current or former spouse of the participant has their own TSP account (other than a beneficiary participant account), the payee can request that the

5 CFR Ch. VI (1-1-25 Edition)

TSP record keeper roll over the court-ordered payment to the payee's TSP account in accordance with the rules described in 5 CFR 1650.25. However, any pro rata share attributable to tax-exempt contributions cannot be rolled over; instead, it will be paid directly to the payee.

[68 FR 35510, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003; 70 FR 32217, June 1, 2005; 74 FR 63063, Dec. 2, 2009; 76 FR 30510, May 26, 2011; 76 FR 78095, Dec. 16, 2011; 77 FR 26428, May 4, 2012; 83 FR 47547, Sept. 20, 2018; 87 FR 31689, May 24, 2022]

§ 1653.6 Fees.

The TSP record keeper will charge a participant a \$600.00 court order processing fee as follows:

(a) Upon receipt of a complete court order document (whether draft or final) and prior to reviewing the order to determine whether it is a qualifying retirement benefits court order, the fee will be deducted from his or her TSP account balance on a pro rata basis from the participant's traditional and Roth balances. The portion of the fee deducted from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The portion of the fee deducted from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, the entire fee will be distributed pro rata from all TSP core funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the fee is deducted;

(b) The fee will be charged only once per court order. However, it will not be refunded in the event that the court order is never determined to be a qualifying retirement benefits court order; and

(c)(1) If the court order:

(i) Is determined to be a qualifying retirement benefits court order; and

(ii) Explicitly requires the fee to be split between the participant and the payee;

(2) The TSP record keeper will deduct the payee's portion of the fee from his or her payment and credit that amount

back to the participant's TSP account balance.

[87 FR 31690, May 24, 2022]

Subpart B—Legal Process for the Enforcement of a Participant's Legal Obligations To Pay Child Support or Alimony Currently

§ 1653.11 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Alimony means the payment of funds for the support and maintenance of a spouse or former spouse. Alimony includes separate maintenance, alimony *pendente lite*, maintenance, and spousal support. Alimony can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

Child support means payment of funds for the support and maintenance of a child or children of the participant. Child support includes payments to provide for health care, education, recreation, clothing, or to meet other specific needs of a child or children. Child support can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

Competent authority means a court or an administrative agency of competent jurisdiction in any State, territory or possession of the United States; a court or administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor the process; or an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction pursuant to state or local law.

Legal process means a writ, order, summons, or other similar process in the nature of a garnishment, which is brought to enforce a participant's legal obligations to pay child support or alimony currently.

[68 FR 35510, June 13, 2003, as amended at 76 FR 78095, Dec. 16, 2011]

§ 1653.12 Qualifying legal processes.

(a) The TSP record keeper will only honor the terms of a legal process that is qualifying under paragraph (b) of this section.

(b) A legal process must meet each of the following requirements to be considered qualifying:

(1) A competent authority must have issued the legal process;

(2) The legal process must expressly relate to the Thrift Savings Plan account of a TSP participant, as described in § 1653.2(a)(1);

(3) The legal process must require the TSP to:

(i) Pay a stated dollar amount from a participant's TSP account; or

(ii) Freeze the participant's account in anticipation of an order to pay from the account.

(c) The following legal processes are not qualifying:

(1) A legal process relating to a TSP account that has been closed;

(2) A legal process relating to a TSP account that contains only nonvested money;

(3) A legal process requiring the return to the TSP of money that was properly paid pursuant to an earlier legal process;

(4) A legal process requiring the TSP to make a payment in the future; and

(5) A legal process requiring a series of payments.

(6) A legal process that designates the specific TSP core fund, source of contributions, or balance from which the payment or portions of the payment shall be made.

[68 FR 35510, June 13, 2003, as amended at 77 FR 26429, May 4, 2012; 87 FR 31690, May 24, 2022]

§ 1653.13 Processing legal processes.

(a) The payment of legal processes from the TSP is governed solely by the Federal Employees' Retirement System Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP record keeper will honor legal processes properly issued by a competent authority, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP record keeper will review a legal process to determine

§ 1653.13

whether it is enforceable against the TSP only after the TSP record keeper has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Legal processes should be submitted to the TSP record keeper at the current address as provided at <https://www.tsp.gov>. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a legal process must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

- (1) The participant's account number or Social Security number (SSN);
- (2) The name and last known mailing address of each payee covered under the order; and
- (3) The SSN and state of legal residence of the payee if he or she is the current or former spouse of the participant.

(c) As soon as practicable after the TSP record keeper receives a document that purports to be a qualifying legal process, whether or not complete, the participant's account will be frozen. After the account is frozen, no TSP withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, investment elections, fund reallocations, and fund transfers.

(d) The following documents will not be treated as purporting to be a qualifying legal processes, and accounts of participants to whom such orders relate will not be frozen:

- (1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued by a competent authority;
- (2) A legal process relating to a TSP account that has been closed; and
- (3) A legal process that does not relate either to the TSP or to the participant's retirement benefits.

(e) After the participant's account is frozen, the TSP record keeper will review the document further to determine if it is complete; if the document is not complete, it will be rejected, the account will be unfrozen, all parties will be notified, and no further action

5 CFR Ch. VI (1-1-25 Edition)

will be taken with respect to the document.

(f) As soon as practicable after receipt of a complete copy of a legal process, the TSP record keeper will review it to determine whether it is a qualifying legal process as described in § 1653.12. The TSP record keeper will mail a decision letter to all parties containing the same information described at § 1653.3(f).

(g) [Reserved]

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen pursuant to a legal process requiring the TSP to freeze the participant's account in anticipation of an order to pay from the account, the account will be unfrozen if any one of the following events occurs:

(i) As soon as practicable after the TSP record keeper receives a complete copy of an order vacating or superseding the preliminary order (unless the order vacating or superseding the preliminary order qualifies to place a freeze on the account);

(ii) Upon payment pursuant to the order to pay from the account, if the TSP record keeper determines that the order is qualifying; or

(iii) As soon as practicable after the TSP issues a decision letter informing the parties that the order to pay from the account is not a qualifying legal process;

(2) If the account was frozen after the TSP record keeper received a document that purports to be a legal process requiring payment from the participant's account, the account will be unfrozen:

(i) Upon payment pursuant to a qualifying legal process; or

(ii) As soon as practicable after the TSP record keeper informs the parties that the document is not a qualifying legal process.

(i) The TSP record keeper will hold in abeyance the processing of a payment required by legal process if the TSP record keeper is notified in writing that the legal process has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the legal process. The notification must be accompanied by the documentation and citations to legal authority described at § 1653.3(i).

Federal Retirement Thrift Investment Board**§ 1653.23**

(j) Multiple qualifying legal processes relating to the same TSP account and received by the TSP record keeper will be processed as follows:

(1) If the legal processes make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP record keeper will only honor the legal process bearing the latest effective date.

(2) If the legal processes relate to different payees, the legal process will be honored:

(i) In the order of their receipt by the TSP record keeper, if received by the TSP record keeper on different days; or

(ii) In the order of their effective dates, if received by the TSP record keeper on the same day.

[87 FR 31690, May 24, 2022]

§ 1653.14 Calculating entitlements.

A qualifying legal process can only require the payment of a specified dollar amount from the TSP. Payment pursuant to a qualifying legal process will be calculated in accordance with § 1653.4(a), (d), (f) and (g).

§ 1653.15 Payment.

Payment pursuant to a qualifying legal process will be made in accordance with § 1653.5.

§ 1653.16 Fees.

The TSP record keeper will charge a participant a \$600.00 legal process processing fee as follows:

(a) Upon receipt of a complete legal process document (whether draft or final) and prior to reviewing order to determine whether it is a qualifying legal process, the fee will be deducted from his or her TSP account balance on a pro rata basis from the participant's traditional and Roth balances. The portion of the fee deducted from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The portion of the fee deducted from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, the entire fee will be distributed pro rata from all TSP core funds in which the participant's account is invested. All pro rated

amounts will be based on the balances in each fund or source of contributions on the day the fee is deducted; and

(b) The fee will be charged only once per legal process. However, it will not be refunded in the event that the court order is never determined to be a qualifying legal process.

[87 FR 31691, May 24, 2022]

Subpart C—Child Abuse Court Orders**§ 1653.21 Definitions.**

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Child means an individual less than 18 years of age.

Judgment against a participant for physically, sexually, or emotionally abusing a child means any legal claim perfected through a final enforceable judgment which is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence.

§ 1653.22 Purpose.

Under 5 U.S.C. 8437(e)(3) and 8467(a)(2), the TSP record keeper will honor a court order or other similar process in the nature of a garnishment that is brought to enforce a judgment against a participant for physically, sexually, or emotionally abusing a child.

[FR 35510, June 13, 2003, as amended at 87 FR 31691, May 24, 2022]

§ 1653.23 Processing and payment.

To the maximum extent consistent with sections 8437(e)(3) and 8467(a)(2), child abuse court orders will be processed by the TSP record keeper under the procedures described in subparts A and B of this part.

[FR 35510, June 13, 2003, as amended at 87 FR 31691, May 24, 2022]

§ 1653.31

Subpart D—Process for the Enforcement of a Participant's Legal Obligation To Pay a Federal Tax Levy or Criminal Restitution Order

SOURCE: 79 FR 53604, Sept. 10, 2014, unless otherwise noted.

§ 1653.31 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Criminal restitution order means a complete copy of a judgment in a criminal case issued by a federal court ordering restitution for a crime under 18 U.S.C. 3663A.

Enforcement letter means a letter received from the Department of Justice requesting a payment from a participant's TSP account to enforce a criminal restitution order.

[79 FR 53604, Sept. 10, 2014, as amended at 80 FR 52605, Sept. 1, 2015]

§ 1653.32 Qualifying Federal tax levy.

(a) The TSP record keeper will only honor the terms of a tax levy that is qualifying under paragraph (b) of this section.

(b) A tax levy must meet each of the following requirements to be considered qualifying:

(1) The Internal Revenue Service issued the levy.

(2) The levy includes a signature certifying that it attaches to a retirement plan.

(3) The levy requires the TSP to pay a stated dollar amount from a TSP participant's account.

(4) The levy is dated no earlier than thirty (30) days before receipt.

(5) The levy is issued in the name of the participant only.

(6) The levy expressly refers to the "Thrift Savings Plan" or describes the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits.

(c) The following levies will not be considered qualifying:

(1) A levy relating to a TSP account with a zero dollar account balance;

5 CFR Ch. VI (1-1-25 Edition)

(2) A levy relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Government service;

(3) A levy requiring the TSP to make a payment at a specified date in the future;

(4) A levy that does not contain a signature certifying that it applies to retirement plans;

(5) A levy requiring a series of payments;

(6) A levy that designates the specific TSP core fund, source of contributions, or balance from which the payment or portions of the payment shall be made.

[79 FR 53604, Sept. 10, 2014, as amended at 87 FR 31691, May 24, 2022]

§ 1653.33 Qualifying criminal restitution order.

(a) The TSP record keeper will only honor the terms of a criminal restitution order that is qualifying under paragraph (b) of this section.

(b) A criminal restitution order must meet each of the following requirements to be considered qualifying:

(1) The restitution must be ordered in the sentencing of the participant as required by 18 U.S.C. 3663A and 18 U.S.C. 3664.

(2) The criminal restitution order must require the participant to pay a stated dollar amount as restitution.

(3) The criminal restitution order must be accompanied by an enforcement letter that states the restitution is ordered under 18 U.S.C. 3663A. The enforcement letter must expressly refer to the "Thrift Savings Plan" or describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits.

(c) The following orders will not be considered qualifying:

(1) A criminal restitution order relating to a TSP account with a zero dollar account balance;

(2) A criminal restitution order relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP record keeper receives the order if the participant were to remain in Government service;