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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.

(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 and the rate is not specified, the TSP will credit the payee's entitlement with the rate of return for the G Fund.

(4) Earnings at the G Fund rate will accrue on a monthly basis through May 31, 2003, beginning with the month following the entitlement date; thereafter, G Fund earnings will accrue on a daily basis, beginning with the business day following the date used for calculating the payee's entitlement (or beginning June 1, 2003, if interest or earnings commence before June 1, 2003) and ending 2 business days before payment is made.

(g) The TSP will estimate the amount of a payee's entitlement when it prepares the court order 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 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

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

§ 1653.5 Payment.

(a) Payment pursuant to a qualifying retirement benefits court order ordinarily will be made 60 days after the date of the TSP decision letter. This is intended to permit the payee sufficient time to consider decisions about tax withholding, payment by EFT, and transfer, if applicable, under paragraph (e) of this section. An earlier distribution may be made as follows:

(1) If the payee is the current or former spouse of the participant, the payee can request to receive the payment sooner than 60 days by making a tax withholding election, by requesting a payment by EFT, or by requesting a transfer described in paragraph (e)(1) of this section. The TSP decision letter will provide the forms a payee can use to request an earlier disbursement.

(2) If the payee is someone other than the current or former spouse of the participant, the participant can request a disbursement sooner than 60 days by making the tax withholding election described in paragraph (e)(2) of this section (on forms provided to the participant with the TSP decision letter).

(3) If the court order makes an award to multiple payees, a disbursement may be made earlier than 60 days only if requests for expedited payment are received from all of the payees.

(4) In no event will payment be made earlier than 31 days after the date of the TSP decision letter.

(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.

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(d) Payment will be made *pro rata* from all TSP investment funds in which the account is invested, based on the balance in each fund on the date payment is made, and from both tax-deferred and tax-exempt balances, if any. The TSP will not honor provisions of a court order that require payment to be made from specific investment funds or contribution sources. A court order may, however, specify a particular payment from the tax-exempt balance of a uniformed services TSP account.

(e) Payment will be made only to the person or persons specified in the court order.

(1) If payment is made to the current or former spouse of the participant, the distribution will be reported to the Internal Revenue Service (IRS) as income to the payee.

(i) A current or former spouse of a participant may request that the TSP transfer all or a portion of the payment to an eligible employer plan or traditional IRA. A retirement benefits court order cannot prevent the TSP from providing this transfer option to a current or former spouse of a participant.

(ii) Any amount that is not so transferred will be distributed to the payee. That distribution will be subject to mandatory Federal income tax withholding. The payee may elect to have an additional amount withheld by filing with the TSP the forms provided to the payee with the decision letter.

(iii) Any distribution directly to the payee will be made under the following rules:

(A) If the court order specifies a third-party mailing address for the payment, the TSP will mail to the address specified any portion of the payment that is not transferred to an eligible employer plan or traditional IRA. That portion will be disbursed in the form of a United States Treasury check made payable solely to the court order payee, and mailed in care of the third party addressee.

(B) If the court order does not specify a third party addressee, the payee can choose to receive the distribution by United States Treasury check or by electronic funds transfer (EFT) to a checking or savings account at a financial institution.

(2) If the payment is made to anyone other than the current or former spouse of the participant, the following rules apply:

(i) The payment is taxable to the participant and is subject to Federal income tax withholding. The participant can elect the amount to be withheld by filing with the TSP the forms provided to the participant with the decision letter. If the participant does not make a withholding election, the TSP will withhold 10 percent from the payment. The tax withholding will be taken from the payee's entitlement and the gross amount of the payment (*i.e.*, the net payment distributed to the payee plus the amount withheld from the payment for taxes) will be reported to the IRS as income to the participant.

(ii) The payment will be made under the same rules described in paragraph (e)(1)(iii) of this section.

(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:

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

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

(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 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

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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 his or her TSP database address. If the payee does not respond within 60 days, the TSP will forfeit the funds to the Plan. The payee can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(l) A properly paid court order payment cannot be returned to the TSP.

[68 FR 35510, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

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 1600.1.

(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

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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.

§ 1653.12 Qualifying legal processes.

(a) The TSP 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, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Federal service;

(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.

§ 1653.13 Processing legal processes.

(a) The payment of legal processes from the TSP is governed solely by the