

received by the TSP 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 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 will honor them in the order of their effective dates.

(3) If the orders relate to different payees and award fixed dollar amounts, percentages or fractions 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, if received by the TSP on different days; or

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

(4) In all other cases, the TSP will honor multiple qualifying court orders relating to the same TSP account in the order of their receipt by the TSP.

[68 FR 35510, June 13, 2003, as amended at 69 FR 29851, May 26, 2004; 71 FR 50320, Aug. 25, 2006]

§ 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 or fraction 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 will use the participant's account balance as of the last preceding business day.

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

(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.

(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

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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).

§ 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 options. 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 of all or a portion of the payment to a traditional IRA or eligible employer plan. The TSP decision letter will provide the forms a payee must use to choose one of these payment options.

(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 a tax withholding election 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.

(d) Payment will be made *pro rata* from all TSP 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 TSP 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. 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 a traditional IRA or eligible employer plan.

(2) If the payment is made to anyone other than the current or former spouse of the participant, the payment is taxable to the participant and is subject to Federal income tax withholding by the participant. The participant can elect the amount to be withheld by filing with the TSP the forms provided to the participant with the decision letter. 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.

(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: