

## Federal Retirement Thrift Investment Board

## § 1653.2

AUTHORITY: 5 U.S.C. 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.

*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.

#### § 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;

(ii) A stated percentage or fraction 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.

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].

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].

Example (3). ORDERED: [payee’s name, SSN, and address] is awarded [fraction] 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: 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, unless the money will become

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vested within 30 days of the date the TSP receives the order if the participant were to remain in Federal service;

(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; and

(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.

[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]

#### § 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 will honor retirement benefits court orders properly issued 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 will review a retirement benefits court order to determine whether it is enforceable against the TSP only after the TSP 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. Retirement benefits court orders should be submitted to the TSP record keeper at the current address as provided at <http://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 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 withdrawal 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 document that does not indicate on its face (or is not accompanied by a document that establishes) that it has been issued or approved by a court;

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

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

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

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

(e) After the participant's account is frozen, the TSP will review the document further to determine if it is complete; if the document is not complete, the TSP will request a complete document. If a complete copy is not received within 30 days of that request, the account will be unfrozen and no further action will be taken with respect to the document.

(f) The TSP 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 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