Court Orders and Powers of Attorney

Dissolution of Marriage ◆ Legal Process ◆ Guardian/Conservator

September 2014

Table of Contents

Introduction. 1

Understanding the TSP 1

Dividing a TSP Account in an Action for
Divorce, Annulment, or Legal Separation. 3

Garnishing a TSP Account for a Participant's
Alimony or Child Support Debt. 8

How the Amount of an Entitlement Is Calculated 11

Tax Treatment and Transfer of Payments 13

Method and Timing of Payments 16

Special Rules for Uniformed Services Accounts 18

Special Rules for Beneficiary Participant Accounts 19

Tips for Avoiding the Delay or Denial of Awards 20

Giving a Power of Attorney 21

Court Appointments of Guardians or Conservators. 23

Sample Language for a Qualifying
Retirement Benefits Court Order. 24

Sample Language for a Qualifying Legal Process 26

Sample Language for Granting a Power of Attorney 27

Introduction

This booklet explains how a TSP account can be divided in an action for divorce, annulment, or legal separation, or garnished to satisfy a participant's past-due alimony or child support obligations.

The TSP must also honor all qualifying Federal tax levies as well as qualifying criminal restitution orders pursuant to the Mandatory Victims Restitution Act (MVRA). For detailed information on these two actions in particular, please see the TSP fact sheet Internal Revenue Service Tax Levies and Criminal Restitution orders. To read it, visit our Forms & Publications page on our website, tsp.gov, or contact the TSP directly for a copy.

In addition to providing information about certain legal processes, this booklet further identifies what the TSP expects to find in documents that grant a power of attorney (POA)—or in a guardianship or conservatorship order—that empowers someone other than a TSP participant to transact business with the TSP.

Please note that the TSP will not review drafts of legal documents. Pages 24-27 of this booklet provide sample language for use in drafting court orders and legal processes, and a copy of the TSP Special Power of Attorney form. Using the sample language will help to expedite the TSP's processing of these documents.

Points of contact are provided on the inside back cover.

Understanding the TSP

The Thrift Savings Plan (TSP) is a retirement savings and investment plan for Federal civilian employees and members of the uniformed services. It is a defined contribution plan that offers the same types of savings and tax benefits that many private corporations offer their employees under "401(k)" plans.

For most civilian Federal employees hired after 1983, the TSP is one part of a three-part retirement system that also includes Social Security and the Federal Employees' Retirement System (FERS) Basic Annuity.

For civilian employees hired before 1984 who did not switch to FERS, the TSP supplements the Civil Service Retirement System (CSRS) annuity.

The FERS and CSRS annuity programs are administered by the Office of Personnel Management (OPM). Court orders related to these benefits should be directed to OPM.

For members of the uniformed services, the TSP supplements military retired pay.

The TSP maintains separate accounts for civilian, uniformed services, and beneficiary participants. Thus, if a participant has more than one type of TSP account, court orders and legal processes must identify each account separately, even if more than one account is addressed in a single court order or legal process. The terms "civilian," "uniformed services," and/or "beneficiary participant" must be used to identify the appropriate account. If a participant has multiple beneficiary participant accounts, the court order or legal process must specify the last 4 digits of the appropriate account number(s). Pages 18 and 19 explain the special rules that apply to uniformed services accounts and beneficiary participant accounts.

Beneficiary participant accounts are established for the spouse beneficiaries of deceased TSP participants. Court orders may be processed against beneficiary participant accounts, though special rules apply. Court-ordered payments made from a beneficiary participant account may not be transferred or rolled over. Consequently, if a beneficiary participant remarries, his or her new spouse will not be able to transfer or roll over any court-ordered payments made from the beneficiary participant's account, and the taxable portion of the payment will be fully taxable in the year issued.

Certain TSP account information is available to spouses. To assist a spouse in developing a valid court order and protecting his or her rights, the TSP will provide the spouse (and the spouse's attorney), upon written request, with TSP account information, such as:

- the participant's (or beneficiary participant's) account balance;
- the participant's outstanding loan balance, if any; and
- annual or quarterly statements.

However, the TSP will **not** provide personal information, such as the participant's address, date of birth, or Social Security number (SSN).

Requests for account information must be in writing and directed to the TSP Legal Processing Unit. (See the inside back cover for the address, or you can also fax the request to 1-866-817-5023.) Requests should:

- provide the participant's (or beneficiary participant's) name and TSP account number (or SSN);
- identify the individual requesting the information and describe his or her relationship to the participant;

- describe the information needed; and
- state the purpose for which the information is being requested.

The participant's (or beneficiary participant's) spouse and his or her attorney may obtain an account balance and TSP transaction history by submitting a written request. (See 5 U.S.C. § 552a.) A subpoena is not required. *Id.*

Dividing a TSP Account in an Action for Divorce, Annulment, or Legal Separation

A TSP account can be divided by means of:

- a court decree of divorce, annulment, or legal separation; or
- a court order or court-approved property settlement agreement incident to such a decree.

A court order may be issued at any stage of a divorce, annulment, or legal separation proceeding. The TSP calls such a document a "retirement benefits court order" (court order).

To be honored by the TSP, a court order must meet the requirements found in 5 United States Code (U.S.C.) §§ 8435(c) and 8467, and 5 Code of Federal Regulations (C.F.R.) part 1653, subpart A.

Note: The **participant** is the Federal civilian employee, uniformed services member, or beneficiary participant who owns the TSP account that is subject to division. The **payee** is the individual or organization who is the intended recipient of the court-ordered disbursement.

The TSP will review only a *complete* copy of a court order. To be complete, a court order must contain all pages and attachments. It also must provide (or be accompanied by a document that provides):

- the participant's TSP account number or Social Security number (SSN);
- the name and mailing address of each payee;
- if the current or former spouse of the participant is a payee, the SSN of the spouse-payee; and

- if the court order is written in a language other than English, a certified English language translation of the entire court order.

The rules for Qualified Domestic Relations Orders (QDROs) that apply to private sector retirement plans do not apply to the TSP. The TSP is not covered by the Employee Retirement Income Security Act of 1974 (ERISA), which governs private sector plans. Therefore, a QDRO, the court order that is used to divide a private sector plan, may not be valid with respect to the TSP. The TSP will evaluate such an order under its own rules.

A qualifying retirement benefits court order for the TSP must meet four basic requirements set forth in 5 C.F.R. § 1653.2:

- It must be issued by a court in any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or by any Indian court as defined by 25 U.S.C. § 1301(3).
- It must expressly relate to the TSP. This means that it **must** specifically contain the name **"Thrift Savings Plan."** Terms such as "all retirement benefits," "Government benefits," "Federal retirement benefits," "Thrift Savings," or "Thrift Savings Account" are **not** adequate.
- If the court order requires a payment from a TSP account, it must clearly describe the payee's entitlement. It can only award a specified dollar amount or a fraction or a percentage of the participant's account as of a specific past or current date.
- A court order can require a payment only to the participant's current or former spouse or to the participant's dependents. Furthermore, the TSP will not honor a court order asking for a single payment to be made jointly (for example, $10,000 to be divided among the former spouse and dependents). The court order must separately specify the dollar amount, percentage, or fraction of the award made to each person.

The TSP will honor a court order that requires payment in the future **only if** the present value of the payee's entitlement can be calculated to be paid currently. (This practice is more generally associated with court orders affecting defined benefits or pension accounts.)

A court order can be used to prevent a participant from withdrawing his or her TSP account during a divorce action. As soon as possible

after receiving a court order that is issued in an action for divorce, annulment, or legal separation, the TSP will "freeze" a participant's account if:

- the court order names the "Thrift Savings Plan" and provides that the participant may not obtain a TSP loan or withdrawal; or
- the court order purports to divide a participant's TSP account.

Once an account is frozen, no new loans or withdrawals are permitted from the account until the action is resolved. All other account activity will be permitted, including investment decisions and payments on existing loans.

The TSP will not freeze an account in response to anything other than the court orders we have described here.

The TSP processes a court order in four steps:

Step 1. As soon as possible after the TSP receives a document that purports to be a qualifying retirement benefits court order, the participant's account will be frozen.

Step 2. The TSP will then evaluate whether the court order is complete. If the court order is not complete, the TSP will request that the parties submit a complete copy of the order. If a complete copy is not received within **30 days** of the date of that notification, the participant's TSP account will be unfrozen, and no further action based on that court order will be taken until a complete court order is received.

Step 3. When the TSP receives a complete court order, the TSP will freeze (or retain the freeze on) the participant's account and evaluate the court order to determine whether it is a qualifying retirement benefits court order and how the account should be divided.

Step 4. The TSP will mail a decision letter to the participant and provide a copy to all of the other parties having a legal interest in the action. The decision letter will describe the effect the order will have on the participant's account and will state when the freeze will be removed from the account. If the court order is not qualifying, the decision letter will explain why. If the order requires a payment, the letter will also explain how the payment amount will be calculated and when the payment will be made.

The party who must pay Federal income tax on the distribution will receive tax reporting and withholding information from the TSP.

If the payee is the current or former spouse of the participant, the payee will also receive information about the option to transfer the payment to a traditional IRA, a Roth IRA, or an eligible employer plan. The transfer option does not apply to court-ordered payments made from beneficiary participant accounts.

The freeze will be removed from the participant's TSP account as follows:

- **If the account was frozen upon receipt of an incomplete court order,** the freeze will be removed if a complete copy of the order is not received within 30 days of the TSP's written request for a complete copy.
- **If the account was frozen in response to a court order issued to preserve the status quo (i.e., a freeze order),** the freeze will be removed when the TSP receives a court order that removes the freeze, or when the TSP receives a court order that purports to require a payment from the TSP, as described below.
- **If the account was frozen in response to an order that purports to require a payment from the TSP, or in response to a freeze order,** the freeze will be removed as follows:
  - ***If the court order requires a payment from the TSP,*** the freeze will be removed after the payment is made.
  - ***If the court order is not qualifying,*** the account will remain frozen for 45 days from the date on which the TSP informs the parties in writing that the order does not qualify. The freeze will be removed sooner if the TSP receives letters from the attorneys of both parties specifying that the freeze may be removed, or the TSP receives a written notarized agreement—signed by both of the parties involved in the divorce proceeding—that the freeze may be removed.

For death benefit purposes, your designated beneficiary will receive your account even if you divorce. If you filed Form TSP-3, Designation of Beneficiary, the law requires us to pay your designated beneficiary under all circumstances. If you designated your spouse as your beneficiary, your TSP account must be paid to the spouse designated on the TSP's Designation of Beneficiary form, **even if you are separated or divorced from that spouse or have remarried.** This is true even if the spouse you designated gave up all rights to your TSP account. Consequently, if you are going through a divorce and have designated the spouse you are

divorcing as your TSP beneficiary, you may want to file a new Designation of Beneficiary form that cancels or changes your current beneficiary designation. See Ridgway v. Ridgway, 454 U.S. 46 (1981). (A spouse was designated by name on a Federal designation of beneficiary form. The participant did not change the election following a subsequent divorce, and the ex-spouse was entitled to all of the proceeds.)

If you have not filed a Designation of Beneficiary form, we are required to pay your TSP death benefit in accordance with the following order of precedence:

1. To your spouse;
2. If none, to your child or children equally, and descendants of deceased children by representation;
3. If none, to your parents equally or to the surviving parent;
4. If none, to the appointed executor or administrator of your estate; or
5. If none, to your next of kin who is entitled to your estate under the laws of the state in which you resided at the time of your death.

Under this order of precedence, even if you are separated from your spouse, as long as you are married, your spouse will be paid your TSP account upon your death. Once you are divorced, your former spouse will no longer receive your account under this order of precedence. If you want to designate someone other than your spouse to receive your TSP account upon your death, you must file the Designation of Beneficiary form with the Thrift Savings Plan.

For more information about the TSP Designation of Beneficiary form and death benefits, please read the booklet *Death Benefits: Information for Participants and Beneficiaries* or *Your TSP Account: A Guide for Beneficiary Participants.*

Garnishing a TSP Account for a Participant's Alimony or Child Support Debt

A **TSP account can be garnished** with a writ, order, summons, or other similar document in the nature of a garnishment that is brought to enforce a participant's child support or alimony obligation. The TSP calls such a document a "legal process."

To be honored by the TSP, a legal process must meet the requirements found at 5 U.S.C. § 8437(e)(3) and 5 C.F.R. part 1653, subpart B.

The TSP will only review a complete copy of a legal process. To be complete, it must contain all pages and attachments and provide (or be accompanied by a document that provides):

- the participant's TSP account number or Social Security number (SSN);
- the name and mailing address of each payee;
- if the current or former spouse of the participant is a payee, the SSN of the spouse-payee. (If the court order requires the payment to be mailed in care of a third party, it must also provide the state of legal residence of the spouse-payee); and
- if the legal process is written in a language other than English, a certified English language translation of the entire legal process.

A legal process must meet three requirements:

According to 5 C.F.R. § 1653.12:

- It must be issued by a court or administrative agency of competent jurisdiction in any of the 50 United States, the District of Columbia, or a territory or possession of the United States, by a court in a foreign country with which the United States has entered into an agreement to honor such processes, or by an official, pursuant to an order of such a court or administrative agency of competent jurisdiction or pursuant to State or local law.

- It must expressly relate to the TSP. This means that it **must** specifically contain the name **"Thrift Savings Plan."** Terms such as "all retirement benefits," "Government benefits," "Federal retirement benefits," "Thrift Savings," or "Thrift Savings Account" are **not** adequate.
- It must either expressly require the payment of a stated dollar amount from the participant's TSP account to satisfy his or her child support or alimony debt, or it must require the TSP to freeze the participant's account pending receipt of an order to make such a payment from the account. The TSP will not honor a legal process that awards a percentage or fraction of an account, or that requires a series of payments (e.g., monthly).

A participant who is liable for alimony or child support can be prevented from withdrawing his or her TSP account. The participant's account will be frozen as soon as possible after the TSP receives a legal process that:

- expressly names the **"Thrift Savings Plan,"** and
- either requires a payment from the TSP to satisfy a child support or alimony debt or requires the TSP to withhold a portion of the participant's account in anticipation of an order to make such a payment.

The TSP takes action on a legal process in four steps:

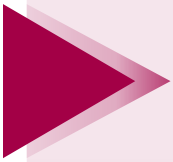
Step 1. As soon as possible after the TSP receives a document that purports to be a qualifying legal process, the participant's account will be "frozen."

Step 2. The TSP will then evaluate whether the legal process is complete. If it is not complete, the TSP will remove the freeze if a complete copy is not received within 30 days of the TSP's written request for one.

Step 3. When the TSP receives a complete legal process, the TSP will evaluate it to determine whether it is a qualifying legal process.

Step 4. The TSP will mail a decision letter to the participant and provide a copy to all other parties having an interest in the action. The decision letter will describe the effect the legal process will have on the participant's account and state when the freeze will be removed from the account. If the legal process is not qualifying, the decision letter will explain why. If the legal process is qualifying and requires a payment from the TSP, the letter will also explain how the payment amount will be calculated and when the payment will be made.

The party who must pay Federal income tax on the distribution will receive tax reporting and withholding information. If the payee is the current or former spouse of the participant, the payee will also receive information about the option to transfer the payment to a traditional IRA, a Roth IRA, or an eligible employer plan. **Note:** The transfer option does not apply to court-ordered payments made from beneficiary participant accounts.



If an order names a spouse or former spouse as a payee, any portion of the award distributed as a cash payment will be treated as taxable income to the payee. If the intent of the parties is to award a payment for child support arrears that is taxable to the participant, the payee must be identified in the court order as the dependent child or as a state child support enforcement agency.

The freeze will be removed as explained below.

If the participant's account was frozen upon the TSP's receipt of a complete document purporting to be a qualifying legal process:

- **If the legal process requires a payment from the TSP,** the freeze will be removed after the payment is made.
- **If the legal process does not qualify to require a payment from the TSP,** the freeze will be removed as soon as possible after the TSP informs the parties in writing that the document is not a qualifying legal process.

Some states allow a two-step garnishment process. The first step consists of an order to withhold, which freezes the debtor's assets. The second step consists of an order to deliver, which requires the recipient to pay a specified amount of the debtor's assets to a third party.

If the account was frozen upon receipt of an order to withhold, the freeze will be removed:

- upon receipt of an order removing the freeze;
- after payment pursuant to a qualifying order to deliver; or
- as soon as possible after the TSP informs the parties in writing that the document is not a qualifying legal process.

How the Amount of an Entitlement Is Calculated

For a retirement benefits court order:

If a court order awards a percentage or fraction of a TSP account as of a specific day, the payee's entitlement is determined based on that day's total account balance.

If a court order awards a percentage or fraction of a TSP account and does not specify a date for calculating the award, the payee's entitlement is determined based on the effective date of the order.

If a court order awards a fixed dollar amount, the payee's entitlement is that dollar amount.

If a court order describes a payee's entitlement as a fixed dollar amount and as a percentage or fraction of the account, the payee's entitlement is the specified dollar amount, even if the percentage or fraction, when applied against the total account balance, yields a different amount.

A court order cannot require the TSP to pay more than the participant's total vested account balance. Therefore, if the payee's entitlement exceeds the participant's vested account balance when the TSP pays the award, the TSP will only pay the vested account balance.

For a legal process:

Because a legal process can only award a specific dollar amount, the payee's entitlement is determined based on the participant's total vested account balance at the time of payment. That is, the TSP will pay the lesser of the specified dollar amount or the participant's vested account balance.

Effect of a Loan

A TSP loan may or may not affect an account balance for purposes of calculating a court-ordered award. For purposes of computing a payee's entitlement, the dollar amount of an outstanding TSP loan is **included**

in the account balance, unless the court order specifically provides otherwise. Therefore, a court order need not mention a TSP loan unless the outstanding loan amount should be excluded from the award calculation.

For example: Assuming a participant has a $10,000 account balance and also has a $5,000 outstanding loan, his or her total account balance for the purpose of computing a court order payee's entitlement would be $15,000. This is because funds borrowed by a participant are not considered to be withdrawn from his or her account and are expected to be paid back to the account by the participant.

Interest and Earnings

For the purpose of a retirement benefits court order, the term "earnings" includes earnings and losses.

Neither interest nor earnings will be paid on the amount of the entitlement unless the court order specifically provides for them. A court order can only require the payment of earnings at a stated annual percentage rate or the addition of a per diem dollar amount to the payee's entitlement.

The order cannot reference a TSP fund as an interest or earnings rate. If the court order provides for earnings, but does not specify a rate or a per diem dollar amount, the TSP will calculate earnings based on the type of TSP funds the participant was invested in on the date used to calculate the payee's entitlement, the number of shares the participant had in each fund on the date used to calculate the payee's entitlement, and the share price of those TSP funds up to two days prior to disbursement. **Note:** Investment fund changes that were made after the date used to calculate the participant's entitlement are not considered in this calculation.

Tax Treatment and Transfer of Payments

Tax Treatment

The tax treatment of a payment made under a qualifying court order or legal process depends on the type of money contributed to the TSP account. A TSP account may consist of a traditional (non-Roth) balance, a Roth balance, or both.

Contributions to a **traditional (non-Roth) balance** are made pre-tax. This means the participant did not pay taxes on his or her own contributions, any agency contributions, or earnings. Therefore, taxes will be owed on the traditional (non-Roth) portion of a payment made under a qualifying court order or legal process.

Contributions to a **Roth balance** are made after-tax. This means that the participant paid tax on his or her contributions before those contributions were made. Any amount of a payment that is made up of Roth contributions is not taxable. In addition, no taxes will be owed on the Roth earnings portion of a payment provided certain Internal Revenue Service (IRS) rules are met.[1]

Any payment made under a qualifying order will be disbursed proportionally from any traditional (non-Roth) and Roth balances in the participant's account. A court order or legal process cannot specify the type of balance from which the payment should be made.

If a payment is made to the current or former spouse of the participant, the taxable portion of the payment is reported to the Internal Revenue Service (IRS) as gross income for the recipient spouse for the tax year in which the payment is made (unless the funds are transferred to a traditional IRA, a Roth IRA, or an eligible employer plan). This is the case even if the payment is intended to satisfy child or spousal support arrears.

[1] The tax treatment of Roth earnings depends on whether those earnings are qualified. Earnings become qualified, and therefore paid tax-free, when **two** conditions have been met: 1) 5 years have passed since January 1 of the calendar year in which the first Roth contribution was made, **and** 2) the participant has reached age 59½, has a permanent disability, or has died.

Note: The transfer option does not apply to court-ordered payments made from beneficiary participant accounts.

If the payment is made to someone other than the current or former spouse of the participant (e.g., a child or a support enforcement agency), the taxable portion of the payment is reported to the IRS as gross income for the participant for the tax year in which the payment is made.

A payment in response to a retirement benefits court order or legal process is not subject to an early withdrawal penalty tax. Such distributions are exempt from the early withdrawal penalty tax under the Internal Revenue Code.

For more detailed information about tax treatment of payments, see the TSP tax notice "Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders," available on the TSP website.

Transfers

All or part of a payment to a current or former spouse under a court order or legal process may be transferred to a traditional IRA, a Roth IRA, or an eligible employer plan.[2] **Note:** The transfer option does not apply to court-ordered payments made from beneficiary participant accounts.

Current or former spouses asking the TSP to transfer the payment to a traditional IRA, a Roth IRA, or an eligible employer plan must use the proper TSP forms to request such a transfer. **These forms are provided to the participant's current or former spouse with the TSP decision letter. The TSP will not accept transfer forms developed by financial institutions.** The financial institution to which the payment is being transferred must complete the relevant section of the appropriate TSP form.

The TSP will not honor payment information, financial institution information, or payment elections submitted in the form of a cover letter or embedded within a court order document. The information may only be submitted using the proper TSP form.

[2] The terms "traditional IRA," "Roth IRA," and "eligible employer plan" are defined in the TSP tax notice "Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders," which explains the Federal income tax treatment of court-ordered awards. The tax notice, which also describes certain rules and restrictions associated with transferring funds from a traditional (non-Roth) balance to a Roth IRA, will be provided to the payee with the TSP decision letter. It is also available from the TSP website, from the participant's personnel or payroll office, or from the TSP. (Before transferring the traditional (non-Roth) portion of a payment to a Roth IRA, the participant may also want to seek the counsel of a tax advisor.)

The TSP will not honor forms received on or after the payment date (see "Timing" on page 16). Failure to submit forms on time may result in tax withholding, and the TSP will not reverse properly disbursed payments.

The TSP is an eligible employer plan. Therefore, if the current or former spouse of the participant has a TSP account, he or she can transfer all or part of the payment to that account. This transfer is not automatic. The current or former spouse must complete and submit the proper TSP form to transfer or roll over the disbursement into his or her TSP account. **Note:** Tax-exempt balances coming from a uniformed services TSP account may not be transferred into another TSP account (see "Special Rules for Uniformed Services Accounts" on pages 18 and 19). Also, the transfer option does not apply to court-ordered payments made from beneficiary participant accounts.

Sometimes a court order may instruct the TSP to mail a payment to a third-party addressee, such as the payee's attorney. However, in such cases, the current or former spouse of a participant still has the right to ask the TSP to transfer a payment to a traditional IRA, a Roth IRA , or an eligible employer plan. Therefore, even if a court order requires the TSP to mail a current or former spouse's payment to a third-party addressee, the TSP will honor the spouse's request to transfer the payment.

A payment that is properly made cannot be returned to the TSP. (See 5 C.F.R. § 1653.5(l).)

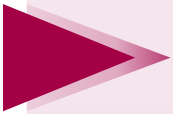
Method and Timing of Payments

Method of Payment

The payment will be made *pro rata* (proportionally) from any traditional (non-Roth) and Roth balances in the participant's account, and from all TSP investments in which the participant is invested:

- based on the balance in each fund on the date payment is made; and
- from all contribution sources (i.e., from employee contributions and employing agency or service contributions, if applicable).

TSP payments are made by United States Treasury check directly to the payee or by direct deposit via electronic funds transfer (EFT) to the payee's financial institution. (However, EFT cannot be used to transfer a payment or a portion of a payment to an IRA or eligible employer plan.)



The TSP will not make a series of payments even if the order or process requires it, or even if the participant's account balance is insufficient at the time of payment for the TSP to satisfy the payee's entire entitlement. The TSP will honor a second order, however.

Timing

The TSP will generally disburse a payment **60 days** after it issues the decision letter that describes the effect the court order or legal process will have on the participant's account. If the payee is the current or former spouse of the participant, the payee can ask to have the payment disbursed sooner by:

- waiving the tax notification period;
- making a Federal income tax withholding election; or
- in the case of a payment to a spouse or former spouse that is **not** coming from a beneficiary participant account, requesting that the TSP transfer the payment to a traditional IRA, a Roth IRA, or an eligible employer plan.

If payment is made to a state child support enforcement agency, the payment will generally disburse 31 days after the date of the TSP decision letter, and the participant cannot elect additional Federal income tax withholding.

In no case will payment be made earlier than 31 days after the date of the TSP decision letter.

Disputing a Payment

A decision letter by the TSP regarding a court order is considered a final administrative action by the TSP. Court-ordered payments made in accordance with TSP rules cannot be reversed.

The only way to cancel or suspend a pending court-ordered payment is to obtain a valid new or amended court order, motion, or restraining order specifically addressing the relevant case. A party disputing any portion of the decision letter should contact the TSP immediately and submit a signed letter of dispute containing a current phone number and mailing address. The letter of dispute must be received no later than 25 days from the date of the decision letter.

Upon receipt of a letter of dispute, the TSP will hold the payment until the scheduled payment date. If a valid new or amended court order, motion, or restraining order has not been received by the payment date, the TSP will disburse the payment, which cannot be reversed.

Special Rules for Uniformed Services Accounts

When a participant has more than one type of account (e.g., civilian, uniformed services, and/or beneficiary participant), a single court order or legal process can affect all of the accounts. However, each account must be expressly identified in the court order or legal process.

> If the court order or legal process requires payment from more than one TSP account, it must clearly describe the payee's entitlement for **each account**.

TSP accounts for members of the uniformed services may include contributions from pay that is subject to the combat zone tax exclusion. These contributions are exempt from Federal income taxes, and remain tax-exempt even when the money is distributed from the account pursuant to a qualifying court order or legal process.

However, the **earnings** on tax-exempt contributions may or may not be taxable. Earnings on tax-exempt contributions made to a **traditional (non-Roth) balance** are taxable when they are distributed. But earnings on tax-exempt contributions made to a **Roth balance** are not taxable if they satisfy the IRS rules for qualified earnings (see page 13).

A payment from a traditional balance that contains both taxable and tax-exempt money will be paid proportionally from taxable and tax-exempt amounts. A court order or legal process cannot specify that a payment be made only from tax-exempt contributions.

If the payment is eligible for transfer and the payee wishes to transfer or roll over a payment that includes tax-exempt funds:

If the award contains a tax-exempt contributions from a traditional (non-Roth) balance, the tax-exempt portion may be transferred to a traditional IRA, a Roth IRA, or certain eligible employer plans, **but only if the IRA or plan accepts tax-exempt funds.**

If the current or former spouse elects to transfer only part of the payment from a traditional (non-Roth) balance into an IRA or eligible employer plan, **the taxable portion of the payment will be transferred to the IRA or plan first.**

Amounts that are not transferred will be paid directly to the individual receiving the payment.

If a payee wishes to transfer or roll over a payment into his or her own pre-existing TSP account, any tax-exempt balances coming from a uniformed services TSP account may not be transferred into another TSP account.

Court-ordered payments from beneficiary participant accounts cannot be transferred or rolled over. For more detailed information regarding the transfer or rollover of payments that include tax-exempt funds, see the TSP tax notice "Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders." The tax notice will be provided to the payee with the TSP decision letter. It is also available from the TSP website, from the participant's personnel or payroll office, or from the TSP.

Special Rules for Beneficiary Participant Accounts

Beneficiary participant accounts are established for the spouse beneficiaries of deceased TSP participants. Court orders may be processed against beneficiary participant accounts, though special rules apply. Court-ordered payments made from a beneficiary participant account may not be transferred or rolled over. Consequently, if a beneficiary participant remarries, his or her new spouse will not be able to transfer or roll over any court-ordered payments made from the beneficiary participant's account. The taxable portion of the payment will be fully taxable for the year it is made.

When a beneficiary participant's account contains tax-exempt money, the money remains tax-exempt when it is distributed from a beneficiary participant's account pursuant to a qualifying court order or legal process.

When a participant has more than one type of account (e.g., civilian, uniformed services, and/or beneficiary participant), a single court order or legal process can affect all of the accounts. However, each court order or legal process must expressly identify from which type of account the payment is to be made. If a participant has more than one beneficiary participant account, the court order or legal process must specify the last 4 digits of the appropriate account number(s).

Tips for Avoiding the Delay or Denial of Awards

Common errors or omissions can sometimes result in the delay or denial of a court-ordered award. To avoid them, use the checklist below.

- ✓ Be sure to provide the signature of the appropriate judicial official. The TSP will not review draft court orders or legal processes, and it will treat any order or process submitted without the appropriate judicial signature as a draft.
- ✓ Be sure to include the payee's current address and, if the payee is a spouse or former spouse, his or her Social Security number (SSN). If the payee's information is not provided within the court order or legal process, it may only be submitted by the payee or either party's attorney of record.
- ✓ Be sure to include the participant's TSP account number or SSN and current address.
- ✓ Be sure the court order or legal process refers expressly to the "Thrift Savings Plan" by name. No variations will be accepted.
- ✓ Be sure the dollar amount of the award (or percentage or fraction, if a retirement benefits court order) is clearly stated.
- ✓ Be sure the court order or legal process does not ask for future payments. The award must be a one-time payment that can be paid out immediately.
- ✓ If the participant has more than one type of TSP account, be sure the court order or legal process identifies the account from which the award is to be paid using the terms "civilian," "uniformed services," and/or "beneficiary participant."
- ✓ If eligible, be sure the spouse-payee submits forms for transferring a payment to a traditional IRA, a Roth IRA, or eligible employer plan, in a timely manner. Failure to do so will result in the issuance of a check, and the mandatory 20% tax withholding will apply to any taxable amounts. The TSP will not reverse a properly disbursed payment.

Giving a Power of Attorney

A TSP participant or payee may use a power of attorney (POA) to authorize another person to act on his or her behalf. For example, a participant who has to go overseas for an extended period of time may want to designate someone to conduct business with the TSP on his or her behalf while out of the country. The TSP participant or payee who gives the power of attorney is called the "principal," and the individual who is authorized to act on behalf of the principal is called the "agent" or "attorney-in-fact."

A POA may be general or specific:

- A general POA gives the agent unlimited power to conduct business with the TSP. For example, the agent could make a withdrawal, take a TSP loan, or change a beneficiary designation.
- A specific (or special) POA limits — and clearly states — what the agent can do on behalf of the principal. For example, it might state that the agent can obtain information about the participant's TSP account or borrow or withdraw funds from that account.

The sample Power of Attorney document on page 27 (also available from the TSP website) has lines to initial by hand in order to identify what the agent can do when granted special power of attorney. If all three lines are initialed, the document gives the agent unlimited authority to conduct business with the TSP. We encourage participants to use this POA document for their TSP accounts.

A valid POA must be signed by the appropriate participant or payee, dated, and notarized. It must not have expired, and must contain language that authorizes the agent to transact the participant's or payee's business with the TSP.

When signing a document on behalf of the principal, the agent should sign his or her own name, followed by "POA for" and the principal's name. When calling the TSP on behalf of the principal, the agent will be asked for information regarding the approved POA.

Springing POA

A POA that becomes effective only after a specific event has occurred is called a "springing POA." A springing POA must be submitted with evidence that the event it describes has already occurred.

For example, for a springing POA, the TSP participant might sign a statement saying "This POA is effective when I become incapacitated or disabled as documented by a physician." In such a case, acceptable evidence would be a letter from the participant's physician clearly stating that the participant has become "incapacitated" or "disabled."

Court Appointments of Guardians or Conservators

A court order that authorizes an individual to act on behalf of an incapacitated or incompetent person is known as a guardianship order or a conservatorship order. For the purposes of the TSP, the incapacitated or incompetent person is the participant or a payee. That person is also referred to as the "principal." The person appointed by the court to act on the principal's behalf is called a "guardian" or "conservator."

Once a guardianship or conservatorship order is approved, the TSP will not accept any documents the participant (or payee) signed after the date of the court order.

A guardianship or conservatorship order must be issued by a court in one of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or by any Indian court (as defined by 25 U.S.C. 1301(3)). A judge or other judicial official designated by the relevant jurisdiction must sign the order. Further, before the TSP may honor a guardianship or conservatorship order, you must demonstrate that all preconditions in the order have been satisfied. For example, if the order states that it is not effective until letters of guardianship have been issued, you **must submit the letters** with the order. (See 5 C.F.R. § 1690.13(a)(3).) If the guardianship or conservatorship was created in a jurisdiction that issues letters of guardianship or letters of conservatorship, then both the letters and the underlying order must be submitted for review.

Like a POA, a guardianship or conservatorship order can grant an individual either general or specific power. For example, a guardianship or conservatorship order granting general power might broadly appoint the guardian or conservator to handle the principal's "estate" or "personal property" or to conduct business transactions on the principal's behalf. However, a guardianship or conservatorship granting specific power would limit the guardian's or conservator's power — for example, by appointing the guardian or conservator only to obtain information about the participant's TSP account or to borrow or withdraw funds from that account.

Because guardianship and conservatorship orders vary widely from jurisdiction to jurisdiction, we are not including samples of them in this booklet.

Sample Language for a Qualifying Retirement Benefits Court Order

(***Note:*** *A retirement benefits court order must meet the requirements found at 5 U.S.C. §§ 8435(c) and 8467, and 5 C.F.R. part 1653, subpart A. The Thrift Savings Plan will honor any court order or court-approved property settlement agreement that meets these requirements. Use of the format below is not required.)*

[court name]

In re the Marriage of:	)
	)
Petitioner	)
and	)
Respondent	)

RETIREMENT BENEFITS COURT ORDER

THIS MATTER having come before the court on motion, and the court, after reviewing the motion and being otherwise fully advised of the matter:

*(**Note:** Any **ONE** of 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.)*

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

-OR-

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

-OR-

* If the participant has more than one type of TSP account, the court order must expressly identify the account(s) to which it relates. If the participant has multiple beneficiary participant accounts, the court order must specify the last 4 digits of the appropriate account number(s).

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

*(**Note:** The following optional language can be used in conjunction with any of the aforementioned examples.)*

FURTHER ORDERED: Earnings will be paid on the amount of the entitlement under this ORDER until payment is made.

Dated: _____

BY THE COURT:

_____

Judge's Signature

* If the participant has more than one type of TSP account, the court order must expressly identify the account(s) to which it relates. If the participant has multiple beneficiary participant accounts, the court order must specify the last 4 digits of the appropriate account number(s).

Sample Language for a Qualifying Legal Process

(***Note:*** *A legal process (an alimony and/or child support garnishment order) must meet the requirements of 5 U.S.C. § 8437(e)(3) and 5 C.F.R. part 1653, subpart B. The Thrift Savings Plan will honor any legal process that meets these requirements. Use of the format below is not required.)*

[court name]

Petitioner)
vs.)
Respondent)

ORDER FOR GARNISHMENT OF A TSP ACCOUNT

WHEREAS by order of this court [participant's name, Social Security number (SSN), and address] was required to pay alimony and/or child support to [payee's name, SSN, address, and relationship to participant];

AND WHEREAS [participant's name] has failed to meet this obligation and is currently $_____ in arrears;

IT IS THEREFORE ORDERED that the Thrift Savings Plan (TSP) pay to [payee's name] $_____ from the [civilian, uniformed services, and/or beneficiary participant] TSP account(s)* of [participant's name] to satisfy the obligation.

IT IS FURTHER ORDERED that the earnings will be paid on the amount of the entitlement under this ORDER until payment is made. (***Note:*** *This paragraph is optional.*)

Dated: _____

BY THE COURT:

_____
Judge's Signature

* If the participant has more than one type of TSP account, the legal process must expressly identify the account(s) to which it relates. If the participant has multiple beneficiary participant accounts, the legal process must specify the last 4 digits of the appropriate account number(s).

Sample Language for Granting a Power of Attorney

SPECIAL POWER OF ATTORNEY

The purpose of this document is to designate a person as your agent to act on your behalf with the Thrift Savings Plan (TSP). You may revoke this power of attorney in writing if you wish.

If there is anything about this power of attorney that you do not understand, you should ask a lawyer to explain it to you. To make this document official, you must sign it—or acknowledge having signed it—in the presence of a notary public.

Mail or fax the form to: **TSP Legal Processing Unit, P.O. Box 4390, Fairfax, VA 22038-4390.**
Fax number: **(703) 592-0151.**

Assignment of the Power of Attorney

A TSP participant, his or her spouse, or his or her payee may complete this section. ***Please type or print.***

I, _____ of _____ do hereby appoint
First name Middle initial Last name City State

_____ of _____ my true and lawful agent to:
First name Middle initial Last name City State

(Please ***hand write your initials*** *on the line in front of the power you are granting.)*

_____ obtain information about this TSP account.

_____ borrow or withdraw funds from this TSP account.

_____ take any other action(s) relating to this TSP account.

This power of attorney relates to the TSP account of _____,
Participant's first name Middle initial Last name

whose Social Security number is _____ – _____ – _____.

This power of attorney will not be affected if I subsequently become disabled, incapacitated, or incompetent. It is effective immediately, and, unless revoked or terminated by me earlier in writing, will expire on

_____. *(If no date applies, write "indefinite.")*
Month/day/year

Signature of person giving power of attorney: _____ Date: _____
Month/day/year

Statement of Notary Public

A notary public must complete this section; no other acknowledgment is acceptable.* Please type or print.

This document granting a power of attorney was signed, or acknowledged to have been signed, before me

on _____ by _____,
Month/day/year First name Middle initial Last name

who is personally known to me or has properly identified himself/herself to me.

_____ _____
Jurisdiction (County) (State) Notary public's signature

SEAL

My commission expires: _____
Month/day/year

* This document will be filed with the Federal Retirement Thrift Investment Board (FRTIB) in Washington, D.C. The FRTIB is an agency in the United States Government established by 5 U.S.C. § 8472.

OC 01-10 (1/2011)

This form is available from the TSP website in Forms & Publications under Legal Documents.

Points of Contact

Court orders, legal processes, powers of attorney, and guardianship or conservatorship appointments relating to the Thrift Savings Plan (TSP) must be submitted to:

TSP Legal Processing Unit
P.O. Box 4390
Fairfax, VA 22038-4390

Fax: 1-703-592-0151

Overnight address:

ATTN: TSP Legal Processing Unit
12210 Fairfax Town Center
Unit 906
Fairfax, VA 22033

Telephone Number: 1-877-968-3778 (toll free); for callers outside the U.S. and Canada, 404-233-4400 (not toll free)

TDD: 1-877-847-4385 (toll free)

TSP Website: tsp.gov

Court orders relating to the civilian retirement benefits administered by the Office of Personnel Management (OPM) must be submitted to:

U.S. Office of Personnel Management
Court Ordered Benefits Branch
P.O. Box 17
Washington, DC 20044

Federal tax levies and restitution orders relating to the TSP must be submitted to:

TSP Legal Processing Unit
P.O. Box 4570
Fairfax, VA 22038-9998

Overnight address:

ATTN: TSP Legal Processing Unit
12210 Fairfax Town Center
Unit 906
Fairfax, VA 22033

Tax levies and restitution orders must include the participant's TSP account number(s) or Social Security number, as well as the name and mailing address of the payee.

THRIFT SAVINGS PLAN
YOUR PLAN ★ YOUR FUTURE

TSPBK11 (9/2014)
PREVIOUS EDITIONS OBSOLETE