

# Thrift Savings Plan



# Information About Court Orders

June 2003

Federal Retirement  
Thrift Investment Board

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# 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.

Please note that the TSP will not review drafts of legal documents. Section I of this booklet provides sample language for use in drafting court orders and legal processes. Using the sample language may help to expedite the TSP's processing of the document.

The remaining sections discuss the TSP, provide specific information about different types of court orders and legal processes, explain how the award amount is computed, describe the method, timing, and tax treatment of payments, and identify the special rules that apply to uniformed services accounts.

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# Points of Contact

Court orders, legal processes, and account information requests relating to the Thrift Savings Plan (TSP) must be submitted to the TSP record keeper:

TSP Service Office  
National Finance Center  
P.O. Box 61500  
New Orleans, LA 70161-1500  
Phone: (504) 255-8777  
TDD: (504) 255-5113

Court orders relating to the 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

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# I. Sample Language

## A. 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), 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 or uniformed services] Thrift Savings Plan account\* of [participant's name, SSN, and address].

**-OR-**

**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, SSN, and address] as of [date].

**-OR-**

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\*If the participant has both a civilian TSP account and a uniformed services TSP account, the court order must expressly identify the account to which it relates.

**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, 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.

Signed this [day] day of [month], [year].

**BY THE COURT:**

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Judge

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\*If the participant has both a civilian TSP account and a uniformed services TSP account, the court order must expressly identify the account to which it relates.



## B. 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 or uniformed services] TSP account\* 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.)

Signed this [day] day of [month], [year].

**BY THE COURT:**

\_\_\_\_\_  
Judge

\*If the participant has both a civilian TSP account and a uniformed services TSP account, the court order must expressly identify the account to which it relates.



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## II. General TSP Information

### What is the Thrift Savings Plan (TSP)?

The TSP is a retirement savings and investment plan. Congress established the TSP in the Federal Employees' Retirement System Act of 1986 for Federal civilian employees and members of Congress. (See 5 United States Code (U.S.C.) §§ 8351, 8401-79.) A provision of the Floyd D. Spence National Defense Authorization Act of Fiscal Year 2001 (Public Law 106-398) extended participation in the TSP to members of the uniformed services. The TSP 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 Federal employees hired after 1983, the TSP is one part of a three-part retirement system that also consists of Social Security and the Federal Employees' Retirement System (FERS) Basic Annuity. For 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).<sup>1</sup> Court orders related to these benefits should be directed to OPM.

Because the contribution rules for uniformed services members and Federal civilian employees differ, the TSP maintains separate accounts for civilian and uniformed services participants. Thus, if a participant has both a civilian and a uniformed services TSP account, court orders and legal processes must separately address each account. Section VII of this booklet explains the

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<sup>1</sup> FERS refers to the Federal Employees' Retirement System, the Foreign Service Pension System, and other equivalent Government retirement plans. CSRS refers to the Civil Service Retirement System, including CSRS Offset, the Foreign Service Retirement and Disability System, and other equivalent Government retirement plans.

special rules that apply to TSP accounts that are maintained for members of the uniformed services.

A detailed discussion of the TSP and its features can be found in the *Summary of the Thrift Savings Plan for Federal Employees* and the *Summary of the Thrift Savings Plan for the Uniformed Services*; they are available from the TSP Web site at [www.tsp.gov](http://www.tsp.gov), from the participant's agency personnel office or service TSP representative, or, if the participant is separated from service, from the TSP Service Office.

### **Can a spouse find out a participant's TSP account balance?**

Yes. To assist a spouse in developing a valid order and protecting his or her rights, the TSP will provide the spouse (and his or her attorney) with TSP account information, such as the participant's account balance and outstanding loan balance, if any. The TSP will also provide spouses with replacement participant statements. However, the TSP will not provide personal information, such as the participant's address, Social Security number, or date of birth.

Requests for account information must be directed to the TSP record keeper at the mailing address found on page ii of this booklet, and should:

- Name the participant and provide his or her Social Security number (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.

**Note:** The TSP will take action to prosecute any person who requests or obtains information regarding a participant's account under false pretenses. Such misrepresentation is a crime that is punishable under the Privacy Act, 5 U.S.C. § 522a(i)(3).

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### **III. Dividing a TSP Account in an Action for Divorce, Annulment, or Legal Separation**

#### **What document is needed to divide a TSP account in an action for divorce, annulment, or legal separation?**

A TSP account can be divided by a court decree of divorce, annulment, or legal separation, or by 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. The TSP calls such a document a “retirement benefits court order” (court order). To be honored by the TSP, the court order must meet the requirements found in 5 U.S.C. §§ 8435(c), 8467, and 5 Code of Federal Regulations (C.F.R.) part 1653, subpart A, which are explained below.

#### **Does the TSP need a complete copy of the court order?**

Yes. The TSP will only review 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 Social Security number (SSN);
- The name and last known mailing address of each payee; and
- If the current or former spouse of the participant is a payee, the SSN of the spouse-payee. In addition, 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.

## **Do the same rules that apply to private sector retirement plans also apply to the TSP?**

No. The TSP is not covered by the Employee Retirement Income Security Act of 1974 (ERISA), which governs private sector plans. The rules governing the TSP are found at 5 U.S.C. §§ 8351, 8401-79, and 5 C.F.R. chapter VI. Therefore, court orders that are used to divide private sector plans (called “Qualified Domestic Relations Orders” or “QDROs”) may not be valid with respect to the TSP. For example, under ERISA, a court order can award a payee a benefit to be paid in the future; however, the TSP will not honor a court order that requires a future payment.

## **Must the TSP be joined as a party before payment can be made pursuant to a retirement benefits court order?**

No. Joinder of the TSP (i.e., making the TSP a party to an action for divorce, annulment, or legal separation) is neither permissible nor necessary. Because the TSP is a Federal Government program administered by a Federal agency, the doctrine of sovereign immunity (which permits the Federal Government to be sued only if Congress consents) precludes joinder of the TSP in any court proceeding. Congress has not waived sovereign immunity in this area. Instead, Federal law provides that the TSP must honor a qualifying retirement benefits court order. While Federal law requires payment pursuant to a qualifying court order, it does not permit the TSP to be made a party in the divorce action that gives rise to the order.

## **What are the requirements for a qualifying retirement benefits court order?**

A qualifying retirement benefits court order must meet four basic requirements:

- First, 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.

- Second, 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,” or “Federal retirement benefits” are not adequate.
- Third, if the court order requires a payment from the TSP, it must clearly describe the payee’s entitlement. For example, a court order can award a specified dollar amount or a fraction or a percentage of the participant’s account as of a specific past or present date. If the court order describes the payee’s entitlement by using a formula, all of the variables in the formula must be described in the court order or be available from TSP records.
- Fourth, a court order can only require a payment to the participant’s current or former spouse, to the participant’s dependents, or to an attorney who represents the participant’s current or former spouse or dependents (for attorney’s fees). The TSP will not honor a court order asking for payment to be made jointly, such as to the former spouse and children or to a former spouse and the former spouse’s attorney. The court order should separately specify the award to be made to each person.

### **Can a court order require payment at a future date?**

No. The TSP will not honor a court order that requires a future payment unless it is possible to calculate and make a payment equal to the present value of the future payment.

### **How can a participant be prevented from withdrawing his or her TSP account during a divorce action?**

The TSP will “freeze” a participant’s account as soon as practicable after receipt of a court order that is issued in an action for divorce, annulment, or legal separation to preserve the *status quo* pending the outcome of the litigation. Once an account is

frozen, ***no loans or withdrawals will be permitted from the account.*** All other account activity will be permitted. To be effective against the TSP, the court order must expressly name the TSP and contain language to the effect that the participant is not permitted to obtain a TSP withdrawal or loan.

The TSP will also freeze an account as soon as practicable after receipt of a court order issued in an action for divorce, annulment, or legal separation if it purports to divide a participant's account.

However, the TSP cannot freeze an account in response to anything other than such a court order. Accordingly, a letter or a Notice of Interest (or similar document) that would be effective under state law against a private sector retirement plan is not effective for freezing a TSP account.

## **What happens after the TSP receives a court order?**

The TSP's processing of a court order involves four steps:

**Step 1** - As soon as practicable after the TSP Service Office receives a document that purports to be a qualifying retirement benefits court order, the account of the participant will be frozen. (See "How can a participant be prevented from withdrawing his or her TSP account during a divorce action?" above.)

**Step 2** - The TSP will then evaluate whether the court order is complete. If the court order is not complete, the TSP will continue the freeze on the account and notify the parties to 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 the court order will be taken. (If a complete copy of the court order is received after the 30-day period, the participant's TSP account will be refrozen at that time.)

**Step 3** - When the TSP receives a complete court order, the TSP will evaluate it to determine whether it is a qualifying retirement benefits court order.



**Step 4** - The TSP will mail a decision letter to the participant and provide a copy to all the other parties having an interest in the action. The decision letter will describe the effect the order will have on the participant's account and state when the freeze will be removed from the account. If the court order is not found to be 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. (See "Who must pay Federal income tax on a payment made by the TSP in response to a court order or legal process?" on page 23.) 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 or an eligible employer plan. (See "Can a payment be transferred to a traditional IRA or an eligible employer plan?" on page 21.)

### **When will the freeze be removed from the participant's TSP account?**

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 if the TSP receives a court order that removes the freeze.

The freeze will also be removed if the TSP receives an order that supersedes the freeze order. A court order that purports to require a payment from the TSP will supersede the freeze order, and, in such a case, 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 does not qualify to require a payment from the TSP, 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. This will allow the parties an opportunity to obtain and submit to the TSP a new qualifying order without concern that the participant may withdraw or borrow from his or her account in the interim. (The freeze will be removed sooner if the TSP receives a written agreement — from both of the parties involved in the divorce proceeding — that it may be removed.)

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## **IV. Garnishing a TSP Account for a Participant's Alimony or Child Support Debt**

### **What document is needed to garnish a TSP account for a child support or alimony 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 past-due 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, which are explained below.

### **Does the TSP need a complete copy of the legal process?**

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

- The participant's Social Security number (SSN);
- The name and last known mailing address of each payee; and
- If the current or former spouse of the participant is a payee, the SSN of the spouse-payee. In addition, 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.

### **What are the requirements for a qualifying legal process?**

A legal process that the TSP will honor must meet three basic requirements:

- First, 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 agency.
- Second, 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,” or “Federal retirement benefits” are not adequate.
- Third, either it must 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.

### **How can a participant who is liable for alimony or child support be prevented from withdrawing his or her TSP account?**

The participant’s account will be frozen as soon as practicable after the TSP receives a legal process that expressly names the TSP 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.

### **What happens after the TSP receives a legal process?**

Taking action on a legal process involves four steps:

**Step 1** - As soon as practicable after the TSP Service Office receives a document that purports to be a qualifying legal process, the account of the participant will be “frozen.” (See “How can a participant who is liable for alimony or child support be prevented from withdrawing his or her TSP account?” above.)

**Step 2** - The TSP will then evaluate whether the legal process is complete. If the legal process is not complete, the TSP will remove the freeze from the account and notify the parties to submit a complete copy of the legal process. When the legal process is deemed complete, the participant's TSP account will be refrozen.

**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 found to be qualifying, the decision letter will explain why. If the legal process is found to be qualifying and 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 also receive tax reporting and withholding information. (See "Who must pay Federal income tax on a payment made by the TSP in response to a court order or legal process?" on page 23.) 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 into a traditional IRA or an eligible employer plan. (See "Can a payment be transferred to a traditional IRA or an eligible employer plan?" on page 21.)

## **When will the freeze be removed?**

If the participant's account was frozen upon the TSP's receipt of a complete document purporting to be a qualifying legal process, the freeze will be removed according to the following schedule:

- 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 immediately and the TSP will inform the parties in writing that the process does not qualify.
- If the account was frozen upon receipt of an order to withhold (i.e., pending receipt of an order to deliver), the freeze will be removed: (1) upon receipt of an order that removes the freeze; or (2) after payment pursuant to a qualifying order to deliver; or (3) at the time the TSP issues a written statement to the parties to inform them that an order to deliver does not qualify to require a payment.

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## V. Computing the Award Amount

### How is the amount of an entitlement calculated for court orders and legal processes?

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

If a court order awards a fixed dollar amount, the payee's entitlement is determined based on the participant's account balance at the time of payment (to determine whether the participant's account balance is sufficient to satisfy the entire award). If the participant's account balance is not sufficient to satisfy the entire award, the TSP will pay the participant's entire vested account balance to the payee.

If a court order describes a payee's entitlement as a fixed dollar amount and as a percentage or fraction of the account, the TSP pays the fixed dollar amount, even if the percentage or fraction, when applied to the account balance, yields a different result.

Because a legal process can only award a specific dollar amount, the payee's entitlement is determined based on the participant's account balance at the time of payment.

### How does a TSP loan 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 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.

### **Can the amount of the entitlement change after the original award is calculated?**

Yes. A payee's entitlement will be calculated initially when the decision letter is prepared and will be recalculated at the time of payment. The recalculation may differ from the initial calculation because the initial calculation will include vested and non-vested<sup>2</sup> amounts in the participant's account. If, at the time of payment, the non-vested portion has not become vested or has been forfeited, that amount will not be included in the recalculated entitlement; the recalculated entitlement will apply only to the participant's vested account balance.

### **Will interest or earnings be paid on the portion of the account awarded by the court order or legal process?**

Interest or earnings will not be paid on the amount of the entitlement unless the court order or legal process specifically provides for interest or earnings. If interest or earnings are

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<sup>2</sup> A participant who is "vested" in his or her TSP account has met the service requirements that entitle him or her to contributions or earnings in the account. All TSP participants are immediately vested in their own contributions and their earnings and any matching contributions from their agency or service. However, civilian employees under the FERS retirement system also receive Agency Automatic (1%) Contributions in which they generally become vested after completing 3 years of service. FERS employees in congressional and certain noncareer positions become vested in their Agency Automatic (1%) Contributions after completing 2 years of civilian service.



awarded, the TSP will use the rate of return earned by the Government Securities Investment Fund (G Fund) unless the court order or legal process specifies a different rate. A court order that requires a rate other than the G Fund rate of return can only require the payment of a stated annual percentage rate or require the addition of a *per diem* dollar amount to the payee's entitlement.

Interest or earnings will be calculated beginning with the business day following the applicable valuation date and ending two business days before payment is processed, unless otherwise provided in the court order or legal process. In no event will the TSP pay more than the participant's vested account balance at the time of payment.

### **Will an awarded amount be invested separately?**

No. The award will not be segregated from the participant's TSP account or invested separately pending payment, nor will the payee be able to direct the investment of the award amount pending payment. The participant retains the exclusive right to invest the account.



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## **VI. Method, Timing, and Tax Treatment of Payments Made Under Court Orders and Legal Processes**

### **Can a payment be transferred to a traditional IRA or an eligible employer plan?**

Yes, but only if the payee is the current or former spouse of the participant. He or she can ask the TSP to transfer the payment to a traditional IRA or an eligible employer plan. A traditional IRA is an individual retirement account, as defined in the TSP tax notice “Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders.” An eligible employer plan is also defined in that tax notice. The tax notice is available from the TSP Web site at [www.tsp.gov](http://www.tsp.gov), from the participant’s agency personnel office or service TSP representative, or from the TSP Service Office.

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 the payment to that account. The TSP will provide the payee with detailed instructions and the forms needed to request a transfer to his or her TSP account.

### **How soon after the TSP receives a valid court order or legal process can payment be made?**

Payment ordinarily will occur 60 days after the TSP 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 receive the payment sooner by waiving the tax notification period, by making a Federal income tax withholding election, or by asking the TSP to transfer the payment to a traditional IRA or an eligible employer plan, as described in “Can a payment

be transferred to a traditional IRA or an eligible employer plan?” above. However, payment will be made no earlier than 30 days after the date of the TSP decision letter.

## **How will the payment be made?**

The disbursement will be made to the person (or persons) to whom benefits are awarded by the order or process. The payment will be made *pro rata* from all TSP investments in which the participant is invested, based on the vested 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 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 make only one disbursement per payee under a court order or legal process; 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 not honor language giving the payee the right to choose among TSP withdrawal options. However, as explained in “Can a payment be transferred to a traditional IRA or an eligible employer plan?” on page 21, if the payee is the spouse or former spouse of the TSP participant, the payee may request that the TSP transfer all or a portion of his or her payment to a traditional IRA or an eligible employer plan.

If a court order explicitly awards a survivor annuity, when the participant submits a withdrawal election after separation, the TSP will purchase an annuity from the TSP’s annuity vendor with the participant as the primary annuitant and the spouse as the survivor annuitant. In such cases, the former spouse will not receive monthly payments until after the participant’s death. This option is unavailable for a legal process.

## **What if the court order or legal process requires the TSP to mail a payment in care of a third-party addressee?**

A court order or legal process may instruct the TSP to mail a payment to a third-party addressee, such as the payee's attorney. However, as discussed in "Can a payment be transferred to a traditional IRA or an eligible employer plan?" on page 21, the current or former spouse of a participant has the right to ask the TSP to transfer a payment to a traditional IRA or an eligible employer plan. Therefore, even if a court order or legal process requires the TSP to mail a current or former spouse's payment to a third-party addressee, the TSP will mail the spouse's payment to that address only if the payee has not asked the TSP to transfer the payment.

## **Who must pay Federal income tax on a payment made by the TSP in response to a court order or legal process?**

If payment is made to the current or former spouse of the participant, the payment is included in the gross income of the recipient spouse for the tax year in which the payment is made. If the payment is made to someone other than the current or former spouse of the participant (e.g., a child, a spouse's attorney, or a support enforcement agency), the payment is included in the gross income of the participant for the tax year in which the payment is made. For detailed information regarding the taxation of court-ordered payments, see the TSP tax notice "Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders." The tax notice is available from the TSP Web site at [www.tsp.gov](http://www.tsp.gov), from the participant's agency personnel office or service TSP representative, or from the TSP Service Office.

**Is a payment in response to a retirement benefits court order or legal process subject to a tax penalty?**

No. Such distributions are exempt from the early withdrawal penalty under the Internal Revenue Code.

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## VII. Special Rules for Uniformed Services Accounts

**Are separate court orders or legal processes needed when a participant has a civilian and a uniformed services TSP account?**

No. Both accounts can be dealt with in a single court order or legal process. However, each account must be addressed separately. That is, the court order or legal process must specify from which account or accounts payment is to be made.

**How will the payee's entitlement be paid if the participant's account contains contributions from combat zone pay?**

TSP accounts for members of the uniformed services may include contributions from combat zone pay. Combat zone pay is exempt from Federal income taxes; therefore, TSP contributions from combat zone pay are also exempt from Federal income taxes when they are subsequently distributed from a TSP uniformed services account pursuant to a qualifying court order. (This is not true for the earnings attributable to contributions from combat zone pay; all earnings are taxable when they are distributed from a TSP account.)

The TSP will make all payments from a uniformed services account on a *pro rata* basis from both taxable and tax-exempt balances unless the court order or legal process directs otherwise. A payment under a qualifying order or legal process will therefore include taxable and tax-exempt balances if the account includes contributions from combat zone pay.

## Can the payee transfer or roll over a payment that includes tax-exempt funds?

If a current or former spouse receives a TSP payment containing a tax-exempt balance (i.e., contributions from combat zone pay), the tax-exempt portion may be transferred or rolled over into a traditional IRA or transferred into certain eligible employer plans, but only if the IRA or plan accepts tax-exempt balances. (See the TSP tax notice “Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders.” The tax notice is available from the TSP Web site at [www.tsp.gov](http://www.tsp.gov), from the participant’s agency personnel office or service TSP representative, or from the TSP Service Office.)

In addition, if the spouse or former spouse elects to transfer or roll over part of the payment into a traditional IRA or an eligible employer plan, the taxable portion of the payment will be transferred to the IRA or plan first. Tax-exempt money will be transferred **only if** the taxable portion of the payment does not satisfy the percentage of the payment being transferred to the IRA or plan (**and** the IRA or plan certifies that it will accept tax-exempt money). Amounts that are not transferred will be paid directly to the spouse or former spouse receiving the payment.

Tax-exempt balances in a uniformed services TSP account may not be transferred into a civilian TSP account.



