

(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

(4) If the qualifying order requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment;

(iii) Tax information and income tax withholding forms to the person responsible for paying Federal income tax on the payment;

(iv) Information and the form needed to transfer the payment to an eligible employer plan or traditional IRA (if the payee is the current or former spouse of the participant); and

(v) Information and the form needed to receive the payment through an electronic funds transfer (EFT).

(g) The TSP decision letter is a final determination of the parties' rights in the account. There is no administrative appeal from the TSP decision.

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen upon receipt of an incomplete order, the account will be unfrozen if a complete order is not received within 30 days of the date of the request described in paragraph (e) of this section;

(2) If the account was frozen in response to an order issued to preserve the *status quo* pending final resolution of the parties' rights to the participant's TSP account, the account will be unfrozen if the TSP receives a court order that vacates or supersedes the previous order (unless the order vacating or superseding the order itself qualifies to place a freeze on the account). A court order that purports to require a payment from the TSP supersedes an order issued to preserve the *status quo*, even if it does not qualify to require a payment from the TSP;

(3) If the account was frozen in response to an order purporting to require a payment from the TSP, the freeze will be lifted:

(i) Once payment is made, if the court order is qualifying; or

(ii) Forty-five (45) days after the date of the TSP decision letter if the court order is not qualifying. The 45-day

period will be terminated, and the account will be unfrozen, if both parties submit to the TSP a written request for such a termination.

(i) The TSP will hold in abeyance the processing of a court-ordered payment if the TSP is notified in writing that the underlying court order has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the order.

(1) In the notification, the TSP must be provided with proper documentation of the appeal and citations to legal authority, which address the effect of the appeal on the enforceability of the underlying court order.

(i) If the TSP receives proper documentation and citations to legal authority which demonstrate that the underlying court order is not enforceable, the TSP will inform the parties that the payment will not occur until resolution of the appeal, and the account will remain frozen for loans and withdrawals.

(ii) In the absence of proper documentation and citations to legal authority, the TSP will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The TSP must be notified in writing of the disposition of the appeal before the freeze will be removed from the participant's account or a payment will be made. The notification must include a complete copy of an order from the appellate court explaining the effect of the appeal on the participant's account.

(j) Multiple qualifying court orders relating to the same TSP account and received by the TSP will be processed as follows:

(1) If the orders make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP will only honor the order bearing the latest effective date.

(2) If the orders relate to different former spouses of the participant and award survivor annuities, the TSP will honor them in the order of their effective dates.

(3) If the orders relate to different payees and award fixed dollar amounts, percentages or fractions of an account, or portions of an account calculated by the application of formulae, the orders will be honored:

(i) In the order of their receipt by the TSP, if received by the TSP on different days; or

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

(4) In all other cases, the TSP will honor multiple qualifying court orders

relating to the same TSP account in the order of their receipt by the TSP.

§ 1653.4 Calculating entitlements.

(a) For purposes of computing the amount of a payee's entitlement under this section, a participant's TSP account balance will include any loan balance outstanding as of the date used for calculating the payee's entitlement, unless the court order provides otherwise.

(b) If the court order awards a percentage or fraction of an account as of a specific date, the payee's entitlement will be calculated based on the account balance as of that date. If the date specified in the order is not a business day, the TSP will use the participant's account balance as of the last preceding business day.

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

(d) If the court order awards a specific dollar amount, the payee's entitlement will be the lesser of:

(1) The dollar amount stated in the court order; or

(2) The vested account balance on the date of disbursement.

(e) If a court order describes a payee's entitlement in terms of a fixed dollar amount and a percentage or fraction of the account, the TSP will pay the fixed dollar amount, even if the percentage or fraction, when applied to the account balance, would yield a different result.

(f) The payee's entitlement will be credited with TSP investment earnings as described:

(1) The entitlement calculated under this section will not be credited with TSP investment earnings unless the court order specifically provides otherwise.

(2) If earnings are awarded and a rate is specified, the rate must be expressed as an annual percentage rate or as a *per diem* dollar amount added to the payee's entitlement.

(3) If earnings are awarded and the rate is not specified, the TSP will credit the payee's entitlement with the rate of return for the G Fund.

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