



Thrift Savings Plan

Information About Court Orders

**Federal Retirement
Thrift Investment Board**

June 1995

WEB 1.0 10/16/96 TSP BK11 Revised 6/95
PREVIOUS EDITIONS OBSOLETE

Introduction

This booklet contains important information about court orders and how they relate to the Thrift Savings Plan (TSP).

Section I of this booklet provides sample language which can be used when drafting a court order. Using this language may help to expedite processing of the order.

Section II of this booklet briefly describes the TSP and provides details about court orders in the context of the TSP. It outlines the procedures that must be followed when submitting a court order, provides guidance on what type of information is necessary to produce a qualifying court order, and explains how the court order is evaluated to determine the amount of the payment.

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Table of Contents

Introduction	i
Section I – Sample Language	1
Section II – Questions and Answers About Retirement Benefits Court Orders	2
1. What is the Thrift Savings Plan (TSP)?	2
2. Can a divorce decree or other court order award an interest in a participant’s TSP account?	3
3. What authority does the Board rely upon to process Retirement Benefits Court Orders?	3
4. Does the Board require a Qualified Domestic Relations Order (QDRO)?	4
5. What are the requirements for a qualifying Retirement Benefits Court Order that the Board will honor?	4
6. What do these requirements mean?	4
7. What if the order requires payment at a future date?	5
8. What happens after a court order is received by the TSP? ..	6
9. How is the amount of an entitlement calculated?	7
10. Can the amount of the entitlement change after the original award is calculated?	8
11. Will interest or earnings be paid on the portion of the account awarded under the court order?	8
12. Will an awarded amount be invested separately? ..	9
13. How soon after receipt of a valid order can the payment be made?	9
14. How will the payment be made?	10
15. When will the participant’s TSP account be unfrozen? ..	10
16. Who is responsible for paying Federal income tax on a payment made by the TSP in response to a Retirement Benefits Court Order?	11
17. Is a payment in response to a Retirement Benefits Court Order subject to a tax penalty? ..	12
18. Where should Retirement Benefits Court Orders relating to a TSP account be sent?	12

Section I Sample Language

The language in any **one** of the following examples would be effective to award a payment from a TSP account. Use of this exact language will expedite processing of the order. However, ambiguous or conflicting language elsewhere in the order or in another order could still cause an order using this language to be delayed or rejected.

Fixed Dollar Award: [Payee] is awarded \$_____ from the Thrift Savings Plan account of [TSP participant].

Percentage Award Linked to a Specific Date: [Payee] is awarded _____% of the Thrift Savings Plan account of [TSP participant] as of [date].

Fraction Award Linked to a Specific Date: [Payee] is awarded [fraction] of the Thrift Savings Plan account of [TSP participant] as of [date].

Formula Award: [Payee] is awarded a portion of [TSP participant's] Thrift Savings Plan account to be calculated based on [participant's] account balance as of [date]. [Payee's] portion is to be determined by applying a formula/fraction, the numerator of which is _____ [the number of months participant participated in the TSP during marriage] and the denominator of which is _____ [the total number of months the participant has participated in the TSP as of [same date as above]].

Note: *Participation in the TSP can never have a beginning date earlier than April 1, 1987, the date contributions were first accepted into the TSP.*

Award of Interest/Earnings: Earnings will be paid on the amount of the entitlement under this order until payment is made.

Section II Questions and Answers About Retirement Benefits Court Orders

1. What is the Thrift Savings Plan (TSP)?

The TSP is a retirement savings and investment plan for Federal employees which was established by Congress in the Federal Employees' Retirement System Act of 1986 (FERSA). It is a defined contribution, cash or deferred arrangement similar to 401(k) plans for private sector employees covered by the Employees' Retirement Income Security Act (ERISA). All sums contributed to the TSP by an employee or by his or her agency are held in trust for the employee in an individual account identified by name and Social Security number. A detailed discussion of the TSP and its features is found in the *Summary of the Thrift Savings Plan for Federal Employees*, which is available from the participant's current employing agency or from the TSP Service Office if the participant is separated from Federal service.

The TSP is administered by an independent Federal agency, the Federal Retirement Thrift Investment Board (Board). For most Federal employees hired in 1984 or later, the TSP is one part of a three-part retirement system. The other parts are 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 basic defined benefit program, known as the Civil Service Retirement System (CSRS). Both the FERS basic annuity and CSRS are administered by the Office of Personnel Management (OPM).

Court orders that relate to the TSP must be submitted directly to the TSP recordkeeper. (See Question 18 for address.) Court orders that relate to retirement benefits administered by OPM

must be submitted directly to OPM's Court Order Section, P.O. Box 17, Washington, DC 20044-0017. The Central Intelligence Agency (CIA) administers the TSP for its employees and maintains separate TSP accounts for them. Court orders that relate to a TSP account maintained by the CIA must be submitted separately to the CIA.

2. Can a divorce decree or other court order award an interest in a participant's TSP account?

Yes. A court decree of divorce, annulment, or legal separation can make an award from a participant's TSP account to someone other than the participant, such as the participant's spouse or former spouse. The Board calls these orders "Retirement Benefits Court Orders."

The Board will only honor such orders if they are issued ***in connection with a divorce, annulment, or legal separation*** and if they meet the requirements of the Board's regulations. The Board will also honor ***preliminary court orders*** which are issued in connection with a divorce, annulment, or legal separation, but prior to a decree, for the purposes of freezing a participant's TSP account, as well as ***amendatory court orders*** which are issued subsequent to such a decree for the purpose of amending the decree with respect to the TSP.

The Board processes orders for the enforcement of outstanding child support or alimony obligations under regulations it has issued (to be codified) at 5 C.F.R. Part 1653, Subpart B, which are not addressed in this booklet.

3. What authority does the Board rely upon to process Retirement Benefits Court Orders?

The Board processes court orders in accordance with 5 U.S.C. §§ 8435(d)(1) and (2) and 8467 and the regulations it has issued (to be codified) at 5 C.F.R. Part 1653, Subpart A.

4. Does the Board require a Qualified Domestic Relations Order (QDRO)?

No. The Board will honor any order that meets the requirements of its regulations. This can include a QDRO, but a QDRO is not required.

The Internal Revenue Code accords distributions and payments from the TSP in response to a Retirement Benefits Court Order the same special tax treatment as distributions and payments from a private sector plan made in response to a QDRO. See 26 U.S.C. § 414(p)(11). However, the QDRO rules are not applicable to the TSP.

5. What are the requirements for a qualifying Retirement Benefits Court Order that the Board will honor?

A qualifying Retirement Benefits Court Order that the Board will honor must meet three basic requirements. First, it must **expressly relate** to the TSP account of a participant. Second, if it requires a payment from the TSP account, the amount of the entitlement must be **clearly determinable**. Finally, the order must require payment to a **person other than the TSP participant**.

6. What do these requirements mean?

In order to **expressly relate to a participant's TSP account**, the order must specifically contain the name "Thrift Savings Plan." Terms such as "all retirement benefits," "Government benefits," or "Federal employment retirement benefits" will not be adequate. Also, even if the term Thrift Savings Plan is used, any descriptive language in the order regarding the award should be written in terms of the individual participant's "account" or "account balance" rather than in terms of a "benefit."

In order to be *clearly determinable*, the court order must provide a means by which the amount of the entitlement can be calculated with certainty. This can be done either by:

- Awarding a specific dollar amount to be paid from the participant's TSP account

OR

- Dividing the participant's TSP account balance by applying a fraction, a percentage, or a formula that does not contain variables found outside of normal Government employment records.

The court order should **also** include a date or event as of which the amount of the entitlement is to be calculated.

Finally, a qualifying order must require payment to a *person other than the participant*. Payment must be made to the participant's current or former spouse, the attorney for the current or former spouse, the dependent children of the participant, other dependents of the participant, or the attorney for the participant's dependent children or other dependents.

Payment cannot be made to any person from whom the participant can eventually gain access to the money. Furthermore, the Board will not honor an award asking for payment to be made jointly, such as to the former spouse and children. The order should separately specify the award to be made to each person. The Board will also not honor an award asking that payment be made to creditors of the parties to the divorce.

7. What if the order requires payment at a future date?

An order that requires payment at a future date or upon a future event will generally not be considered to be qualifying. However, an order that requires payment at a future date may be considered qualifying if two conditions are met:

(1) it is possible to calculate the amount of the entitlement currently, and

(2) the award provides for interest or earnings to be paid on the amount of the award until the future date of payment.

If an order requiring payment at a future date is found to be qualifying because it meets these two conditions, payment will be made **as soon as practical** after appropriate notice has been provided; payment will **not** be made at the future date specified in the order. (The Board construes an order requiring payment at a future date that meets these two conditions to be the economic equivalent of an order requiring payment currently.)

8. What happens after a court order is received by the TSP?

There are four steps in processing the court order:

Step 1 — After the TSP Service Office receives a court order which purports to award benefits from the TSP, the account of the participant will be “frozen.” This means that the participant will not be permitted to withdraw his or her account (except to meet IRS minimum distribution requirements) or receive a loan from that account. All other account activity, including contributions, adjustments, and interfund transfers, will be permitted. The participant will thus retain the exclusive right to invest his or her entire account balance. The parties will be notified that the account has been frozen.

Step 2 — If the order is not complete, the Board will advise the parties that if a complete copy of the order is not received within 30 days of the date on the notification, the participant’s TSP account will be “unfrozen.” A withdrawal or loan will be permitted, and no further action based on the court order will be taken. If a complete copy of the order is received after the 30-day period, the participant’s TSP account will be refrozen at that time. In order to be considered, separation agreements

or other documents dealing with the TSP which are incorporated into the order must be included as part of the documents submitted.

Step 3 — After receipt of a complete copy of the order, the Board will evaluate it to determine whether it is a qualifying Retirement Benefits Court Order.

Step 4 — The Board will issue a decision to the party submitting the order. The decision letter will include the following information:

- The Board's determination regarding whether the court order is qualifying
- A statement regarding the effect that compliance with the court order will have on the participant's TSP account, if the order is determined to be qualifying
- A description of the method by which any entitlement under the court order was calculated, the results of that calculation, and the circumstances under which payment will be made, if the order requires payment

Copies of this decision will be provided to all parties to the action, either individually or through their attorneys.

9. How is the amount of an entitlement calculated?

TSP accounts are valued once a month as of the last day of the month. If the date or event specified in the order for calculating the entitlement falls on any day except the last day of the month, the account balance on which the amount of the entitlement is based is determined as of the last day of the previous month. (Any outstanding loan balance will be included in the account balance for this calculation.) If the date or event specified in the order falls on the last day of the month, the account balance is determined as of that day.

Where the award does not cite a specific date or event, the entitlement will be calculated based on the month-end balance on or immediately prior to the date the order was entered by the clerk of the court or the date the order was filed by the clerk of the court, if the order does not show a date entered. If the order does not indicate a date entered or filed, the date the court order was signed by the judge will be used.

10. Can the amount of the entitlement change after the original award is calculated?

Yes. When payment is made, the amount of the entitlement is recalculated and compared to the participant's current vested account balance to determine the amount available to pay the award. The amount paid may be different from the amount of the initial entitlement calculation for various reasons. For example, late contributions, adjustments, investment losses, loan payments, or an outstanding loan may affect the account balance used to calculate the entitlement. Also, regardless of the reasons for the change in the account balance, in no case can the amount of payment exceed the vested account balance at the time of payment. In addition, amounts placed into a participant's account **after the date of payment** (even if they relate to a period prior to the relevant valuation date) will not be paid unless another qualifying Retirement Benefits Court Order is received.

11. Will interest or earnings be paid on the portion of the account awarded under the court order?

Interest or earnings will **not** be paid on the amount of the entitlement unless the court order specifically provides for interest or earnings. If interest or earnings are awarded, the Board will use the monthly rates of return credited to the account unless the court specifies a different rate. If the court specifies a different rate, that rate will be used; however, the

Board will not pay more than the valued, vested balance in the account at the time of payment. Interest or earnings will be calculated beginning with the month following the applicable month-end valuation date through the month prior to payment, unless otherwise provided in the court order.

12. Will an awarded amount be invested separately?

No. The amount of the entitlement will not be segregated or invested separately pending payment, nor will the spouse or former spouse be able to invest this amount separately pending payment. The participant retains the exclusive right to invest the account.

13. How soon after receipt of a valid order can the payment be made?

The parties should allow approximately three to four months for payment after the Board has received a complete copy of the order. Payments are made once each month, in approximately the middle of the month.

Use of the form language contained in Section I of this booklet should allow payment to be made as quickly as possible. If the order uses unusual language or raises new issues which the Board has not previously addressed, it may take longer for the order to be processed.

Tax information must be sent to the parties; this is done after the determination letter is sent. (See Question 8.) Payment will occur not less than 30 days after appropriate tax withholding notification has been provided by the TSP.

If the payee's Social Security number and mailing address are not provided in or with the court order, payment will **not** be made until that information is received.

14. How will the payment be made?

The Board will make only one disbursement pursuant to a court order; the Board will not make a series of payments even if the court order requires it. The disbursement will be made to the person (or persons) whom the Board determines is awarded benefits under the order. The Board will not honor language giving the payee the right to choose among TSP withdrawal options. However, if the payee is the spouse or former spouse of the TSP participant, he or she may request that the TSP transfer all or a portion of his or her payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. The Board will provide the payee with the appropriate information and form required to make such a transfer. If the order explicitly awards a survivor annuity, the Board will purchase an annuity from the TSP's annuity vendor for the former spouse; monthly payments will then be made at the appropriate time.

TSP payments are made by Treasury check. A check will not be issued to more than one person, nor will a check be issued to a person different from the person to whom the benefits are awarded, even if the order explicitly so provides.

The check will be mailed to the person and address stated in the order (even if different from the payee). If the payee wants a payment directed to another address, the payee must provide written instructions. If no mailing instructions are contained in the order, the payee's address must be provided before payment can be made.

15. When will the participant's TSP account be unfrozen?

When a court order is found to be qualifying to award a current payment, the account will be unfrozen only after payment is made. Payment will not be made less than 30 days after the TSP sends tax information regarding the payment.

When the Board determines that an order is **not** qualifying, the participant's account will remain frozen for 45 days after that determination. This will enable the parties to seek and submit to the Board a new, qualifying order from the divorce court without concern that the participant may withdraw or borrow from his or her account during the 45-day period. The freeze may be removed sooner only upon written agreement from both parties to the divorce proceeding.

16. Who is responsible for paying Federal income tax on a payment made by the TSP in response to a Retirement Benefits Court Order?

If payment is made to the spouse or former spouse of the participant, the payment is includible in the gross income of the recipient spouse or former spouse for the tax year in which the payment is made. By law, if the total payment to the spouse or former spouse is \$200 or more, the TSP is required to withhold for Federal income tax purposes 20 percent of any amounts paid directly to a spouse or former spouse. The spouse or former spouse can avoid withholding on any portion of the payment by asking the TSP to transfer that amount to an IRA or other eligible retirement plan. The mandatory 20 percent withholding cannot be avoided on any amount paid directly to the spouse or former spouse even if he or she intends to roll it over to an IRA or other eligible retirement plan.

If the payment is made to someone other than the spouse or former spouse of the participant (e.g., a child), the payment is includible in the gross income of the participant for the tax year in which payment is made. The TSP will withhold 10 percent for Federal income tax from this payment. However, the participant may make a different tax withholding election by submitting Form W-4P, Withholding Certificate for Pension or Annuity Payments. Such payments cannot be transferred or rolled over.

After the Board's decision has been issued, the TSP will provide detailed tax information to the person who is responsible for paying the tax on the payment. Payment will be made in the first mid-month processing cycle after the 30-day period following issuance of the tax notice.

17. Is a payment in response to a Retirement Benefits Court Order subject to a tax penalty?

No. Even if the participant (or the payee) is younger than age 59½, such distributions are exempt from the early withdrawal penalty under the Internal Revenue Code.

18. Where should Retirement Benefits Court Orders relating to a TSP account be sent?

Court orders should be sent to:

Thrift Savings Plan Service Office
National Finance Center
P.O. Box 61500
New Orleans, LA 70161-1500