

Federal Retirement Thrift Investment Board

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governmental agency determination must contain a finding or a recitation of such exceptional circumstances regarding the spouse as would warrant an exception to the signature requirement.

(ii) Exceptional circumstances are narrowly construed and include circumstances such as when a court order:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her Thrift Savings Plan account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A withdrawal election by a separated participant or an in-service withdrawal request by a participant in the Federal service received within one year of an approved exception will be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal by a separated participant or an in-service withdrawal by a participant in the Federal service and the 90-day period of validity of an approved exception also apply to exceptions for loans under 5 CFR 1655.18.

[62 FR 49113, Sept. 18, 1997, as amended at 67 FR 17605, Apr. 11, 2002]

PART 1651—DEATH BENEFITS

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AUTHORITY: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

SOURCE: 62 FR 32429, June 13, 1997, unless otherwise noted.

§ 1651.1 Definitions.

Terms used in this part shall have the following meanings:

Beneficiary means the person or legal entity who is entitled to receive a death benefit from a deceased participant's TSP account;

Board means the Federal Retirement Thrift Investment Board;

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

Death benefit means all or a share of the deceased participant's TSP account at the time of payment;

Domicile means the participant's place of residence for purposes of state income tax liability;

Eligible retirement plan means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)); an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract); a qualified trust; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Investment fund means the C Fund, the F Fund, the G Fund, or any other TSP investment fund created subsequent to December 27, 1986;

Order of precedence means the order in which a death benefit will be paid, as specified in 5 U.S.C. 8424(d);

Participant means any person with an account in the Thrift Savings Fund;

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Thrift Savings Fund means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan or *TSP* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*;

TSP record keeper means the entity that is engaged by the Board to perform record keeping service for the Thrift Savings Plan. As of June 13, 1997, the TSP record keeper is the National Finance Center, United States Department of Agriculture, whose mailing address is National Finance Center, TSP Service Office, P.O. Box 61135, New Orleans, Louisiana 70161-1135;

Withdrawal election means a request for the payment of a participant's vested account balance filed under 5 CFR 1650, subpart B.

[62 FR 32429, June 13, 1997, as amended at 64 FR 31062, June 9, 1999; 67 FR 49527, July 30, 2002]

§ 1651.2 Entitlement to benefits.

(a) *Death benefit payments made before the participant has completed a withdrawal election.* If a participant dies before completing a withdrawal election, the account will be paid to the individual or individuals surviving the participant in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant on a properly completed and filed Form TSP-3, Designation of Beneficiary, in accordance with § 1651.3;

(2) If there is no designated beneficiary, to the spouse of the participant in accordance with § 1651.5;

(3) If none of the above in paragraphs (a)(1) and (a)(2) of this section, to the child or children of the participant and descendants of deceased children by representation in accordance with § 1651.6;

(4) If none of the above in paragraphs (a)(1) through (a)(3) of this section, to the parents of the participant or the surviving one of them in accordance with § 1651.7;

(5) If none of the above in paragraphs (a)(1) through (a)(4) of this section, to the duly appointed executor or admin-

istrator of the estate of the participant in accordance with § 1651.8;

(6) If none of the above in paragraphs (a)(1) through (a)(5) of this section, to the next of kin of the participant who are entitled under the laws of the state of the participant's domicile at the date of the participant's death in accordance with § 1651.9.

(b) *Death benefit payments made after the participant has completed a withdrawal election.* (1) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a single payment or monthly payments (whether or not the participant has requested that all or part of such payments be transferred to an eligible retirement plan), but the account balance has not yet been paid out in accordance with such election.

(2) The death benefit will be paid as a single payment to the joint life annuitant if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a joint life annuity, but the annuity has not yet been purchased.

(3) The death benefit will be paid pro rata as a single payment to the beneficiary(ies) designated on Form TSP-11-B, Beneficiary Designation for a TSP Annuity, if both the participant and the joint annuitant die after the participant has completed an election to withdraw his or her TSP account balance in the form of a joint life annuity that includes a cash refund, but before the annuity has been purchased.

(4) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section, if the Board learns that—

(i) Both the participant and the joint annuitant have died after the participant has completed an election to withdraw his or her TSP account balance in the form of a joint life annuity that does not include a cash refund, but the annuity has not yet been purchased; or

(ii) Both the beneficiary(ies) named under a cash refund election and the

joint annuitant have died after the participant has completed an election to withdraw, but the annuity has not yet been purchased.

(5) The death benefit will be paid *pro rata* to the beneficiary(ies) designated on the Form TSP-11-B if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a single life annuity that includes either a cash refund or 10-year certain feature, but the annuity has not yet been purchased.

(6) The death benefit will be paid in accordance with the order of precedence set forth in paragraph (a) of this section if the Board learns that the participant and all beneficiaries designated on a Form TSP-11-B have died after the participant has completed an election to withdraw his or her TSP account balance in the form of a single life annuity that includes either a cash refund or a 10-year certain feature, but the annuity has not yet been purchased.

(7) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section if a participant dies after having completed an election to withdraw his or her TSP account balance in the form of a single life annuity that does not include either a cash refund or 10-year certain feature, but before the annuity has been purchased.

(8) If a participant dies after the annuity purchase has been completed, benefit payments will be provided in accordance with the annuity method selected.

(c) If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the Board will transfer the entire account into the G Fund after receiving written notice of the participant's death. The account will continue to accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid in accordance with the order of precedence set forth in paragraph (a) of this section.

[62 FR 32429, June 13, 1997, as amended at 64 FR 31062, June 9, 1999; 67 FR 49527, July 30, 2002]

§ 1651.3 Designation of beneficiary.

(a) *Filing requirements.* In order to designate a beneficiary of a TSP account, the participant must complete and file Form TSP-3, Designation of Beneficiary, unless Form TSP-11-B is used for this purpose. All Forms TSP-3 and TSP-11-B signed on or after January 1, 1995, must be received by the TSP record keeper on or before the participant's date of death. If the Form TSP-3 was received and accepted by the participant's employing agency before January 1, 1995, the TSP record keeper will process it and determine its validity when it is received from the employing agency. A valid Form TSP-3 remains in effect until it is properly canceled or changed as described in § 1651.4.

(b) *Eligible beneficiaries.* Any individual, firm, corporation, or legal entity, including the U.S. Government, may be designated as a beneficiary. Any number of beneficiaries can be named to share the death benefit. A beneficiary may be designated without the knowledge or consent of the beneficiary or the knowledge or consent of the participant's spouse.

(c) *Validity requirements.* In order to be valid, a Form TSP-3 must be signed by the participant in the presence of two witnesses, or the participant must acknowledge his or her signature on the Form TSP-3 in the presence of two witnesses. A witness must be age 21 or older, and a witness designated as a beneficiary on the Form TSP-3 will not be entitled to receive a death benefit payment. If a witness is the only named beneficiary, the Form TSP-3 is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries *pro rata*.

(d) *Will.* A will, or any document other than Form TSP-3 or Form TSP-11-B, may not be used to designate a beneficiary(ies) of a TSP account.

§ 1651.4 Change or cancellation of a designation of beneficiary.

(a) *Change.* In order to change a designation of beneficiary, the participant must properly complete a new Form TSP-3, which must be received by the TSP record keeper on or before the date of death of the participant under

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the same rules as set forth in § 1651.3(a). The TSP record keeper will honor the Form TSP-3 with the latest date signed by the participant which is otherwise valid under the rules set forth in § 1651.3. A change of beneficiary may be made at any time and without the knowledge or consent of the participant's spouse or any current or prior designated beneficiaries.

(b) *Cancellation.* A participant may cancel all prior designations of beneficiaries by sending the TSP record keeper either a new valid Form TSP-3 or a letter, signed and dated by the participant and witnessed in the same manner as a Form TSP-3, stating that all prior designations are canceled. In order to be effective, either of these documents must be received by the TSP record keeper on or before the date of death of the participant in accordance with the rules set forth in § 1651.3(a). The filing of either of these documents will cancel all earlier designations.

(c) *Will.* A will, or any document other than Form TSP-3 or Form TSP-11-B, may not be used to change or cancel a beneficiary(ies) of a TSP account.

§ 1651.5 Spouse of the participant.

For purposes of payment under § 1651.2(a)(2), the spouse of the participant is the person to whom the participant was married on the date of death. A person is considered to be married even if the parties are separated, unless a court decree of divorce or annulment has been entered. State law of the participant's domicile will be used to determine whether the participant was married at the time of death.

[62 FR 32429, June 13, 1997, as amended at 67 FR 49527, July 30, 2002]

§ 1651.6 Child or children.

If the account is to be paid to the child or children, or to descendants of deceased children by representation, as provided in § 1651.2(a)(3), the following rules apply:

(a) *Child.* A child includes a natural or adopted child of the deceased participant.

(b) *Descendants of deceased children.* "By representation" means that, if a child of the participant dies before the

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participant, all descendants of the deceased child at the same level will equally divide the deceased child's share of the participant's account.

(c) *Adoption by another.* A natural child of a TSP participant who has been adopted by someone other than the participant during the participant's lifetime will not be considered the child of the participant, unless the adopting parent is the spouse of the TSP participant.

§ 1651.7 Parent or parents.

If the account is to be paid to the participant's parent or parents under § 1651.2(a)(4), the following rules apply:

(a) *Amount.* If both parents are alive at the time of the participant's death, each parent will be separately paid fifty percent of the account. If only one parent is alive at the time of the participant's death, he or she will receive the entire account balance.

(b) *Step-parent.* A step-parent is not considered a parent unless the step-parent adopted the participant.

§ 1651.8 Participant's estate.

If the account is to be paid to the duly appointed executor or administrator of the participant's estate under § 1651.2(a)(5), the following rules apply:

(a) *Appointment by court.* The executor or administrator must provide documentation of court appointment.

(b) *Appointment by operation of law.* If state law provides procedures for handling small estates, the Board will accept the person authorized to dispose of the assets of the deceased participant under those procedures as a duly appointed executor or administrator. Documentation which demonstrates that the person is properly authorized under state law must be submitted to the TSP record keeper.

§ 1651.9 Participant's next of kin.

If the account is to be paid to the participant's next of kin under § 1651.2(a)(6), the next of kin of the participant will be determined in accordance with the state law of the participant's domicile at the time of death.

§ 1651.10 Deceased and non-existent beneficiaries.

(a) *Designated beneficiary dies before participant.* The share of any beneficiary designated on a Form TSP-3 or Form TSP-11-B who predeceases the participant will be paid *pro rata* to other designated beneficiary(ies). If there are no designated beneficiaries who survive the participant, the account will be paid to the person(s) determined to be the beneficiary(ies) under the order of precedence set forth in § 1651.2(a).

(b) *Trust designated as beneficiary but not in existence.* If a trust or other entity that has been designated as a beneficiary does not exist on the date of death of the participant, or if it is not created by will or other document that is effective upon the participant's death, the amount will be paid in accordance with the rules of paragraph (a) of this section, as if the trust were a beneficiary that predeceased the participant.

(c) *Non-designated beneficiary dies before participant.* If a beneficiary other than a beneficiary designated on a Form TSP-3 or a Form TSP-11-B (*i.e.*, a beneficiary by virtue of the order of precedence) dies before the participant, the beneficiary's share will be paid equally to other living beneficiary(ies) bearing the same relationship to the participant as the deceased beneficiary. However, if the deceased beneficiary is a child of the participant, payment will be made to the deceased child's descendants, if any. If there are no other beneficiaries bearing the same relationship or, in the case of children, there are no descendants of deceased children, the deceased beneficiary's share will be paid to the person(s) next in line according to the order of precedence.

(d) *Beneficiary dies after participant but before payment.* If a beneficiary dies after the participant, the beneficiary's share will be paid to the beneficiary's estate.

(e) *Death certificate.* A copy of a beneficiary's certified death certificate is required in order to establish that the beneficiary has died.

§ 1651.11 Simultaneous death.

If a beneficiary dies at the same time as the participant, the beneficiary will be treated as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10. The same time is considered to be the same hour and minute as indicated on a death certificate. If the participant and beneficiary are killed in the same event, death is presumed to be simultaneous, unless evidence is presented to the contrary.

§ 1651.12 Homicide.

If the participant's death is the result of a homicide, a beneficiary will not be paid as long as the beneficiary is under investigation by local, state or Federal law enforcement authorities as a suspect. If the beneficiary is convicted of, or pleads guilty to, a crime in connection with the participant's death which would preclude the beneficiary from inheriting under state law, the beneficiary will not be entitled to receive any portion of the participant's account. The Board will follow the state law of the participant's domicile as that law is set forth in a civil court judgment (that, under the law of the state, would protect the Board from double liability or payment) or, in the absence of such a judgment, will apply state law to the facts after all criminal appeals are exhausted. The Board will treat the beneficiary as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10.

§ 1651.13 How to apply for a death benefit.

In order for a deceased participant's account to be disbursed, the TSP record keeper must receive Form TSP-17, Application for Account Balance of Deceased Participant. Any potential beneficiary or other individual can file Form TSP-17 with the TSP record keeper. The individual submitting Form TSP-17 must attach a copy of a certified death certificate of the participant to the application. The acceptance of an application by the TSP record keeper does not entitle the applicant to benefits.

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§ 1651.14 How payment is made.

(a) *Notice.* The TSP record keeper will send notice of pending payment to each beneficiary.

(b) *Payment.* Payment is made separately to each entitled beneficiary. It will be sent to the address that is provided on Form TSP-3, unless a more recent address is provided on Form TSP-17, or is otherwise provided to the TSP record keeper in writing by the beneficiary. All beneficiaries must provide the TSP record keeper with a taxpayer identification number; *i.e.*, Social Security number (SSN), employee identification number (EIN), or individual taxpayer identification number (ITIN), as appropriate.

(c) *Payment to the participant's spouse.* The spouse of the participant may request that the TSP transfer all or a portion of the payment to an eligible retirement plan (including the spouse's TSP account, if he or she already has one). A transfer to a spouse's TSP account is permitted only if the spouse is not receiving monthly payments from the account. In order to request such a transfer, a spouse must file Form TSP-13-S, Spouse's Election to Transfer to IRA or Other Eligible Retirement Plan, with the TSP record keeper.

(d) *Payment to minor child or incompetent beneficiary.* Payment will be made in the name of a minor child or incompetent beneficiary. A parent or other guardian may direct where the payment should be sent and may make any permitted tax withholding election. A guardian of a minor child or incompetent beneficiary must submit court documentation showing his or her appointment as guardian.

(e) *Payment to executor or administrator.* If payment is to the executor or administrator of an estate, the check will be made payable to the estate of the deceased participant, not to the executor or administrator. A TIN must be provided for all estates.

(f) *Payment to trust.* If payment is to a trust, the check will be made payable to the trustee. A TIN must be provided for the trust.

[62 FR 32429, June 13, 1997, as amended at 67 FR 49527, July 30, 2002]

§ 1651.15 Claims referred to the Board.

(a) *Contested claims.* Any challenge to a proposed death benefit payment must be filed in writing with the TSP record keeper before payment. All contested claims will be referred to the Board. The Board may also consider issues on its own.

(b) *Payment deferred.* No payment will be made until the Board has resolved the claim.

§ 1651.16 Missing and unknown beneficiaries.

(a) *Locate and identify beneficiaries.* (1) The TSP record keeper will attempt to identify and locate all potential beneficiaries.

(2) If a beneficiary is not identified and located, and at least one year has passed since the date of the participant's death, the beneficiary will be treated as having predeceased the participant and the beneficiary's share will be paid in accordance with § 1651.10

(b) *Payment to known beneficiaries.* If all potential beneficiaries are known but one or more beneficiaries (and not all) appear to be missing, payment of part of the participant's account may be made to the known beneficiaries. The lost or unidentified beneficiary's share may be paid in accordance with paragraph (a) of this section at a later date.

(c) *Abandoned account.* If no beneficiaries of the account are located, the account will be considered abandoned and the funds will revert to the TSP. If there are multiple beneficiaries and one or more of them refuses to cooperate in the Board's search for the missing beneficiary, the missing beneficiary's share will be considered abandoned. In such circumstances, the account can be reclaimed if the missing beneficiary is found at a later date. However, earnings will not be credited from the date the fund is abandoned. The beneficiary will be required to submit Form TSP-17 and may be required to submit proof of his or her identity and relationship to the participant.

§ 1651.17 Disclaimer of benefits.

(a) *Disclaimer criteria.* The beneficiary of a TSP account may disclaim his or her right to receive the account. In

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order to be effective, the following criteria must be met:

(1) The disclaimer must be in writing. The writing must state specifically that the beneficiary is disclaiming his or her right to receive a death benefit payment from the TSP account of the participant.

(2) The disclaimer must be irrevocable.

(3) The disclaimer must be received by the TSP record keeper before payment is made.

(4) The disclaimant cannot direct to whom the disclaimant's portion of the participant's account should be paid.

(5) The disclaimant must disclaim the entire benefit, not a portion.

(b) *Treatment of disclaimed share.* The disclaimant will be treated as having predeceased the participant and his or her share will be paid in accordance with § 1651.10.

§ 1651.18 Payment to one bars payment to another.

Payment made to a beneficiary(ies) in accordance with this part, based upon information received before payment, bars any claim by any other person.

PART 1653—DOMESTIC RELATIONS ORDERS AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

Subpart A—Retirement Benefits Court Orders

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AUTHORITY: 5 U.S.C. 8435, 8436(b), 8437(e)(3), 8467, 8474(b)(5) and 8474(c)(1).

SOURCE: 60 FR 13609, Mar. 13, 1995, unless otherwise noted.

Subpart A—Retirement Benefits Court Orders

§ 1653.1 Purpose.

This subpart contains regulations prescribing the Board's procedures for processing retirement benefits court orders.

§ 1653.2 Qualifying retirement benefits court orders.

(a) The TSP will only honor the terms of a retirement benefits court order that is qualifying under paragraph (b) of this section.

(b) A retirement benefits court order must meet each of the following requirements to be considered qualifying:

(1) The court order must be a court decree of divorce, of annulment, or of legal separation, or any court order or court-approved property settlement agreement incident to a decree of divorce, of annulment, or of legal separation. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding. Orders issued prior to a final decree, such as orders for the purpose of preserving the *status quo* pending the final resolution of the proceeding, are referred to as "preliminary" court orders, and will be considered "incident to" a final decree, notwithstanding that a final decree has not yet been, and may not be, issued. Orders issued subsequent to a final decree, such as orders for the purpose of amending such decree, are referred to as "subsequent" court orders, and will also be considered "incident to" such decree. However, any subsequent court order that requires the return of money properly paid pursuant to an earlier court order will not constitute a qualifying order.

(2) The court order must "expressly relate" to the Thrift Savings Plan account of a current TSP participant. This means that:

(i) The order must on its face specifically describe the TSP in such a way that it cannot be confused with other