



**Legal Opinion L-2001-10**  
**July 23, 2001**

U.S. Railroad Retirement Board      Phone: (312) 751-7139  
844 North Rush Street              TTY: (312) 751-4701  
Chicago Illinois, 60611-2092      Web: <http://www.rrb.gov>

**TO** : Nancy Z. Marks  
Chief of Calculation Analysis and Systems  
Through: Ronald Russo  
Director of Policy and Systems

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Clarification of Legal Opinion L-2000-26

This memorandum addresses your request for clarification of Legal Opinion L-2000-26, as well as related issues introduced in discussions between members of your staff and this office. Legal Opinion L-2000-26 addressed a change in the Social Security Administration's regulations at section 404.403 regarding the computation of the family maximum and its application to the computation of annuities payable under the Railroad Retirement Act (RRA). Briefly stated, the regulatory change provided that, in cases involving benefits subject to reduction for both the family maximum and dual social security benefit entitlement, only the amount of benefits actually due or payable to the dually entitled person based on the insured worker's earnings record are considered when determining how much to reduce the total monthly benefits payable to the remaining family members. For ease of reference, this change is referred to in this decision as the "Parisi redistribution," after the court case which resulted in the processing change.

The issues presented in your memorandum and in subsequent discussions are addressed below.

**ISSUE I:** Does the amount of the social security benefit the survivor annuitant receives, i.e., an amount that is greater than or less than tier I, impact the application of the Parisi redistribution?

**Answer:** The amount of the social security benefit the survivor annuitant receives may impact the application of the Parisi redistribution if the survivor annuitant receives an auxiliary benefit. (If the survivor annuitant receives an annuity based on his or her own earnings, the Parisi redistribution applies, regardless of whether the social security benefit is greater than or less than tier I, provided of course, that there are family members not subject to a social security reduction.)

As you note in your memorandum, under the Social Security Act, where an individual is simultaneously entitled to two auxiliary benefits, only the larger auxiliary benefit is payable. See 42 U.S.C. § 402(k). Consequently, you suggest that applying the Parisi redistribution where the tier I is greater than the social security benefit, results in paying a family group more than they would receive under the Social Security Act. However, based upon an example provided in your memorandum, and our review of the applicable provisions of the Social Security Act, it appears that a provision of the Social Security Act that should be applied in computing the family maximum is not being applied at this time.

Provisions regarding the computation of the maximum payable based upon an individual's earnings record are found in Section 203(a) of the SSA (45 U.S.C § 403(a)). Where a child's annuity is limited due to the application of the family maximum, and the child would be entitled to more than one child's insurance benefit except for the restriction on simultaneous entitlement found in section 202(k)(2)(A) of the SSA (45 U.S.C. § 402(k)(2)(A)), the statute provides for consideration of a combined family maximum (CFM). This provision is found in section 203(a), which provides, in relevant part, as follows:

(3)(A) When an individual who is entitled to benefits on the basis of the wages \* \* \* of any insured individual and to whom this subsection applies would (but for the provisions of section 202(k)(2)(A)) be entitled to child's insurance benefits for a month on the basis of the wages \* \* \* of one or more other individuals, the total monthly benefits to which all beneficiaries are entitled on the basis of such wages \* \* \* shall not be reduced \* \* \* to less than the smaller of –



## Legal Opinion L-2001-10 July 23, 2001

U.S. Railroad Retirement Board Phone: (312) 751-7139  
844 North Rush Street TTY: (312) 751-4701  
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

(i) the sum of the maximum amounts of benefits payable on the basis of the wages \* \* \* of all such insured individuals, or

(ii) an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 215(a)(1) for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 230, and (II) thereafter increased in accordance with the provisions of section 215(i)(1)(A)(ii).

The year established for purposes of clause (ii) shall be 1983 or, if it occurs later with respect to any individual, the year in which occurred the month that the application of the reduction provisions contained in this subparagraph began with respect to benefits payable on the basis of the wages \* \* \* of the insured individual.

Section 4(f)(1) of the RRA provides that the tier I component of the annuity of a survivor of a deceased employee shall be in an amount equal to the amount of the benefit to which the survivor would have been entitled under the Social Security Act if such deceased employee's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. Consequently, consideration must be given to the CFM which would be payable to a family group where a child annuitant is entitled to a child's insurance benefit under the SSA.

**ISSUE II:** Where the CFM applies, how should the combined family maximum be computed?

**Answer:** The maximum should be computed in accordance with the applicable provisions of the SSA and relevant regulations. See 42 U.S.C. § 403(a)(3)(A) and 20 CFR 404.403. In order to insure that the family group does not receive less under the Railroad Retirement Act, than would have been paid under the Social Security Act, it is my opinion that the amount paid to the family members should not necessarily be limited by the railroad employee's PIA, but should be limited to no more than the statutory share of the highest PIA involved.

**ISSUE III:** If a surviving mother's tier I is subject to reduction for social security entitlement, thereby reducing her tier I to zero and allowing for a Parisi redistribution of the maximum to the children, must the mother be included in the family group composition when computing the tier II?

**Answer:** Yes. The mother must be included in the family group composition as long as she is entitled to an annuity. Of course, if the mother loses entitlement, or withdraws her application, then she should not be included in the family group composition.

**ISSUE IV:** Should the thirty percent basis for survivor 1974 Act tier II computations be recomputed in Parisi redistribution cases?

**Answer:** No. Prior to the 1981 amendments, section 4(g) of the Railroad Retirement Act provided that a survivor's annuity shall "be increased by an amount equal to 30 per centum of the amount of the annuity (before any deductions on account of work) to which such survivor is entitled for such month under the provisions of subsection (f) of this section, or to which such survivor would have been entitled for such month under such subsection if such survivor were entitled to no other monthly benefit under section 2 of this Act or under the Social Security Act."

Section 4(g) was amended in 1981 to change the method by which the tier II component of a survivor annuity is computed. However, provisions were included which allowed some individuals to receive a tier II under section 4(g) as quoted above if the annuity was awarded prior to October 1, 1986. These provisions were discussed in Legal Opinion L-82-130. In that opinion, this office determined that the calculation of the tier II following a change in a family group's composition, required a calculation as to the tier I amount that would have been payable to the "new" family group in May of 1982 (or when the annuity was awarded, if later). The tier I so computed was then used to compute the tier II payable to the family members.



## Legal Opinion L-2001-10 July 23, 2001

U.S. Railroad Retirement Board Phone: (312) 751-7139  
844 North Rush Street TTY: (312) 751-4701  
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

The change in the manner by which the family maximum is distributed results from a recent change in legal interpretation. As explained above, the basis for the 1974 Act tier II is based upon a calculation as to the tier I amount that would have been payable as of a specified date, no later than October 1, 1986. At that time, social security entitlement was not relevant to the distribution of the family maximum. Therefore, it is my opinion that an adjustment made for Parisi redistribution purposes should not result in a recomputation of the thirty percent basis for 1974 Act tier II computations.

### ISSUE V: Does the CFM apply to O/M cases?

Yes. The purpose of the O/M is to insure that less benefits would not be paid based upon an employee's earnings than would be paid if the employee's earnings were creditable under the Social Security Act. Consequently, the combined family maximum must be taken into consideration in O/M cases where a child is entitled to a child's insurance benefit under the SSA based on earnings other than the employee's earnings. In practice, the end result may be that the CFM does not result in a larger share of the O/M attributable to the auxiliary, but consideration should still be given to the CFM. If the railroad employee's PIA is less than the PIA for the social security benefit, however, the O/M share attributable to the auxiliary may increase where the CFM applies.

### ISSUE VI: Should an auxiliary's share of the O/M always be reduced for that auxiliary's social security entitlement?

Yes. To the extent L-2000-26 suggests otherwise, that advice is withdrawn.

### ISSUE VII: How many members must be present for the Parisi redistribution to apply in O/M cases?

The Parisi redistribution applies only if there is more than one auxiliary and at least one, but not all of the auxiliaries, is entitled to a social security benefit based on earnings other than the railroad employee's earnings. In such instances, the share of the O/M to which the dually entitled auxiliary is entitled should be reduced for the dual entitlement. To compute the O/M amounts divisible between the remaining auxiliaries, the maximum should be reduced by an amount equal to the employee's PIA and should also be reduced by the difference remaining after the dually entitled individual's O/M share is reduced for social security entitlement. The amount that remains should be redistributed to the remaining auxiliaries. The O/M share payable to the remaining auxiliaries may not exceed fifty percent (50%) of the highest PIA.

### Question VIII: Legal Opinion L-2000-26 was effective August 15, 2000. Should annuity rates be adjusted from August 1, 2000 or September 1, 2000?

Payments made by the RRB are made at the beginning of a month and represent payment for the previous month. Consequently, changes made in accordance with Legal Opinion L-2000-26 should be made with payments issued after the date the legal opinion was issued.