

Program Letter

United States Railroad Retirement Board Office of Programs



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Letter No.

2014-03

TO: Certification Contact Officials

SUBJECT: Supplemental Annuities not Reduced for 401(k) Distributions

Please distribute this notice to all individuals within your organization who may need the information in connection with their work.

The Office of General Counsel (OGC) of the Railroad Retirement Board (RRB) issued legal opinion L-2014-2 on January 13, 2014, which reinterprets the definition of a private pension under section 216.42 of RRB regulations to exclude 401(k) plans. Therefore, effective immediately, a supplemental annuity will no longer be reduced if an employee receives a distribution from a 401(k) plan.

Under section 2(h)(2) of the Railroad Retirement Act (RRA), a supplemental annuity is reduced by the amount of a private railroad pension the employee receives that is attributable to the employer's contributions. Section 216.42 of RRB regulations defines a private railroad pension as follows:

- (a) *What is a private railroad pension...* A private pension is a plan that: (1) is a written plan or arrangement which is communicated to the employees to whom it applies; (2) is established and maintained by an employer for a defined group of employees; and (3) provides for the payment of definitely determinable benefits to employees over a period of years, after retirement or disability. Such a plan is commonly referred to as a defined benefit plan.
- (b) *Defined contribution plan.* A plan under which the employer is obligated to make fixed contributions to the plan regardless of profits (sometimes known as a money purchase plan) is a private pension plan. A plan under which the employer's contributions are discretionary is not a private pension plan under this section.

Although under some 401(k) plans the employer is obligated to make fixed contributions to the employee's account, a 401(k) plan does not provide for the payment of definitely determinable benefits to employees over a period of years. For this reason, the OGC has determined that a 401(k) plan does not qualify as a private pension plan under section 216.42 of the RRB regulations.

The RRB uses Form G-88p, *Employer's Supplemental Pension Report*, to obtain an employee's pension information from the railroad employer. Both RRB field offices and Operations examiners have been instructed to no longer release Form G-88p to the railroad employer if the employee states they are covered only under a 401(k) plan. However, the form will continue to be released, as before, in the following situations:

- “Conflict” cases. A conflict exists when the employee states that they were not covered under a private pension plan with the employer, or were covered only under a 401(k) plan, and based on the latest pension information the RRB has in file, the job category in which the employee worked was covered under the employer's pension plan.
- The employee states they were covered under a private pension plan, but their monthly pension benefit amount is less than \$43.
- The employee states they were required to receive their entire pension account in a lump sum payment due to the pension plan's small benefit provision.

Both Form G-88p and the Employer Reporting Instructions will be revised to reflect the changes outlined in Legal Opinion L-2014-2. In the interim, please follow these instructions if you receive Form G-88p for a former employee.

1. If the employee was not covered under a private pension and only under a 401(k) plan sponsored by your organization, select “No” in Item 8 and enter “401(k) Only” in the remarks section. No additional information is necessary.
2. Sign and date the form.
3. Return the form to the address shown.

If you have any questions regarding the reduction to supplemental annuities for 401(k) distributions, please contact the Quality Reporting Service Center at QRSC@rrb.gov or the telephone number shown above.