

General guidelines for replies to retirement program and related inquiries are included in this chapter. The list of topics covered does not exhaust all possible subjects of inquiry. Methods of handling inquiries relating to specialized areas covered in other articles of the FOM are incorporated with those subjects where possible.

This chapter is designed to consider procedures that can be generalized in handling most areas of inquiry. Use these guidelines in conjunction with Freedom of Information and Privacy Act directives outlined in [FOM-1-130](#).

Always check on-line systems before routing inquiries to headquarters. See [RCM 10.2.8](#) for a detailed description of these systems. Refer to [RCM 10.2.2](#) for a list of commonly used terms and their definitions.

## **135.5 Field Office Inquiries to the Bureau Field Service (BFS)**

### **135.5.1 General Description of Inquiries to BFS**

Direct general case and procedural inquiries to BFS through the Network office via electronic mail. This alerts the office of the problems and/or trends that may be affecting employees within their jurisdiction. When sending procedural inquiries to BFS group mailbox, include the following items in the inquiry:

- Description of the problem/question/incident
- Claim number of case involved, if any
- Description of actions taken to investigate or solve the problem

#### **135.5.1.1 General case inquiries include:**

- Reports of circumstances that affect or involve more than one case.
- Inquiries related to application error notices.

#### **135.5.1.2 Procedural Inquiries include:**

- Requests for special guidance or interpretation in unusual circumstances not specifically covered in procedure.
- Questions about use of resources **provided** for assistance and guidance in serving the railroad public.
- Questions concerning principles, practices, or procedure (including questions concerning computations).
- Request for interpretation of procedures

## 135.10 Field Office Inquiries to Headquarters

### 135.10.1 General Description of Inquiries

It may be necessary to make inquiries and reports for special handling, information, or assistance. To assure that service is provided with the least possible inconvenience or delay, become familiar with the information contained in this chapter and adhere to its guidelines.

The inquiries will usually fall into the following general categories:

- Status inquiries,
- Reports of critical circumstances,
- Questions concerning assignments,
- Requests for information from a file.

### 135.10.2 Handling Specific Types of Inquiries

The majority of inquiries are related to individual cases. The method used to transmit the inquiry will depend primarily upon the type of case involved and whether the case is currently active. It is also important to determine if the inquiry is priority or non-priority in order to establish a response time. Priority cases include critical or dire need, delayed initial cases in which no partial is in force, reinstatements, erroneous reports of death, etc. Non-priority cases include recalculation attainments, cost-of-living rejects, status of final with partial rate in force, etc. Always make full use of the on-line data available before making an inquiry. Refer to [RCM 10.3](#) for a list RRB systems and Non-RRB systems.

If the inquiry cannot be answered without contacting headquarters, send an electronic mail or written memoranda to the unit responsible. In a dire need, critical or VIP situation, a phone call is appropriate.

Effective 10-01-2000, Retirement Benefit Division (RBD) stopped creating paper claim folders for initial applications. Effective 10-01-2001, Survivor Benefits Division (SBD) stopped creating paper claim folders for initial applications. For inquiries on applications filed 10-01-2000 or later check Work Desk for a list of Railroad Retirement Act (RRA) imaged documents. Folders are still being created for Disability Benefit Division (DBD) to house medical evidence only.

### **135.10.3 Using the Different Forms of Communication for Initial Inquiries**

#### **135.10.3.1 Electronic Mail**

Electronic mail is the preferred form for making inquiries on cases. Most e-mail inquiries will be made on standard inquiry patterns established in Outlook. Inquire about only one case in each e-mail message.

When preparing the inquiry message, include any information available (e.g., AFCS location, status message on REQUEST, etc.), that will expedite the response time. Make sure the RRB claim number is shown.

Inquiries on initial social security payments should include the beneficiary's social security number and/or social security claim number, the date of entitlement to benefits and the RRB claim number.

Railroad Unemployment Insurance Act (RUIA) non-receipt inquiries should include the claim number, claim period beginning date and processing date.

Certain formats require a time frame for a response to the inquiry. It is important that these time frames be indicated, as the adjudication units use these time frames to initially screen through the incoming mail. For inquiries to units in the Office of Programs, refer to the Headquarters Communications Reference Chart on Boardwalk under the Office of Programs.

If a format used does not call for a response time, it is not necessary to designate one. If an application is pending at the time of the inquiry, indicate this in the message.

#### **135.10.3.2 Telephone Inquiries**

A telephone call is the appropriate form of communication in the following instances:

- VIP inquiries (labor, management, Congressional).
- Dire need inquiries.
- Situations too lengthy or complicated to communicate via electronic mail or in writing.
- Cases in which the field office manager believes a telephone call is warranted (suicide threat, monthly cut-off date approaching).

Do not handle routine matters by telephone.

Retirement and Survivor units have Customer Service Representatives (CSR) to handle incoming telephone calls and written inquiries. Contact a CSR unless returning a specific examiner's call. In the event that a CSR is not available to handle incoming

inquiries, call the appropriate section supervisor. For inquiries to units other than retirement or survivor, call that section or unit supervisor; refer to Headquarters Communications Reference Chart.

Relate identifying information and the problem to staff taking the call. Be sure to advise the person about any outstanding assignment, or prior and current communication concerning the case. All telephone inquiries are to be entered into the Contact Log (refer to [FOM1 1592](#)).

### **135.10.3.3 Written Inquiries**

Limit written memoranda to transmitting documents or other correspondence. These would include requests for reconsideration and/or possibility of waiver of overpayments. See [135.10.5](#) for guidelines and routing details.

### **135.10.4 Routing Inquiries to RBD, SBD and DBD Via Electronic Mail**

Always check AFCS for the folder location and USTAR for pending or completed action. Refer to the Headquarters Communications Reference Chart on RRB intranet for a description of functions and proper mail procedure for each division at RRB.

### **135.10.5 Routing Inquiries to Units**

Direct electronic mail only to the unit that is responsible for handling the inquiry based on the Headquarters Communications Reference Chart. The receiving unit will respond to the inquiry and request the folder if necessary. Indicate the AFCS charge, if available, at the time of your inquiry.

If a written memorandum is necessary, forward it to the unit responsible for handling the inquiry, in a plain envelope, or use a G-26 Route Slip.

In critical, dire need or VIP cases, direct a phone call to the unit that would handle the response, advising of the current file charge if a folder exists.

#### **135.10.5.1 Unemployment and Program Support Division (UPSD) Tax Clerical and Imaging Section (UPSD-TCIS).**

[Refer to RCM 10.2.8.6](#)

#### **135.10.5.2 Bureau of Fiscal Operations – Debt Recovery Division (BFO/DRD)**

[Refer to RCM 10.2.8.24](#)

#### **135.10.5.3 RECONSIDERATION (RECON)**

[Refer to RCM 10.2.8.5](#)

#### **135.10.5.4 Hearing & Appeals (H&A)**

[Refer to RCM 10.2.8.4](#)

#### **135.10.5.5 Office of General Counsel (OGC)**

[Refer to RCM 10.2.8.25](#)

#### **135.10.5.6 Survivor Benefits Division (SBD)**

[Refer to RCM 10.2.8.11](#)

#### **135.10.5.7 Retirement Benefits Division (RBD)**

[Refer to RCM 10.2.12](#)

#### **135.10.5.8 Unemployment and Programs Support Division (UPSD) – Clerical Services Unit UPSD-CSU**

[Refer to RCM 10.2.8.8](#)

#### **135.10.5.9 Congressional Inquiry Section (CIS)**

[Refer to RCM 10.2.8.9](#)

#### **135.10.5.10 Office of Public Affairs (OPA)**

[Refer to RCM 10.2.8.10](#)

#### **135.10.5.11 A&T – Compensation and Employer Service Center (CESC)**

[Refer to RCM 10.2.8.3](#)

#### **135.10.5.12 Disability Benefit Division (DBD)**

[Refer to RCM 10.2.8.13](#)

#### **135.10.5.13 Policy & Systems (P&S)**

[Refer to RCM 10.2.8.26](#)

## 135.15 Tracing Inquiries

### 135.15.1 General

If the inquiry is not responded to within the proper time frame, trace the inquiry for status. Before tracing, check AFCS and the other on-line systems for status. Cases handled folderless will not show any folder activity on AFCS. In this situation check USTAR. Allow the proper response time for the tracer action before tracing to the next level. Allow five workdays for a response to the first tracer and two workdays for a response to the second tracer. This is the standard tracing time period for most units in the Office of Programs.

If it is necessary to contact a HQ director or chief, the contact must be made by a BFS Network Manager. Briefly state the facts and actions taken in the case. Include the dates of the previous inquiries and to whom the inquiries were directed.

It is suggested to use the same mode of communication when tracing. For instance, if the original inquiry was by e-mail, continue by that medium. If by telephone, continue by telephone.

It is acceptable to trace an electronic mail or written inquiry by telephone in the following situations:

- The designated time frame has not elapsed and the case becomes critical.
- Delayed cases.
- No reply is received, the appropriate systems have been checked, the folder is returned to Claim Files and the requested action was not completed.
- No activity is shown on USTAR.

#### 135.15.1.1 Electronic Mail Inquiries

Trace initial e-mail inquiries when the proper time frame has elapsed from the date of the inquiry (10 or 30 days). The appropriate time frame should have been indicated on your initial e-mail message according to the guidelines in [FOM 135.10.3](#). Refer to the HQ Communications Reference Chart on RRB intranet for units and their tracing schedule. Indicate on the message that this is a tracer. Direct the tracer message as outlined in the next section.

#### 135.15.1.2 Written or Fax Inquiries

Allow at least 30 calendar days from the date of the inquiry, if necessary trace. It is acceptable to trace via e-mail. Indicate on the message that this is a tracer.

### 135.15.1.3 Telephone Inquiries

The telephone is used for special circumstances (e.g., critical or dire need). Telephone inquiries will be responded to in five workdays. A telephone inquiry should not have to be traced. However, if a reasonable length of time (allow five workdays) has passed and a reply has not been made, a tracer call should be made. Remember to allow for special situations, such as computer processing being cancelled or delayed.

If there is a need to trace inquiries, follow the lines of communication as outlined in the next section. All telephone inquiries are to be entered into the Contact Log ([Refer to FOM 1592](#)).

### 135.15.2 Tracing Inquiries to Specific Units

Refer to the HQ Communications Reference Chart on the RRB intranet for units and their tracing schedules.

#### 135.15.2.1 Electronic Mail

The first tracer should be directed to the same mailbox used for the initial inquiry. To trace, make a copy of the original message and change status to TRACER. The message will be referred to a supervisor or customer service representative for a response.

If required, the second tracer should go to the HQ chief or director.

Allow a five-workday response for the first tracer and a two-workday response for the second tracer unless otherwise specified. When tracing by electronic mail, do not count the day the message was sent in the response time, as the message may not be read until the following business day.

## 135.25 Handling of Summons, Subpoena, or Other Judicial Process

A subpoena or summons is generally issued by the court to secure information about computations or eligibility under the RRA. This information can be furnished in writing, and should not require a court appearance by a RRB representative. Consequently, issuance of a subpoena or summons which names a specific individual should be avoided unless a court appearance is necessary. Field offices should not encourage the issuance of a subpoena or summons; however, service of a subpoena should not be refused.

An RRB employee should not appear in court as an RRB representative without a subpoena or summons being issued. The RRB does not wish to appear as a partisan witness for either party in the court proceedings. The issuance of a summons or subpoena prevents such an interpretation. Refer any requests for RRB employee involvement in litigation whether by formal subpoena or otherwise to the Office of General Counsel.

### **135.25.1 Directed to the RRB**

Under the RRB Regulations, no officer, agent or employee of the RRB, except the Office of General Counsel, is authorized to accept or receive a subpoena, summons or other judicial process addressed to the RRB. However, if service of a subpoena, summons or other judicial process addressed to the RRB is attempted, accept it. Advise the serving officer that employees in the field office are not authorized to accept these documents; records are not maintained in the field office, and that the document should be forwarded to the appropriate person for handling.

A general subpoena addressed to the Railroad Retirement Board (Keeper of Records or Custodian of Records) is preferred over one which names a specific individual. Attempt to avoid, whenever possible, the issuance of a subpoena or summons that names a specific individual. A general subpoena is to be transmitted immediately to the General Counsel for handling. A letter directed to the court providing the information requested in the court order is prepared and released by the Office of General Counsel. A court appearance by an RRB employee or representative is generally avoided with a general subpoena.

### **135.25.2 Subpoena, Summons, or Other Judicial Process Addressed to RRB Employee**

When a subpoena, summons or other judicial process is specifically addressed to an RRB employee, follow the procedure set forth below, depending on whether the case involves prosecution for fraud under the RRA.

#### **135.25.2.1 Prosecution for Fraud Under the RR Act Is Involved**

In any case where prosecution for fraud under Section 13 of the Act has been recommended, information necessary for the fraud prosecution may be disclosed in accordance with instructions in [FOM-I-130](#).

#### **135.25.2.2 Prosecution for Fraud Under the RR Act Is Not Involved**

If a prosecution for fraud under the RRA is not involved, and the matter cannot be handled under the succeeding paragraph (which relates to a subject other than disclosure of information in the RRB's files), follow the procedures detailed in [FOM2-316](#) and [FOM2-605.20](#). Send the copy of the report to Office of Investigative General (OIG).

Field office personnel should try to discourage court appearances for the purpose of explaining some of the RRA provisions. It is permissible for them, in response to a subpoena and in the absence of specific instruction from the Office of General Counsel, to answer general and fairly simple questions on the provisions of the Act. For example: If a field office employee is asked to explain the qualifying conditions for an employee annuity under the RRA, he may furnish the conditions under which a person is eligible for an employee annuity. These requirements are given in [FOM-I-305](#) and on Form G-177 (Explains Eligibility Requirements for a Railroad Employee Annuity). Also, simple



illustrations of annuity computations may be given. Field personnel should indicate that adjudicative actions are performed by Headquarters staff, and that field employees are not qualified to serve as experts on such questions. Submit a report giving the particulars of each such court appearance to the Office of General Counsel.

### **135.30 Correspondence Requesting Information To Be Used In A Law Suit**

Immediately forward the following inquiries to the Office of General Counsel:

- A written inquiry from an attorney representing an employee or a deceased employee's estate requesting information to be used to prepare a law suit or
- A request that includes the signing of an affidavit relative to the status of persons or companies under the Railroad Retirement Act and Railroad Unemployment Insurance Act, immediately forward it to the Office of General Counsel for reply.

Usually these letters request information about annuity requirements, estimated annuity rates, potential beginning dates, etc.

Follow [FOM-I-135.35](#) for handling inquiries regarding property settlements in divorce proceedings.

**Exception:** Inquiries received requesting copies of medical evidence or other documents in the file should be handled by the appropriate section even when the request indicates information may be used for a possible legal action.

### **135.35 Community Property Settlements And RR Annuities**

The RRB often is contacted to supply information about railroad retirement benefits in dissolution of marriage (divorce) proceedings. Most attorney inquiries in these cases can be handled at the district office level. If the inquiry is of a general nature, the General Counsel has created an "Attorney's Guide to the Partition of Railroad Retirement Annuities", which is available at the RRB website. You may either print the publication and forward it to the inquirer and/or direct them to the site at <https://www.rrb.gov/Resources/LegalInformation/PartitionofRRA/AttorneysGuide>.

Section 14 of the Railroad Retirement Act exempts railroad retirement annuities from legal process. In the United States Supreme Court case, in re Marriage of Hisquierdo, 439 U.S. 572 (1979), the Supreme Court held that section 14 prohibited consideration of benefits under the Act as property for purposes of community property distributions in a California divorce. Following the Hisquierdo decision, many non-community property states held that section 14 as interpreted by the Supreme Court was broad enough to prohibit consideration of railroad retirement benefits as property in marital estate divisions as well. This was also the opinion of the RRB's General Counsel.

The Railroad Retirement Solvency Act of 1983 amended section 14 to permit Tier II benefits, vested dual benefits, O/M (the difference between the O/M and RR annuity is

subject to partition), and supplemental annuities to be considered as property subject to division by a decree of divorce, annulment or legal separation issued by a court in both community property and non-community property states. Benefits may also be divided by a court-approved property settlement incident to such a decree. The amendment is effective for benefits for months beginning September 1983.

Because the amendment excludes Tier I amount from the benefits subject to division, the Hisquierdo decision still applies to that portion of an employee's benefits. For this reason, the RRB will not honor any portion of a state court decree which attempts to order a division of Tier I benefits. Effective August 17, 2007, the Pension Protection Act of 2006 allows for the continuation of partition payments (based on the employee's Tier II only) after the employee's death unless otherwise noted on the court order/property settlement. Additional details are provided in [135.35.6](#) below.

This FOM section provides instructions for answering inquiries regarding property settlements when dissolution of marriage proceedings are initiated. It also provides instructions for handling court decrees that order the RRB to make payments to a spouse or former spouse, and information regarding payment of those benefits by the Retirement Benefits Division.

### **135.35.1 Answering Inquiries Regarding Dissolution of Marriage Tracer**

If you are contacted by attorneys requesting information about our law for use in dissolution of marriage, use form G-25 (09-10), entitled Statement of Railroad Employee's Actual or Estimated Railroad Retirement Benefits, for your response. Form G-25 (09-10) should be enclosed with the standard cover letter used by the General Counsel (Letter GL-30). Additional enclosures are Forms G-177c and G-177d and the Qualified Domestic Relations Orders (QDRO) explanation. Form G-25, Letter GL-30, and the QDRO explanation are available in the retirement portion of RAILS. Forms G-177c and g-177d are accessible withing GL-30.

Attempt to obtain the name and address of the attorney representing the other party in the dissolution of marriage proceedings and release a duplicate of the Form G-25 package to that attorney.

This action may prevent further inquiries and will ensure that both attorneys have the same information. Forward to the General Counsel only those inquiries that you are unable to satisfy or that are accompanied by a subpoena, injunction, joinder or other court-issued document.

The RRB is not required to furnish the present value of future benefits, the amount of benefits payable at a future date, or any other computations based on statistics or procedures not maintained by the RRB in the normal course of administration of the Railroad Retirement Act (RRA). If the employee is not currently entitled to benefits, the RRB will furnish the current amount of any estimated benefit to which the employee would be entitled if he were eligible at the time of the request. Considerations such as lag or future entitlement are not used in furnishing a current rate estimate.

Requests regarding employer or employee contributions are not pertinent to the amount of RR annuities payable. The General Counsel has ruled that the only information that may be released to third party inquirers, without written authorization from the employee, is an actual or estimated annuity amount. No other information should be released to third parties without the employee's written consent. For example, other information that is available in the field office such as employee Tier II contributions, date of birth, sex, and credited railroad compensation and service should not be released.

Completion of Sections B, C and D of Form G-25 is dependent on the status of the railroad employee.

1. Employee receiving an annuity.

- A. Place an "x" in the first 2 boxes of Section B. - Statement of Current Railroad Retirement Benefit Entitlement.
- B. Complete Section C - Monthly Railroad Retirement Benefit Amounts. The amounts for completion of Section C are found by accessing Screen 1 of the RHRCPAY (3277) available through PREH of the RRAPID Main Menu.

Divisible railroad retirement benefits components: Include the sum of Tier II, supplemental annuity and vested dual benefits. If the employee is receiving benefits under the overall minimum (O/M), add the difference between the O/M rate and the regular RR rate to the sum of Tier II, supplemental annuity and vested dual benefits. The form includes a note stating that, if the Employee is receiving O/M that the rate will decrease once the O/M is no longer payable.

If the employee is being reduced for a third party reduction, this amount should be deducted from the divisible retirement benefits components.

- C. Complete Section D - Railroad Retirement Divorced Spouse Benefit Estimate. Enter a divorced spouse benefit estimate effective with the month and year of the employee's benefits shown in Section C.
- D. Complete Section E - Certification.

2. Employee not currently entitled.

- A. Place an "x" in the first and third boxes of Section B - Statement of Current Railroad Retirement Benefit Entitlement. Enter the month and year through which railroad service has been reported in the sentence following the third box.

- B. Complete Section C. - Monthly Railroad Retirement Benefit Amounts. The amounts for completion of Section C are found by accessing the MARC of the RRAPID Main Menu.
  - C. Complete Section D., Railroad Retirement Divorced Spouse Benefit Estimate. Enter a divorced spouse benefit estimate effective with the current month and year.
  - D. Complete Section E., Certification.
3. Employee has less than 120 months, or less than 60 months after 1995.
- A. Place an "x" in the fourth box of Section B, Statement of Current Railroad Retirement Benefit Entitlement. Enter the month and year through which railroad service has been reported in the sentence following the fourth box.
  - B. Complete Section E, Certification.

### **135.35.2 Criteria for Acceptable Court Decree or Property Settlement**

The RRB must comply with a final decree of divorce, annulment, or legal separation issued by a court of competent jurisdiction, which obligates the RRB to pay RRA annuities (other than Tier I) directly to a spouse or former spouse. The RRB also must comply with a property settlement approved by a court in connection with a final decree of divorce, annulment, or legal separation. The property settlement must be incorporated in the final decree, or the final decree must refer to a property settlement that was filed previously in connection with the suit. A final decree that modifies the terms of a previously issued final decree of divorce, annulment, or legal separation is also acceptable.

Final decree means a court order from which either:

- No appeal may be taken; or
- No appeal has been taken within the prescribed time limit; or
- A timely appeal has been taken and such appeal has been finally decided.

The RRB will assume a final decree is not being appealed, unless we receive information that an appeal will be or has been filed.

The RRB will honor for payment a court decree or property settlement which meets all the following criteria. Use this information to respond to inquiries before a final order is made. Once a final decree has been entered, it should be forwarded immediately to the General Counsel for a determination of its acceptability.

- A. The court decree or property settlement must provide that the spouse or former spouse is awarded payments from railroad retirement annuities payable to the railroad employee.
- B. The court decree or property settlement must specify an amount to be paid to the spouse or former spouse. The order does not have to state a dollar amount. However, the amount must be stated in terms the RRB can use to readily determine an amount under the RRB's normal procedures for administration of the RRA.

Acceptable examples are "one-half of Tier II" or "the amount of the railroad benefits based on a ratio of the years of marriage to the years of work." An unacceptable example is "one-half of the employee's contributions."

- C. The court decree or property settlement must obligate the RRB, rather than the employee, to make payments directly to the spouse.
- D. The court decree or property settlement must clearly identify both the employee and the spouse or former spouse.
- E. The court decree or property settlement submitted to the RRB must be a recently certified copy of the document filed with the court.

The date a property settlement is approved or a decree is entered may be before 9-1-83. A modification of that order must, however, be in accord with the law of the jurisdiction in which the original decree was entered or the property settlement was approved.

In the case of a court-approved property settlement, both the settlement and any decree incorporating or approving the settlement must be provided. When the property award is made in an order modifying an earlier court decree, copies of both the original decree and the subsequent order must be furnished.

### **135.35.3 Field Office Development**

- A. Address for final court decree - When an inquirer indicates that a final court decree or property settlement for divorce, annulment, or legal separation has been issued, inform the individual that a certified copy of the court document must be submitted to headquarters according to the following instructions. If two court documents are involved, e.g., a court-approved property settlement and a final decree that refers to the settlement, a copy of both documents must be submitted.

Any court decree or property settlement must be sent by certified or registered mail, return receipt requested, or delivered by personal service, to:

**General Counsel  
Railroad Retirement Board  
844 Rush Street  
Chicago, Illinois 60611**

If the documents were delivered to a field office, forward them in your regular mail in an envelope addressed "General Counsel; Do Not Open In Mailroom." The dates the documents were received in the field office and forwarded to the General Counsel (GC) should be shown. The effective date of the payment to the spouse or former spouse will be determined by the date the General Counsel receives the court decree.

In order to expedite handling the Office of General Counsel (OGC) has requested that the address of the divorced spouse be included with the documentation furnished to the OGC.

- B. Supporting documentation from spouse or former spouse - If a spouse or former spouse contacts a field office regarding payment under a court decree or property settlement, advise them to complete the 'Spouse or Former spouse agreement' and 'Electronic Funds Transfer Statement'. This form is released to the spouse/former spouse when the court order is approved. **This is the only acceptable form and is only to be released by OGC.** If the spouse/former spouse requires the forms, request OGC to forward a copy to the spouse/former spouse. The complete forms must be submitted to OGC within three months from the date the OGC receives the court decree. Failure to make any response may result in nonpayment. If some of the information is unknown, that should be indicated on the form. The forms must be signed and dated containing the following information:
1. Employee identifying information - Social security number, railroad retirement claim number, and full name of the employee.
  2. Spouse/former spouse identifying information - Social security number, full name, and current address.
  3. Statement regarding termination
  4. EFT information - Routing transit number, account number and account type. If the spouse or former spouse claims "no account," a signed statement certifying to that fact is necessary. This information is only required if the employee is currently entitled or an application has been submitted.

If the General Counsel (GC) receives the court order before the employee becomes entitled to an annuity, the spouse or former spouse will be notified by headquarters when the employee does become entitled. She

must contact the RRB within 3 months of that notice, and submit the supporting documentation as indicated in section B above.

If the supporting documentation is submitted separately from the court decree, it may be sent regular mail to the address in section A. If it is submitted through a field office, transmit it in an envelope addressed "General Counsel; Do Not Open in Mailroom."

A regular annuity application (AA-3) is not required unless the spouse or former spouse is eligible for an annuity, and wishes to file an application.

- C. Entering an IMPACT Amount - If you are aware that a court decree or property settlement ordering payments to a spouse or former spouse has been delivered to the GC, omit Tier II and the VDB when entering an IMPACT. You may enter a Tier I only IMPACT. Do not mark the application for manual review, unless it is required for another reason. Please enter "Community property settlement" in the remarks section of Form G-230.

#### **135.35.4 Amount Payable to the Spouse or Former Spouse**

As noted in section [135.35](#), a state court may not in any way consider Tier I in making a property division. The RRB will disregard that part of any court order which attempts to direct the RRB to pay a portion of the employee's Tier I to the spouse or former spouse. The RRB has no authority to intervene in cases where the court order attempts to make the employee responsible for paying a portion of his Tier I to the spouse or former spouse; however, if this comes to your attention, you should inform the parties that this is contrary to section 14 and the Hisquierdo decision.

Only employee annuity components may be paid to the spouse or former spouse. The components that may be paid are the Tier II, VDB, SUP ANN, and the amount of the overall minimum which exceeds the regular RR rate. When the O/M is prorated between employee and spouse annuities, only that part of the O/M paid in the employee's check is subject to division. Inquiries insisting that other than employee annuity components may be divided should be referred to the General Counsel.

The employee's annuity that is subject to court order is the amount after:

- Withholding for an overpayment under the RRA, Railroad Unemployment Insurance Act, or any other act administered by the RRB (e.g., Social Security Act);
- Work deductions; and
- Waiver.

The amount ordered payable by the court will be determined according to the court's intent, with these exceptions:

1. If the decree states a dollar amount greater than the payable annuity components, the lesser amount will be paid. Any increase in the components awarded to the spouse or former spouse will be paid to that individual until the amount ordered by the court is reached.

If the decree states an amount less than the payable annuity components, the amount ordered by the court will be paid.

2. If the decree states the amount in terms of a ratio of the length of the marriage to the length of railroad service, the periods will be determined in months, not years. If the court overstated the number of railroad service months, the actual number will be used.

If the court understated the number of service months, the figure stated by the court will be used.

The monthly amount paid to the spouse or former spouse may not be less than \$1.

We will not increase the amount payable to the spouse or former spouse because of any money the employee owes her (e.g., an arrearage in court-ordered payments).

If more than one spouse or former spouse submits court decrees or property settlements, benefits will be paid on a first-come, first-served basis governed by the date of receipt by the GC. Conflicting decrees received on the same day will be paid according to which decree became final on the earliest date.

The spouse or former spouse does not have appeal rights with regard to the amount paid.

### **135.35.5 Review and Notification by the Office of General Counsel**

The OGC will determine the date the court order was received in the office. If it was delivered to another office of the RRB, it is not considered delivered until the date received by the OGC. If a court order was sent to the RRB before September 1, 1983, it is not considered delivered until a copy is received by the GC after August 30, 1983.

The OGC or a designee will review the court documents to determine if they comply with the law of the state, Federal law, and the RRB's regulations. The amount to be paid the spouse or former spouse will be determined. The OGC will then notify the employee and the spouse or former spouse either that the court order is not acceptable and why, or the dollar amount that will be paid. A copy of the court decree or property settlement will be sent to the employee. The notice will be mailed to the most recent address on record for each party or the attorneys.

If the employee is not currently entitled to an annuity, RPS-B2 will notate the folder accordingly. If and when the employee becomes entitled, RPS-B2 will apply the



partition reduction to the employee's annuity and request address verification along with Direct Deposit information from the spouse or former spouse.

### 135.35.6 Payment of Benefits

The Retirement Post Section B2 (RPS-B2) in the Retirement Benefits Division handles the initial and subsequent annuity adjustments in these cases. Send any follow-up inquiries regarding the court decree or property settlement to RPS-B2. Do not send them to the General Counsel.

- A. Employee annuity - The employee annuity will be suspended at the earliest possible date following receipt of the court decree by the GC. Benefits withheld from the employee may not be paid to the spouse or former spouse until the spouse or former spouse has furnished all supporting documentation as specified in [FOM 135.35.3B](#).

When the employee's entitlement is in the future, payments will be withheld for the spouse or former spouse, beginning with the annuity beginning date.

If the spouse or former spouse does not submit the supporting documentation in the prescribed time (three months from the date the initial response from the spouse or former spouse was made), withheld benefits will be paid to the employee. When documentation is submitted later, no retroactive benefits will be paid to the spouse or former spouse.

Unlike garnishment payments, which are taxable to the employee, partition payments are taxable income to the spouse or former spouse. If the employee elects tax withholding, the amount to be withheld will be after deduction of the payments awarded to the spouse or former spouse. [See TOM 2215](#).

- B. Spouse or former spouse payments No payments will be made to the spouse or former spouse for any month the employee's annuity is not payable with the exception cited below in part C. If an overpayment occurs in the employee's annuity, any amount paid to the spouse or former spouse in excess of the amount that was actually payable, is an erroneous payment to the spouse or former spouse. The spouse or former spouse will be given all the rights given to an overpaid annuitant, even though they are not an annuitant.

Handle non-receipt or other payment inquiries according to the regular procedure. If a representative payee must be appointed, develop according to regular annuity procedure.

Payments to a spouse or former spouse terminate on the earlier of:

- The date the employee annuity terminates (see exception below, part C); or

- The date required by the court decree or the law of the jurisdiction in which the court decree was entered; or
- The last day of the month before the month in which the spouse or former spouse dies.

An amount due but unpaid at the death of the spouse or former spouse is payable as if it were an employee annuity. Payment will not be made to the heirs, legatees, creditors, or assignees of a spouse or former spouse, except in accordance with the priority of payment of an amount due but unpaid at death.

A change of address request for a spouse/former spouse is to be handled as follows:

- If the spouse/former spouse is on DATAQ, process the change of address via FAST. If a written request is received, image the document.
- If the spouse/former spouse is not on DATAQ, send an email notification to the 'RPS-Legal Partition' mailbox. Image any written request received. If requested by the spouse/former spouse, release a letter acknowledging receipt of the request. A code paragraph has been added to the RRAILS Custom Letter selection; which reads: "This is to acknowledge receipt of your request to change your address and/or Direct Deposit information in our records."

- C. The Pension Protection Act (PPA) of 2006, P.L. 109-280, amended the Railroad Retirement Act of 1974 by allowing the continuation of partition payments to surviving former spouses. The PPA stipulated that only the tier 2 portion of the partition payment would be continued; and the employee's death would have to be after August 17, 2007.

The Worker, Retiree, and Employer Recovery (WRER) Act of 2008, P. L. 110-458, further liberalized court ordered payments to partition recipients in several ways:

- Allowed partition payments to begin when the employee is eligible for an annuity but not yet receiving one if certain conditions are met;
- Removed final divorce as a precondition for early payment or continuation of the payment of the partition. As long as a valid court order has been received by the RRB and reviewed and approved by the OGC, payment of the partition may be made to a separated or a divorced spouse;
- Allowed the partition amount paid **before** the entitlement of the employee to be based on the tier 2 and the VDB. Appropriate COLAs will be included if the partition amount is calculated as a percentage or ratio of the employee's divisible benefits;

- Allowed the partition amount paid **after** the employee's death to be based on the tier 2, VDB, and SUPP. Appropriate COLAs will be included if the partition amount is calculated as a percentage or ratio of the employee's divisible benefits;
- Allowed all partitions terminated due to the death of the employee to be reviewed and reinstated, regardless of the employee's date of death. However, no reinstatement could be effective prior to September, 2007;
- All partitions continued after the employee's death effective September, 2007 would be reviewed for inclusion of the VDB, SUPP, and COLAs;
- Established the court order as the document to determine whether or not payment will continue after the death of the employee. The court order can limit the total amount paid; the number of payments; the age of the recipient; etc.

When the first partition payment is made before the entitlement of the employee; or after the death of an employee who hasn't been entitled to an annuity, three pieces of information must be on file before payment is made:

- Proof of age for the employee and the spouse or former spouse. The proofs must be on APPLE.
- Both the employee and the spouse or former spouse must be 62 for a full month before the partition can be paid. If the employee has died, the employee would have been 62 for a full month.
- The court documents are on file in IMAGING and have been reviewed and approved by the Office of General Counsel.

Use the following procedure to process these cases.

**Initial Partition Payments Made to a Spouse or Former Spouse When the Employee is not Entitled to an Annuity**

**Field Office**

The Worker, Retiree, and Employer Act of 2008 allows a court ordered partition payment to be made to a spouse or former spouse prior to the entitlement of the employee. The field office will usually be the first point of contact between the spouse or former spouse and the RRB. The following instructions should be followed by the field offices.

Step	Action
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1.	Check EDMA to make sure the employee has 10 years of service or 5 years after 1995.
2.	<p>Check APPLE for proof of age (POA) for both the spouse or the former spouse, and the employee. If POA is not on APPLE or IMAGING, contact the spouse or former spouse and advise that this information is necessary before the court ordered partition payment can be paid. If it is not possible to secure the employee's proof, follow the instructions in <a href="#">FOM1 905.5.5</a> in using the NUMIDENT at the Social Security Administration to prove the age of the employee.</p> <p>Both the employee and the spouse or former spouse must be 62 for a full month in order for payment of the partition to be made when the employee is not or has not been entitled to an annuity. If proofs cannot be secured, payment will not be made.</p>
3.	Check IMAGING for the court document, and evidence that the Office of General Counsel (OGC) has approved it for payment. If the documents are not on IMAGING, request a copy from the spouse or former spouse; then forward to the OGC for review.
4.	If the court document and the OGC review are on IMAGING, verify bank information and the street address. Send an email to the RBD Mailbox. In the Attn box, put ' <b>ATTN RB2: Partition.</b> ' Include the name and claim number of the employee and the name of the spouse or former spouse and the message: 'Possible Independent Partition Payment'. Include the contact information if it is different from the information on IMAGING.

## Headquarters-RB2

The RBD mailbox is screened daily. The senior specialist in RB2 will assign cases on USTAR. The USTAR code will be RB2 0PI. Examiners should use the following procedure to pay these cases.

Step	Action
1.	<p>Verify the requirements for payment of an independent partition.</p> <ul style="list-style-type: none"> <li>The employee must have 10 years of service or 5 years after 1995.</li> <li>The employee and the spouse or former spouse must be age 62 for a full month. If the employee is deceased, the employee would be age 62 for a full month if still alive. If the employee and the</li> </ul>

	<p>spouse or former spouse will be 62 in the future, set a Tickler for the month both will be 62 for a full month.</p> <ul style="list-style-type: none"> <li>The legal documents must have been reviewed and approved by the OGC.</li> </ul>
2.	<p>Request a G-90.</p> <ul style="list-style-type: none"> <li>Fill in Part 1 as usual, making sure to use the employee's date of birth.</li> <li>In Part 2 use the spouse's or former spouse's first date of payment as the ABD in number 8. For the DLW-RR, use the day before the first payment date. The Type of Request will always be '01'. The Annuity Code will be '01' or '02' depending on the employee's age. The APP File date will be the day before the first payment date.</li> <li>Enter lag only if necessary for eligibility.</li> </ul>
3.	<p>Calculate the partition amount, once the G-90 has been received.</p> <ul style="list-style-type: none"> <li>If the rate will be a ratio or percentage of the employee's rate, use the Legal Process Tier Proration Program to calculate the partition. Use only the tier 2 and the VDB if the employee is alive but not entitled to an annuity. Use the tier 2, the VDB, and the SUPP if the employee is deceased.</li> <li>If the employee would be entitled to a 60/30 annuity, no age reduction will be used in the calculation. For an age and service annuity with less than 30 years of service, calculate the employee age reduction. Use the effective date of the court ordered partition payment to calculate the employee's age reduction months.</li> </ul>
4.	<p>The case will be paid in ROC. Before the independent partition can be paid, a dummy award for the employee must be set up. To set up the dummy award:</p> <ul style="list-style-type: none"> <li>Fill out the General Information screen with the employee's information, except use the first payment date of the partition as the ABD.</li> <li>The Type of Annuity will be based on the employee's age and years of service. The Type of Computation will be 0 or 8, and the Type of Cert will be 0.</li> </ul>

	<ul style="list-style-type: none"> <li>• Fill in the address; complete the exam number and the unit ID. Put in remarks: Dummy Employee Award for an Independent Partition. Hit enter.</li> <li>• Go to PF 22, the Annuitant Data screen. Enter the BA number, and the Current Connection code. The Service Before 08-12-1983 will be pre-filled from EDMA. The Filing Date, the Date Last Worked, and the Date Relinquish Rights will be the day before the first payment date. The marital code will be '1' for a male employee and '4' for a female employee. Hit enter.</li> </ul>
5.	The dummy award will not be sent to authorization or vouchering. It is necessary for the independent partition award to send certain employee information to the TAS database when the employee is not entitled.
6.	<p>Prepare an award to pay the legal partition as usual.</p> <p><b>Note:</b> Once the employee becomes entitled to an annuity, the partition payment will be recalculated. The recalculation will include the employee's tier 2, the VDB, and the SUPP amounts payable at the employee's ABD. The court ordered partition payment to the spouse or former spouse will be recertified effective with the employee's ABD.</p>
7.	Prepare the ALTA letter RL-23 notice as usual.
8.	In the comments section of USTAR, include "Third party payment under PL 110-458—Independent Partition." Close the USTAR referral using the appropriate disposition code.
9.	Send all documents to IMAGING.
10.	PREH will code the SP-REC-ONLY-FLG on the 3200 screen, page 6, with a '2', to identify these cases as independent partitions.

### **Continuation of Partition Payments After the Death of the Employee**

Effective August 17, 2007, when an FNOD is entered, APPLE identifies all third party payments and generates a STAR referral for examiner handling.

- If the third party payment is a garnishment, the referral is 0471, terminate 3<sup>rd</sup> party payment and recover any outstanding overpayment.
- If the third party payment is a partition, the referral is 0472, check 3<sup>rd</sup> party payment adjustment under PL 109-280.

If partition is involved, any additional examiner action will be taken by examiners in RB2.

Step	Action
1	<p>Locate the court documents on IMAGING or in the folder. If the documents cannot be located, contact the Office of General Counsel before proceeding.</p> <p>Go to step 2. .</p>
2	<p>Review court documents. If:</p> <ul style="list-style-type: none"> <li>• The court documents specifically state the partition is to terminate upon the EE's death – terminate the third party payment - go to step 7.</li> <li>• The court document does not mention a terminating event – go to step 3.</li> <li>• The court document mentions a terminating event other than EE's death – set a TICKLER for the date to stop the partition payment, i.e., when the partition recipient turns age 65; is eligible for an RRB annuity; etc.-go to step 3.</li> </ul> <p>NOTE: If there is any question regarding the intent of the court document, contact the OGC for an interpretation.</p>
3	<p>Partitions paid after the death of the employee are calculated on the tier 2, the VDB, and the Supp. Verify the partition amount by reviewing PREH, screen RH3RDPAY (3276). It will be necessary to recalculate the partition amount if LPE work deductions were involved, or if the partition was calculated using the overall minimum. If the partition rate must be recertified, go to step 4.</p> <p>If the partition rate does not need to be recertified, take a PREH update action to correct the ANN-TYP-CD to 7 or 8. See step 4 for an explanation of these codes. Go to step 6.</p>
4	<p>Do a recert award on ROC to recertify the partition amount. On screen ADJUSTMENT DATES AND CODES (PF 18), enter one of two LEGAL PROCESS TYPE codes.</p>

Step	Action
	<ul style="list-style-type: none"> <li>• Code 7 indicates that the partition paid after the death of the employee will continue without restriction.</li> <li>• Code 8 indicates that the partition continues after the death of the employee, but should terminate at a future date, as indicated in the court documents. A TICKLER has been set for this termination.</li> </ul> <p>Go to step 5.</p>
5	<p>Complete RL-23 with the following paragraph.</p> <ul style="list-style-type: none"> <li>• We have adjusted your court ordered payment due to the death of the employee.</li> </ul> <p>Go to step 7.</p>
6.	<p>If the terminating event is other than EE DOD then complete a tickler so that partition may be removed timely. Go to step 7.</p>
7	<p>Close the STAR referral and provide the comment, "Third party payment (terminated) (continued) (adjusted) under PL 110-458."</p>

In a special workload, partition payments terminated prior to August 17, 2007 were reviewed and reinstated, where appropriate, effective September, 2007. Also, all partition payments continued after August 17, 2007 were reviewed and the payments recertified where necessary.

## 135.40 Garnishment of Benefits and Assignment in Lieu of Garnishment

### 135.40.1 What Can Be Garnished

Annuities and accrued annuities payable under the Railroad Retirement Act, sickness and unemployment benefits payable under the Railroad Unemployment Insurance Act, and benefits payable under any other Act administered by the RRB, can be subject to legal process (i.e., garnishment) to enforce an obligation for child support and/or alimony payments.

Garnishment of retirement benefits for other purposes, such as payments to an estate, is expressly prohibited by section 14 of the Railroad Retirement Act.



### 135.40.2 Retirement Annuities Exempted from Garnishment

A portion of retirement benefits payable is exempt from garnishment by Federal law. If the state in which the legal process is issued also provides for an exemption, the larger exemption will apply in the case.

In the absence of a state law providing for a higher exemption, Federal law exempts 35% of benefits from garnishment. The amount of the exemption is:

- Increased by 10% if the beneficiary is supporting a spouse or child other than the spouse or child with respect to whose support the legal process is issued.
- Increased by 5% if the support or alimony arrearage which precipitated the garnishment order is less than 12 weeks old.

If both of these conditions exist, the maximum retirement benefit subject to garnishment is 50%, unless an applicable state law provides a higher exemption.

The amount of the retirement benefits considered for possible garnishment is the rate after any necessary reduction, such as for recovery by the RRB of an overpayment, deduction of Medicare premiums, vested dual benefit cutback, tax withholding, payments awarded to a spouse or former spouse as part of a property settlement, or a reduction for some other reason. Any applicable exemptions are applied to the reduced benefits actually paid.

### 135.40.3 General Inquiries

If legal references are requested by any of the parties involved in a garnishment proceeding, use the following guide paragraph as a response:

"The current provisions permitting garnishment of benefits may be found at 42 U.S.C. 659(a) et seq; and the Federal exemption provisions may be found at 15 U.S.C. 1672 and 1673(b). The RRB's regulations regarding garnishment may be found at 20 CFR Part 350."

In your dealings with inquirers, be careful not to assume the role of counselor regarding securing a writ of garnishment or challenging such an order. Explain that the RRB can neither represent nor raise arguments on behalf of the concerned parties. Advise such individuals that they may retain someone to represent them by either hiring a private attorney or contacting a legal aid or legal services program in their community.

### 135.40.4 Actual Action of Garnishment

Because the RRB is obliged by law to respond swiftly to legal process, immediately send any correspondence or legal notices you receive regarding the actual action of garnishment to the General Counsel in a plain white envelope with the notation "DO NOT OPEN IN MAILROOM." Any other inquiries regarding the form or creation of such

notices which you are unable to satisfy should also be directed to the General Counsel in this manner.

Advice lawyers representing annuitants or spouses to send writs of garnishment of benefits paid by RRB and related pleadings or correspondence directly to the General Counsel of the Board, 844 Rush Street, Chicago, Illinois, 60611, via certified or registered mail, return receipt requested. Such orders can also be served personally upon the General Counsel.

### **135.40.5 Assignment of Payment**

An annuitant may assign a specific amount of an annuity to be paid directly to the spouse or to someone else for alimony or child support in lieu of going through garnishment proceedings if:

- The beneficiary files an acceptable "Assignment of Payment" with the RRB, and
- The assignment is in accordance with state law provisions concerning garnishment which generally require that the annuitant must be in arrears in making court ordered payments for alimony or child support, and
- The amount meets the Federal exemption rules as stated above.

### **135.40.6 Processing an Assignment Request**

When an annuitant expresses the desire to assign a portion of an annuity in lieu of having the benefit garnisheed or attached, legal assistance in preparing the assignment statement may be suggested or you may assist in preparing the statement to be sent to the General Counsel. The statement of assignment which you assist in preparing must include:

- A. That this statement is intended to be in accord with appropriate state law and in lieu of garnishment;
- B. That a court order for payment of alimony or child support which is the obligation of the annuitant exists and a copy of the order is attached;
- C. That the annuitant is in arrears in making the ordered payments, and the amount of the arrearage;
- D. Declaration of the amount to be assigned per month, and the name and address of the party to whom the assigned payment is to be made;
- E. The signature, address and telephone number of the annuitant;
- F. The notation that the annuitant was "Assisted in preparation by (your name and field office location)".

### **135.40.7 Status Inquiries**

- Court orders and related correspondence are to be sent to the General Counsel. Law will determine if the order applies to an annuitant or an employee of the RRB. Orders that apply to an annuitant are forwarded to RBD.
- RBD will handle all matters and make all decisions relating to the appropriateness and acceptability of the garnishment notice and to the removal of such orders.
- If the order is valid, RBD will be responsible for the initial and post adjudication of retirement, disability and survivor annuities. However, disability ratings are still the responsibility of DPS. Effective May 1, 1997, RBD will also be responsible for orders involving RUIA payments.
- If the order is determined to be invalid, RBD will release a letter explaining why the order is not "acceptable."
- Any inquiries or materials not directly related to the garnishment or assignment of payment, (e.g., change of address) should be routed through the usual channels. DO NOT send them through the General Counsel or RBD.

### **135.45 Parent Locator Service**

Public Law 93-647 provided for a "Parent Locator Service" to be established within the Department of Health and Human Services. This service is intended to assist spouses and children in locating parents who may be subject to support orders.

Inform any person inquiring about the Parent Locator Service that the law requires that all local sources of information be exhausted before Federal Services can be requested.

The Federal Service will accept requests for assistance only from a State Parent Locator Service.

Advise anyone who asks about the Parent Locator Service to contact the pertinent State agency. The name, address, and telephone number of the appropriate state agency may be obtained from either the local welfare or public assistance office, or an SSA district office.

### **135.55 Payment of Tax Refunds**

#### **135.55.1 Excess Taxes Paid Prior to 1975**

An employee with 10 or more years of railroad service who is not entitled to a windfall benefit is entitled to a tax refund if his combined taxable earnings from both systems in any year in the period 1951-1974 exceeded the maximum annual amount creditable under the Railroad Retirement Act. The refund is equal to the social security taxes

applicable to that portion of an employee's combined creditable earnings from both systems which are in excess of an amount specified in the RR Act (for most years, this amount is the maximum railroad earnings taxable for the year). The refund will be paid by the examiner upon the employee's retirement or death.

### **135.55.2 Income Tax Credit After 1974**

After 1974, an employee must apply for refund of excess tier I taxes by claiming the excess amount on his Federal income tax return. The amount is entered on Form 1040 under Excess FICA Tax Withheld or Excess Railroad Retirement Tier I Tax Withheld. Employees who work for both a social security and a railroad employer or two railroad employers are likely to have combined earnings which exceed the maximum amount creditable under the RRA. Nevertheless, employees cannot avoid the initial overpayment of taxes by authorizing his employers to exchange information; an employer has a mandated obligation to deduct retirement taxes without regard for deductions made by another employer.

Excess tier II tax refunds can be obtained by completing IRS Claim Form 843. RRB is not responsible for making a refund in such cases.

Internal Revenue Service Publication 505, "Tax Withholding and Estimated Tax", provides information on how to figure any excess railroad retirement or social security tax withheld. Upon request, this publication is provided free of charge by the Internal Revenue Service.

### **135.55.3 Effect of Tax Refund on Other Benefits**

The tax refund has no effect on the payment of retirement benefits, for either an employee or spouse. However, the tax refund is a deductible amount for the residual lump sum in survivor cases, whether it was paid to the employee while alive or to his survivors after his death.

### **135.55.4 How to Handle an Employee Request for a Refund of All RR Taxes**

Explain to the employee that railroad retirement taxes cannot be refunded except as explained above, or if they were collected in error. Advise him that the money will come back to him directly in the form of monthly benefits under either the RR or SS acts when he reaches retirement age, provided he meets the eligibility requirements. Also explain that, in the event of his death, his survivors may receive monthly benefits and/or a lump-sum death payment. Also explain that a residual payment may be made to his survivors; this payment is a guarantee that the benefits paid to him and his survivors will at least equal the taxes he paid into the railroad retirement fund prior to 1-1-75.

## **135.60 Separation And Dismissal Allowances - General**

Railroad employees frequently ask how accepting a separation allowance or a dismissal allowance from an employer affects their future eligibility for benefits under the Railroad

Retirement or Railroad Unemployment Insurance Acts. Form IB-6, Separation and Dismissal Allowances under the Railroad Retirement and Railroad Unemployment Act, is available for distribution to employees to provide information on this subject. Form IB-6 also instructs employees to contact their local RRB office if they need assistance distinguishing between a separation and dismissal allowance. Additional questions that cannot be answered in the field should be directed to Policy and Systems through the P&S Inquiry – Policy & Systems Inquiry Group Mailbox.

- Request that the employee submit a copy of the complete agreement before a determination can be made. Inform the employee that in most cases it will take approximately two weeks for a response after receipt of the agreement.
- Send an e-mail inquiry to the P&S mailbox along with a facsimile copy of the agreement to Policy and Systems (P&S) fax number (312)751-4650.

#### **135.60.1 P & S will take the following actions:**

- Send a copy of the agreement to the attorney advisor requesting a determination on the type of allowance offered.
- Respond to the field office e-mail inquiry stating that the agreement has been forwarded to the attorney advisor for a determination.
- Send a copy of the attorney advisor's determination to the field office once received.
- Retain copies of the legal decisions made in order to avoid duplicate requests from the same railroad and expedite processing.
- Forward copies of the legal decisions to the Assessment and Training Employer Service and Training Center for their information.
- All pertinent documents should be imaged for future reference and documentation.

### **135.65 Railroad Earnings and the “Social Security Statement”**

#### **135.65.1 General**

The Social Security Administration (SSA) regularly sends any worker or former worker aged 25 and older a *Social Security Statement*. The *Statement* is a record of the earnings on which the worker paid Social Security taxes during his or her working years and provides calculations of estimated future benefits.

Railroad earnings may or may not appear on the *Statement*. Because of space limitations, there is no explanation on the *Statement* itself of when railroad earnings are

or are not included. A complete explanation of when SSA includes railroad earnings on its statement can be found on SSA's website beginning at [www.ssa.gov/mystatement](http://www.ssa.gov/mystatement).

If at the time the statement is issued the RR employee has 10 years (120 months) of railroad service or 5 years after 1995,

- railroad earnings are not included on the *Statement*, and
- railroad earnings are not included in the Social Security benefit estimate calculation.

If at the time the statement is issued the RR employee has less than 10 years of railroad service or less than 5 years after 1995,

- railroad earnings from 1973 through the present are included on the *Statement*, and
- all railroad earnings (including prior to 1973) are included in the Social Security benefit estimate calculation.

NOTE: RR earnings before 1973 do not appear on the *Statement* because the RR retirement and SSA tax rates were different prior to that year. The tax rates have been the same since 1973 and are included only from that year forward.