



Legal Opinion L-2006-23
November 3, 2006

U.S. Railroad Retirement Board Phone: (312) 751-7139
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TO : Marie C. Leeson
Chief of RRA Application and Calculation
Through: Ronald Russo
Director of Policy and Systems, Office of Programs

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Age Reduction Factor Adjustment in Widow's Initial Minimum Amount Widow's Annuity – Age Reduction

This is in reply to your request for my opinion as to the proper calculation of the widow's minimum amount under section 4(g)(10) of the Railroad Retirement Act (RRA) when the annuity is subject to a recalculation of the age reduction factor at full retirement age because the annuity was not payable for some past months due to earnings over the annual exempt amount. For the reasons set forth below, in my opinion, effective with the recalculation of the age reduction factor, the initial minimum annuity under section 4(g)(10) is sum of the initial tier I and tier II annuity components reduced by the recalculated age reduction factor.

As you know, section 4(g)(10) of the Railroad Retirement Act, as amended by section 101 of Public Law 107-90, establishes an "initial minimum amount" effective January 2002 for widow's and widower's annuities. That section provides that the "unreduced annuity" as defined by subdivision 4(g)(10)(i) is to be compared to "widow's initial minimum amount" as calculated under subdivision 4(g)(10)(ii). Where the unreduced annuity under subdivision (i) is less than the widow's initial minimum amount under subdivision (ii), the monthly annuity rate payable is increased by the initial minimum amount. However, if the age reduction factor in the "unreduced annuity amount" under subdivision (i) is recalculated to take into account months when the annuity is not payable due to earnings, in certain cases the 4(g)(10) comparison results in a significantly lower monthly annuity payable. Specifically, the lower rate occurs in cases where the tier I annuity component of the widow or widower's annuity is completely offset by another benefit under the Railroad Retirement or Social Security Acts, or by a public pension under another law. In subsequent conversations, your staff suggested that when the age reduction factor is recalculated at full retirement age, the initial minimum amount under subdivision (g)(10)(ii) be recalculated to reflect the final age reduction factor as well.

You submitted an example case to illustrate how the lower annuity rate occurs. In the example, the widow was awarded an annuity beginning January 1, 2001. As she was born in March 1940, her annuity was reduced by a 38 month factor for early retirement. Her initial tier I annuity component after age reduction was \$1,169. Her initial tier II component was \$272.57, calculated as one-half of the employee tier II of \$660.51 (i.e., \$330.26), less an age reduction factor of \$57.69. In fact, though, because she received a public pension which exceeded the amount of her tier I component, her annuity consisted entirely of the tier II component of \$272.57.

On January 1, 2002, the widow's annuity was recalculated under the widow's initial minimum amount provision, using the initial annuity computation on her beginning date of January 2001. Pursuant to the definition of "unreduced annuity" provided by RRA subdivision 4(g)(10)(i), the tier I amount was determined to be \$1,169, the tier I component after age reduction but before offset for the public pension payment. Pursuant to subdivision 4(g)(10)(ii)(A), the tier II component was determined to be \$545.14, or the full employee tier II of \$660.51, less an age reduction amount of \$115.37. The widow's initial minimum amount in the example case was therefore the sum of \$1,169 plus \$545.14, or \$1,714.14. Again disregarding the tier I offset for the widow's public pension, her tier total on January 1, 2002,



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including appropriate cost of living increases, was \$1,474.75 (a tier I of \$1,200 and a tier II of \$274.75). Her annuity was consequently increased under the section 4(g)(10) initial minimum amount provision effective January 2002 by \$239.39, representing the difference between \$1,714.14 and \$1,474.75.

During the years 2003 and 2004, the widow's annuity was not payable for a total of 29 months due to earnings over the exempt amount pursuant to section 203(f) of the Social Security Act and section 2(g)(2) of the Railroad Retirement Act. Accordingly, when the widow attained full retirement age of 65 and 2 months in May 2005, her previous age reduction factor of 38 months was adjusted down to only 9 months in order to not count any months for which her full annuity was not paid by reason of her earnings. See section 228.16 of the Board's regulations. As a result, effective May 2005 her tier I annuity component increased to \$1,481 before offset for her public pension, and her tier II component increased to \$325.88, for a total of \$1,806.88. The May 2005 tier "unreduced annuity" total thus exceeded the section 4(g)(10) initial minimum amount of \$1,714.14. However, because the tier I continued to be offset by the public pension, the widow's annuity actually payable to the widow dropped from \$439.14 (which included an initial minimum amount of \$158.58) in April 2005 to \$325.88 in May (based only on the tier II component). These calculations are also summarized in the endnote to this memorandum.¹

Section 4(g)(10) of the Railroad Retirement Act, as amended by section 101 of Public Law 107-90 effective January 2002 (115 Stat. 878), provides in pertinent part:

- (10)(i) If for any month the unreduced annuity provided under this section for a widow or widower is less than the widow's or widower's initial minimum amount computed pursuant to paragraph (ii) of this subdivision, the unreduced annuity shall be increased to that initial minimum amount. For purposes of this subdivision, the unreduced annuity is the annuity without regard to any deduction on account of work, without regard to any reduction for entitlement to an annuity under section 2(a)(1) of this Act, * * * any reduction for entitlement to a benefit under Title II of the Social Security Act, and * * * any reduction for entitlement to a public service pension * * * .
- (ii) For the purposes of this subdivision, the widow or widower's initial minimum amount is the amount of the unreduced annuity computed at the time an annuity is awarded to that widow or widower, except that—
- (A) in subsection (g)(1)(i) "100 per centum" shall be substituted for "50 per centum" * * *
- (iii) If a widow or widower who was previously entitled to * * * [an annuity based on a minor child in care] under section 2(d)(1)(ii) of this Act becomes entitled to * * * [an] annuity under section 2(d)(1)(i) of this Act, a new initial minimum amount shall be computed at the time of award of the * * * annuity under section 2(d)(1)(i) of this Act.

Subdivision 4(g)(10)(iii) identifies only one instance where the initial minimum amount may be recalculated for a change of circumstances: re-entitlement on the basis of age of a claimant previously entitled as a young widow with child in care. A statute which expresses things through a list is interpreted in the first instance by the maxim of literal statutory construction "expressio unius est exclusio alterius". The maxim states that a statute which provides that a thing shall be done in a certain way carries with it an implied prohibition against doing that thing any other way. 2A Norman J. Singer Statutes and Statutory Construction (6th ed., 2000), at § 47:23. Applied to the context of the 4(g)(10)(iii) calculation, the expressio unius maxim means that a new initial minimum amount is calculated only when a former young widow or widower annuitant becomes re-entitled on the basis of age.

However, the maxim of expressio unius is a product of logic and common sense, which expresses the common experience that when one says one thing, one does not mean another. Statutes and Statutory Construction at § 47:24. The maxim should be disregarded, and a statute's interpretation be expanded beyond its literal meaning, where expressio unius would thwart the legislative intent made apparent by the entire Act, or would not serve the purpose for which the statute was enacted. Statutes and Statutory Construction at § 47:25.



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Whether section 4(g)(10)(iii) must be interpreted literally under *expressio unius* to exclude all other calculations depends upon the legislative intent and purpose of that section. In this regard, I note that P.L. 107-90 is entitled "An Act to modernize the financing of the railroad retirement system and to provide enhanced benefits to employees and beneficiaries", and that section 101 is entitled "Expansion of Widow's and Widower's Benefits." (115 Stat. at 878). Both the title of a law and the title of an individual section heading, as parts of the entire legislation enacted by Congress, may be considered in determining legislative intent. Statutes and Statutory Construction at §§ 47:03, 47:14. The title of P.L. 107-90 and the title of section 101 clearly show that Congress intended that section 4(g)(10) of the RRA result in increased annuities payable to widows and widowers as a result of the more effective management of the Railroad Retirement Account funds provided by other sections of the amendments. This conclusion is borne out by the House Report on the legislation. See H.R. Rep. No. 82 Part 1, 107th Cong., 1st Sess. (2001), at 15.

In view of the ameliorative purpose of P.L. 107-90 in general and of section 101 in particular, I previously advised you that the widow's and widower's initial minimum annuity should be recalculated if the tier I amount changed by reason of the family maximum benefit amount imposed by section 203(a) of the Social Security Act, as incorporated by section 4(f)(1) of the RRA. See Legal Opinion L-2002-11. I note that in the family maximum cases, if the tier I component on the original beginning date was reduced as a result of entitlement of another family member, but the widow's tier I later increased because the other family member's benefits terminated, then a low initial minimum annuity would be established. This low initial minimum annuity could cause the 4(g)(10) increase to end as soon as benefits to another family member ended. A literal interpretation of 4(g)(10)(iii) under *expressio unius* which limited recalculation of the initial minimum annuity only to entitlement to a new annuity based on age would have penalized these widows and widowers for a recalculation which was intended to increase, not decrease, their annuity. However, the change in the tier I calculation under the family maximum is analogous to the re-determination of entitlement from a young widow to aged widow which is specified by 4(g)(10)(iii) exemption. Recalculating the initial minimum annuity when the family maximum changes, though not expressly listed by 4(g)(10)(iii), effectuates the intent of that provision, and the intent of the family maximum provision as well.

The age reduction recalculation at full retirement age presents a situation similar to the reduction and later recalculation by reason of another family member's annuity entitlement. Both are reductions applied to the "unreduced annuity" calculation under section 4(g)(10)(i). Both are Social Security Act calculations, incorporated into annuity calculations by the RRA. See SSA section 203(a) (family maximum) and SSA section 202(q)(7) and Legal Opinion L-77-637 (age reduction factor recalculation). Both later recalculations are intended to result in a benefit increase based on information after initial retirement. Finally, both the family maximum and the age reduction recalculations are significant changes in the tier I component itself, in contrast to a simple additional percentage added to the tier I by the annual cost of living increases.

Based on the foregoing analysis, to interpret section 4(g)(10) to require under *expressio unius* that a widow's or widower's annuity revert to the regular annuity calculation as a result of the age reduction factor recalculations would thwart the legislative intent behind the widow initial minimum annuity provision, and would not serve the purpose for which section 4(g)(10) was enacted just as I advised with respect to the family benefit maximum in L-2002-11.

I therefore agree with the suggestion by your staff that if a widow's or widower's annuity is increased by a section 4(g)(10) initial minimum annuity calculation which includes an actuarial reduction for early retirement, and if the actuarial reduction for early retirement is later recalculated upon attainment of full retirement age pursuant to section 202(q)(7) of the Social Security Act, then the initial minimum annuity calculation may be recomputed as if the recalculated age reduction were in effect on the widow's or widower's original annuity beginning date. The recalculated initial minimum annuity in such a case replaces the original initial minimum annuity calculation effective with the month of the recalculation of the



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age reduction factor. Whether the initial minimum annuity continues to apply in that case is then determined based upon comparison of the recalculated initial minimum annuity with the unreduced annuity calculated on that date pursuant to subdivision 4(g)(10)(i).

ⁱ The annuity calculations in the example case for the January 2001 Widow's Initial Minimum Annuity rate, the April 2005 annuity rate, and the May 2005 annuity after age reduction factor recalculation are summarized below:

Item	WIMA "unreduced annuity"	April 2005 Last mo. WIMA	May 2005 ARF Recalc
Age Reduced T1	1,169	1,275	1,481
T1 after Pens offset	not applicable	-0-	-0-
Age Reduced T2	545.14	280.56	325.88
Gross Tier total	1714.14	1555.56	1806.88
Pre-WIMA net	not applicable	280.56	325.88
WIMA Increase	not applicable	158.58	-0-
Annuity Paid	not applicable	439.10	325.88