

**L-99-1**

**January 7, 1999**

**TO** : Douglas M. Fager  
Executive Assistant  
Office of Policy and Systems  
Office of Programs

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

**SUBJECT** : Finality - Legal Partitions

This is in reply to your memorandum of November 9, 1998, inquiring whether the Board's administrative finality regulations apply to legal partitions where the Board has failed to appropriately reduce the employee's annuity and has failed to make payments to the alternate payee of the partition.

Part 261 of the Board's regulations applies to any final decisions of the type listed in section 260.1 of the regulations. An action to partition an annuity would fall under section 260.1(a)(1) or section 260.1(a)(5). Accordingly, part 261 would apply to decisions issued in connection with the partition of an annuity and we must apply the criteria in that part in handling individual cases. Section 261.2 provides that a final decision may be reopened within a year for any reason; within four years if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of the adjudication; and at any time if the decision was obtained by fraud or similar fault.

You inquire as to the proper method of handling these types of cases. The proper method is explained in Legal Opinion L-88-37: the beneficiary of the legal partition should be paid the amount which the Board has failed to deduct from the employee's annuity, and, assuming that the award to the employee is reopened as described above, that amount is to be treated as an overpayment to the employee, subject to recovery under Part 255 of the Board's regulations.

There are also situations where the partition has been applied incorrectly so that the employee has been underpaid and thus the former spouse overpaid.

In these cases the employee's rate should be reopened retroactively and an accrual paid. This is because section 261.2(c)(11) of the Board's regulations requires reopening where the decision was unfavorable to the annuitant and was the result of an error which appears on the face of the record.

The above analysis would also apply to garnishments and assignments in lieu of garnishments.