

ATTORNEY'S GUIDE TO THE PARTITION OF RAILROAD RETIREMENT ANNUITIES

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TABLE OF CONTENTS

	Page
¶ 101 Purpose of the Guide	3
¶ 102 The Railroad Retirement Act.....	3
¶ 103 Employee Retirement Income Security Act (ERISA).....	4
¶ 104 Funding of Railroad Retirement Annuities.....	5
¶ 105 Railroad Retirement Annuity Components.....	5
¶ 106 Statement or Estimate of Railroad Retirement Benefits.....	7
¶ 107 Summary of RRB Requirements for Partition Order.....	8
¶ 108 Railroad Retirement Disability Annuities Are Subject to Division	10
¶ 109 Board Action on Receipt of Order.....	10
¶ 110 Garnishment for Support Enforcement.....	13

Appendices

- A. Frequently Asked Questions
- B. Sample Award Language
- C. Sample Court Order
- D. Divorced Spouse Annuity Requirements
- E. Spouse/Former Spouse Agreement Form

¶ 101 Purpose of the Guide

This booklet is a guide to the partition of employee railroad retirement annuities as property in a state court action for divorce, annulment, or legal separation. It explains how to effect an annuity partition in compliance with the Railroad Retirement Act (45 U.S.C. §§231-231v) and the regulations of the Railroad Retirement Board (20 CFR Part 295). This booklet is not a resource tool for private pension plans of rail industry employers.

Questions or comments concerning the information in this booklet should be submitted in writing to: General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092. (E-mail address: LAW@rrb.gov).

¶ 102 The Railroad Retirement Act

The Railroad Retirement Act (RRA) replaces the Social Security Act for rail industry employers and employees and provides monthly annuities for employees based on age and service or on disability. The RRA is administered by the Railroad Retirement Board (RRB), an independent agency in the Executive branch of the Federal government. The RRB does not administer the private pension plans of rail industry employers.

¶ 102.01 Benefits Subject to Property Division. Annuities under the RRA may be comprised of several components, with the most common components being known as Tier I and Tier II. Prior to 1983, section 14 of the RRA (45 U.S.C. § 231m) prohibited the partition of any part of an annuity under the RRA. See Hisquierdo v. Hisquierdo, 439 U.S. 572. However, section 14 of the RRA was amended in 1983 to provide that, with respect to annuity amounts payable for months beginning with September 1983, the Board must comply with a court order that characterizes the non-Tier I benefits as property subject to distribution. (See ¶ 105.02 for a list of the divisible components.) The prohibition on partition of the Tier I component remains.

¶ 102.02 Spouse and Divorced Spouse Annuity Entitlement. In addition to providing monthly annuities for employees of the rail industry, the RRA also provides annuities for spouses, divorced spouses and survivors who meet certain eligibility

requirements. However, such annuities are not subject to partition. See 20 CFR §295.1(b). Furthermore, a court cannot mandate entitlement to an auxiliary annuity. The RRB will disregard any mention in a state court order of the divorced spouse or surviving divorced spouse benefit. An eligible spouse or divorced spouse can receive an annuity under the RRA in addition to any divisible portion of the employee's annuity awarded to her/him as property by state court order. In contrast to a partition award, which awards the spouse or former spouse a share of the employee's annuity, the payment of an annuity to an eligible spouse or divorced spouse does not reduce the amount of the employee's annuity. Also, unlike a partition award, which is dependent on the employee being entitled to an annuity, section 2 (c) of the RRA (45 U.S.C. §231a) was amended to provide entitlement to a divorced spouse annuity, beginning August 17, 2007, even if the employee has not yet filed for an annuity. See 20 CFR § 216.52. The requirements which must be met to be entitled to a divorced spouse annuity are also found in Appendix D.

A booklet that explains retirement and survivor benefits under the RRA may be obtained from any RRB field office. This information, along with additional material, may also be found under “legal information” at the Board’s website: www.rrb.gov.

¶ 103 Employee Retirement Income Security Act (ERISA)

ERISA, as amended by the Retirement Equity Act of 1984, does not apply to annuities under the RRA. Consequently, the RRB will accept a Qualified Domestic Relations Order (QDRO) only if it provides for an annuity partition that is valid under the RRB's regulations. Conversely, a separate order is not required to effect an annuity partition if appropriate language is incorporated within the divorce decree itself. Appendix B contains sample language which may be incorporated within the decree itself. Where such language is not included in the divorce decree or separation agreement incorporated by reference into the divorce decree, a court order will have to be issued. A sample court order may be found in Appendix C, as well as on the Board’s website.

¶ 104 Funding of Railroad Retirement Annuities

Railroad employees and employers pay employment taxes under the Railroad Retirement Tax Act (RRTA) (26 U.S.C. §§3201-3241) to fund payment of railroad retirement annuities. The taxes paid are credited to trust funds from which annuities are paid. RRTA taxes are analogous to contributions under the Federal Insurance Contributions Act (FICA). The Internal Revenue Service collects RRTA taxes just as it collects FICA and other federal taxes. Like FICA contributions, properly collected RRTA taxes are not refundable.

¶ 104.01 "Valuation" and Railroad Retirement Annuities. Railroad retirement taxes are not credited to individual employee "accounts" that accrue value over time as an independent monetary asset. Rather, an employee's monthly annuity rate is computed solely on the basis of his or her length of service and earnings in covered employment. Therefore, it is impossible to segregate or establish a separate account for the share of the employee's future annuity awarded as property to a spouse/former spouse. A court order that divides an employee's "account" instead of his or her retirement annuity will not be valid under the RRA.

¶ 104.02 Status of Railroad Retirement Tax as Marital Asset. The amount of taxes paid by an individual employee under the RRTA is not a marital or community property asset available for division by court order.

¶ 105 Railroad Retirement Annuity Components

An employee's railroad retirement annuity is a monthly benefit comprised of several components. As described below, there are restrictions as to which components a court may characterize as property and subsequently distribute between the parties.

¶ 105.01 Non-divisible Tier I component. The Tier I component of an employee's annuity is calculated by applying the benefit formula in section 215 of the Social Security Act (42 U.S.C. §415) to the employee's earnings record. For this purpose, an employee's earnings record includes both rail industry earnings and any earnings from employment

covered by the Social Security Act. Tier I is the same benefit amount that the Social Security Act would provide if the employee's railroad employment had been covered under that Act. **Important:** Section 14 of the RRA (45 U.S.C. §231m) specifically exempts the Tier I component from property division and the RRB will not honor a property division that attempts to divide the Tier I component.

¶ 105.02 **Divisible annuity components.** In addition to the non-divisible Tier I component, an employee's annuity includes a Tier II component and may also include certain other components, as described below. The RRA does not prohibit allocation as property the following annuity components:

(A) Tier II component. An employee's Tier II component is based solely upon rail industry service and earnings. It is calculated under section 3(b) of the RRA. NOTE: The employee's Tier II component is the only divisible annuity component that may continue to be paid to a former spouse after the death of the employee. See ¶ 109-G.

(B) Supplemental annuity. An employee who completes 25 years of railroad service and who had railroad service before 1981 *may* receive a supplemental annuity under section 2(b) of the RRA. If payable, the amount of a supplemental annuity ranges from \$23 to a maximum of \$43 per month.

(C) Vested dual benefit. The vested dual benefit is an additional amount available to railroad employees who meet certain vesting requirements and are fully insured under both the RRA and the Social Security Act prior to 1975.

(D) Overall minimum increase. In some cases, an employee's annuity under the RRA may be less than the amount he or she could receive under the Social Security Act if rail industry employment were covered by that Act. The annuity may be increased so that the employee receives at least as much as he or she would receive under the Social Security Act. The amount of this increase is divisible.

¶ 106 Statement or Estimate of Railroad Retirement Benefits

Upon request, the RRB will provide a report of the amount of the monthly annuity being paid to a retired railroad employee and a breakdown of the divisible and non-divisible components. If the employee is not retired but has completed 10 years of railroad service, or 5 years of railroad service after 1995, the RRB will estimate the divisible and non-divisible monthly benefit amounts that would be payable if the employee were of retirement age at the time of the request. Estimates are not available until the employee has acquired the above-noted railroad service.

¶ 106.01 Basis of Statement or Estimate. The RRB computes benefit estimates on the basis of its record of the employee's service and earnings. The RRB's records are updated annually on the basis of employer reports of employee service and earnings for the previous year. Benefit estimates are gross annuity amounts before any reductions. (Examples of annuity reductions include age reduction for early retirement, reduction for additional benefit entitlement, deductions for work, Medicare premium deductions, etc.)

¶ 106.02 Report of Creditable Service and Compensation. Each year, the RRB issues Form BA-6 to railroad employees, showing the employee's service for the previous calendar year and his or her total creditable railroad service and compensation. The amount of creditable railroad compensation does not in any way reflect the "value" of the employee's railroad retirement benefits.

¶ 106.03 Future Benefits. The RRB cannot furnish the present value of future benefits. Further, the RRB will not make computations based upon statistics or procedures not maintained by the RRB in its administration of the RRA. The RRB can provide information only to the extent it is maintained in its official records.

¶ 106.04 Disclosure of Employee Information. The RRB can provide other information about the employee only if the employee authorizes the RRB to release it to another party. Information concerning an individual is not subject to disclosure even though it has been made the subject of a subpoena. See 20 CFR §§295.6 and 200.8. See also Hubbard v. Southern Railway Company, 179 F.Supp. 244 (D.C. M.D. Ga., 1959). As

stated in 20 CFR §295.6, the RRB treats a subpoena as a request for a benefit report or estimate.

¶ 107 Summary of RRB Requirements for a Partition Order

The RRB's regulations implementing section 14(b)(2) of the RRA (45 U.S.C. §231m(b)(2)) have been published as Part 295 of Chapter II of Title 20 of the Code of Federal Regulations. The RRB will honor a decree of divorce, legal separation or annulment (or a court-approved property settlement incident to such a decree) that complies with these regulations. The key provisions of the regulations are as follows:

¶107.01 Final Decree. The decree must be final, and issued in accordance with the laws of the jurisdiction of that court (20 CFR §295.2).

¶ 107.02 Statutory Authority. The decree must provide for the division of the employee's benefits under the RRA, as distinguished from payments under a private pension plan (20 CFR §295.3(a)(1)).

¶ 107.03 Final Disposition of Property. The decree must provide for the division of the employee's benefits as part of a final disposition of property between the parties, rather than as an award of spousal support. (20 CFR §295.2).

¶ 107.04 Direct Payments to Former Spouse. The decree must obligate the RRB rather than the employee to make direct payments to the spouse (20 CFR §295.3(a)).

¶107.05 Division of Certain Benefits Only. The decree may not divide the Tier I amount (20 CFR §§295.1(b) and 295.5(a)). The RRB will apply a decree only to the employee's non-Tier I benefits regardless of the wording of a decree (20 CFR §295.4(b)).

¶ 107.06 Statement of Award. A decree may state the award as a percentage, dollar amount, or as a fraction of the employee's benefits subject to division (see Appendix

B for sample language; also see the Board's website). The RRB will deduct any amount or fraction allowed under state law, but the RRB will not deduct an amount greater than the total benefits subject to division payable to the employee for any month.

¶ 107.07 Service of Certified Copy. A certified copy of any decree awarding a spouse/former spouse an interest in an employee's benefits must be forwarded to the General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092. The accompanying correspondence must identify the employee by name and social security number and should include the current mailing addresses of both parties and/or their counsel. The certified copy or a fax of the decree must be received in the office of the General Counsel no later than the month prior to the month of the employee's death.

¶ 107.08 Obligation of Spouse. The spouse or former spouse of an employee must complete an "Agreement of Spouse or Former Spouse" as a condition for receiving payment of the share awarded. The spouse or former spouse will also be required to complete a Direct Deposit Sign-Up Form. If the employee is not yet receiving an annuity, it is also the responsibility of the spouse or former spouse to keep the RRB informed of any changes in his/her address. Such changes must be submitted with reference the employee's name and social security number, to assure proper filing and notification of the spouse or former spouse of the employee's entitlement. See ¶109.03. If an employee is currently being paid an annuity, the spouse/former spouse's timely response upon receipt of such notice is very important. See ¶ 109E for additional information.

¶ 107.09 When Deductions Begin. Deductions from the employee's annuity pursuant to the decree may begin the later of the employee's annuity beginning date; a date specified in the decree; or the month the Office of General Counsel receives the decree. See ¶ 108 and ¶109 for additional information on this topic.

¶ 108 Railroad Retirement Disability Annuities Are Subject to Division

Disability annuities paid under the RRA are subject to partition as property in the same manner as age and service annuities, unless the court order provides otherwise.

¶ 108.01 Effect of Order. The RRB will apply a valid court order to any type of annuity that the RRB pays an employee, whether on the basis of disability or age and service, unless the court order expressly exempts an employee's disability annuity from partition. However, if the order contains such an exemption, but does not otherwise prohibit the division of an age and service annuity, the RRB will apply the court order when the disability annuity is converted to an age and service annuity.

¶ 108.02 Disability Annuities Convert to Age and Service Annuities. The RRB converts an employee's annuity from a disability annuity to an age and service annuity when the employee attains "full retirement age." For those employees born before 1938, full retirement age is age 65. See Chart 2 of Appendix D for a breakdown of when an individual born after 1937 attains full retirement age.

¶ 109 RRB Action on Receipt of Decree or Court Order

Upon receipt of a court-certified copy of a decree or court order, the RRB will take the following actions:

(A) Determine whether the order complies with the RRB's partition regulations (20 CFR §295).

(B) Advise the parties or their legal representatives of the determination. (20 CFR §295.4(c))

(C) If the employee is currently receiving an annuity, and:

(1) The spouse/ former spouse has submitted an executed Agreement of Spouse or Former Spouse and a Direct Deposit Sign-Up Form (see ¶ 107.08), the

RRB will withhold the court-ordered partition amount from any annuity payments currently being made to the employee and initiate payment to the former spouse.

(2) The spouse/ former spouse has not yet submitted both an executed Agreement of Spouse or Former Spouse and a Direct Deposit Sign-Up Form, the RRB will request that he/she do so. Withholding from the employee and payment to the spouse/ former spouse will occur as described in (E) of this section.

(D) If the employee is not yet entitled to an annuity, the RRB will file the order in its official records under the employee's social security number. When the employee becomes entitled to an annuity, the RRB will send notice to the spouse or former spouse at the most current address for him/her in the records maintained under the employee's social security number. The spouse/former spouse will be asked to complete the Agreement of Spouse or Former Spouse and /or a Direct Deposit Sign-Up Form, if not in file, and to respond to the RRB within three months of the date of that notice. Withholding from the employee and payment to the spouse/ former spouse will occur as described in (E) of this section.

(E) Withhold the court-ordered partition amount from any annuity payments currently being made to the employee and initiate payment to the former spouse as soon as the Agreement of Spouse or Former Spouse and Direct Deposit Sign-Up Form are both returned to the Office of General Counsel of the RRB. The RRB will withhold a partition award from the employee's annuity for three months pending receipt of the Agreement and/or Direct Deposit Sign-Up Form, or a response from the spouse/former spouse as requested in (D) of this section; after three months, if these documents or response have not been received in the Office of General Counsel, the RRB no longer has any obligation to withhold the annuity partition, and the withheld amounts are released to the employee. (20 CFR §295.4(d)). Withholding will not begin again until the signed Agreement and Direct Deposit Sign-Up Form are received in the Office of General Counsel, and no arrearage accrues to the former spouse.

(F) Suspend the partition payment to a spouse or former spouse for any month in which the annuity of the employee is not payable for reasons other than the employee's death. No arrearage accrues to the spouse /former spouse for any month in which the annuity of the employee is suspended or reduced under the RRA.

(G) Adjust the amount of the partition payment being made to a former spouse when an entitled employee dies on or after August 17, 2007. Section 5(d) of the RRA was amended by Public Law 109-280 to allow for the continued payment of a partition award after the employee's death, provided that event occurs no earlier than August 17, 2007. The continued payment will be in the amount of the employee annuity net Tier II benefit component that was payable to a former spouse as of the month prior to the month of the employee's death. See ¶105.02. Any other divisible annuity component included in the partition awarded the former spouse (e.g., supplemental annuity, vested dual benefit, and/or overall minimum increase) prior to the employees death, is no longer payable. This provision does not apply if the spouse's marriage to the employee was not ended by a final decree prior to the month of the employee's death, or if the employee was not entitled to an annuity as of the month prior to the month of his/her death. Furthermore, the Tier II based component payable after the death of an entitled employee is no longer subject to any cost- of living increase. The partition rate payable will be frozen at the rate due beginning with the month of the employee's death, until entitlement to receipt of the partition award ends, as described in (H) of this section.

(H) Terminate the payment of a partition award to a spouse or former spouse as of the earlier of the following:

(1) The first day of the month in which a terminating event specified in the decree occurs;

(2) The month prior to the month in which the spouse or former spouse dies;

(3) The month prior to the month in which an entitled employee dies, if the employee's date of death is prior to August 17, 2007, or if the employee's date of death is on or after August 17, 2007 and the marriage to the spouse on which the partition payment is based was not terminated by final decree prior to the month of the employee's death.

¶ 109.01 Effect of Ambiguity. If the decree or court order does not comply with the RRB's partition regulations (20 CFR §295), or if it contains an ambiguity that cannot be resolved, the RRB will explain the nature of the problems that prevent approval.

¶ 109.02 Effect of Other Provisions. The RRB will disregard any provision of an order that attempts to require a division of the employee's Tier I component or that requires payment of a divorced spouse benefit or a survivor benefit under the RRA. The RRB will also disregard any provision of an otherwise valid order if such provision runs contrary to the RRA .

¶ 109.03 Name and Address Changes. The spouse or former spouse is responsible for informing the RRB in writing of any name and address changes. When the employee's annuity becomes payable, the RRB will notify the spouse/ former spouse at the most recent address contained in records maintained under the employee's social security number. The RRB does not cross reference such changes with any changes reported by the spouse/ former spouse for any other earnings records on which he or she may have entitlement under the RRA, therefore failure to report any such change without referencing the employee's social security number could result in the loss of payments to the spouse/former spouse. See ¶ 109-D.

¶ 110 Legal Process for Enforcement of Support Obligations

Annuity payments under the RRA (and payments under the Railroad Unemployment Insurance Act, which the RRB also administers) may be subject to proceedings to enforce an employee's legal obligation to provide child support or alimony (maintenance). Such legal process should be in accord with state law and should be directed to the General Counsel, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092.

¶ 110.01 Portions Subject to Garnishment. All components of an employee's annuity, including Tier I, are subject to legal process for support enforcement, subject to applicable state and federal exemptions.

¶ 110.02 Regulations Concerning Garnishment. Regulations of the RRB concerning garnishment of benefit payments have been published in Title 20 of the Code of Federal Regulations, Chapter II, Part 350.

¶ 110.03 Disclosure of Benefit Information. Upon request, the RRB will provide information about any benefit payments being made to an employee that may be attached to enforce his or her support obligation. The RRB cannot, however, disclose the employee's current address or any other information the disclosure of which is prohibited by Federal statute. The Parent Locator Service, Office of Child Support Enforcement, Department of Health and Human Services, Aerospace Building, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447 (telephone: 202-401-9373; website: www.acf.hhs.gov) has the authority to obtain information as to addresses in certain cases.

APPENDIX A

FREQUENTLY ASKED QUESTIONS

- 1. Does the employee have a divisible account balance?** An employee does not have a divisible "account balance" with respect to any specific period of time, such as the period of the marriage, or as of any given date, such as the date of divorce. Therefore, it is impossible to establish a separate account for the share awarded to a spouse/former spouse or to segregate the share awarded.
- 2. What happens to a partitioned annuity upon the death of the employee or the spouse or former spouse?** Payments under a court order to a spouse, and prior to August 17, 2007, payments to a former spouse, terminate upon the death of the employee, or the spouse/former spouse, whichever takes place first. Payments to the former spouse of an entitled employee who dies on or after August 17, 2007 may continue, albeit at a flat rate as explained in ¶109 -G. If the spouse/former spouse dies first, payment of the amount that the spouse or former spouse was receiving, or could receive under the order, reverts to the employee as his property and does not become the property of the estate of the spouse or former spouse. The spouse or former spouse may qualify for payment of a survivor annuity under the RRA upon the death of the employee.
- 3. What is the maximum amount that can be awarded in a state court order partitioning the employee's benefits?** The RRA does not set or limit the amount that a court may award to a spouse or former spouse as his or her share of the employee's divisible benefits, except that an amount greater than the amount of the divisible benefits may not be awarded. Rather, the court sets the award by applying relevant state domestic relations law or by approving the provisions of a property settlement agreement between the parties.
- 4. Can the RRB be joined as a party to a divorce action?** No. The RRB cannot be joined as a party to any action for divorce, separation, or annulment. As an agency

of the Federal government, the RRB is immune from suit in state domestic relations actions and the records it maintains are not subject to subpoena by the Court.

5. **Can the RRB report whether an employee has a profit sharing plan, 401(k) plan, or other similar monetary asset through his employment?** No. The RRB does not maintain any such information. The only information the RRB can supply is information about the employee's actual or potential right to receive an annuity under the RRA. The amount of any actual or estimated annuity payments under the RRA may also be reported in connection with a state court action for divorce, legal separation, or annulment.

6. **Does remarriage of the former spouse affect payment of the amount of the partition?** Remarriage would have no effect unless the court order that granted the partition requires termination of payment upon remarriage. Since the partitioned amount is an "award of property" and not a "benefit" that could be affected by remarriage, the partition payment is ordinarily payable regardless of the marital status of either party.

7. **Does an employee's marriage have to last at least 10 years before a court can order a partition of his annuity?** No. While the length of marriage of the parties may be relevant to the court in distributing the marital property, it is not relevant as to whether the divisible components of an employee's annuity are subject to division by the court. (As explained in Appendix D, the length of marriage of the parties is relevant to whether a divorced spouse is eligible for a divorced spouse annuity under the RRA.)

8. **What is the difference between a divorced spouse annuity and a partition?** A divorced spouse annuity is a monthly benefit payable to a former spouse who meets the conditions as described in Appendix D. This payment does not reduce the employee's annuity and, beginning August 17, 2007, may be payable even though the employee is not yet entitled to an annuity under the RRA or is entitled but the employee's annuity is not payable due to work or earnings. A partition is a specified payment of a portion of the employee's divisible components of his/her

annuity pursuant to a court order, which results in a reduction in the annuity paid to the employee. An employee must be entitled to an annuity under the RRA, or have been entitled to an annuity in the month prior to his or her death if that death occurs on or after August 17, 2007, in order for a partition award to be payable. Furthermore, a partition award is not payable for any month in which payment of the employee's annuity is suspended due to work, earnings or to recover an overpayment. Partition awards that remain payable after the employee's death may be reduced, as they are based only on the employee's Tier II annuity component, and are no longer subject to any cost of living increases provided for under the terms of the partition as per Appendix B (3). These adjustments are effective with the month of the employee's death. See ¶109-G.

9. **Can a spouse/former spouse or surviving divorced spouse receive both a partition award and an annuity based on his/her relationship to the employee?** Yes. The spouse, divorced spouse or surviving divorced spouse annuity is payable based upon the provisions of the RRA, and the Court cannot affect entitlement to such annuity. The partition award is payable according to the terms of a valid court order and is not affected by the payment of an annuity under the RRA to the spouse/former spouse.

10. **Will the RRB "pre-approve" a draft court order dividing an employee's annuity under the RRA?** Yes, the Office of General Counsel will review draft orders. Such orders may be mailed to the Office of General Counsel of the RRB, at 844 N. Rush Street, Chicago, Illinois, 60611-2092. Draft orders may also be faxed to the Office of General Counsel at 312-751-7102. (While final orders may be submitted via fax, a certified copy of the document must follow in order for the RRB to be properly served.)

11. **What is the difference between a surviving divorced spouse annuity and a partition payable after the employee's death?** A surviving divorced spouse annuity is a monthly benefit payable to a surviving former spouse based on the provisions of the RRA, with the eligibility requirements found in 20 CFR §216.62. Unlike a partition award payable after the death of the employee, the date of the employee's

death and his entitlement to an annuity prior to that event is not controlling for this annuity eligibility. Eligibility for a surviving divorced spouse annuity, like all survivor annuity eligibility under the RRA, requires that the employee have a current connection with the railroad industry at the time of his/her death. (Current connection requirements are explained in 20 CFR Part 216 Subpart B.) A partition is payable after the employee's death only if the employee was entitled to an annuity prior to his/her death, the decree awarding the partition was received in the Office of the General Counsel prior to the month of the employee's death, and the employee's death occurred no earlier than August 17, 2007. The continued payment of a Tier II based, fixed rate partition award after the employee's death, however, is not dependent on whether or not the employee had a current connection with the railroad industry. (See ¶109-G).

APPENDIX B

SAMPLE AWARD LANGUAGE

As explained in ¶ 103, a partition award may be accomplished by including the appropriate language in the divorce decree itself. Provided below are three sample paragraphs containing award language consistent with the regulations of the RRB. The sample paragraph entitled "Formula Award" provides an equal division of property in proportion to the period of the marriage but may be revised to produce a different result. *Important: Be certain to review the "Additional Considerations" following the sample paragraphs.*

Formula Award:

[SPOUSE'S NAME] is awarded, and the Railroad Retirement Board is directed to pay, an interest in the portion of [EMPLOYEE'S NAME] benefits under the Railroad Retirement Act (45 U.S.C. §§ 231-231v) which may be divided as provided by Section 14 of that Act (45 U.S.C. § 231m). [SPOUSE'S NAME] share shall be computed by multiplying the divisible portion of [EMPLOYEE'S NAME] monthly benefit by a fraction, the numerator of which is the number of months [EMPLOYEE'S NAME] worked for a railroad employer during the period of the marriage, [MONTH/YEAR] through [MONTH/YEAR], and the denominator of which shall be [EMPLOYEE'S NAME] total number of months employed by a railroad employer at retirement, and then dividing the product by two.

Percentage Award:

[SPOUSE'S NAME] is awarded, and the Railroad Retirement Board is directed to pay, an interest in the portion of [EMPLOYEE'S NAME] benefits under the Railroad Retirement Act (45 U.S.C. §§ 231-231v) which may be divided as provided by section 14 of that Act (45 U.S.C. § 231m). [SPOUSE'S NAME] share shall be computed as an amount equal to [PERCENTAGE] of [EMPLOYEE'S NAME] monthly divisible benefits.

NOTE: Caution should be taken when using the "Percentage Award" language to be certain such award will produce the intended result. If the order provides for a

percentage award but does not specify a particular point in time, the award will be based upon all railroad service throughout the employee's career, regardless of the period of the marriage; if the order does specify that the percentage is awarded as of a specific date, the award will be based on the employee's railroad service through the specified date, regardless of the period of the marriage AND the award will be converted to a fixed dollar award (see below).

Fixed Dollar Award:

[SPOUSE'S NAME] is awarded, and the Railroad Retirement Board is directed to pay, an interest in the portion of [EMPLOYEE'S NAME] benefits under the Railroad Retirement Act (45 U.S.C. §§ 231-231v) which may be divided as provided by section 14 of that Act (45 U.S.C. § 231m). [SPOUSE'S NAME] share shall be computed as an amount equal to [DOLLAR AMOUNT] of [EMPLOYEE'S NAME] monthly divisible benefits.

Additional Considerations

- (1) Divisible Components - The RRB will apply a valid award to the sum of all of the divisible components which make up the employee's monthly annuity, unless the court order specifies otherwise. The preceding sample paragraphs would result in dividing the sum of the employee's divisible components. If the parties wish to restrict the award to only one divisible component, the phrase "divisible" in the preceding sample paragraphs, should be replaced with the component which the parties wish to divide.
- (2) Disability Annuity - Unless the order expressly exempts a disability annuity from partition, the RRB will apply an award to either a retirement or disability annuity under the RRA. The parties may avoid partition of a disability annuity by a statement such as, "**The parties expressly agree that this paragraph shall not apply to any disability annuity paid by the RRB.**" The RRB will then partition the employee's disability annuity only upon its conversion to an age and service annuity at full retirement age. (See ¶ 108.02).
- (3) Cost-of-living Adjustments - Under the "Formula Award" sample language noted

above, a pro-rata share of any cost-of-living increase in the employee's divisible benefits would also accrue to the spouse or former spouse through the month prior to the month of the employee's death. Under the "Percentage Award" sample language noted above, a share of any cost-of-living increase in the employee's divisible benefits would also accrue to the spouse or former spouse through the month prior to the employee's death, because the amount awarded is not awarded as of a particular point in time. However, if the order provides that a percentage is awarded as of a particular point in time, the award is converted to a fixed dollar award. Cost-of-living increases do not accrue to the spouse or former spouse where the award is a fixed dollar award.

If language such as that shown above is not included in the court decree, a separate order will be needed to achieve a partition of the divisible portion of the employee's annuity. A sample court order is set forth in Appendix C.

APPENDIX C
SAMPLE COURT ORDER

[CASE CAPTION]

ORDER DIVIDING RAILROAD RETIREMENT BENEFITS

1. The purpose of this order is to divide [EMPLOYEE'S NAME] non-tier I benefits under the Railroad Retirement Act as part of a final distribution of property between the parties. The parties in this action were divorced by order of this court entered [DATE].
2. The court finds in accord with the law of this state that [EMPLOYEE'S NAME] non-tier I benefits under the Railroad Retirement Act are marital/community property between the parties and may be allocated by order of this court. The Railroad Retirement Act prohibits any allocation of [EMPLOYEE'S NAME] tier I benefits. The Railroad Retirement Board administers the Railroad Retirement Act.
3.
 - a. The name and address of the employee are:

 - b. The name and address of the spouse/former spouse are:
4. It is therefore ordered that:
[Insert award paragraph; see sample language in Appendix B.]
5. A court-certified copy of this order shall be served upon the General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.
6. So Ordered this _____ of _____, 20_____.

Judge

Attorney for employee

[NAME AND ADDRESS OF LAW FIRM]

Attorney for spouse

[NAME AND ADDRESS OF LAW FIRM]

APPENDIX D

DIVORCED SPOUSE ANNUITY REQUIREMENTS (FORM G-177C)

APPENDIX E

AGREEMENT OF SPOUSE OR FORMER SPOUSE

Railroad Employee: _____

Railroad Employee's S.S.A. No.: XXX-XX-1234

I, _____, social security number _____, hereby claim the interest awarded to me in benefits payable to the above former railroad employee under the Railroad Retirement Act pursuant to the court document entered on (DATE), in the case entitled _____.

I acknowledge that any payments to me pursuant to this claim are disbursements from the Treasury of the United States, and I agree to repay any erroneous payment made to me by the Railroad Retirement Board (RRB) pursuant to this agreement. I further acknowledge that no condition in the order or under relevant state law that requires termination of the payments made to me by the RRB pursuant to the order has occurred, and agree to inform the RRB if any such condition occurs in the future.

Signed: _____

Address: _____

Date: _____

NOTE: THE RRB WILL CONTACT YOU REGARDING PAYMENTS UNDER THE ORDER AT THE ADDRESS SHOWN ABOVE UNLESS A MORE RECENT ADDRESS APPEARS IN THE RECORDS MAINTAINED BY THE RRB UNDER THE SOCIAL SECURITY NUMBER OF THE ABOVE NAMED RAILROAD EMPLOYEE.

Complete and return the form to: U. S. Railroad Retirement Board
Office of General Counsel
844 N. Rush Street
Chicago, Illinois 60611-2092