Legal Opinion L-2005-09
April 22, 2005

U.S. Railroad Retirement Board
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TO: Dorothy Isherwood
Director of Programs

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Railroad maximum reduction

This is in response to the discussion at the April 21, 2005 meeting with Board Office staff, wherein you requested my opinion as to whether the Office of Programs is required to continue to calculate annuities retroacting to months prior to 2002 taking into account the annuity reduction formerly calculated under repealed sections 3(f)(1) and 4(c) of the Railroad Retirement Act (the railroad maximum computation). For the reasons set forth below, in my opinion the new calculation or recalculation of the railroad maximum for months prior to 2002 may be discontinued. Any reduction currently in place must remain.

As you know, section 3(b) of the Railroad Retirement Act (RRA) generally provides that the employee's tier II annuity component shall be .7 of 1 percent of the product of that employee's years of railroad service multiplied by the employee's average monthly railroad compensation in his highest 60 months of railroad earnings. Spouse annuitants receive a tier II annuity component calculated as a percentage of the employee tier II. See RRA section 4(b). Prior to enactment of the Railroad Retirement and Survivors' Improvement Act of 2001 (Public Law 107-90), former section 3(f)(1) specified that the employee tier II annuity component, and supplemental annuity if any, could be cut back according to a formula setting a ceiling for total annuities payable to a family based on the employee's earnings record. Section 4(c) provided that the reduction also could apply to the spouse annuity tier II component. Section 104 of P. L. 107-90 amended the RRA by removing sections 3(f)(1) and 4(c). Section 104(c) provided the repeal "* * * shall take effect on January 1, 2002, and shall apply to annuity amounts accruing for months after December 2001." See 115 Stat. 878 at 882.

In order to facilitate automation of the annuity calculations for the period prior to January 2002, you propose when paying an annuity accrual which includes months prior to 2002 not to perform a railroad retirement maximum calculation to determine whether the reduction continues in those cases where it did apply, or to determine whether it might now apply for the first time during that period. In this regard, former sections 3(f)(1) and 4(c), enacted as provisions of the original Railroad Retirement Act of 1974 (Public Law 93-445)(88 Stat. 1305), did not specifically address many circumstances under which an annuitant who initially was not subject to the limitation might be determined later to fall under the family maximum. Over the 27 years those sections were in effect, this Office consequently provided advice in numerous instances as to whether a particular event required that the annuity need be recalculated. Each opinion resolved the issue from the standpoint of whether the legislation could be construed as intended to include that particular event. See, e.g. L-77-282 (new entitlement to vested dual benefit after annuity beginning date) and L-82-53 (delayed effective date of employee tier I component), requiring recalculation of the annuity; and L-81-228 (repeal of vested dual benefit provisions for spouse annuities) and L-97-52 (increase of tier II due to amendment terminating a reduction for military service also claimed for benefits under other law), advising the earlier railroad maximum computation need not be recalculated.

The effective date provision of section 104(c) quoted above is susceptible to more than one interpretation. One interpretation is that by stating the amendment shall take effect for months after 2001, Congress intended that the Board must continue to calculate, or recalculate, the railroad retirement maximum

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limitation anytime a payment is made for a month prior to 2002. Another interpretation is that by removing the railroad maximum provisions from the Act for months after 2001, Congress intended to end the Board's authority to make this calculation forward in time from the effective date, while leaving in place any railroad maximum reduction calculated under the prior law for months before 2002. This latter result is generally consistent with prior opinions of this Office during the period prior to the repeal which advised that not every subsequent event required the railroad maximum to be recalculated.

Accordingly, in my opinion, you need not recalculate any annuity to consider, or to reconsider, the railroad maximum calculation under repealed sections 3(f)(1) and 4(c) of the RRA in any case adjudicated after December 2001. However, the amount of a railroad retirement maximum calculation under these provisions prior to repeal effective January 2002 must continue to be deducted from any payment retroacting to months in the pre-2002 period.