

May 25, 2000
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TO: Nancy Z. Marks
Chief of Calculation Analysis and Systems
Through: Ronald Russo
Director of Policy and Systems

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Public Law 106-182 - Senior Citizens' Freedom to Work Act of 2000

This is in response to your memorandum dated April 26, 2000, wherein you asked several questions about the above captioned Act in order to develop procedure for the implementation of that Act. Each of your questions is repeated below, followed by a response.

Does the annuitant already on the rolls have to be working in order to request waiver of payment of benefits in order to earn a DRC (delayed retirement credit)? If yes, does it matter how much the annuitant earns?

This question refers to the amendment to section 202(w)(2)(B)(ii) of the Social Security Act (42 U.S.C. § 402(w)(2)(B)(ii)) made by section 4(b) of Public Law 106-182. That amendment provides that an individual shall be entitled to an increment month, for purposes of a DRC, for months beginning with the month before the month in which the individual attains retirement age, for which the individual is either not entitled to an old age insurance benefit or if entitled, did not receive benefits due to a request that the benefit not be paid. A DRC increases the social security benefit payable. No increment month can be granted beginning in the month the individual attains age 70.

There is no requirement that the individual be working, although the tax consequences of earnings seems to be the most likely reason a person would waive the receipt of the entire social security benefit. The amendment requires that the entire social security benefit not be paid based on a request to that

Nancy Z. Marks

effect made by the annuitant. This amendment applies to the computation of the tier I benefits, which is the equivalent of the social security benefit. Thus, the tier I annuity component must be waived by an employee - annuitant in order for the annuitant to receive a DRC when the annuity does become payable. It should be noted that annuitants under the Railroad Retirement Act have always had the right to waive all or part of their annuity under section 11 of the Railroad Retirement Act (45 U.S.C. § 231j).

Are we correct in our assumption that only the tier I and the VDB work deduction components are subject to the waiver provision?

As noted in the response to the previous question, annuitants under the Railroad Retirement Act have always had the right to waive all or part of their annuity under section 11 of the Railroad Retirement Act (45 U.S.C. § 231j). This has not been changed by the amendment made by section 4(b) of P.L. 106-182.

Delayed Retirement Credits (DRC) are applied to the tier I annuity component of an annuity under the Railroad Retirement Act. The Vested Dual Benefit (VDB) is not increased for DRC's. Under the law prior to its amendment by P.L. 106-182, a DRC was earned if the benefit was reduced for work deductions under section 203(b) or 203(c) of the Social Security Act. Consequently, under the prior law, since the tier I work deduction component and the vested dual benefit were subject to reduction under these sections, a DRC was earned whenever those annuity components (tier I work deduction component and the vested dual benefit) were not paid due to work.

In order to earn a DRC, P.L. 106-182 no longer requires that the person lose his benefit due to work. Instead, the amendment provides that if the person entitled to a benefit requests that the benefit not be paid, a DRC will be earned. As noted above, there is no need to work in order to get a DRC. An annuitant must, however, waive the tier I annuity component. The amendment to the Social Security Act provides that the Social Security Administration will grant a DRC only if the entire benefit is not paid due to waiver. Therefore, since the tier I annuity component is equivalent to the amount which the person would have received under the Social Security Act if all of his railroad employment had been covered under that Act, the amount to be waived in order to receive a DRC will also be the entire tier I annuity component.

Nancy Z. Marks

If an annuitant's tier I is reduced for social security benefits or is reduced to zero by any other tier I reduction and there is no VDB (no work deductions would have been assessed), would this provision be applicable?

Initially, as noted above, there is neither a requirement that the annuitant be working nor that the VDB not be payable. However, when the tier I annuity component is reduced to zero by other reductions imposed by the Railroad Retirement Act, the tier I annuity component cannot be waived. Consequently, no DRC can be earned for such a month.

If an employee elects waiver of his benefit in order to earn a DRC, would this have any effect on the spouse's or divorced spouse's annuity?

No, the waiver of the tier I annuity component in order to earn a DRC does not affect the entitlement of the individual or any auxiliary beneficiary. The amendment made by P.L. 106-182 provides that the person "if so entitled, did not receive benefits pursuant to a request by such individual that benefits not be paid". Thus, the person is only waiving payment, not entitlement. In addition, section 11 of the Railroad Retirement Act specifically provides that the waiver of all or a portion of the annuity "will have no effect on entitlement to, or the amount of, any other annuity or benefit." Thus, although a waiver may be requested in order to get a DRC, the auxiliary benefits are not immediately affected by that waiver.

Are we correct in our assumption that the DRCs would continue to be payable to the employee effective January 1 of the year after the year in which they are earned?

Section 4(b) of P.L. 106-182 did not amend section 202(w)(3) of the Social Security Act (42 U.S.C. § 402(w)(3)), which provides that DRC's shall be increased beginning with the January after the year in which the DRC's are earned. Therefore, your assumption is correct.

If the annuitant is entitled to social security benefits and waives payment of that benefit in order to earn a DRC, would we remove the social security benefit offset from the tier I for that month?

Nancy Z. Marks

The reduction in the employee tier I annuity component for a social security benefit is made pursuant to section 3(m) of the Railroad Retirement Act (45 U.S.C. § 231b(m)). That provision reads as follows:

The annuity of any individual under subsection (a) of this section for any month shall, after any reduction pursuant to paragraph (iii) of section 2(a)(1), be reduced, but not below zero, by the amount of any monthly benefit (before any deductions on account of work) payable to that individual for that month under title II of the Social Security Act. (Emphasis supplied.)

The reduction is only for the amount of any social security benefit payable. If the employee elects not to be paid a social security benefit, no reduction in the employee's tier I annuity component for the payment of a social security benefit should be made.

Does the provision apply to auxiliary annuitants?

To clarify this question, a member of my staff telephoned you on May 3, 2000. You stated that this question asks whether the amendment made by section 4(b) of P.L. 106-182 makes any changes in the persons who are entitled to DRC's. The amendment made by section 4(b) did not change the individuals who are entitled to a DRC; it merely changed how a DRC is earned.