April 16, 1997
L-97-15

TO : John L. Thoresdale
Director of Policy and Systems

FROM : Steven A. Bartholow
Deputy General Counsel
Through: Catherine C. Cook
General Counsel

SUBJECT : Effect of the increased retirement age upon calculation of delayed retirement credits and work deductions

This is in reply to your memorandum of December 31, 1996, requesting our opinion as to whether the incremental increase in full retirement age from age 65 to age 67 will: (1) reduce the number of months counted in determining the amount of delayed retirement credit which may be allowed for purposes of tier I computations under sections 3(a), 4(f), and the over-all minimum guaranty computation of section 3(f)(3) of the Railroad Retirement Act; (2) extend the period of time between age 62 and retirement age for which an annuitant is subject to a lower annual exempt amount of earnings to be assessed at $1 of earnings for every $2 of annuity for purposes of assessing deductions against his or her annuity pursuant to sections 2(f)(1), 2(f)(2), and 2(g)(2) of the Railroad Retirement Act; and (3) extend the period of time for which an employee receiving a disability annuity is subject to the $4,800 earnings limitation imposed by section 2(e)(4) of the Railroad Retirement Act. For the reasons set forth below, I am of the opinion that the increased retirement age will have the effect you suggest in each instance.

As you are aware, the Social Security Amendments of 1983 introduced in place of age 65 the concept of a gradually increasing "retirement age" at which full benefits would be paid. See Public Law 98-21 201, (97 STAT. 65, 107-109). Section 201(a) amended section 216(1) of the Social Security Act, effective with the year 2000, to define an increasing retirement age based upon the year an individual attains early retirement age, defined as age 62 for old age beneficiaries, and 60 for widows and widowers. Section 201(b) amended the method of calculating the reduction for early retirement specified by section 202(q) of the Social Security Act. Finally, section 201(c) made conforming amendments to various sections of the Social Security Act, substituting "retirement age" for age 65.

The 1983 amendments also altered the formula for calculation of delayed retirement credits provided by section 202(w) of the Social Security Act by adding section 202(w)(6). See P.L. 98-21 114(b), 97 STAT. 79.[1]

[1]Section 202(w) currently provides in pertinent part that:

(w) Increase in old-age insurance benefit amounts on account of delayed retirement.

(1) The amount of an old-age insurance benefit * * * which is payable without regard to this subsection to an individual shall be increased by -

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months -

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 416(l) of this title) or (if later) December 1970 and prior to the month in which such individual attained age 70, and

(B) with respect to which -

(I) such individual was a fully insured individual (as defined in section 414(a) of this title), and

(II) such individual either was not entitled to an old-age insurance benefit or suffered deductions under section 403(b) or 403(c) of this title in amounts equal to the amount of such benefit.

* * * * *

(6) For purposes of paragraph (1)(A), the "applicable percentage" is -

(A) ½ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1979;
(B) ¼ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus **1/24** of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) ⅔ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.

Section 202(w)(2) thus defines an increment month for purposes of the delayed retirement credit as a month which occurs between retirement age and age 70 on which an insured individual is either not entitled to a benefit, or is entitled but is subject to a deduction for excess earnings. Advancing the statutory retirement age will consequently reduce the number of months between retirement age and age 70 as calculated under 202(w)(2). As your memorandum points out, this is the interpretation adopted by the Social Security Administration in its regulation regarding delayed retirement credits. See 20 CFR 404.313(b)(1).

With regard to your second question concerning the impact of increasing retirement age upon the earnings restrictions imposed on old age and survivor annuities, I should initially note that the Railroad Retirement Act incorporates by reference the earnings limitations of section 203(f) of the Social Security Act. See sections 2(f)(1), 2(f)(2), and 2(g)(2) of the Railroad Retirement Act, concerning employee, spouse, divorced spouse and survivor annuities, respectively. The amount of work deduction under the RRA is therefore controlled by section 203(f)(3),[2] which provides that earnings are to be charged at a rate of $1 of benefit for every $3 of earnings over the applicable exempt amount only upon attainment of "retirement age " and that benefits of those under retirement age are to be subject to withholding of $1 of benefit for every $2 of earnings over a lower threshold figure. The clear import is that as retirement age advances beyond age 65, the period of time for which a particular beneficiary will be subject to the lower annual earnings limit and higher 50 percent rate of deduction will lengthen. Again, this interpretation is consistent with regulations promulgated by the Social Security Administration. See 20 CFR 404.430(a) and (d).

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[2]Section 203(f) of the Social Security Act provides in part that:

(f**) Months to which earnings are charged**.

For purposes of subsection (b) of this section -

(1) The amount of an individual§s excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled for such month under section 202 * * * on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year. * * * Notwithstanding the preceding provisions of this paragraph * * * no part of the excess earnings of an individual shall be charged shall be charged to any month * * *; (B) in which such individual was age seventy or over, * * *;

(3) For purposes of paragraph (1) and subsection (h) of this section, an individual§s excess earnings for a taxable year shall be 33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained (or, but for the individual§s death, would have attained) retirement age (as defined in section 216(l) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual, * * *.

Finally, in answer to your last question regarding the period of time a disability annuitant is subject to the $4,800 limitation imposed by section 2(e)(4) of the Railroad Retirement Act, I note that entitlement to an employee disability annuity under either the total and permanent or the occupational disability provision ends as specified by section 5(c)(2) of the Railroad Retirement Act:

> (2) An individual's entitlement to an annuity under paragraph (iv) or (v) of section 2(a)(1) shall end on (A) the last day of the second month following the month in which he ceases to be disabled as provided for purposes of such

paragraphs, (B) the last day of the month preceding the month in which he attains retirement age as defined in section 216(1) of the Social Security Act), or (C) the last day of the month preceding the month in which he dies, whichever first occurs.

Section 5(b) of the Act further provides that individuals receiving disability annuities under sections 2(a)(1)(iv) and 2(a)(1)(v) shall be deemed to have applied for full age annuities to begin with the month he or she attained retirement age. Together, sections 5(b) and 5(c)(2) therefore provide that as retirement age advances beyond age 65, employees initially awarded disability annuities will continue to receive them beyond the month they attain age 65 and until the month they reach the specified retirement age. As disability annuitants, these employees will consequently continue to be subject to the $4,800 earnings limitation of section 2(e)(4) beyond age 65.

I trust that the foregoing discussion will be of assistance to you.