



Legal Opinion L-2001-06
April 12, 2001

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TO : Kenneth P. Boehne
Chief Financial Officer

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Dual Benefits Payments Account

This is in response to your memorandum of April 2, 2001, regarding the Dual Benefits Payments Account (DBPA).

You advise that the RRB "accrues benefits due and payable at September 30" for all benefit components other than dual benefits. Dual benefits are accounted for on a cash basis. The OIG has recommended that the agency determine the proper accounting method for dual benefits. This issue was previously examined in Legal Opinion L-87-163 where it was stated that the DBPA is a cash account. For the reasons set forth below, it continues to be our opinion that the DBPA is a cash account.

As you know, dual benefits are separately funded by annual appropriations from general revenues. Authority for these appropriations is found in section 15(d) of the Railroad Retirement Act (45 U.S.C. 231n(d)(1)). The amount to be appropriated is based on the Board's estimate of the amount of dual benefits to be paid during a fiscal year. Section 7(c)(1) of the Act (45 U.S.C. 231f(c)(1)) provides that the amount of dual benefits paid in any fiscal year shall not exceed the amount appropriated to the DBPA under section 15(d) of the Act. Finally, as you note in your memorandum, section 15(d) of the Act authorizes the DBPA to borrow funds from the Railroad Retirement Account if an appropriation has not been enacted to cover the costs of dual benefits for a particular month. As noted above, section 7(c)(1) of the RRA provides that dual benefits for a fiscal year shall not exceed the amount appropriated for the fiscal year under section 15(d) of the Act. The plain meaning of this language is that if no appropriation is in effect for a particular fiscal year, no dual benefits may be paid for that fiscal year. The payment on October 1, in such case, would include a dual benefit component if funds had been borrowed from the Railroad Retirement Account for that purpose; in the absence of borrowed funds, no dual benefit would be payable.

Section 15(d)(1) of the Railroad Retirement Act provides in pertinent part that:

*** Not more than 30 days prior to each fiscal year *** the Board may request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Dual Benefits Payments Account any amount not exceeding the amount that the Board estimates will be necessary to pay on the first day of the next succeeding month the [vested dual benefit amounts]. *** Not more than 10 days after the funds appropriated to the Dual Benefits Payments Account *** are received into such account, the Board shall request the Secretary of the Treasury to retransfer [the amounts previously transferred from the Railroad Retirement Account].

The amounts transferred under this provision are for the purpose of the payment of benefits for the next fiscal year. Accordingly, the authority is for the new fiscal year. Moreover, the statute states that any amounts borrowed must be repaid to the Railroad Retirement Account from the amount of the appropriation for the new fiscal year when received. The statute clearly contemplates that the payments due on October 1 of a given fiscal year be made from funds appropriated for the fiscal year commencing on such October 1. Thus the DBPA must be accounted for on a cash basis.

Finally, you ask whether dual benefit payments made on the basis of borrowed funds would be considered erroneous if no appropriation is enacted for the fiscal year. Since the amount of dual benefits paid in a fiscal year cannot exceed the amount of the appropriation for that fiscal year, any payments made in a fiscal year for which no appropriation is enacted would be erroneous payments.