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Legal Opinion L-2002-11
September 30, 2002

TO : Ronald Russo
Director of Policy and Systems

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Summary of RRSIA Legal Interpretations

This is in response to your memorandum wherein you outlined several interpretations of the language contained in P.L. 107-90, the Railroad Retirement and Survivor's Improvement Act of 2001, and asked that we review and confirm those interpretations.

ATTACHMENT 1 – SECTION 101 OF P.L. 107-90

Section 101 of P.L. 107-90 creates an additional amount that is payable under the Railroad Retirement Act to certain widow(er)s. Attachment 1 of your memorandum concerns interpretations made with regard to the computation of this additional amount, called the widow(er)'s initial minimum amount (WIMA). We agree with your interpretation that only widow(er)s paid under the 1981 amendments to the Railroad Retirement Act (RR Act) that provided that the survivor tier 2 amount should be a percentage of the employee's tier 2 amount are eligible for the WIMA. We also agree that the WIMA is effective February 1, 2002. For those individuals whose original annuity beginning date is prior to February 1, 2002, the WIMA is computed based on the amounts to which the widow(er) was entitled on the original beginning date, using the family group in existence in February 2002. The WIMA is compared to the regular annuity amount payable for February 2002, and the higher amount is payable. -

We agree that the computation of the tier 1 annuity component of the WIMA is the same as that computed under section 4(f) of the RRA, except the tier I is not reduced for any public service pension, social security benefits, dual RR Act entitlement, or excess earnings. The widow(er)'s WIMA tier I is the widow(er)'s statutory share of the Social Security Primary Insurance Amount (PIA) payable on the widow(er)'s original beginning date including any cost of living increases that were payable on the original beginning date adjusted for the family maximum, early retirement, and any retirement insurance benefit (RIB) limit. Like any tier I annuity, the WIMA amount is rounded down to the nearest dollar. Finally, we agree that if the widow(er) is not entitled to a tier I annuity component on the original beginning date of the widow(er)'s annuity, the WIMA tier I is zero.

We agree that the computation of the tier II amount to be included in the WIMA is computed as provided in Section 4(g) of the RR Act, except that 100 percent of the deceased employee's tier II amount is used. The WIMA tier II is the deceased employee's basic tier II adjusted for vested dual benefit entitlement and cost-of-living increases payable between the employee's annuity beginning date (or date of death if the employee never filed for an annuity) and the widow(er)'s original annuity beginning date. The WIMA tier II amount is reduced for the family maximum, the number of months the widow(er) is under full retirement age on the widow(er)'s original annuity beginning date, and any applicable take-back amount under Sections 4(g)(7), 4(g)(8) and 4(g)(9).

In addition, we agree that since the WIMA tier I amount is not reduced for dual RR entitlement, the WIMA tier II amount does not include any dual entitlement restored amount.

In applying the age reduction factor of the WIMA, we agree that the following considerations should apply:

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In accordance with Section 134(c) of P.L. 98-21, the age reduction factor applied to the WIMA for a disabled widow(er) is based on the number of months between ages 60 and full retirement age, even if the annuity began before 1984 and was reduced on the widow(er)'s original annuity beginning date by the number of months between ages 50 and full retirement age.

If the widow(er) is entitled to a disability insurance benefit (DIB) at SSA, the age reduction applied to the WIMA tier I is modified in the same manner as the age reduction that is applied to the regular tier I. Only the portion of the WIMA tier I that exceeds the DIB is reduced for age.-

We also agree that the family maximum reduction of the Railroad Retirement Act applicable to the tier II annuity component is also applicable to the computation of the tier II component of the WIMA. The WIMA tier II is limited to the widow(er)'s share of 130 percent of the deceased employee's tier II. To determine the widow(er)'s share, hypothetical shares of the 130 percent maximum are calculated for the other family members. We agree with the computation set forth in the example set forth in your memorandum.

We agree that the WIMA is not adjusted for any cost-of-living increases payable after the widow(er)'s original annuity beginning date. The WIMA tier I and tier II do, however, include any cost-of-living increases payable on the widow(er)'s original annuity beginning date.

We also agree that the WIMA amount computed on the widow(er)'s original annuity beginning date is recomputed in only two situations, first, if a young mother or father becomes entitled to a widow(er)'s annuity based on age or disability, or, secondly, if the tier I is restricted by the family maximum and the number of annuitants in the family changes. The WIMA is recomputed as if the new family group had existed on the widow(er)'s original annuity beginning date. The recomputed WIMA replaces the original WIMA effective with the date the family group changed.

In making the WIMA test, we agree that the WIMA amount is compared to the following portion of the widow(er)'s regular annuity amount: The statutory share of the cost-of-living increased PIA adjusted for the family maximum, early retirement and the RIB limit, and the cost-of-living increased tier II adjusted for early retirement, takebacks, and the spouse minimum. The dual entitlement restored amount is not included in the tier II amount used for the WIMA test.
If the WIMA is higher than the above amount, the difference between the two amounts is added to the regular tier II.

We agree that the spouse minimum remains a part of the law; the WIMA is another alternative to the regular widow(er)'s annuity amount. In any month, the widow(er) is entitled to the higher of the regular widow(er)'s annuity rate, the previous spouse rate, or the WIMA.

We agree that the WIMA is compared to the regular annuity amount each time the regular annuity amount changes. As the regular annuity amount is increased for cost-of-living adjustments, the WIMA increase amount added to tier II would decrease. Eventually, the WIMA will cease to apply when annual cost-of-living increases cause the regular annuity amount to exceed the WIMA.

We also agree that if the widow(er) receives a public service pension, a social security benefit or another RR annuity, the widow(er)'s monthly payment may decrease when the annual cost-of-living increase (COL) is added to the regular annuity rate. The WIMA increase amount included in tier II is reduced by the gross COL paid in tier I, while the rate actually paid includes the net tier I COL reduced by the increase in the other benefit the widow(er) receives.

ATTACHMENT 2 – SECTION 102 OF P. L. 107-90

Section 102 of P.L. 107-90 amended the Railroad Retirement Act to provide for employee and spouse annuities that are not reduced for age when the annuities are based on at least 30 years of railroad

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service and the individual is at least age 60. We agree with your interpretation that employee and spouse annuitants are eligible for full tier I benefits if (1) the employee has 30 years of RR service, the employee receives an annuity based on age, and the employee's ABD is January 1, 2002, or later; or (2) the employee receives a disability annuity and the spouse's annuity beginning date is January 1, 2002, or later.

We agree with your interpretation that for individuals entitled to an unreduced annuity at age 60 based on 30 years of service, the PIA 1, the primary insurance amount (PIA) used to compute the gross tier I annuity component, will be computed as described in 20 CFR 225.11(c), which provides that the eligibility year for indexing earnings is the year in which the annuity begins, and the benefit computation years (BCYs) (number of years of earnings used) are based on the deemed date of birth derived by deeming the employee to have attained full retirement age in the year in which the annuity began to accrue. Since all employees retiring under this provision will be born after 1940, the BCYs will be 35 in all cases.

We also agree that in accordance with 20 CFR 217.26(b)(3), annuitants who began receiving annuities before 2002 based on 30 years of RR service can cancel their original application for benefits and file an application for an annuity to begin January 1, 2002 in order to receive a full tier I amount. All annuities paid for months prior to 2002 must be repaid. In accordance with 20 CFR 217.27, a new application is required.

We also agree that applications for annuities filed before the date of enactment of P. L. 107-90 (December 21, 2002) can be used to pay annuities computed under section 102 if the applicant either designated an ABD of January 1, 2002 or later, or asked for the earliest ABD permitted by law and that date is January 1, 2002 or later.

We agree that in accordance with legal opinion L-89-28, the annuity beginning date for 60/30 annuities cannot be earlier than the first month the applicant is age 60 for the entire month.

For purposes of computing the tier I annuity component of individuals qualifying for an annuity under section 102 of P.L. 107-90, we agree that the tier I should be increased for all cost-of-living increases payable beginning in the year the annuity begins to accrue. The gross tier I should be rounded down to the nearest dollar.

ATTACHMENT 3 – SECTION 103 OF P. L. 107-90

Section 103 of P.L. 107-90 establishes entitlement for a new class of beneficiaries based on 5 years of railroad service after 1995. The types of annuities that can be paid to employees who have less than 10 years of RR service provided the employee has at least 5 years of railroad service after 1995 are a full age annuity at full retirement age, a reduced age annuity at age 62, and total and permanent (T&P) disability annuity at any age. Spouses and divorced spouses of employees entitled under this provision can receive annuities at full retirement age or age 62; spouses can also receive annuities based on children. We agree that military service creditable under the RRA can be used to establish 5 years of service after 1995. The 5 years of service after 1995 can be composed entirely of military service creditable under the RRA.

We agree that the earliest possible annuity beginning date under section 103 is January 1, 2002. Otherwise, there are no special rules for establishing the annuity beginning date of an annuity based on less than 10 years of service; the normal rules in the RRA continue to apply.

If the employee receives a T&P disability annuity under section 103, we agree that tier II is not payable until the first month in which the employee is age 62 for the entire month. We also agree that a spouse may not receive tier II until both the employee and the spouse attain age 62 (only the employee must be

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age 62 if the spouse annuity is based on a child). Finally, we agree that tier II annuity component is reduced for the number of months between age 62 and full retirement age.

We agree that if the employee dies before attaining age 62, (s)he is deemed to have attained age 62 under section 4(g)(1) of the RRA for purposes of survivor annuity computations; a tier II is payable to the survivors.

We agree that neither the employee, the spouse, nor a survivor annuitant is entitled to the tier I annuity component under section 103 unless the employee has enough quarters of coverage (QCs) to be insured under the SS Act based on combined RR and SS earnings. The required number of QCs is based on the date of birth if the employee has attained age 62. If the employee is under age 62 (i.e., receives a T&P annuity), (s)he must have acquired the number of QCs required based on the date of birth, and (s)he must have acquired 20 QCs (or a lesser number if the employee became disabled before age 31) in the ten years immediately preceding the onset of the disability. If the employee does not have the required QCs to receive the tier I annuity component on the annuity beginning date, the tier I annuity component can become payable later if the employee subsequently acquires sufficient QCs. In this situation, the tier I annuity component would become payable from the first month of the qualifying quarter, and the tier I would be reduced by the number of months the person was under full retirement age on that date.

We also agree that the rules used by the Social Security Administration to determine entitlement to a social security benefit apply to entitlement to the tier I annuity component for survivor annuities under section 103. If the employee has a fully insured status or a currently insured status, the tier I annuity component is payable to survivor annuitants.

We also agree that if the disabled employee is under age 62 and does not have enough QCs to be entitled to tier I, no annuity is payable. The application for an annuity should be denied.

We agree that in computing the PIA that will be used for computing the tier I annuity component of an annuity based on less than 10 years of service, the eligibility year for indexing earnings and determining the number of benefit computation years is the year the employee attains age 62, and that cost-of-living increases are added to the PIA 1, beginning with the COL payable in the year the employee attains age 62. This is true even if the employee does not acquire an SS insured status until after the year (s)he attains age 62.

We agree that with regard to annuities based on less than 10 years of service, if the employee retires after full retirement age, delayed retirement credits (DRCs) are payable. The DRCs are accrued from the month the employee attains full retirement age, even if the employee attains full retirement age before January 1, 2002. If the employee became entitled to an SS benefit under Section 202(a) of the SS Act before the RR annuity beginning date, DRCs are accrued only up to the date of entitlement to the SS benefit.

If an employee or spouse receives an annuity under section 103 based on age (not on disability or on a child) and they began receiving certain types of SS benefits before the RR annuity beginning date, we agree that the tier I must be reduced by the number of months the person was under full retirement age on the later of the date they became entitled to the SSA benefit or the date they became eligible for tier I. This rule applies regardless of whether the person actually receives a monthly SS payment (e.g., if the benefit is withheld because of excess earnings). The rule applies if the SSA benefit is based on age (not disability) and is any of the types of benefits, regardless of the account upon which the benefit is paid, provided for by section 202(a) (wage earner), or section 202(b) (wife or divorced wife), or section 202(c) (husband or divorced husband) of the Social Security Act. This rule does not apply if the SS benefit is terminated or cancelled before the annuity beginning date (ABD).

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If the person became entitled to a retirement insurance benefit under the provisions of the Social Security Act (SSA) before the RR annuity beginning date, we agree that the tier I age reduction should be based on the SSA retirement insurance benefit date of entitlement even if the retirement insurance benefit is converted to a disability insurance benefit after the annuity beginning date. If the conversion from retirement insurance benefit to disability insurance benefit took place before the annuity beginning date, the SS entitlement has no impact on the computation of the tier I age reduction.

We agree that the annuity of an employee who receives a tier II annuity component based on 5 years of service after 1995 can, like any other tier II annuity component, be divided in a divorce or legal separation.

We agree that if an employee with 5 years of service after 1995 and a current connection with the RR industry died in 2001 or earlier and jurisdiction of survivor benefits was transferred to the Social Security Administration, jurisdiction can be transferred back to the RRB effective January 1, 2002.

We also agree that an application for retirement benefits filed by a person with less than 10 years of service is deemed to be an application for any wage earner or spouse benefits to which the person may be entitled under the provisions of the SSA. The person cannot waive entitlement to such SS benefits for months after the month of filing. However, the person can waive payment of the SS benefits to which (s)he is entitled. If the SS benefit payment is waived, tier I should not be reduced for the benefit.

We agree that if an employee who receives an annuity under section 103 later acquires 120 service months, the rules of section 103 no longer apply to the annuity. The original application for benefits remains in force. The annuity beginning date remains the same (unless the employee receives a T&P annuity which is terminated because of the return to service). Effective with the date the employee ceases RR service, the annuity should be computed under the rules that apply based on 10 years of service. If the disabled employee began receiving an age-reduced tier II at age 62, the age reduction should be removed from the tier II annuity component effective with the date the annuity is reinstated. If the tier I annuity component is age reduced based on the number of months the annuitant was under full retirement age on the date of entitlement to an social security benefit, tier I will be reduced for the number of months the annuitant was under full retirement age on the annuity beginning date of the railroad retirement annuity effective with the date the annuity is reinstated. The annuity beginning date of the railroad retirement annuity is used to calculate the number of age reduction months even though the employee did not have 10 years of service on that date.

We also agree that if the annuity based on less than 10 years of railroad service did not include a tier I because the employee did not have the required insured status under the SS Act, tier I becomes payable effective with the date the annuity is reinstated. If delayed retirement credits (DRCs) were accrued from the attainment of full retirement age up to the date of entitlement of the social security benefit that preceded the annuity beginning date of the railroad retirement annuity, DRCs should be accrued from full retirement age up to the annuity beginning date of the railroad retirement annuity effective with the date the annuity is reinstated.

ATTACHMENT 4- SECTION 104 OF P.L. 107-90

We have provided no specific guidance with regard to section 104 of P.L. 107-90, which eliminated the RRA maximum effective with benefits payable January 1, 2002 and later. The RRA maximum continues to apply for benefits payable for months before 2002.