



**Legal Opinion L-2001-15**  
**October 2, 2001**

U.S. Railroad Retirement Board    Phone: (312) 751-7139  
844 North Rush Street            TTY: (312) 751-4701  
Chicago Illinois, 60611-2092      Web: <http://www.rrb.gov>

**TO** : Ronald Russo  
Director of Policy and Systems

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Requirements for RUIA Benefits by Internet

This is in response to your memorandum dated August 30, 2001, wherein you set forth a general outline of your plans to provide for the acceptance of applications and claims for benefits under the Railroad Unemployment Insurance Act (RUIA) via the Internet. You ask for a statement of the legal requirements for such a system.

The Department of Justice, in its paper entitled "Legal Considerations In Designing and Implementing Electronic Processes: A Guide For Federal Agencies" set forth four main considerations that must be addressed in considering the legal aspects of moving to electronic processes. Those considerations are as follows:

- (1) Will the electronically gathered and stored information be collected, retained, and accessible whenever needed?
- (2) Will the electronic collection, transmission, or storage of "documents" or information comply with applicable legal requirements, including, for example, laws requiring that certain records be maintained in a particular form or format?
- (3) Will electronic records be sufficiently reliable to be useful to Congress, agency decision-makers, private disputants, judges, juries, and others who must determine the facts underlying agency actions?
- (4) Will the agency's use of electronic methods to obtain, send, disclose and store information comply with applicable laws, such as those governing record keeping, privacy, confidentiality, and accessibility?

Before turning to an analysis of these considerations, it will be helpful to provide a general explanation of the requirements contained in the Federal Records Act as they pertain to your proposed systems. The Federal Records Act defines the term "records" as

all books, papers, \*\*\*, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency \*\*\* as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government \*\*\*. 44 USC § 3301.

"Appropriate for preservation" means documentary materials made or received that, in the judgment of the agency, should be filed, stored, or otherwise systematically maintained by the agency because they constitute evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the material. The applications and claims for benefits that you plan to accept via the Internet fall within the definition of "records" under the Federal Records Act.

The Act also provides that the records obtained by the Government must be maintained and disposed of only in accord with schedules approved by the Archivist of the United States. Since the electronic information that you propose to gather via the Internet will constitute records, just as the same information gathered via a paper application constitutes a record, that electronic information will be subject to retention schedules that must be approved by the National Archives and Records Administration.

The first consideration set forth in the Department of Justice Guidance provides that the electronic records are to be collected, retained and be accessible whenever needed. It is my understanding that the agency will be obtaining the same information electronically as it does currently on paper applications and claims. The information obtained



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electronically, like the information obtained via a paper medium, must be retained and be accessible to those with a need to consider that information. It is my understanding that the information received electronically will be entered into our current systems for processing. It thus appears that the information will be accessible in the same way as is the information obtained via a paper application or claim. If that is not the case and new or additional software and/or computer programs will be needed in order for agency staff to access the applications and claims, you will, of course, need to obtain those prior to accepting applications or claims on the Internet. Agency staff should also receive appropriate training regarding any new means of accessing these applications and claims. In addition, there might be certain information, such as postmarks on envelopes, that will not be present in an electronic format. The electronic process and perhaps the Board's regulations may have to be modified to account for such matters as when a claim is received.

The electronic process must also provide that the information will be retained and be accessible for many years. Currently, paper and imaged documents under the RUIA retention schedule are retained for six years and three months after the end of the benefit year. A new retention schedule for electronic records would have to be established. A similar length of retention would appear to be required for any electronic records. As noted earlier in this discussion, the Archivist must approve records retention schedules. See 44 USC § 3303. In accord with those revised record retention schedules, the records will be available and accessible for the needed period of time.

With regard to the second consideration, the legal sufficiency of the electronic records, there is no definitive answer to the acceptability of electronic records in legal proceedings. The area is too new for there to have been established a record of legal precedent that can be relied upon. However, the Government Paperwork Elimination Act (GPEA), P.L. 105-277, provides that electronic records and signatures shall not be denied legal effect because they are in electronic format. Neither the RUIA nor the Board's regulations expressly require that an application or a claim form be signed. They do, however, require that an application or a claim be made on the form provided by the Board. The application and claim forms have required a signature. This signature serves many purposes, to authenticate that the person is who he or she claims to be, to impress upon the applicant/claimant the significance of the filing, and for use in any court proceeding with regard to that application or claim.

It is my understanding that in the filing of an application and claim forms via the Internet, no signature will be required. Rather, you intend to use the PIN/password system being used for other Internet applications. As I understand this process, the applicant will contact the Board and request a password recognition code (PRC). This code will be sent by the U.S. mail to the last address in the agency's records. If the person has moved, he or she will have to contact the district office to obtain a PRC. After a PRC is received, the person can enter the system and create a unique password for that individual. You intend to use this PIN/password system to identify the individual and authenticate that the person is who he or she claims to be. This serves one of the main purposes of a signature. Due to the newness of electronic processing and the lack of legal precedent in this area, we cannot be certain that a reviewing court would permit the Board to enforce a claim based on such a system. However, we do believe that through the use of other extrinsic evidence, any claim based on this system could be enforced. The claim for benefits will in most cases be paid directly into the employee's bank account. In fact, this might be a requirement for this system, since it adds to the enforceability of any claim that the Board may try to make. It would be difficult, if not impossible, for the claimant to argue that he or she did not know that the payments were being made when those payments were being consistently transferred to his or her account. In addition, the authorization contained in the GPEA would be of assistance in enforcing any claim by the Board in a court. Finally, the PIN/password system by requiring an initial contact to establish the PRC will serve the function of impressing the applicant with the significance of the filing. In conclusion, it is my opinion that there are no legal objections to using the PIN/password system as an alternative to a signature.

The third consideration stated above concerns the reliability of electronic records to be useful to Congress, agency decision makers, or other parties who must determine the facts underlying an agency action. As I understand the proposed system, there will be little if any change in the processing of applications and claims. The information collected will be the same as is currently collected on paper applications and claims. The entry point will be via the Internet, however, rather than a paper application or claim form. When the application or claim form is received, it will then be processed through the Board's existing Railroad Unemployment Claims System (RUCS). RUCS



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currently provides the necessary reliability to provide the information required for decision makers, Congress, and other parties. Since, as indicated above in response to the second consideration, it is my opinion that the electronic system you propose will be sufficient to verify that the claimant is the person he or she claims to be, the current RUCS system will provide all of the information it currently does for various parties. Again as noted above, the reliability of the records will be established both by the security provided by the electronic system and other extrinsic evidence that will support the decisions reached by the various decision makers.

The final consideration identified by the Department of Justice Guidance is whether the use of electronic methods will comply with existing laws regarding record keeping, privacy, confidentiality, and accessibility. According to your memorandum, you will be using a secure socket layer (SSL) communications technology between the public and the contractors hosting any services. A secure virtual private network between the contractor and the RRB will employ encryption. I am unable to comment on the technical aspect of these security matters; however, any system must ensure that the information gathered by the RRB in connection with its administration of the RUIA is not available except in accord with sections 12(d) and 12(n) of the RUIA and with the Privacy Act. In general, section 12(d) of the RUIA precludes disclosure of information except to certain named entities without the authorization of the claimant. Section 12(n) of the RUIA precludes the disclosure of any medical information. Since, at this time, the system will only involve unemployment claims, there should be no medical information transmitted. In general, the Privacy Act again precludes release of information about an individual without that individual's authorization.

In conclusion, any system that relies on the electronic input of data must, as a minimum, address the concerns outlined above. We are available to assist you in the development of the specific systems.