



Legal Opinion L-2002-07
April 25, 2002

U.S. Railroad Retirement Board Phone: (312) 751-7139
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TO : Kenneth P. Boehne
Chief Financial Officer

Frank J. Buzzi
Chief Actuary

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Sections 108 and 204 of Public Law 107-90

This is in response to your memorandum dated April 9, 2002 wherein you request my advice concerning the computation required under section 108 of the Railroad Retirement and Survivors' Improvement Act of 2001 (RRSIA).

Section 108 of the RRSIA requires the Board to calculate the "account benefits ratio" with respect to the railroad retirement system for the most recent 10 preceding fiscal years and to compute a projection of the account benefits ratio for the next 5 succeeding fiscal years. For purposes of computing the account benefits ratio, section 108 directs the Board to the definition of that term contained in section 3241(c) of the Internal Revenue Code of 1986, as added by section 204 of the RRSIA. The term "account benefits ratio" is defined in section 3241 of the Internal Revenue Code as:

[W]ith respect to any fiscal year, the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and of the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust during such fiscal year.

In order to compute the "accounts benefits ratio," you request guidance as to the meaning of several terms within the above definition of "account benefits ratio." In determining the meaning of a statute, we must first look to the specific statutory language. See, Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 300 (1989). If that language is plain, that is the end of the inquiry into the statute's meaning. The only exception to this rule occurs when a literal reading of the statute would produce a result at odds with the intentions of the drafters of the statute. See, Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571(1982).

Initially, you ask for guidance with respect to the meaning of the term "total benefits and administrative expenses paid." With respect to this term you ask whether in determining this amount you should use cash accounting or accrual accounting. You also ask whether the total amount of benefits paid should be only benefit outlays or should be benefit outlays minus recoveries made in a particular year. Concerning the method of accounting to be employed in computing the benefits and administrative expenses, you note that the use of the term "paid" denotes a cash basis of accounting. As to whether total benefits means gross benefits or net benefits, you state that the agency's current cash statements reflect net benefit amounts.

Although the term "total benefits and administrative expenses paid" is not without ambiguity, I agree with you that the use of the word "paid" demonstrates that the computation should be made on a cash basis. In addition, in my opinion, "total benefits... paid" means net benefits paid, i.e. the gross benefits paid in a particular fiscal year minus any cash recoveries made in that fiscal year. The purpose of computing the



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account benefits ratio is to ensure that there are adequate funds to pay benefits due under the Act. Using net benefits paid more accurately reflects the amount of benefits paid in a given year.

The next term that you inquire about is the term "assets." You ask whether that term should include only investments and cash or whether it should or also include accounts receivable. As stated above, the purpose of computing the account ratio is to ensure that there are adequate funds to pay benefits due under the Act. While a receivable may be viewed as an asset under certain circumstances, it is my opinion that Congress did not contemplate inclusion of accounts receivable in the computation of the account benefits ratio. By providing that the computation is to be made based on the fair market value of the assets in the Investment Trust and the accounts, Congress signaled that the computation should be made based on the amount of cash and the value of investments in the Investment Trust and the accounts. Moreover, disregarding accounts receivables in computing the account benefits ratio is consistent with the cash basis being used to determine total benefits and administrative expenses paid in a given fiscal year, as discussed above.

Further, you ask for clarification of the term "administrative expenses paid." As you note in your memorandum, funds for administrative expenses are transferred from the Railroad Retirement Account to a single administrative account from where funds are expended. As noted earlier, Section 3241 (c) of the Internal Revenue Code of 1986, as added by Section 204 of RRSIA, provides that the account benefit ratio shall be calculated by "...dividing the fair market value of the assets in the Railroad Retirement Account and of the National Railroad Retirement Investment Trust...by the total benefits and administrative expenses paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust during such fiscal year." The wording "administrative expenses paid from the Railroad Retirement Account" clearly contemplates that administrative expenses for the purposes of calculating account benefit ratios shall be such funds "paid from the Railroad Retirement Account" when transfers are made to the single administrative account.

Finally, you ask if the cash transfers by the Railroad Retirement Account to the Limitation on the Office of Inspector General should also be considered administrative expenses for purposes of calculating account benefit ratios. Office of Inspector General administrative expenses are appropriate railroad retirement program expenses and should be considered administrative expenses when they are transferred from ("paid from") the Railroad Retirement Account to the Limitation on the Office of Inspector General.

Although I have provided guidance with respect to your questions in this memorandum, I believe that this guidance should be memorialized in a regulation adopted by the Board. Such a regulation would serve to provide notice to all interested parties, rail labor, rail management, and the public as to the methodology we will employ in computing the account benefits ratio. I will ask a member of my staff to begin drafting a regulation on this subject. We will contact your offices for advice as to what should be included in the regulation.