



**Legal Opinion L-2003-05**  
**May 27, 2003**

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**TO** : Pauline Coleman-Sutton  
Acting Chief of Calculation, Analysis and Systems  
**Through:** Ronald Russo  
Director of Policy and Systems

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

**SUBJECT** : Payment of the Overall Minimum to Incarcerated Felons

This is in response to your memorandum dated April 21, 2003, wherein you ask whether the Board may pay benefits under the overall minimum provided for in section 3(f)(2) of the Railroad Retirement Act (45 U.S.C. § 231b(f)(2)) to incarcerated felons.

Section 3(f)(2) provides that the amount payable to a railroad employee may be increased to the amount that would have been payable under the Social Security Act to the railroad employee and his/her family if the railroad employee's earnings creditable under the Railroad Retirement Act had been considered employment under the Social Security Act. Changes to the payment provisions of the Social Security Act are applicable to the payment of benefits under the overall minimum provision. See Legal Opinions, L-82-20, L-83-176, and L-91-80. In Legal Opinion, L-83-176, the General Counsel affirmed the assumption of the Director of Retirement Claims, as set forth in his memorandum dated April 20, 1983, that the amendment to the Social Security Act (section 339 of P.L. 98-21) that prohibited payment to incarcerated felons was applicable to the payment of benefits under the overall-minimum.

In your memorandum, you suggest changing this legal interpretation based on the decision of the Board set forth in a memorandum from the Secretary to the Board dated January 25, 1995, to no longer apply the non-payment provision of the Social Security Act to the tier 1 annuity component of incarcerated felons.

The amount that is payable under the overall minimum is the amount that would be payable under the Social Security Act to the employee and his/her family. Section 202(x)(1) of the Social Security Act (42 U.S.C. § 402(x)(1)) precludes payment of the wage earner's benefit to the incarcerated felon. The Board in applying the overall minimum must conform its payments to what the Social Security Administration would pay in applying the Social Security Act. Although auxiliary beneficiaries could be included in the computation of the overall minimum, the Board could not include the incarcerated felon in this computation because of section 202(x)(1) of the Social Security Act.