

**L-99-17**

December 2, 1999

**TO:** Kenneth P. Boehne  
Chief Financial Officer

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

**SUBJECT:** Appropriation for Vested Dual Benefits

In response to a request from the Office of Management and Budget, you have asked for an opinion as to whether the appropriation for vested dual benefits is subject to the government-wide rescission of 0.38% in discretionary budget authority provided in Public Law 106-113. As set forth below, it is my opinion that the appropriation for vested dual benefits is not subject to the government-wide rescission.

The government-wide rescission applies to discretionary budget authority provided (or obligation limit imposed) for fiscal year 2000.... 2 U.S.C. 900(c)(7) defines the term discretionary appropriations to mean budgetary resources (except to fund direct-spending programs) provided in appropriation Acts. The term direct-spending is defined in 2 U.S.C. 900(c)(8) as follows:

The term direct spending means --

- (A) budget authority provided by law other than appropriations Acts;
- (B) entitlement authority; and
- (C) the food stamp program.

Funding for the payment of vested dual benefits falls squarely within the definition of direct spending. Authority for appropriations to the Dual Benefits Payments Account is provided in section 15(d) of the Railroad Retirement Act (45 U.S.C. 231n(d)). Monies appropriated to the Dual Benefits Payments Account are used to fund statutorily provided benefit amounts, which are components of railroad retirement annuities paid to qualified retired railroad employees. Railroad retirement annuities, including vested dual benefits, are entitlements. The Comptroller General confirmed the status of vested dual benefits as entitlements in an advisory opinion issued in 1982 to the Honorable Jim Sasser, United States Senator. In that opinion letter, which is reproduced at 128 Cong. Rec. 3970-71 (March 11, 1982), the Comptroller cites language in section 7(c) of the Railroad Retirement Act referring to the entitlement of individuals to vested dual benefits and the legislative history of vested dual benefits in concluding that the payments in question [vested dual benefits] are entitlements for which the Government must make outlays to eligible retirees.

As entitlements and, therefore, within the definition of direct spending in 2 U.S.C. 900(c)(8), vested dual benefits are not funded by discretionary appropriations and would not, in my opinion, constitute discretionary spending within the meaning of the government-wide rescission contained in Public Law 106-113. Further support for this conclusion may be found in 2 U.S.C. 905(g), which exempts the Dual Benefits Payments Account from reduction pursuant to any order under the so-called Gramm-Rudman-Hollings Act.

cc: The Board  
Director of Administration  
Director of Programs  
Director of Legislative Affairs