

Chicago, Illinois 60611

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Director of Retirement Claims

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Associate General Counsel

Offset for Social Security Act Benefits

This is in reference to your memorandum of February 19, 1971, concerning the provisions of the Railroad Retirement Act to the effect that once an offset for Social Security Act benefit increases has been applied to an annuity, the offset is never changed because of an increase from a recomputation (other than for adjustment because of error) or legislation. The question is whether the offset should change in a case where the annuitant has become entitled to a different social security benefit.

The parenthetical clause in the second proviso of section 3(a)(2) of the Railroad Retirement Act provides as follows:

"\* \* \* (disregarding for the purpose of this and the following proviso any increase in such benefit based on recomputations other than for the correction of errors after the first adjustment and any increases derived from legislation enacted after the Social Security Amendments of 1967) \* \* \*." [Underscoring supplied.]

There is like language in section 5 of the Act.

The second proviso in section 3(a)(2) refers to "a benefit under title II of the Social Security Act" with respect to which an individual is entitled. The above-quoted parenthetical clause which is at the end of the second proviso in section 3(a)(2) refers to "a benefit under title II of the Social Security Act" as "such benefit". It is clear from the ordinary usage of the word "such" that it refers to the particular thing which was indicated, suggested, or exemplified. It is a common practice in legislative drafting to use the word "such" to avoid repetition of a descriptive term. In this case, "such benefit" was used instead of "a benefit under title II of the Social Security Act". There is nothing in the legislative history of section 3(a)(2) that would indicate that the term "such benefit" would apply in a manner other than its plain, ordinary meaning.

It may be noted that the parenthetical clause in section 3(a)(2) was made part of section 3(a) of the Railroad Retirement Act by Public Law 89-699, approved October 30, 1966. The same language was retained when section 3(a) was amended by Public Law 90-257, approved February 15, 1968, except that "1965" was changed to "1967". Public Law 91-377, approved August 12, 1970, which amended section 3(a) of the Railroad Retirement Act left the language of the parenthetical clause unchanged.

In conclusion, it is my opinion that the language of the parenthetical clause in section 3(a)(2) of the Railroad Retirement Act must be applied literally in accordance with its plain meaning; that is, that once there is a new social security benefit a new offset would apply.

In the case to which you have referred where a woman becomes entitled to a wife's benefit, which would be \$100 except for the fact that she is already entitled to primary benefits of \$80, the amount to be used for the offset is changed from \$80 to \$100. This is because the amount of \$100 is for the purpose of the offset provision, the amount of the new benefit. She is, of course, paid \$80 as her primary benefit and \$20 as her wife's benefit for a total of \$100.

This opinion shall apply only to annuities accruing for the month after the date of this opinion.

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SJS:lmr