REPORT BY THE

Comptroller General

OF THE UNITED STATES

Employee Protection Provisions Of The Rail Act Need Change

Title V of the Regional Rail Reorganization Act authorized a $250 million fund to pay workers whose compensation or working conditions were adversely affected by the reorganization of bankrupt railroads into Conrail. It is expected that the fund will be depleted in late 1979; however, the law requires employers to continue paying eligible employees.

After more than 3 years, the program has shown that costs will extend far beyond original expectations. Estimates of the eventual cost range from $884 million to $1.7 billion. However, none of the estimates could be used confidently to predict total cost, and GAO recommends that a better estimate be made.

One of the factors that makes the program costly is the length of time employees are eligible. Title V gives employees protection to age 65 while other federally funded plans limit protection to 6 years. GAO is recommending, among other things, that the law be revised.

CED-80-16
DECEMBER 5, 1979

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-164497

The Honorable John L. Burton, Chairman
Subcommittee on Government Activities and
Transportation
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

Pursuant to the December 28, 1977, request from you and Congressmen Evans, Maguire, and Moffett and subsequent meetings with your office, this is our report on various aspects of the title V employee protection provisions of the Regional Rail Reorganization Act of 1973 (Public Law 93-236), as amended. This is the fourth and final report to be issued in response to your request.

The $250 million title V fund authorized by the Congress will probably be exhausted by the end of 1979; however, employers are required by law to continue paying eligible employees whether or not title V funds exist. Program planners originally felt that separation and termination allowances would be the predominant type of payment. However, after 3 years, the program has shown that monthly displacement allowances to working employees have exhausted most of the fund and that the program cost will extend far beyond original funding. Estimates of total program cost range from $884 million to $1.7 billion; however, we believe the estimates are not reliable and recommend that a more accurate estimate be made.

One of the factors that makes the program costly is the length of time employees are eligible for benefits. Title V offers employees protection to age 65, while other federally funded plans limit protection to 6 years. We believe that program limitations are needed to bring it more in line with original estimates and with benefits provided by other federally funded employee protection programs.

Other provisions of the law have produced results not necessarily intended by the Congress or have made the program difficult to administer; therefore, we recommend revising the law in those instances.

We obtained comments on this report from Conrail, the United States Railway Association, Department of Transportation, and the Railroad Retirement Board. The Railway Association did not respond in writing but its oral comments are included where appropriate. Conrail's, Department of Transportation's, and Railroad Retirement Board's written comments are included as appendixes and are also discussed in the text where appropriate.

We are sending this report today to Congressmen Evans, Maguire, and Moffett. Copies are being sent to the Chairman, Subcommittee on Transportation and Commerce, House Committee on Interstate and Foreign Commerce. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of the report until 2 days from its date. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION, HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

EMPLOYEE PROTECTION PROVISIONS OF THE RAIL ACT NEED CHANGE

D I G E S T

Title V of the Regional Rail Reorganization Act of 1973, as amended, authorized a $250 million fund to protect employees whose compensation, fringe benefits, working conditions or rights and privileges were adversely affected by the reorganization of bankrupt railroads into the Consolidated Rail Corporation (Conrail).

Between April 1976 and May 31, 1979, the Railroad Retirement Board has withdrawn $192.3 million from the fund to reimburse Conrail and seven other employers for benefits paid to about 36,500 protected employees. The Railroad Retirement Board estimates that the $250 million fund will be depleted some time in late 1979. However, protected employees will continue to be eligible for benefits until approximately the year 2021, when the last protected employee reaches age 65 and becomes ineligible. Under the law, Conrail and other employers are required to continue paying benefits to protected employees whether or not any funds are in the title V account.

Estimates of how much the Title V Program will eventually cost vary--ranging from $884 million to $1.7 billion. Although the program will cost substantially more than the original authorization, GAO believes the estimates cannot be used confidently to predict total program cost partly because of the nature of the program and partly because of the relatively short period the program has been operating. GAO also found problems with Conrail and Railroad Retirement Board estimating procedures. A more carefully thought out estimate of the title V liability needs to be calculated as soon as practicable. (See ch. 2.)

The Railroad Retirement Board agreed there were weaknesses in the estimates but were concerned that the method GAO recommended for producing a more reliable estimate would be too costly. GAO does not agree that a new estimate would be excessively expensive and believes it is needed. (See p. 24.)

Railroad officials who helped draft the employee protection provisions advised the Congress that the bulk of the $250 million fund would be needed for employee separation and termination allowances. After 3 years the program has shown that monthly displacement allowances to full-time employees constitute most of the payments and that the program will extend significantly beyond original funding. Limitations may be needed to bring the program more in line with original estimates. (See p. 10.)

One factor that increases program costs considerably is the length of time employees are granted protection. Compared to other federally funded employee protection plans, the Rail Act protects employees much longer. For example, persons who were employed 5 or more years on the effective date of the Rail Act (January 2, 1974) are protected until age 65. This means a person under 25 when the Rail Act became law would be eligible to receive benefits for 40 or more years. On the other hand, the Amtrak plan developed pursuant to the Rail Passenger Service Act of 1970, limits employee protection to 6 years, and the more recent Redwood Employee Protection Program of 1978, limits protection to 6 years for most employees. The Congress should reduce the period of employee protection under the Rail Act so that it is more in line with other employee protection plans. (See p. 28.)

The Rail Act does not provide for effective Federal management control and oversight of the Title V Program. The nine employers who have paid protected employees have had to interpret the law, prepare their own implementing procedures and instructions, and disburse Federal funds according to their own interpretations. GAO identified several instances

where the law can be interpreted differently from Conrail's interpretations and some of these interpretations are being arbitrated as provided by the Rail Act. Where ambiguities in the law exist, Conrail's interpretations usually conserve the fund by reducing the amount of claims payable to employees.

GAO's review showed that Conrail has made some claim overpayments and underpayments, but that the rate of errors was not large in relation to the volume of claims processed and paid by Conrail. Nevertheless, GAO believes the program is too complex and too much Federal money is involved to allow it to continue without adequate Federal control and oversight. Accordingly, GAO recommends that if the Congress continues funding the Title V Employee Protection Program, it amend the Rail Act to assign oversight and audit responsibilities to a Federal agency. GAO also recommends that the Congress require the agency to make a more accurate estimate of the Title V Program cost as soon as practicable.

Conrail, Railroad Retirement Board, and Department of Transportation all had strong views concerning GAO's recommendations that a Federal agency be responsible for administering the Title V Program. After considering their comments, GAO changed the wording to recommend the agency be given oversight and audit responsibility. Further, GAO believes the Department of Transportation should be assigned this responsibility. (See p. 42.)

GAO also believes the law lacks some provisions and contains others which make the Title V Program difficult to properly manage and has produced results not necessarily intended by the Congress. These include the following:

--There is no requirement for employees to file claims within a specified period after the date they were adversely affected. Lack of such a provision makes effective management of the program difficult because (1) old claims will be virtually impossible to verify and (2) program costs will be difficult to estimate reliably. (See p. 29.)

--There is no requirement to limit employees' monthly displacement allowance payment to their annual guarantees. As a result, 10,551 Conrail employees received monthly displacement allowance payments amounting to almost $11 million during 1977, even though the combined total of their wages and monthly displacement allowance exceeded their annual guarantees. Some of the employees had annual wages in the $30,000 to $50,000 range but also received thousands of dollars in monthly displacement allowances during the year. (See p. 31.)

--A provision in the law which provides that employees' claims be reduced by only 50 percent of the amount of any nonrailroad earnings has allowed some laid-off Conrail employees who find other jobs to make substantially more than their annual guarantees when earnings and monthly displacement allowances are combined. For example, GAO identified 16 laid-off truck drivers who had exceeded their annual guarantee by an aggregate $153,837. (See p. 32.)

--The law does not permit Conrail to transfer surplus union employees skilled in certain kinds of work to vacant jobs involving other skills. Moreover, the law does not give employers other than Conrail the right to transfer employees under any conditions. (See p. 38.) These prohibitions will relegate a large number of employees who could be retrained, to an unproductive status as title V beneficiaries and will cost millions of dollars in Federal funds.

--The purpose of the title V provision was to minimize the adverse effects on employees resulting from the reorganization of the bankrupt railroads and the formation of Conrail. However, the law permits Conrail and other employers to pay title V benefits to employees for reasons not related to the reorganization. Under this provision, Conrail has paid benefits to

employees because of adverse economic effects resulting from such things as strikes and snowstorms which were clearly unrelated to the reorganization. Most other employee protection agreements, such as Amtrak's, prohibit benefit payments for such other unrelated causes. (See p. 39.)

--The law gives preferential treatment to union employees over nonunion employees and treats Conrail employees differently than the employees of other employers such as Amtrak. (See p. 36.)

GAO is also recommending that the Congress amend the Rail Act as follows:

--Require employees to file for monthly displacement allowance benefits within a specified time (for example, 2 to 6 months) after the month of entitlement.

--Limit an employee's monthly displacement allowance payments in any year to his or her annual guarantee.

--Require that the monthly displacement allowances for laid-off employees be reduced by the full amount of any outside earnings involving the same job skills.

--Permit Conrail to transfer surplus union employees skilled in certain kinds of work to job openings involving other skills. Also, grant employers other than Conrail the same transfer privileges regarding their employees.

--Provide equal benefits for both union and nonunion employees in all areas including (1) upgrading of monthly guarantees, (2) transfer procedures, and (3) payment of fringe benefits.

The Department of Transportation felt that the recommendation to limit employee's

monthly displacement allowance payments to their annual guarantee was good in theory, but could deny payments to certain employees whose claims are calculated under the hours principle. The Railroad Retirement Board believed that the current method of paying employees' claims monthly would have to be converted to an annual payment system. GAO believes the factors cited by the Department of Transportation and Railroad Retirement Board are not sufficient to change or withdraw our recommendation and believes they can be handled administratively by the carrier calculating and paying employees claims. (See p. 45.)

The Department of Transportation also felt the recommendation requiring that laid-off employee's monthly claims be reduced by 100 percent of any outside earnings would reduce the incentive for employees to seek outside employment. GAO said its recommendation was not intended to reduce the incentive to seek outside employment, but to close a loophole that allows some employees to work at their normal trade and still receive monthly displacement allowances. (See p. 46.)

The United States Railway Association reviewed a draft of this report but did not respond in writing. Its oral comments are included where appropriate. Conrail's, Department of Transportation's, and Railroad Retirement Board's written comments are included as appendixes and are also discussed in the text where appropriate.

Contents

ABBREVIATIONS

CONRAIL	Consolidated Rail Corporation
DOT	Department of Transportation
GAO	General Accounting Office
MDA	monthly displacement allowance
RRB	Railroad Retirement Board
USRA	United States Railway Association

CHAPTER 1

INTRODUCTION

On December 28, 1977, the Chairman, Subcommittee on Government Activities and Transportation, House Committee on Government Operations, asked us to undertake a comprehensive review of the Consolidated Rail Corporation (Conrail). The review was to include assessments of Conrail's (1) past performance, (2) prospects for achieving financial self-sufficiency, (3) track abandonment program, and (4) administration of the title V employee protection provisions of the Regional Rail Reorganization Act of 1973 (Public Law 93-236, Jan. 2, 1974), (45 U.S.C. 701), as amended.

Because of the volume of audit work requested, we agreed to perform the work in segments and issue separate reports. This report, which deals with the title V employee protection provisions, is the fourth and final report to be issued in response to the subcommittee's request. The three previous reports we issued were entitled "How Long Does It Take Conrail to Process Protected Employees' Claims Under the 1973 Regional Rail Reorganization Act?" (CED-78-138, July 31, 1978); "Conrail Faces Continuing Problems" (CED-78-174, Oct. 6, 1978); and "Information on Questions About Conrail's Track Abandonment Program" (CED-79-45, Apr. 2, 1979).

The Chairman asked us to examine the following aspects of Conrail's Title V Program.

1. The time lapse between when an employee files for a claim and when actual payment is made.

2. The number of Conrail personnel handling such claims.

3. The procedures and practices Conrail uses in processing claims.

4. The arrangement between Conrail and the Railroad Retirement Board (RRB) to reimburse Conrail for funds paid or obligated to be paid to protected employees.

5. The total value of title V funds involved to date.

6. How Conrail uses title V funds during periods of delay until transferred to individual recipients.

We responded to items 1 and 2 in a previous report (CED-78-138, July 31, 1978). In addition, we reported that the program's costs were growing faster than had been anticipated and that there was almost no Federal supervision or audit of the program. Accordingly, we agreed that a more comprehensive audit of the Title V Program was warranted.

TITLE V PROVISIONS

Section 509 of the Rail Act established the Regional Rail Transportation Protective Account, a separate account in the Treasury, and authorized $250 million to be appropriated to the account.

Section 509 further requires RRB to reimburse, from the protective account, Conrail, the United States Railway Association (USRA), and acquiring railroads for payments they made to employees protected under the Rail Act. With respect to Conrail, the Rail Act considers a protected employee to be any person, other than a corporate officer, who was employed by one of Conrail's predecessor bankrupt railroads as of January 2, 1974, and who had not reached age 65. Conrail and other employers are required under the law to pay benefits to protected employees whether or not title V funds exist.

Protective payments made to employees under section 505 of the Rail Act consist of monthly displacement allowances (MDAs), separation allowances, termination allowances, fringe benefits, and moving expense benefits. The law provides that a protected employee whose employment is governed by a collective-bargaining agreement will not be placed in a worse position with regard to fringe benefits.

MDAs are payments to protected employees whose compensation in their current positions is less in any month than their average compensation was in a particular base period as determined in accordance with section 505 of the Rail Act. Protected employees with 5 or more years of service on the effective date of the Rail Act (January 2, 1974) are entitled to MDAs until age 65. Protected employees with less than 5 years service at that date are entitled to an MDA for a period equal to their total prior years of service beginning on the date they became adversely affected. Entitlement ends when a protected employee dies, resigns, retires, or is fired. In addition, it may be suspended for a number of reasons such as refusal to exercise seniority to an available position.

The law provides for employees' MDAs to increase in proportion to general wage increases. Through January 1979 there had been nine such increases for many Conrail employees. Since, as a matter of corporate policy, Conrail does not grant general wage increases to nonunion employees, the employees receiving increases have generally been union workers. The legislated maximum MDA of $2,500 per month is also escalated by any general wage increase.

The law also provides separation allowances for protected employees with 3 or more years of service as of the date of the Rail Act. The allowance is paid to an employee who resigns or who elects such payment in lieu of an offer to transfer to a bona fide vacancy requiring a change of residence to another part of Conrail's system. An employee who accepts a separation allowance is not entitled to any other title V benefits. The separation allowance cannot exceed $20,000.

The law provides for a termination allowance for protected employees with less than 3 years of service as of the date of the law. An employee may elect to receive a termination allowance when notified of Conrail's intent to terminate his or her services. An employee who accepts a termination allowance is not eligible for any other title V benefits under the Rail Act.

Moving expense benefits are provided for protected employees who are required to change their residence.

The law also provides that employee fringe benefits cannot be curtailed, and employers have been reimbursed for such expenditures by RRB. Fringe benefits include pension, social security, unemployment insurance, health and welfare, military duty, and vacation pay.

HISTORY OF EMPLOYEE PROTECTION AGREEMENTS

Employee protection agreements have been common in the rail industry since rail management and labor negotiated the 1936 Washington Job Protection Agreement which protected employees for 5 years. This agreement provided MDAs (up to 60 percent of monthly compensation) and separation and relocation allowances to employees who were adversely affected by mergers, consolidations, or abandonments.

The Interstate Commerce Commission frequently required that employees be protected before it would approve mergers or consolidations. In 1962 a Norfolk and Western Agreement removed the 5-year time limit for protection so that

employees were protected until they left the company. The Penn Central Merger Agreement in 1964, also included the "no time limit" provision and provided that the normal compensation basis would be upgraded by subsequent general wage increases.

The Congress included employee protection provisions in the Rail Passenger Service Act of 1970 (Public Law 91-518), which created Amtrak in the fall of that year. The law required railroads to protect employees affected by discontinuances of intercity rail passenger service. Among other things, individual employees were protected against a worsening of their positions with respect to their employment and were assured priority of reemployment in event of termination or layoff. Furthermore, Amtrak could not contract with a railroad to provide intercity passenger service unless the Secretary of Labor certified that the labor protection was adequate.

The Amtrak legislation did not specify the details of employee protection. It merely directed that fair and equitable arrangements be provided and set forth certain minimum requirements. The details were developed later in a series of appendixes to the law. When Amtrak assumed the passenger operations of the Penn Central Railroad, employees affected by the initial discontinuance of intercity passenger service were protected under such an appendix. The appendix was agreed to by Penn Central, Amtrak, and labor unions representing the affected employees and was later certified by the Secretary of Labor. The appendix outlined the general protection provisions, with specific conditions to be determined by subsequent agreements to be drafted as employees were affected. The agreement provided for MDAs, dismissal allowances, separation allowances, fringe benefits, and relocation expenses.

Under the appendix, displaced employees were to be paid at a level equal to the level of their last year of employment. The payments could continue for a maximum of 6 years. Like the Penn Central Merger Agreement, average compensation was to be upgraded to reflect subsequent general wage increases, but the agreement protected only those employees affected by the discontinuance of passenger service and specifically excluded employees affected by "fluctuations and changes in volume or character of employment brought about by other causes."

The Amtrak legislation provided that employee protection arrangements should also be developed to protect employees who would be affected if Amtrak discontinued intercity

provisions adopted were identical to those found in the other appendixes except that protection extended to non-union employees.

During the rail crisis following the collapse of the Penn Central in June 1970, it was apparent that rail labor support would be needed for any effective solution. Such support could only be gained by continuing the precedent of rail employee protection begun in 1936. Further, the cost of such protection would have to be borne by the Federal Government as a social cost because of the bankrupt railroads' financial condition.

Rail industry management and labor made several unsuccessful attempts to draft satisfactory employee protection legislation. Finally, the Secretary of Transportation requested that union leaders and rail industry management draft the legislation. The Chairman of the Union Pacific Railroad and the President of the Southern Railway represented rail industry management and met with several union officials to draft an acceptable labor protection law.

In an October 30, 1973, letter to the Chairman, House Committee on Interstate and Foreign Commerce, the two rail company officials stated that they believed $250 million would be adequate to cover the cost of the proposed employee protection program. Further, they felt that the major portion of employee protection costs would be associated with severance allowances and relocation payments and that MDAs would be minor.

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CLAIM HISTORY

Through May 31, 1979, RRB had reimbursed eight employers about $192.3 million for title V payments. (See table 1, p. 6.) The RRB suspended payments to carriers on March 13, 1979, until additional funds are appropriated to the Regional Rail Transportation Protective Account. As of May 31, 1979, the balance in the account was about $1.2 million, which RRB was holding as a reserve to protect against overspending and to reimburse its administrative expenses.

In addition to appropriations for benefit payments, section 509 of the Rail Act expressly authorizes annual appropriations to RRB for the administrative expenses RRB incurrs in carrying out its title V functions. For example, for fiscal year 1979, Congress appropriated $25 million for section 509 payments to remain available until expended "including not to exceed $75,000" for RRB's administrative expendes. (Public Law 95-480). In

Table 1

Summary of Title V Reimbursements made by RRB for the Period April 1, 1976, to May 31, 1979

Payments to employers	1976 (9 months)	1977	1978	1979 (5 months)	Total
Conrail	$22,521,858	$56,536,316	$61,774,220	$26,537,690	$167,370,084
Pennsylvania Truck Lines	534,374	2,891,177	5,073,758	1,332,213	9,831,522
Amtrak	0	674,881	3,043,157	624,914	4,342,952
Grand Trunk Western	895	26,476	96,725	0	124,096
Delaware and Hudson	0	107,356	88,488	22,949	218,793
Norfolk and Western	0	0	3,682	0	3,682
Detroit, Toledo, and Ironton	0	0	168	0	168
Toledo, Peoria, and Western	0	0	36,858	0	36,858
Other payments					
Railroad unemployment	2,880,506	3,746,343	3,205,657	324,675	10,157,181
Administrative expense	68,174	79,407	16,602	17,600	181,782
Total	$26,005,807	$64,061,956	$73,339,315	$28,860,041	$192,267,119

earmarking a portion of the protective account to reimburse its administrative expenses, RRB is limited to the amounts specifically appropriated for this purpose. Any additional reservation of title V funds to assure reimbursement of future administrative expenses for which the Congress has not yetmade appropriations would be improper under section 509. RRB could not tell us what portion of the reserved $1.2 million represented administrative expenses. We believe RRB should establish adequate controls to ensure that reserves for administrative expenses do not exceed amounts specifically appropriated for that purpose.

RRB had requested a supplemental appropriation of about $56.5 million for fiscal year 1979, which when added to the moneys expended and held in reserve would exhaust the original $250 million. Between cessation of reimbursements (Mar. 13. 1979) and May 31, 1979, RRB had received 89 additional requests for reimbursement from five carriers for a total of about $15.2 million. These requests are being held pending appropriation action. 1/ One of the five carriers, Michigan Interstate, was a new claimant which had not been reimbursed previously, therefore, nine carriers are now making title V payments.

1/On July 25, 1979, the Supplemental Appropriations Act, 1979, Public Law 96-38, was enacted. It appropriated $18.9 million for section 509 payments, and in addition, reappropriated unexpired fiscal year 1976 funds, all to remain available until expended. Based on this, RRB resumed payments on August 11, 1979, and has in fact reimbursed the $15.2 million which had been held up.

During this period, Conrail made the majority of title V payments, but Pennsylvania Truck Lines and Amtrak payments were rapidly growing. Pennsylvania Truck Lines is a Conrail subsidiary. The other employers acquired various parts of the former bankrupt railroads and their employees.

Employers other than those listed may also have protected employees eligible for payments who have not yet filed a claim.

RRB has also reduced the title V special account by about $10.2 million to reimburse the Railroad Unemployment Insurance Account for unemployment benefits paid to protected workers. The Rail Act prohibits charging the title V protective account for benefits paid under the provisions of the Railroad Unemployment Insurance Act or any other income-protection law or regulation.

Most of the protective payments have been MDAs paid to Conrail employees who are still working regular hours. Severance allowances, which the planners thought would constitute the majority of payments, have represented only about one-third of the amount paid for MDAs. Table 2 summarizes the payments by type through May 31, 1979.

Table 2

Summary of Title V Reimbursements by Type
from
April 1, 1976, to May 31, 1979

Reimbursement for	Termination allowances	Separation allowances	MDAS	Relocation allowances	Vacation allowances (note a)	Military allowances (note b)	Total
Payments to employees	$1,421,182	$54,272,288	$108,406,127	$5,598,747	$272,428	$71,402	$170,042,174
Fringe benefits (note c)	(d)	407,593	11,463,297	0	7,612	7,479	11,885,981
Railroad unemployment	0	0	10,157,181	0	0	0	10,157,181
Total	$1,421,182	$54,679,881	$130,026,605	$5,598,747	$280,040	$78,881	$192,085,336

a/Vacation allowances are paid to protected employees who do not have sufficient qualifying days to quality for a vacation payment pursuant to the National Vacation Agreement but who have sufficient equivalent service when MDA payments are considered.

b/Military allowances are paid to certain protected employees who are subject to annual military training and represents the difference between the Conrail earnings employees would have received and their military pay.

c/Includes: Railroad retirement tax, railroad unemployment contribution, social security, State unemployment, pensions, and health and welfare.

d/Amount included in separation allowances.

The reimbursed amounts shown in tables 1 and 2 represent MDA payments to about 34,500 protected employees and severance payments to about 2,150 employees. RRB estimates that about 118,500 workers are protected under title V. Therefore, as many as 84,000 additional employees may be entitled to benefit payments for the time already elapsed and may make a claim some time in the future. (The Rail Act does not place a time restriction on filing.) A Conrail official said that most employees tend to claim benefits within a few months after the period for which they were eligible.

As of May 31, 1979, RRB had 89 requests from five carriers for reimbursements totaling about $15.2 million. These requests had been received after RRB suspended reimbursements on March 13, 1979. One of those carriers was Michigan Interstate, which had not previously been reimbursed for title V payments. In table 3, the amounts requested for reimbursement are summarized by carrier. RRB intends to hold these requests until the Regional Rail Transportation Protective Account is refunded.

Table 3

Summary of Reimbursements Claimed by Carriers onhand as of May 31, 1979

Conrail		
Crew consist separation allowances (note a)	$2,296,775	
Other separation allowances	1,255,648	
MDAs	8,240,603	
Fringe benefits and relocation allowances	167,505	
Total		$11,960,531
Pennsylvania Truck Lines		
MDA		1,087,329
Amtrak		
MDA	$1,329,152	
Relocation allowance	3,259	
Total		1,332,411
Delaware and Hudson		
MDA		10,442
Michigan Interstate		
MDA		194,216
Amount allowable for transfer to Railroad Unemployment Insurance Account		574,175
Total		$15,159,104

a/A crew consist is the number and kind of people assigned to operate a particular train and is usually specified by union agreement. In September 1978 Conrail and the United Transportation Union agreed to reduce train crew sizes on many of Conrail's freight trains. The number on this line represents separation payments to employees who Conrail no longer needs because of the new union agreements.

SCOPE OF REVIEW

We reviewed and analyzed title V operating statistics and management reports compiled since April 1, 1976, concentrating on MDAs, severance allowances, and personnel transfer procedures. We reviewed a statistical sample of 766 MDA claims and case files at 5 of Conrail's 14 title V field offices. The sample was drawn from the period September 1977 through August 1978 during which Conrail paid MDA claims totaling $42.7 million. 1/ We did not attempt to determine whether employees who have not filed claims are eligible for benefits. We also examined Conrail's title V forecasting model.

We also considered the work done on the Title V Program by Conrail's internal audit department. When applicable, we used RRB and Conrail reports and analyses.

We did most of our work at Conrail. We also worked at the RRB in Chicago, Illinois; Pennsylvania Truck Lines in Malvern, Pennsylvania; and the National Railroad Passenger Corporation in Philadelphia, Pennsylvania. The Conrail work was performed at headquarters in the Labor Relations and Personel Departments and at five title V field offices located in Philadelphia, Pennsylvania; Newark, New Jersey; Indianapolis, Indiana; Cleveland, Ohio; and New Haven, Connecticut.

1/This figure does not include an additional $8.2 million in MDA payments which Conrail made to its employees after our review.

CHAPTER 2

PROGRAM COST ESTIMATES VARY WIDELY

Title V Program cost estimates were prepared by Conrail, RRB, and a consulting firm under contract to Conrail. The estimates--which used various assumptions about future events, used different methods for projection, and were intended for different purposes--ranged from $884 million to $1.7 billion. Although the program, as presently structured, will substantially exceed the original $250 million authorized by the Congress, we do not believe that any of the estimates made thus far can be used confidently as an indicator of what the program will ultimately cost.

Costs of a program such as title V are difficult to estimate because of the nature of the program and because of the relatively brief period the program has been operating. There is no other comparable benefit program about which data could be gathered and applied to project the cost of title V. Also, title V was analyzed for only a brief period, calendar year 1977, and it is possible that this limited period was not a good predictor of what will happen in future years. We also identified certain estimating procedures and assumptions which if improved would produce more realistic estimates.

Because the range of estimates was so wide and none could be used with confidence, we believe it is important that a new estimate be made of the title V liability. This estimate should be based on a longer period than 1977 and should consider the procedures and assumptions discussed in this chapter.

CONRAIL ESTIMATES OF TITLE V PROGRAM COST

As part of its ongoing title V administration, Conrail made three forecasts of title V expenditures for its employees. The three reflect optimistic, probable, and pessimistic assumptions about variables which affect title V payments until the year 2021, when the last eligible Conrail employee reaches age 65. If the percentage of people filing claims remains constant and Conrail's estimates are increased to reflect all carriers' potential title V payments, the total estimated cost of the program ranges from a low of $884 million to a high of about $1.2 billion, including the initial $250 million authorization. The probable estimate is $1 billion.

Conrail's three forecasts are presented in table 4, showing the different assumptions used in the estimates. The forecasted expenditures have been increased by 2.3 percent to approximate expenditures of all carriers.

Conrail has developed a computer model to forecast title V expenditures for Conrail employees. The model was built on the assumption that employees who filed a claim in the past will use the same filing pattern in the future and that employees who have not filed claims will not in the future. If substantial numbers of employees begin making claims in the future because of a radical decline in business or substantial reduction in the work force, then the projections will not be valid.

The model projects 1977 MDA payments based on several assumptions about future events. The primary assumptions, which must be specified by the model user, concern employee attrition, wage gains, and Conrail's business level. Conrail officials said business level is not as significant as the other two assumptions for long-range forecasts. Employee attrition seemed to be the most important determinant of projected expenditures.

Conrail's model does not project payments for severance or moving expenses but adds assumptions about such payments to the yearly amounts projected for MDA payments.

Although the model is designed to project payments for Conrail employees, Conrail believes the model could also be used to project payments for all employees covered by title V. Assuming that the ratio of reimbursements to Conrail and the other employers remains constant, Conrail's expenditure forecasts can be increased by about 2.3 percent to approximate expenditures of all carriers.

Conrail varied its assumptions concerning wage gains and attrition for each of its three forecasts but did not vary its assumption about future business levels. The company said that "hours worked" is a most important variable for determining title V payments but reliable assumptions about future hours worked were not available. Conrail does forecast business levels measured in ton-miles and carloads in its annual business plan, but Conrail analysts have not found a statistically significant relationship between these factors and title V payments, and therefore do not believe that these variables are useful for forecasting title V payments.

Table 4

Conrail Forecast of Title V Program Costs

	Wage gain	Average annual attrition	Level of business	Merit increase factor (note a)	Seniority increase factor (note b)	Fringe benefits	Transfer payments	Severance payments	MDA payments including fringe benefits	Total
		(percent)					(millions)			
Optimistic	6.5 percent decreasing by 10 percent per year	9.4	1977	Same level decreasing by 10 percent per year	Same level	12.2 percent of MDA	$15	$204	$665	$ 884
Probable	7.3 percent decreasing by 6.6 percent per year	8.4	1977	Same level decreasing by 6.6 percent per year	Same level	12.2 percent of MDA	15	204	790	1,009
Pessimistic	8.5 percent decreasing by 2 percent per year	7.4	1977	Same level decreasing by 2 percent per year	Same level	12.2 percent of MDA	15	264	894	1,173

a/Schedule of factors developed by Conrail to show wage increases granted to nonunion employees. Same factors used for all three forecasts, but decrease rates varied.

b/Schedule of factors developed by Conrail to show increases in union workers wages assumed from the 6th to the 10th due to increases in seniority. Same factors used for all three forecasts.

OTHER ESTIMATES OF TITLE V PROGRAM COSTS

In 1977, A.S. Hansen, Inc., a consulting firm under contract to Conrail, estimated title V MDA costs would be $948 million. In its 1978 budget justification, RRB estimated the Title V Program would eventually cost $1.7 billion. Conrail's 1979 forecasting approach was more detailed than the other estimates, each of which used different assumptions and historical claim periods. The three estimates are compared in table 5.

Table 5

Comparison of Three Estimates of Total Title V Program Cost

	1979 Conrail probable forecast	1978 RRB forecast	1977 Consulting firm forecast
	----------	(millions)	----------
Original title V authorization	$250.0	$ (a)	$ (a)
Expended at beginning of forecast period	(a)	206.5	75.0
Projected additional	736.0	1,474.9	873.4
Additional severance costs	included	60.0	not estimated
Total	986.0	1,741.4	948.4
Total (note b)	$1,009.0	$1,741.4	$948.4

a/Not applicable.

b/Escalated to estimate all employers.

RRB derived its estimate by computing the historical relationship of payments to the number of protected employees and then assumed that this relationship would remain constant. In essence, the average reimbursement per protected employee was then escalated by 6 percent per year for wage gains and increased by $60 million, which Conrail estimated would be the additional severance cost associated with reducing the size of train crews. Furthermore, RRB assumed that existing protected employees will have attrition rates similar to the rates for the entire railroad industry. The projection was based on claims paid between October 1977 and August 1978.

The consulting firm's projection was for MDAs only and consisted of two items: $472.1 million for employees who had filed a claim during the first 6 months of 1977 and $476.3 million for employees who appeared to be eligible but had not filed a claim. This is the only estimate to include costs for unclaimed liability but it did not project costs for transfers, terminations, and separations. The estimate applies a scale of inflation factors ranging from 6.5 percent in the early years to 2 percent after the year 2002. Conrail has used this estimate only as an indication that a near-term shortfall in the $250 million fund was likely to occur and it was not intended as a reliable long-term estimate of title V funding needs.

EVALUATION OF CONRAIL'S FORECASTS

Conrail made several assumptions about future wage gains, attrition rates, business levels, and other areas which are inconsistent with other available estimates. Because of the program's recent origin, the data base was limited to 1 year's claims, which may not represent what happens in the future. Also the design of the model results in a loss of precision because of averaging techniques and treatment of partially protected employees.

Evaluation of assumptions

Conrail made several assumptions which are at odds with other information.

Assumed wage gains for union employees are possibly understated

Factors for each year of a long-range projection should be reasonable overall and should begin with values that are the current best estimate of the near future. For the years beyond that, factors should represent long-range values that

are reasonable and consistent with current economic projections.

Of the three Conrail projections, the pessimistic assumption is closest to Conrail's 1979 business plan projection. This can be seen in table 6 which compares the wage increases used to generate the three Conrail forecasts to those rates found in the 1979 Conrail business plan and those forecast by Data Resources, Incorporated, for State and local workers.

Table 6
Predicted Percentage Wage Gains for Selected Years

Selected year	Conrail title V model assumption			Conrail 1979 business plan	Data Resources' forecast
	Optimistic	Probable	Pessimistic		
1978	6.5	7.3	8.5	9.5	(a)
1979	5.8	6.8	8.3	10.4	(a)
1980	5.3	6.4	8.2	9.1	6.0
1981	4.7	5.9	8.0	8.6	6.0
1982	4.3	5.5	7.8	8.3	6.0
1983	3.8	5.1	7.7	8.1	6.0
1985	3.1	4.5	7.4	(a)	6.0
1990	1.8	3.2	6.7	(a)	6.0
2000	0.6	1.6	5.4	(a)	5.3

a/Not included.

Conrail has negotiated new labor contracts for most employees which provide about a 10-percent per year wage increase through the early 1980s. That higher level of increase is included in Conrail's 1979 business plan, which estimates that the cost of wages, materials, and supplements for eastern railroads will increase by 10.4 percent in 1979, 9.1 percent in 1980, and 8.1 percent in 1983--which is higher than the title V beginning assumption. The eastern railroad inflation rate is projected econometrically 1/ by Conrail based on the general inflationary outlook provided by Chase Econometrics. 2/ From 1973 to 1977, the eastern railroad inflation rate averaged 11.4 percent, and 1969 was the last year in which it was less than 7.3 percent.

Data Resources, Incorporated's macroeconomic model forecasts that State and local employee salaries will rise by about 6 percent annually from 1980 through 1999 and by about 5.3 percent annually from 2000 through 2020. The wages for union workers normally have risen faster than those of State and local workers. Many pension plans are also using about 6 percent to value future salaries. Since annual title V guarantees for union employees are escalated by any general wage increase, the gap between guarantees and wages can be expected to widen more in terms of actual dollars than Conrail predicted.

Assumed level of business is less than Conrail's business plan forecasts

In making its projection, Conrail assumed that future years' business activity would remain constant at the 1977 level. This assumption is not consistent with the levels forecast in Conrail's 5-year business plan, the document which supports appropriations requests from the Congress. Conrail officials acknowledge that MDA payments are related to level of business, but they have been unable to determine a valid statistical relationship between MDA payments and the measures of forecasted volume, namely tonnage and carloadings. Conrail's business plan anticipates a 9.6percent increase in traffic tonnage from 1979-83.

1/The application of statistical methods to the study of economic data and problems.

2/An economic consulting and forecasting firm.

for at least one of the forecasts to incorporate the business levels projected in Conrail's business plan.

EVALUATION OF DATA BASE

The historical data base used in Conrail's model was developed from data obtained from Conrail, RRB, and USRA. The same data base was used for all Conrail forecasts. Therefore, any errors, omissions, or duplications affect all forecasts. The data base consists of claims incurred in 1977 but paid as late as August 1978.

Due to the short history of title V, base year 1977 was the logical choice for the initial estimates of program costs. But limitations of this period and others used in the future should be considered in evaluating forecasts. An implicit assumption is that the 1977 data base represents what will happen in the future. Whether or not this assumption is valid cannot be determined until a longer claims history exists.

One limitation of the data base, for example, is that the Conrail model projects costs only for employees who had filed at least one claim during 1977. However, no costs are projected for protected employees who may be eligible but have not yet filed a claim. Since only about one-third of the protected population have filed claims, an additional liability could exist for unfiled claims. Protected employees nearing retirement may wait to file until after retirement, thereby substantially increasing the value of title V payments since the money would be taxed at a lower rate.

The probability of filing for title V benefits declined from a high of 40 percent at age 50 to about 12 percent at age 64. Other factors could influence this filing rate and may be more evident as the program continues.

Another limitation in Conrail's data base is the omission of railroad unemployment insurance benefit payments from MDA payment information. Inclusion of these payments in the data base increases Conrail's title V projections for MDA payments by about 9 percent.

EVALUATION OF MODEL DESIGN

Certain characteristics of the design of Conrail's title V forecasting model cause the estimates of future payments to be understated or overstated. Problems or limitations of the model design affect all forecasts regardless of the assumptions or data base.

Partially protected employees are treated as if they were fully protected

The Conrail model treats partially and fully protected employees alike on the assumption that as protection periods expire for those employees who are partially protected, other partially protected employees with similar claiming characteristics will take their place. Conrail initially estimated that the data base of 80,213 protected employees contained 8,000 or 9,000 partially protected employees. But we identified about 15,000 employees who are protected for 5 years or less. If Conrail's first assumption on the stability of the claiming population is not borne out by future events, the projection could either be understated or overstated depending on whether the claiming population of partially protected employees increases or decreases.

Each claimant's filing pattern assumed to be constant

Although various assumptions about future claim patterns are possible, Conrail's model assumes each person's 1977 filing pattern will remain constant. Each group of employees retains its average characteristics, such as number of MDA claims per year, earnings after 10 years of service, and MDA payments from 1977 until termination of active service.

A more reliable actuarial method is to assign specific characteristics such as cost per claim, probability of claiming, and salary scales based on historical information.

The financial effect of the two different approaches has not been calculated. However, the probability of filing for title V benefits does vary significantly with age.

Averaging technique could affect liabilities forecast

While Conrail's title V forecast model is convenient for research or experimentation, insurance companies use more accurate methods for calculating benefit liability. A more precise actuarial method would project future payments for each individual based on eligibility, earnings history, age, incidence of claim, and cost per claim whereas Conrail's model aggregates groups by age, union, region, and claimant status. Thereafter, the model arbitrarily distributes employees uniformly within age groups and uses weighted averages in its yearly projection. The financial effect of this uniform distribution and averaging instead of

using actual figures cannot be estimated until an actuarial method is used to calculate the liability.

Technique for increasing wages is too rigid

The technique used to model rising earnings due primarily to wage increases is too inflexible and can cause undesirable results. After a rate is specified to escalate the earnings during the first year to be simulated, the model is designed to either not change the specified rate or to increase or decrease it by another constant factor. For long-term projections, the only realistic option the model allows is to increase earnings at a constant rate, since increasing or decreasing the rate by a constant factor quickly produces undesirable results.

A more accurate way to project future wage gains is to specify changes during an initial period (for example, 5 years) and then continue at a constant rate. Such a technique would use wage increases already negotiated in current labor contracts for the near term. Thereafter, the best current estimate for future wage gains could be used.

Business level is used to estimate MDA payments but the exact relationship has not been defined

Conrail's model can be set up to increase or decrease MDA payment estimates during the first 5 years of the simulation. However, the user must define the relationship between business level and MDA payments. The model uses percentage increases or decreases to inversely vary estimated MDA payments; but Conrail has been unable to define the relationship of hours worked, an important variable influencing MDA payments, to either tonnage hauled or carloadings, the two most important measures of business level. Conrail expects a decrease in business to cause an increase in MDA payments, but does not know whether the percentage increase in payments would be less than, equal to, or greater than the percentage decrease in business level. Conversely, we do not expect an increase in business to decrease MDA payments because productivity could increase, or MDA claimants may not be located in the area of increased business.

CONCLUSIONS

Estimates of the eventual total cost of the Title V Program varied--ranging from $884 million to $1.7 billion. Although the program, as presently structured, will exceed the original $250 million authorization by a

substantial amount, we believe the estimates made to date do not accurately indicate total program costs.

Program costs are difficult to estimate because of the nature of the program and because of the relatively brief period the program has been in operation. There is no other comparable benefit program about which data could be collected and applied to project the cost of title V. Also the experience under title V has been analyzed for only a brief period, calendar year 1977, and possibly this limited experience is not a good predictor of what will happen in future years.

Because the range of estimates is so wide and none can be relied on with confidence, we believe that a new estimate of the title V liability should be made as soon as practicable. The estimate should be based on a longer period than 1977 and should consider the assumptions and procedures discussed in this chapter. In chapter 3 we recommend that the Title V Program be assigned to a Federal agency for oversight. The agency assigned would be the logical choice for ensuring that an estimate is completed.

RECOMMENDATION

We recommend that the Congress require a new estimate of Title V Program cost as soon as practicable. In chapter 3 of this report, we also recommend that the Congress assign oversight and audit responsibility for the Title V Program to a Federal agency. If the Congress adopts the latter recommendation, then that agency is a logical one to develop the estimate.

AGENCY COMMENTS AND OUR EVALUATION

The draft report we sent for comment recommended that the Congress require the Federal agency that will be assigned administrative responsibility for the Title V Program to make a complete and reliable estimate of program cost as soon as practicable. RRB, commenting on our draft report, stated it recognized there were weaknesses in its estimate. However, it was concerned that the method we recommended to produce a reliable estimate would require substantial manpower and money. We did not recommend any specific methods of estimating the Title V Program cost in the draft report. However, we have clarified the report to state that the agency charged with oversight responsibility for title V should prepare a new and more accurate estimate. Such an estimate would more accurately treat actuarial costs; correct some of the weaknesses,

such as short claim period and protection for less than 5 years; and use more realistic short-and long-term assumptions. We believe this refinement or extension of the existing estimates would not be excessively expensive and is needed for two reasons. First, the high potential cost of title V merits a better estimate than currently exists, especially for the near future. Second, the choice of calculation method and data base could help in measuring the cost impact of legislative changes.

Conrail officals welcomed our recommendation for an independent forecast by a Federal agency. USRA said that because legislative changes to title V benefit provisions appeared almost certain, any additional effort on making long-range estimates of title V liability should await the new legislation.

CHAPTER 3

NEED FOR CHANGES TO THE TITLE V STATUTORY PROVISIONS

The Rail Act does not provide for Federal management, control, or oversight of the Title V Program. As a result, the nine employers who have made title V payments to protected employees have had to interpret the law for themselves, issue their own instructions and procedures and disburse Federal funds according to their interpretations.

In addition, several title V provisions have resulted in a program which is difficult to administer properly and may have produced results not necessarily intended by the Congress. These provisions (or lack of provisions) of the law and their impact on the Title V Program are summarized below.

--The Rail Act provides employee protection benefits for a longer period than many other employee protection plans. For example, a 25 year old employee with at least 5 years of service when the Rail Act became law could receive benefits until age 65--a total of 40 years. Other employee protection plans have limited protection to 5 or 6 years.

--The law does not require that employees submit title V claims to employers within a specified time after they have been adversely affected. The lack of a specific time limit for filing a claim makes effective management of the program difficult because employers will not be able to substantiate the validity of claims filed by employees many months or years after the month in which they were adversely affected. In addition, a large number of employees may be eligible to file claims for past months but have not done so, thereby making it difficult to estimate reliably what the program will eventually cost.

--There is no requirement in the law to limit an employee's MDA payments to the amount of his or her annual guarantee. As a result, 10,551 Conrail employees received MDA payments and wages in 1977 which exceeded their annual upgraded guarantees. The total amount of MDAs paid to these employees in 1977 was almost $11 million.

--The law provides that protected employees who are not currently working for Conrail or other employers covered by the statute, shall have their MDAs reduced by all or part of any earnings from outside employment. If the outside earnings are from other railroads, MDAs are reduced by their full amount; if the earnings are from nonrailroad sources, however, the MDA is reduced by only 50 percent of the earnings. This provision of the law has resulted in nonrailroad employees' receiving windfall title V benefits which in many cases significantly increased annual earnings above guarantees.

--The law prevents Conrail (and other employers) from transferring surplus union employees from one craft to job openings in other crafts. This provision of the law could result in a large number of employees not working and collecting title V benefits until age 65 because their skills are no longer needed. For example, between April 1976 and March 1978, Conrail declared that 95 of its 103 marine employees were surplus. Conrail cannot transfer these surplus employees to nonmarine jobs, and it estimates that the 95 employees will collect title V benefits of about $23 million through the year 2010 when the last employee reaches age 65.

--The law permits the payment of title V benefits to employees for reasons not related to the reorganization of the bankrupt railroads and the creation of Conrail. As a result, Conrail has paid benefits to employees who were adversely effected by such economic conditions as strikes and snowstorms rather than conditions resulting from the reorganization. Most employee protection agreements, including the Amtrak agreement, specifically exclude benefit payments for events or conditions which develop later and are not related to the merger or reorganization.

--The law gives preferential treatment to union employees as compared to nonunion employees. As a result, union employees collect higher title V benefits and allowances than nonunion employees even though all are paid from Federal funds.

THE RAIL ACT DOES NOT PROVIDE FOR ADMINISTRATION AND OVERSIGHT OF THE TITLE V PROGRAM BY A FEDERAL AGENCY

The title V legislation did not assign a Federal agency oversight responsibility for the program. RRB's

responsibility under the Rail Act is to administer the Regional Rail Transportation Protective Account and to reimburse employers disbursing title V funds. Neither RRB nor any other Federal agency is responsible for overall administration of the Title V Program, including interpreting the law, verifying claims, settling protests, or auditing expenditures. The employers have done all these things for themselves. The law provided for boards of adjustment to settle disputes or controversies over the interpretation or enforcement of the title V provisions. The Conrail board, which is comprised of five members--two representing labor, two representing management, and one neutral--had at the time of our review ruled on three disputes and had six under consideration.

RRB, an independent executive agency, is primarily responsible for administering benefit programs set up by the Railroad Retirement Act and the Railroad Unemployment Insurance Act. RRB verifies claims, determines benefit rates, interprets legislation, settles protests, and audits the programs.

An RRB official told us that initially RRB was unsure of its role under title V; specifically, its responsibilities for assuring accuracy and propriety of the amounts reimbursed to carriers. Section 509 of the Regional Rail Reorganization Act of 1973, as amended, states:

> "The Corporation, * * * and acquiring railroads * * * shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees* * * The Corporation, * * * and acquiring railroads shall then be reimbursed for actual amounts paid to, or for the benefit of, protected employees, * * * by the Railroad Retirement Board, upon certification to such Board, by the Corporation, * * * and acquiring railroads, of the amounts paid such employees* * *"

Because of its uncertainty, RRB requested the Comptroller General to interpret the title V legislation and define RRB's duties and responsibilities. On August 2, 1976, the Comptroller General ruled that the:

> " * * * Railroad Retirement Board is not charged with the responsibility for determining the propriety of each payment prior to or after its actual disbursement. The Consolidated Rail Corporation* * * or acquiring railroad must make the actual payments to beneficiaries

and must certify to the Board the amounts paid. The Board's responsibility* * * is satisfied when it reimburses those entities for payments made* * *"

To fulfill its responsibilities, RRB issued a procedure statement for employers seeking title V reimbursement. The procedures require an authorized officer to certify the accuracy of the amounts requested for reimbursement and prescribe the required forms and supporting documentation.

Since RRB's procedure only prescribes the administrative framework for reimbursement, as required by the Rail Act, no single guideline has been established for calculating the amounts due protected employees under the Title V Program. Employers have defined what is meant by compensation under many different circumstances and determined how much the employee will be paid on his or her claim. We believe such a situation could result in inconsistent implementation of the law and inequitable treatment of protected employees.

Conrail has described title V as the most complex legislation involving unemployment-type benefits and has issued a detailed set of implementing instructions, which are also used by Amtrak and Pennsylvania Truck Lines. Other railroads paying benefits also have established their own procedures.

THE RAIL ACT PROVIDES BENEFITS FOR A LONGER PERIOD THAN OTHER EMPLOYEE PROTECTION PLANS

The Rail Act provides that an employee who was working for 5 or more years on the effective date of the law (January 2, 1974) is entitled to employee protection benefits until age 65, unless the employee dies, resigns, or is fired, or unless entitlement is suspended for one of the reasons specified in the law, such as refusal to exercise seniority to an available position. This means that a person 25 years of age when the Rail Act became effective would be eligible to receive employee protection benefits for 40 years. When the Congress passed the Rail Act, it had been advised by the two rail company officials who helped draft the employee protection provisions that most of the protection payments would be needed for separation and termination allowances rather than MDAs and that the $250 million fund would be sufficient. Since MDAs have constituted the bulk of the protection payments and could extend the program beyond original expectations, limitation on the program may be called for to bring it more in line with what was originally intended.

The length of time employees are covered under the Rail Act is longer than other employee protection plans. For example, the 1936 Washington Job Protection Agreement contained a 5-year time limit on employee protection, and the more recent plan, developed pursuant to the Rail Passenger Service Act of 1970, had a 6-year limit.

Employee protection agreements negotiated outside the rail industry also have much shorter protection periods than title V. For example, the Redwood Employee Protection Program of 1978 limited protection to 6 years for most employees.

THE RAIL ACT DOES NOT SET A TIME LIMIT FOR FILING CLAIMS

The title V legislation does not prescribe a time limit within which an employee must file a monthly claim. Conceivably, an employee could file a claim months or even years after the month of entitlement. The validity of such a claim would be difficult to establish because employers cannot keep their records indefinitely. Conrail does not believe that employees would wait very long to file, which we verified to be true on the average. But, we did find cases where employees filed claims that were more than a year old.

Another difficulty arising from the lack of a time limit for filing claims concerns the uncertainty of about 80,000 employees who may be eligible to file a claim but have not yet done so. Such a situation makes it extremely difficult to plan and estimate what the program will eventually cost.

A Conrail official said that at one time both Conrail and the unions tried to enforce time limits for employee filing, but such time limits have since been suspended. Both Conrail and RRB officials stated that old claims (those submitted months or years after the month of entitlement) would be difficult, if not impossible, to verify.

Our review of a sample of MDA claims revealed that employees generally filed their claims in the month following the month of entitlement. However, some employees filed large batches of claims for many prior months. One employee, for example, submitted a batch of claims for 32 months. Another employee filed 10 claims having a total value of $11,219. These and other examples are shown in table 7.

Table 7

Examples of Conrail Employees who submitted Batches of Claims for Previous Months

Employee	Date submitted	Number of claims	Earliest month claimed	Latest month claimed	Total
A	1-26-79	32	4-76	a/12-78	$ 716.42 (note a)
B	1-4-79	21	4-76	12-77	792.05
C	10-23-78	15	4-76	11-77	1,443.45
D	2-20-78	13	3-77	3-78	1,153.36
E	5-5-78	12	10-76	4-78	617.81
F	12-5-78	11	7-77	9-78	1,577.60
G	5-4-78	11	1-77	4-78	490.28
H	2-7-77	10	4-76	1-77	11,219.22
I	1-2-79	10	1-78	10-78	6,617.39
J	12-29-78	5	7-78	11-78	4,968.62

a/This is the amount claimed since these claims had not been processed and paid at the time of our review.

The majority of protected employees have not filed a monthly claim. Conrail estimates that it has 80,000 protected employees, and RRB records indicate that only about 32,000 of those have filed a monthly claim. A.S. Hansen, Inc.'s, 1977 study concluded that a substantial number of employees who did not submit a claim in the first 6 months of 1977 appeared to be eligible for benefits based on their Conrail earnings and the amount of their guarantees. The study postulated several explanations: (1) employees were unaware of the title V eligibility criteria, (2) employees could consider the benefits insignificant and not worth the trouble to file, (3) employees could be opposed to Government give-away programs, or (4) the study inaccurately estimated the eligibility of the employees.

A Conrail official informed us that the consulting firm estimate was questionable because (1) it was based on only 6 months of claim filing data, (2) future years' inflation rates were low, and (3) it assumed that an employee would continue to file in only the months in which he or she filed in the base period.

CERTAIN EMPLOYEES RECEIVED WINDFALL BENEFITS

There is no requirement in the law to stop an employee's MDA payments when wages and MDAs reach the annual guarantee level. As a result, during 1977, 10,551 Conrail employees received MDA payments and wages which exceeded their annual protection levels. The total amount of MDAs received by these claimants in 1977 was almost $11 million. Some had annual wages in the $30,000 to almost $50,000 range but also received MDA payments. 1/

The law requires only a 50-percent reduction of the MDA for nonrailroad earnings. As a result, a group of laid-off Pennsylvania Truck Line drivers who had jobs driving for other companies also earned more than their guaranteed annual protection level when outside earnings and MDAs were combined.

The statute does not limit MDA payments to annual guarantee amounts

The Rail Act states that a protected employee is eligible for an MDA in any month in which his or her compensation is less than the monthly guarantee. Under this provision, it is possible for an employee's MDA payments and wages for a year to exceed his or her annual protection level. This can occur because no requirement exists to stop an employee's MDA payments when wages and MDAs equal the annual guarantee.

During 1977, 10,551 Conrail employees received MDA payments and wages in excess of their annual protection levels. These employees represented over 40 percent of those receiving MDAs, and the total amount of MDA's received by these employees was almost $11 million. Table 8 presents the 10 employees whose earnings and MDA payments exceeded their annual protection levels by the largest amounts. In addition to the 10 employees shown, 2 others each earned over $34,000 and were paid $19,914, and $11,502, respectively, in MDAs in 1977.

1/See schedule on page 32 for examples.

Table 8

Ten Conrail Employees Who Exceeded Their Annual Protection Levels by the Largest Amounts

Employee	Total 1977 earnings			1977 annual protection level	Amount by which total earnings exceeded protection level
	Wages	MDA	Total		
A	$33,640	$4,424	$38,064	$15,780	$22,284
B	31,496	5,112	36,608	14,567	22,042
C	49,010	1,411	50,421	28,542	21,879
D	38,436	3,682	42,118	20,414	21,704
E	33,293	905	34,198	13,594	20,604
F	46,798	505	47,303	26,832	21,471
G	31,399	7,713	39,112	18,817	20,295
H	29,692	6,232	35,924	15,966	19,958
I	32,508	4,531	37,039	17,219	19,820
J	31,155	3,779	34,934	15,405	19,529

The law does not require a sufficient MDA offset for outside earnings

The Rail Act provides that the MDAs of laid-off employees be reduced by the full amount of any earnings from other railroads but by only 50 percent if the earnings are from nonrailroad sources. Because the statute requires only a 50-percent MDA offset for nonrailroad earnings, some laid-off Pennsylvania Truck Line drivers who drive trucks for other companies earned more than their guaranteed annual wage when outside earnings and MDAs were combined. For instance, the driver earning the most during the 1978, earned over $44,600, which exceeded his annual MDA guarantee by about $11,173. This man was paid almost $13,735 in MDAs. Another driver earned less total money but exceeded his annual guarantee by over $15,795 while being paid almost $16,284 in MDAs.

The rationale for the offset provision seems to be that if laid-off workers are able to obtain similar jobs using the same skills, then their earning power also should be similar to their old job. Accordingly, the MDA should be reduced by the full amount of any earnings involving the same job skills. As long as the provisions are applied to railroaders, the distinction between railroad and nonrailroad jobs seems to produce the desired effect. However,

when the provisions are applied to protected employees of nonrailroad subsidiary companies, such as Pennsylvania Truck Lines, it results in those employees earning more than their annual guarantees because of title V.

Many laid-off Pennsylvania Truck Line employees are truck drivers and mechanics, both skills which are highly marketable. Of those employees laid off, 117 indicated they had received outside earnings on their last MDA claim, and of those, 18 were truck drivers who had found jobs driving for another trucking firm. These 18 drivers had properly reported their outside income, but because they were not working at railroad jobs, only 50 percent of their outside earnings were offset against their MDA claims.

In 1978, 16 of the 18 truck drivers exceeded their guaranteed annual wage by an aggregate $153,837 when earnings and MDAs are combined. The average total income for the 18 drivers was almost $38,000, with average earnings of $21,032 and average MDA payments of $16,968. The earnings data for the 18 truck drivers is detailed in table 9.

TABLE 9

Earnings Data For Calendar Year
1978 for 18 Laid-Off Pennsylvania Truck Line
Employees who Worked for Another Trucking Firm

Employee	MDA yearly guarantee	MDA received year to date	Outside earnings year to date	Total income	Amount by which income exceeds annual guarantee
1	$33,427.68	$13,734.62	$ 30,865.97	$44,600.59	$ 11,172.91
2	33,591.36	20,972.05	23,499.96	44,472.01	10,880.65
3	33,245.16	21,371.72	22,260.22	43,631.94	10,386.78
4	31,128.36	17,676.76	25,614.91	43,291.67	12,163.31
5	28,902.36	15,450.00	25,499.48	40,949.48	12,047.12
6	29,191.92	16,951.99	23,227.78	40,179.77	10,987.85
7	26,407.92	22,372.57	17,522.26	39,894.83	13,486.91
8	29,864.88	21,103.34	18,071.51	39,174.85	9,309.97
9	29,509.80	17,647.99	21,170.99	35,518.98	9,309.18
10	23,021.88	16,284.19	22,532.71	38,816.90	15,795.02
11	32,466.24	22,443.95	15,886.85	38,330.80	5,864.56
12	33,092.28	19,892.33	16,545.38	36,437.71	3,345.43
13	27,627.22	17,014.21	19,276.20	36,290.41	8,662.69
14	24,051.60	11,013.34	23,119.39	34,132.73	10,081.13
15	26,773.32	12,482.51	21,018.32	33,500.83	6,727.51
16	34,142.80	17,502.31	15,882.14	33,354.45	- 763.35
17	31,051.20	5,742.84	24,582.77	30,325.61	- 725.59
18	22,651.80	15,760.06	11,996.33	27,756.39	5,104.59
Total					$153,836.67

THE RAIL ACT ASSURES FULL PAY FOR SOME LAID-OFF EMPLOYEES UNTIL RETIREMENT

Conrail's need for employees skilled in certain kinds of work has been substantially reduced since its formation in April 1976. However, Conrail and other employers are prevented by title V from transferring surplus union employees to vacant jobs in other kinds of work. One such situation exists at Conrail where 95 of 103 marine employees were declared surplus between April 1976 and March 1978. Since the 95 laid-off employees could not be required to transfer to nonmarine jobs, they could continue to collect their full pay in the form of title V benefits until retirement. We identified 50 of these employees as having already collected more than $1.8 million in MDA payments through 1978. Conrail estimates that all 95 employees will collect title V benefits totaling almost $23 million through the year 2010.

The Rail Act states that Conrail can only transfer surplus union employees to the same type of job from which they were declared surplus. In particular,

> "* * * a protected employee who has been deprived of employment may be required* * * to transfer to any bona fide vacancy for which he is qualified in his same class or craft of employment on any part of the Corporation's system* * *."

With the creation of Conrail, at least one craft of employees was substantially reduced in numbers. These marine department employees were primarily responsible for towing barges of freight to the export piers of various shipping companies. In 1976, USRA estimated that Conrail would need 132 marine employees. However, Conrail's need for these employees decreased and surplus marine employees increased to 95 as of March 1978. As of January 1979, Conrail had only 8 marine employees in active service.

More than half of the marine employees listed as surplus are in one Conrail field office. We identified 50 as having been surplus since May 1976 and were still surplus as of January 1979. A field office official said that about 63 marine employees were declared surplus at that field office, but that about 13 either accepted an offer of separation or voluntarily bid for and accepted another type of job. He said that surplus marine employees are a continuous liability to the title V fund because they cannot be transferred outside their craft. He also stated that these

employees could be retrained and put to work as trainmen, brakemen, or even coach cleaners if the law permitted it.

The 50 surplus marine employees at one Conrail field office were paid more than $1.8 million in MDA payments through December 1978. Details on the 10 surplus marine employees who received the most MDA payments are shown in table 10.

Table 10

The ten Surplus Marine Employees at one Conrail Field Office who Received the Most MDA Payments

Employee	Age	Position	Total claims through 1978	Current yearly guarantee
A	55	Deckhand	$64,942.93	$25,466.16
B	52	Tug captain	49,812.27	19,476.72
C	60	Tug captain	49,502.84	19,578.92
D	52	Tug captain	48,147.67	19,731.72
E	61	Tug captain	47,152.88	18,896.64
F	64	Deckhand	46,066.53	18,156.60
G	62	Tug captain	45,855.51	17,428.84
H	63	Tug oiler	44,733.15	17,438.16
I	59	Tug mate	43,693.92	17,418.60
J	61	Tug oiler	42,130.84	16,463.28
Total			$482,038.56	$190,055.64

Conrail estimates that the total liability for all 95 surplus marine employees will be almost $23 million through the year 2010. This estimate takes into account projections of future wage increases, which will escalate each person's annual guarantee. Conrail believes that surplus marine employees should be transferred to nonmarine positions for which they are qualified or for which they can be retrained.

THE RAIL ACT DOES NOT GIVE EQUAL PROTECTION AND BENEFITS TO ALL EMPLOYEES

The law does not give all employees the same level of protection and benefits. For example

--monthly guarantees were not upgraded for Conrail nonunion employees,

--transfer procedures are discriminatory,

--nonunion employees who returned to union positions received unequal treatment, and

--some fringe benefits for nonunion employees were not paid.

Monthly guarantees are not upgraded for Conrail nonunion employees

The law provides that employees' monthly guarantees are to be upgraded by any general wage increases given to employees up to a maximum of $2,500. The $2,500 maximum is also to be escalated by the amount of any general wage increases. Conrail union employees and all Amtrak employees have had their guarantees upgraded by general wage increases. Conrail nonunion employees' guarantees, however, have not been upgraded because their wage increases are "merit increases" rather than general wage increases. The legislative history of the Rail Transportation Improvement Act, which amended the Rail Act in October 1976, indicates that selective salary increases such as merit increases should not be used to raise guarantees.

Conrail and Amtrak nonunion employees have received dissimilar treatment. Amtrak nonunion employee guarantees and maximums have increased because Amtrak gives general wage increases to both union and nonunion employees. Amtrak has also granted merit increases to nonunion workers which do not escalate guarantees and maximums.

Since conveyance, Conrail union employees have had their monthly guarantees and maximums increased by the negotiated general wage increases, while nonunion employees, guarantees have remained at the April 1976 level. To illustrate , most union employees have received about a 29-percent cumulative general wage increase from April 1976 through October 1978; the same percentage increase was applied to their guarantees. In making assumptions for its forecast of title V liability, Conrail assumed that on the average, annual nonunion wage increases would be slightly higher than the average general wage increases granted to union employees. However, since these wage increases are merit increases and not general wage increases, nonunion guarantees will remain frozen.

Nonunion employees who are not fully displaced eventually will become ineligible for title V benefits because their escalating wages will eventually surpass

their frozen guarantees. However, union employees will remain eligible since guarantees and wages are both escalated.

Transfer procedures are discriminatory

The Rail Act gives Conrail the right to transfer surplus protected employees but sets different criteria for union and nonunion employees. The legislation only gives Conrail the power to transfer employees. Other organizations employing protected workers (for instance, Amtrak), cannot transfer a surplus protected employee. Therefore, employees who work for different carriers receive dissimilar treatment.

The Rail Act further discriminates between union and nonunion employees by setting different criteria for transfer. A Conrail union employee who has been laid off only can be offered a transfer to a position for which he or she is qualified and which is in the same craft or class of employment. Additionally, the law specifies that the transfer offers must be in inverse order of seniority. Conversely, the law allows Conrail to offer transfers to surplus nonunion employees to any vacant nonunion position in Conrail. Laid-off employees who refuse bona fide transfer offers become ineligible for MDA payments.

We believe the transfer procedures of the Rail Act applicable to union employees should be less restrictive, so as to permit the transfer of surplus employees such as the marine employees discussed on pages 35 and 36 of this report.

Unequal treatment of nonunion employees who return to a union position

The Rail Act provides unequal protection to nonunion employees who voluntarily return to a union position compared to those who are declared surplus by Conrail and then choose to return to a union position. Nonunion employees who voluntarily return to a union position receive greater benefits because they are then considered union employees. The nonunion employee who is declared surplus and then chooses to exercise seniority rights to a union position is still considered a nonunion employee.

Nonunion employees exercising seniority rights under different conditions are treated differently with respect to (1) monthly base level guarantee calculation, (2) subsequent

guarantee escalation for general wage increases, and (3) rules governing transfers. Accordingly, the employee who voluntarily returns to a union position and then is considered a union employee receives preferential treatment to the extent that (1) the guarantee is calculated based on the last 12 months in which a union position was held and is upgraded for any subsequent general wage increases and (2) if surplused, the employee can only be transferred in inverse order of seniority to a position in the same class or craft. On the other hand, surplused nonunion employees who exercise seniority rights have guarantees based on their base period earnings; their guarantees are frozen at that base level; and if surplused again, they can be transferred to any nonunion job, anywhere in the Conrail system.

Some fringe benefits not protected for nonunion employees

The law provides for the protection and payment of all fringe benefits for union employees, but only certain fringe benefits of nonunion employees. The Rail Act specified that nonunion employees could not be placed in a worse position with respect to pension benefits, voluntary relief plans, and preretirement life insurance and medical benefits. A former Penn Central official said that nonunion employees retiring from Penn Central had as part of their fringe benefits, postretirement company paid life insurance equal to their annual salary and continuing coverage as part of the group health insurance plan. A Conrail official stated that those postretirement benefits were not part of Conrail's fringe benefit package and, therefore, such benefits are not provided for protected former Penn Central employees who retire.

THE RAIL ACT ALLOWS BENEFIT PAYMENTS FOR REASONS NOT RELATED TO THE REORGANIZATION

The purpose of the title V provision was to minimize the adverse effects on protected employees resulting from the reorganization of the bankrupt railroads and the creation of Conrail. However, the Rail Act, as written, permits the payment of title V benefits for reasons not related to the formation of Conrail. For example, benefits are paid because of adverse economic effects clearly resulting from other causes, such as strikes and snowstorms, totally unrelated to the reorganization. Other employee protection programs, such as Amtrak's, prohibit payments for these other causes.

The Rail Act states that a protected employee is eligible for an MDA in any month in which the compensation is less than the monthly guarantee. This is purely an economic criteria, even though the intent of the legislation was to protect employees against adverse effects caused by the reorganization. Such legislative intent was recognized in USRA's Final System Plan which stated,

> "The economic impact of reorganization is minimized for individual employees by the employee protection provisions contained in title V of the act."

However, USRA went on to recognize that the criteria as set forth in the law would allow payments for other causes, such as a decline in business, not associated with the reorganization. An RRB official pointed out that in addition to a business downturn, MDA payments also could result from strikes, storms, or other emergencies unrelated to the consolidation.

Such unexpected events have harmed Conrail's level of business and have caused MDA payments to increase. Strikes, floods, severe winters, and other unanticipated events have caused an estimated $219 million in revenue to be lost from April 1976 through December 1978. During early 1978, Conrail's business was hurt by the severe winter weather as well as a coal strike, and MDA payments for the first quarter increased by 18.6 percent, or almost $2.2 million over the previous quarter.

Unlike title V, other employee protection agreements provide for suspending protective payments during an emergency situation or a business decline. For example, in a 1962 agreement for merger protection of Norfolk and Western Railway Company employees, workers were not to be considered deprived of employment or placed in a worse position because of furloughs caused by seasonal requirements or decline in traffic volume or revenues. Another agreement in 1965 for the protection of nonoperating employees, such as clerks and freight handlers, provided that if a carrier's business was expected to decline by more than 5 percent as measured by operating revenues and revenue tonmiles, protected employees could be furloughed and protective payments would be suspended. Payments also could be suspended if the work of the affected positions could not be performed because of emergency conditions, such as floods, snowstorms, hurricanes, earthquakes, fires, or strikes. An RRB official said that under the above conditions, affected Conrail employees could be eligible for railroad unemployment compensation benefits.

Finally, the Amtrak plan, developed pursuant to the Rail Passenger Service Act of 1970, provided that benefits would not be provided to workers whose earnings were reduced due to fluctuations and changes in volume or character of employment brought about by causes other than the discontinuance of intercity rail passenger service.

CONCLUSIONS

The Rail Act does not provide for adequate Federal administration and oversight of the Title V Employee Protection Program. Moreover, the law contains some provisions (and lacks others) which have produced program results the Congress may not have envisioned or intended at the time the legislation was adopted.

One of the principal factors influencing the program's eventual cost is the type of benefits it pays to employees. When the Congress passed the Rail Act, it was advised that most of the fund would be used for separation and termination payments and that the $250 million fund would be sufficient. However, after 3 years, the program has shown that most of the protection payments have been for MDAs to employees who are working and earning good wages rather than severance allowances or MDAs to laid-off workers. This is a major factor in the program's increased cost estimate. Accordingly, the Congress may want to revise the program so that results will be more in line with original estimates. One way to do so would be to limit protection to a specific period, as in the Rail Passenger Service Act. Another way would be to reduce the length of time an employee is protected by freezing annual guarantees.

If annual guarantees were frozen, escalating wages would exceed guarantees within a relatively short time, thereby making the working employee ineligible for an MDA. On the other hand, fully displaced employees would remain eligible for the type of assistance which was apparently intended in the Rail Act.

RECOMMENDATIONS

We recommend that the Congress amend the title V provisions of the Rail Act as follows:

--Assign oversight and audit responsibility for the Title V Employee Protection Program to a Federal agency. There are several logical choices including the Departments of Labor and Transportation and the RRB. We believe the Department of Transportation would be the best choice. Whatever agency has

program responsibility should also be given responsibility for the title V fund.

--Reduce the period of employee protection by limiting the program to a specific period or by freezing the guaranteed annual income levels as of a specific date.

--Include a provision requiring an employee to file for MDA benefits within a specified time period after the month he or she was adversely affected. Conrail believes a reasonable time period for filing MDA claims would be 60 days, while RRB prefers a 6-month limit.

--Include a provision that would stop an employee's MDA payments in any year when earnings and MDAs reach his or her annual guarantee amount.

--Include a provision requiring that MDA's of laid-off employees be reduced by the full amount of any outside earnings which involve the same job skills.

--Revise the law to permit Conrail to transfer surplus union employees skilled in certain kinds of work to job openings involving other skills. Also, grant employers other than Conrail the same transfer rights with regard to all their protected employees.

--Amend the law to ensure that union and nonunion employees are provided equal protection and benefits in all areas including (1) upgrading of monthly guarantees, (2) transfer procedures, and (3) payment of fringe benefits.

AGENCY COMMENTS AND OUR EVALUATION

We sent copies of a draft of this report to Conrail, RRB, USRA, and DOT for their comment. Conrail, RRB, and DOT provided written comments, and those applicable to this chapter are summarized below.

RECOMMENDATION THAT A FEDERAL AGENCY ADMINISTER THE TITLE V PROGRAM

The draft we sent for comment recommended that a Federal agency be responsible for administering the Title V Program. Conrail, RRB, and DOT all had strong views. Conrail stated it had no objection to the recommendation, provided that the agency assumes full responsibility and that Conrail is fully absolved of both the cost and responsibility of the program. They suggested that all title V claims should be submitted

to, processed, and paid by the Federal agency and that all interpretations of the law and all determinations of the propriety of claims should be made by the agency. They cautioned against a partial transfer of responsibility under which a Federal agency would assume a supervisory function while Conrail received, processed, and paid the claims. Conrail felt such an arrangement would add an unnecessary layer of administration to the program, increasing the time required to process and pay claims, and unnecessarily complicate Conrail's relations with its employees.

DOT said that certain administrative aspects of title V do need strengthening, but that bringing the entire administrative function under a Federal agency would require a significant increase in Federal personnel and result in an unneccessary cost burden. DOT suggested that a Federal agency assume only oversight and audit responsibility and not all the title V functions. It also concluded that USRA is the logical choice for an agency to oversee and audit the Title V Program.

RRB also agreed with the recommendation, stating that complete administrative responsibility, including the authority, personnel, and funds to administer the program, should be placed in one agency. It specified several powers the agency must have, including (1) authority to demand timely data from Conrail, USRA, and the other acquiring railroad, (2) full authority for interpreting title V and issuing policy guidance and instructions, and (3) sufficient staffing and funding to administer the program. RRB felt the designated agency should report to the Congress periodically on the status of the protective account, including what effect labor agreements, arbitration decisions, and manpower adjustments may have on disbursements from the account.

After considering all these comments, we changed our wording to recommend that a Federal agency be assigned responsibility for oversight. As chapter 4 points out, Conrail (which spends most of the title V money) is generally doing a good job of administering the program and, although we did find some errors and recommended Conrail attend to system problems that allowed the errors to occur, we think day-to-day administration should be left with Conrail and the other employers. Further, the present law permits Conrail and the other employers to deal quickly and directly with problems that arise and make legal interpretations, and it provides an adequate mechanism for arbitrating disputed interpretations. We believe the employers should be able to deal directly with their labor forces on a matter that affects rates of pay.

We also believe transferring these activities to a Federal agency would be costly and cumbersome.

We believe that oversight should include audit to the extent needed but that the agency should rely principally on Conrail and the other employers' internal auditors and other internal control systems and conduct only the audits needed to ensure that those systems are adequate and working.

DOT, USRA, and RRB are all candidates for this responsibility. RRB has the most experience and expertise in this program area. DOT is more directly accountable to the executive branch and, even though it does not have RRB's expertise, it should have the needed resources to fulfill an oversight responsibility. USRA, however, is not a Federal agency and is assumedly an organization with a limited lifespan. While program oversight could be transferred to another agency if USRA ever does see its sunset, it seems more logical to place the responsibility more permanently. Therefore, in our opinion, DOT is the best agency to provide Federal oversight for title V.

RECOMMENDATION TO REDUCE THE PERIOD OF EMPLOYEE PROTECTION

In our draft we recommended that the period of employee protection be reduced by freezing all guarantees at the March 30, 1982, level. DOT agreed that such a change would ultimately reduce Federal liability as inflation, and consequently employees' cost-of-living allowances and wages, would continue to rise, but it mentioned alternative methods of reducing the Federal liability, including (1) eliminating employee overtime and arbitrary compensation from the calculation of the employees' monthly guarantee and (2) terminating all title V benefits at the end of a specified period, such as 6 years.

The RRB said it would not take a position on this recommendation but noted that while a lifetime guarantee may be unusual for Federal protection programs, it is not unique in railroad labor-management agreements.

Conrail did not comment on the recommendation.

In our opinion, the period of employee protection should be limited. It is true that past railroad merger agreements have included lifetime employee protection provisions, but those were agreements between private companies and their employees, and the companies were convinced that the advantages of the merger would more than offset protection costs labor demanded. The creation of Conrail was not analagous

to such private mergers because it was in essence a federally financed action to avert a series of liquidations that could have resulted in a number of displaced railroad employees. Therefore, lifetime protection payments as a needed bargaining tool were not appropriate under these circumstances.

We do agree that there are a number of ways to limit the period of protection besides those we recommended, and we adjusted our language to reflect the options available.

RECOMMENDATION TO REQUIRE EMPLOYEES TO FILE BENEFIT CLAIMS WITHIN A SPECIFIED TIME

Our draft report recommended that a reasonable time period for filing claims might be 6 months or 1 year. We revised that to reflect Conrail's belief that 60 days is long enough while RRB's suggestion was 6 months.

RECOMMENDATION THAT EMPLOYEES' MDA PAYMENTS BE STOPPED WHEN THE PAYMENTS AND REGULAR EARNINGS REACH THE ANNUAL GUARANTEE AMOUNT

DOT agrees with our recommendation in theory but feels in practice the recommendation could subject Conrail employees to possible overtime abuse.

DOT pointed out that the Rail Act provided for a guarantee based on average monthly hours worked as well as average monthly compensation, and that shifting to an annual guarantee would mean that all an employee's monthly earnings would be credited against the guarantee regardless of the hours it took to produce the earnings. Thus employees might be adversely affected by being transferred to lower paying positions but be denied MDA payments because they are working longer hours.

Our review showed that Conrail is not now using hours worked as a factor in its calculation of MDAs for most of its employees, although this interpretetion is presently in arbitration. (See p. 61.) Even if hours worked is included as a factor, we think it could easily be adjusted out for purposes of establishing annual compensation guarantee ceilings. For example, earnings produced by hours exceeding the base average monthly hours worked could be ignored in calculating whether employees had reached their ceilings.

RRB stated that if annual earnings are to be considered in determining entitlement to a displacement allowance, the

employee's claims would have to be held until the end of the year, converting the present monthly payment system to an annual system.

Our recommendation was not intended to result in employees receiving displacement allowances that would precisely equal the difference between their actual annual earnings and their annual guarantee ceilings; it was intended only to limit instances where employees received substantial MDAs after they had exceeded their base period annual earnings. Thus, we had envisioned a program that would operate as it does now but which would preclude MDA payments for any pay periods after employees reached their annual guarantee ceilings. We recognize that such a program may result in some unequal treatment but believe that it would mostly involve employees low on the seniority list getting proportionally more MDA payments than more senior employees who have a better opportunity to work.

We do not advocate an annual payment system, though RRB is correct in pointing out that that would be the easiest way to ensure accuracy.

RECOMMENDATION TO REQUIRE THAT LAID-OFF EMPLOYEES' MDAS BE REDUCED BY THE FULL AMOUNT OF ANY OUTSIDE EARNINGS WHICH INVOLVE THE SAME JOB SKILLS

DOT commented that this recommendation would be effective only if adopted with our other recommendation that would allow Conrail to transfer surplus union employees in one craft to another craft after any necessary retraining. They said this was so because the 50-percent offset was included in the Rail Act to provide displaced employees incentive to seek outside employment and that crediting 100 percent of an employee's outside earnings against his or her monthly compensation guarantee would take away the incentive.

DOT further commented that our recommendation that an outside job would have to involve the same job skills as the employee's rail occupation appears unnecessarily restrictive because railroaders use many skills and attempting to equate skills used on one job with those used on another could be counterproductive to using the 100-percent offset effectively.

Our recommendation was not intended to reduce the incentive to seek outside employment but to close a loophole that allows some employees to work at their normal trade and still receive MDAs, while most protected employees must seek work

outside the parameters of their training and experience. We do not believe people who worked for the railroad as truck drivers (or in other jobs that are common to other businesses) need the same kind of incentive or assistance in seeking nonrailroad work as those whose skills are peculiar to railroading (for example, locomotive engineers or brakemen). We think the situation at Pennsylvania Truck exemplifies what can happen and mocks the real intent of the provision, which is to help people out while they are reestablishing themselves in the labor force.

We agree that problems exist with the question of whether one job involves the same skills as another and that the question of whether a job is qualified for MDA continuation or not could be knotty. However, Conrail has resolved many other problems in its interpretations of the law, and the arbitration procedure provided in the law should be adequate to settle disputes.

If incentives to work are considered important for laid-off employees who can find higher paying jobs in their occupations, then the Congress may wish to consider a sliding scale of offsets to reduce the income supplement gradually.

It is important to note that this problem would be reduced if our recommendation to place overall limits on the program is followed.

RRB had no objections to our recommendations, and Conrail did not comment.

RECOMMENDATION TO PERMIT CONRAIL AND OTHER EMPLOYERS TO TRANSFER SURPLUS UNION EMPLOYEES TO JOB OPENINGS INVOLVING OTHER THAN THEIR PRIMARY SKILLS

DOT said that this recommendation should be adopted with our recommendation to reduce MDA payments by 100 percent of earnings from outside the rail industry if the occupational skills involved are the same. RRB said it took no position on the recommendation but that it appears some limitations might be desirable. RRB was concerned that a highly skilled employee such as a tugboat captain, for example, might be transferred to a menial job, such as coach cleaner or track laborer, and suggested the recommendation be modified to include consideration of the employee's age, education, past experience, and other similar factors so employees would be offered work they are capable of doing and which is suited to personal circumstances.

In response to RRB's comment, we noted that nonunion employees are now subject to transfer without consideration of factors such as those RRB mentioned. We found that lawyers and managers had been transferred to positions as clerks. While we would not object to reasonable limitations, the same logic applies to nonunion employment, and treatment under the law should be similar for both.

RECOMMENDATION TO ENSURE THAT UNION AND NONUNION EMPLOYEES ARE PROVIDED EQUAL PROTECTION AND BENEFITS

RRB stated it had no objection to this recommendation but suggested it might be helpful to estimate the increased benefit costs of the proposal. Neither Conrail nor DOT commented on the recommendation.

Because all our recommendations interact, we cannot calculate the possible cost/benefit of any one. If the Congress changed the program along the lines we are suggesting, however, we are confident the long-term savings would be substantial.

CHAPTER 4

CONRAIL'S ADMINISTRATION OF ITS TITLE V PROGRAM

Our review disclosed that Conrail field office personnel did not always process claims in accordance with Conrail's instructions, and as a result, some overpayments and underpayments occurred. In those cases, Conrail has or will process amended claims to correct the mistakes.

As of November 1978, about $42.7 million 1/ had been paid on MDA claims submitted by Conrail employees for the period September 1977 through August 1978. Based on a random sample of these claims, we estimate Conrail made overpayments of about $322,700 and underpayments of $132,300, or about 1.1 percent of the claims accumulated for the 12-month period.

Also, Conrail was requesting reimbursement from RRB immediately after approving the claim and in some cases was being reimbursed before the employee actually received a title V payment. This is contrary to the law which provides that Conrail and other employers shall pay employees' claims and then be reimbursed for the actual amounts paid.

Under the law it is Conrail's responsibility to verify the accuracy of employee title V claims. For some employees on a leave of absence from Conrail and working full-time for the Boston and Maine Railroad, however, Conrail only verified the mathematical accuracy of the claims.

We also identified several instances where the title V statute is ambiguous, and Conrail's implementing procedures and instructions usually resulted in paying fewer and lower dollar-value claims to employees than would have been the case if the law had been interpreted differently.

CLAIM PROCESSING PROCEDURES ARE NOT ALWAYS FOLLOWED

Our review of a random sample of MDA claims for union and nonunion employees processed at five Conrail field

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1/This figure does not include an additional $8.2 million in MDA payments made by Conrail after our review.

offices disclosed the following general categories of claim processing errors.

--Conrail processed and paid several claims for three people who were no longer employees.

--Required offsets to claims, such as for voluntary absences, were either not deducted or were deducted incorrectly.

--Conrail's administrative procedures and instructions were not always followed in processing the claims.

For three employees, claims were processed and paid after they were severed

Conrail processed and paid MDA claims submitted by three of its protected employees after they had been severed from their railroad employment. Since protected employees are no longer eligible for title V benefits after severance, these employees were overpaid a total of about $8,179. Conrail has taken action to reduce its reimbursement from the RRB and to recover the overpaid amounts from the former employees.

The Rail Act precludes payment of MDA claims for periods after an employee's severance date. In particular,

"The monthly displacement allowance provided for in subsection (b) of this section * * * shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause* * *."

Resignation can occur under the separation provisions of the Rail Act, under which an employee can accept a lump sum title V payment not to exceed $20,000 in lieu of all other benefits provided.

We identified three employees who terminated their employment with Conrail but who later submitted and were paid for one or more MDA claims. The claims were approved for payment by the Conrail title V claims examiner and were included in a reimbursement request which Conrail sent to the RRB. In these three instances, Conrail field office personnel said that either no notification was received or a notification was not timely. Conrail's labor relations staff is responsible for terminating protected employees and also for promptly notifying the field offices and the RRB.

The three employees submitted a total of six claims which were improperly paid, resulting in a total overpayment of $8,179.43

In each case, Conrail had discovered the error and reduced subsequent reimbursement requests. However, two of the three were discovered by chance; one through an informant and the other through an examiner's inquiry about a claimant's change in status on another report. In only one of the three instances was the field office officially notified, that the claimant had been severed.

Even though Conrail reduced subsequent reimbursement requests from RRB, Federal funds are still at stake since Conrail received funds from USRA to make up deficits. Conrail did initiate collection actions against the three former enployees.

Offsets incorrectly charged to MDA claims

We identified instances where the required offsets to MDA claims were either not made or were made incorrectly, resulting in overpayments or underpayments to employees. Conrail has processed amended claims or will take action to adjust the overpayments or underpayments. For most errors, Conrail was not aware that an error had occurred until we told them.

Incorrect wages offset against MDA claims

In five cases in our sample, Conrail field office examiners calculated MDA claim amounts using incorrect employee earnings. On three claims, the examiner used an earnings amount that was higher than the employee's actual monthly compensation, and on the other two claims, the examiner used an earnings amount which was lower than actual. The errors resulted in underpayments to three employees totaling $292.50 and in overpayments to two employees totaling $69.96.

The use of incorrect earnings resulted from several factors. In one case, the employee's monthly earnings, as shown on his payroll record, were misread and thus the wrong amount was used to calculate the claim. In another case, the employee's monthly earnings, as shown on his payroll record, included earnings from 2 prior months which should have been deducted before making the offset. Finally, for three cases, the claims were processed using earnings entered incorrectly by the employees rather than the correct earnings as shown on their payroll records.

Voluntary absence offsets either not made or made incorrectly

Conrail either failed to charge a claimant with an MDA offset for voluntary absence or charged the claimant incorrectly. Voluntary absences are other than vacations and include absences due to illness, voluntary furlough, union business, personal business, jury duty, and others. We identified 28 instances in our sample where errors resulted in 15 claimants being overpaid by a total of $739.30 and 13 claimants being underpaid by a total of $503.07.

The errors had several causes.

--Offsets for voluntary absence were based on a daily rate of pay rather than on a percent of the MDA guarantee.

--Offsets were charged for more days off than was appropriate.

--Offsets were charged to MDA claims, but sick pay was not deducted from earnings, thereby producing a double offset.

--Offsets were charged for a full day's absence when only a partial day was missed.

Seniority offsets were either not made or were made incorrectly

Conrail's title V field offices have not been equally effective in determining whether an employee is holding the highest paying job available. Although only about 5 percent of the total claims for 1 year were charged with a seniority offset, the range among offices was from 1.67 to 13.63 percent. These offsets amounted to a net reduction in MDA claim payments of almost $1.4 million in 1 year. We found two improperly calculated seniority offsets in our sample that resulted in overpayments to one claimant of $16,213.52 and an underpayment to another of $61.60.

The Rail Act requires that seniority offsets be calculated and charged to claims where applicable. Specifically,

"* * * in determining compensation in his current employment, the protected employee shall be treated as occupying the position producing the highest rate of pay to which his qualifications and seniority

entitle him under the applicable collective bargaining agreement and which does not require a change in residence * * * ."

Because of the complexities involved, claims examiners find it difficult to calculate offsets correctly for seniority. Officials at four of the five field offices we visited agreed that determining seniority offsets is the most difficult and time-consuming title V responsibility. They cited several causes for the difficulties: (1) necessary records are not always accurate or available to the examiners, (2) due to the various railroad mergers and consolidations, Conrail employees may hold three tiers of seniority rights in several overlapping districts which makes determination difficult, and (3) negotiated labor agreements may restrict the availability of some positions. In addition, labor unions frequently argue that an employee was not qualified to hold a higher paying position which is offset against an MDA.

Conrail's labor relations officials said that while they support the seniority offset in theory, Conrail's position is that it is not administratively feasible to ensure that the offset is applied in all cases because of the large volume of claims and the large geographical area involved.

The variance among the five offices was over 8 percent, with one office being responsible for over half of the total amount offset. Although seniority offsets were charged on only about 4 percent of all claims processed at the five field offices, those offsets resulted in a total savings of over $730,000 in MDA payments, as shown in table 11.

Table 11

Seniority Offsets Made By Five Conrail Field Offices Showing Range of Variances For September 1977 through August 1978

Field office	Number of claims	Number of seniority offsets	Percent of claims with seniority offset	Total amount offset
A	5,561	549	9.87	$100,567.97
B	28,016	474	1.69	78,707.59
C	15,697	262	1.67	56,425.70
D	12,192	418	3.43	110,560.78
E	18,647	1,618	8.68	384,313.24
Total	80,113	3,321	4.15	$730,575.26

The two field offices with the highest percentages of seniority offsets had established procedures to track seniority for at least certain groups of employees. For example, field office "E," which charged 8.68 percent of claims paid with seniority offsets, apparently had information available for all groups, whereas field office "A," which charged 9.87 percent of its claims with seniority offsets, tracked train and engine employees by permanently assigning claims examiners to crew dispatch offices.

The other three field offices varied in their efforts to trace seniority. Field office "D," with a 3.43-percent rate of seniority offset, maintained information on train and engine employees and clerks. According to an examiner at that office, no effort has been made to obtain information to trace seniority on other employees. Field office "C," had the lowest offset rate of the five offices, 1.67 percent, but one claims examiner had designed and implemented a system which obtained seniority information from crew dispatchers for assigned employees. Other examiners stated that similar seniority information for other employees had been repeatedly requested from other crew dispatchers, but they were uncooperative in providing it.

Officials at field office "B," with an offset rate of 1.69 percent, stated that because of the number of claims, not much effort was devoted to determining seniority. Generally, most claims examiners rely on field supervisors to provide information as to whether the employee could have held a higher paying position.

In our review we found overpayments of $16,213.52, and one underpayment of $61.60. One employee had his non-agreement position abolished as a result of the consolidation that led to the establishment of Conrail. Since the employee had union seniority rights at his work location, there were a number of union jobs that he could have held had he exercised his seniority rights. The correct information concerning the employee's seniority rights was entered on his title V records, but according to a Conrail official, the claims examiner must have overlooked it. As a result, an offset should have been made to 27 claims filed by the employee from April 1976, through June 1978, which resulted in overpayments of $16,213.52. Conrail later discovered the overpayments while processing the claimant's application for a separation allowance and recovered the overpayments from this payment.

The second employee was improperly charged with a seniority offset for days not worked and also was charged with voluntary absence offsets. This improper double offset resulted in an underpayment of $61.60.

Offsets required for medically disabled employees were not made

Two protected employees who were medically restricted to passenger train service were not charged with the required offsets, resulting in overpayments of $5,054.68 on 11 claims. The law requires that offsets be made for periods of physical disability, and Conrail has agreements with labor as to the amount of such offsets. The offsets should continue for as long as the employee remains medically restricted and are processed as seniority offsets.

The field office which processed MDA claims for the two employees said that it later learned of these employees' medical restrictions and of the $5,054.68 in overpayments by chance. Amended claims were processed and subsequent certifications to RRB were reduced for the overpayments.

CONRAIL'S ADMINISTRATIVE PROCEDURES AND INSTRUCTIONS FOR PROCESSING CLAIMS WERE NOT ALWAYS FOLLOWED

Conrail's title V field offices did not always follow the company's established administrative procedures and instructions for processing MDA claims. Such procedures were established to provide program control and represent Conrail's uniform method for satisfying the statutory

requirements of title V. Conrail instructions state that the approved procedures are the only means by which matters of employee protection under the Rail Act are to be handled. Further, procedures cannot be changed without official approval.

We found procedural deviations ranging from omissions and inaccuracies on individual claims to a situation where a field office supervisor unilaterally decided that a certain procedure should be discontinued since it represented duplicate recordkeeping. The procedural deviations were:

--The protected employee's daily record of work was not always verified by the immediate supervisor before the claim was processed and approved for payment.

--MDA claims were not always recorded or were incorrectly recorded on MDA history cards or work logs.

--Title V history cards were not prepared by one field office.

--Title V history cards did not always show the correct date on which employees' benefits expire.

--Voluntary absence offsets were not always shown in the manner specified by Conrail instructions.

--Voluntary absence and seniority offsets were not always explained to the claimants as required.

Accurate MDA history cards are especially important because they provide data that determines the validity and accuracy of claims, such as the employee's date of birth, date entered service, date benefits expire, and monthly guarantee with effective dates. If the card is not kept or if inaccurate or incomplete information is shown, the examiner is not certain, without checking detailed records, whether or not a certain claim is valid and should be approved for payment.

PROJECTION OF SAMPLE RESULTS

We projected our sample of MDA claims to the universe of claims paid by Conrail field offices for the 12-month period from September 1977 through August 1978. Our sample was randomly selected from 12 months of claims paid by five of the largest Conrail field offices which processed

over 66 percent of the total claims. 1/ Our estimates of the number and amounts of errors for all 14 offices were made on the assumption that the frequency and dollar amounts of errors among the nonsampled offices are similar to those of the offices included in our sample.

We estimate Conrail overpayments to claimants of $322,670 and underpayments of $132,259 for the 12 months, or about 1.1 percent of claims accumulated. Overpayments to union employees were about $312,234 and overpayments to nonunion employees were about $10,436. Union employees accounted for about $130,037 of the projected underpayments and nonunion employees about $2,222.

CONRAIL OBTAINED RRB REIMBURSEMENT BEFORE PAYING EMPLOYEE CLAIMS

Our review disclosed that Conrail generally requested reimbursement from RRB for title V claims it certified it had paid to employees before Conrail's payroll department had actually paid the employees. Conrail submitted almost 95 percent of the claims we reviewed from 1 to 29 days before it issued the employee's check. An RRB official told us RRB sends a reimbursement check to Conrail within 3 days after it receives Conrail's request for reimbursement.

The legislative provisions and subsequent interpretations specify that Conrail will be reimbursed for actual payments made to or for protected employees. Section 509 of the Rail Act provides that:

> "The Corporation * * * and acquiring railroads * * * shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees * * * The Corporation, * * * and acquiring railroads * * * shall then be reimbursed for actual amounts paid to, or for the benefit of, protected employees, * * * by the Railroad Retirement Board, upon certification to such Board, by the Corporation,

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1/For union employees we took a stratified random sample of MDA claims with each of the five field offices comprising one stratum. We used simple random sampling techniques to generate a sample of claims from the one field office which processes all nonunion employee claims. Sampling criteria was an expected 50-percent occurrence rate of claim processing errors; a 95-percent confidence level; and a 4-percent acceptable sampling error rate for union employees and a 7-percent rate for nonunion employees.

* * * and acquiring railroads, of the amounts paid such employees * * *"

CONRAIL PAID SOME EMPLOYEE CLAIMS WITHOUT VERIFICATION

Conrail has paid MDA claims to some protected employees who are on a leave of absence while working full-time for the Boston and Maine Railroad without assuring that the claims were proper. As of July 1978, 193 Conrail employees were working full time for the Boston and Maine, and of those, 82 had submitted at least one MDA claim. From July 1977 to February 1978 Conrail paid these employees over $116,400 for 528 MDA claims.

The employer paying the claim is required to ensure that all claims are lawfully and properly paid. The Comptroller General's interpretation of the Rail Act stated that:

"* * * the entity charged with actually disbursing the appropriated funds (e.g., Conrail) must be considered the entity with the responsibility to assure that those funds are lawfully and properly applied in the absence of specific legislation providing otherwise * * *."

RRB's reimbursement procedures further emphasize that:

"In approving payment of a monthly displacement allowance, it is the employer's obligation to examine and review carefully each employee's claim, making certain that the provisions under title V of the Act are adhered to in computing the amount due the employee. The employer also has the responsibility to make proper deductions from an employee's claim for any period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or for failure of the employee to exercise his seniority rights in the claim month * * *"

Until March 1977, Conrail operated commuter lines for the Massachusetts Bay Transportation Authority in the Boston area. The Boston and Maine assumed operation of these lines and Conrail signed several agreements with the unions representing the employees who operated this service to allow the employees to work full time for the Boston and Maine while protecting their title V benefits by remaining on a leave of absence from Conrail. The agreements stated that the leave of absence for protected employees would

generally continue for as long as they were entitled to title V protection.

The employees submit their MDA claims to the Boston and Maine, which then sends them to Conrail for payment. A Conrail official stated that the Boston and Maine is responsible for verifying the accuracy of the claimants' monthly earnings, determining whether they worked the maximum number of days possible, and determining whether they exercised seniority to the highest paying job available. A Boston and Maine employee computes the necessary offsets and forwards the claims to the Conrail field office.

Conrail does not verify the propriety of the claims Boston and Maine employees submitted, nor has it audited the validation procedures used by the Boston and Maine to ensure compliance with the legislation. Conrail relies solely on the Boston and Maine's verification and only checks the claim's mathematical accuracy. The Boston and Maine does provide a monthly earnings summary for each employee, which is used by Conrail's payroll department to compute Conrail's pro rata share of railroad retirement. After the mathematical check, Conrail approves the claims for payment and submits a reimbursement claim to RRB.

CONRAIL'S INTERPRETATION OF SOME TITLE V PROVISIONS IS NOW IN ARBITRATION

We noted instances where the title V provisions can be interpretated differently from Conrail's interpretation. Conrail's procedures and instructions usually conserve title V funds by reducing the amount of claims payable to employees. Following are two cases being decided by the board of adjustment, as provided by the Rail Act arbitration provision.

Conrail uses average rather than actual earnings to offset claims

For nonunion and certain union employees, Conrail uses average earnings rather than actual earnings to compute an MDA. Most union employees' claims are based on actual earnings, as specified in the Rail Act. The use of average earnings for nonunion and certain union employees has reduced the amount of claims paid to them.

The legislation could be interpreted to require that an MDA claim be calculated using an employee's actual monthly earnings. Specifically, the Rail Act states that:

> " * * * if an employee's compensation in his current position is less in any month in which he performs

work than the aforesaid average compensation, he shall be paid the difference, less any time lost on account of voluntary absences other than vacations * * *."

A Conrail official said that theoretically, a protected employee whose annual earnings equal or slightly exceed the annual guarantee could be paid an MDA for a relatively short work month, such as February. This is because the monthly guarantee was computed by dividing the annual guarantee by 12, which does not recognize that different months have different numbers of regular workdays. To negate this averaging effect and to reduce total MDA payments, Conrail uses average earnings instead of actual earnings to compute MDA claims of nonunion and some union employees.

Table 12 illustrates how MDA payments are reduced by using average instead of actual earnings for an employee whose earnings and guarantee are both $12,000 per year. The table shows that when average earnings are compared to monthly guarantee, the employee would not be eligible for an MDA payment. However, if actual monthly earnings are compared to the monthly guarantee, the employee would be eligible for MDA claims totaling $160.40.

Table 12

Comparison of MDA Amounts Computed by Using Average and Actual Monthly Earnings for a Theoretical Employee whose Annual Earnings and Guarantee are Both $12,000

Month	Number of workdays	Compensation on average pay basis	Actual monthly earnings	Monthly guarantee	MDA claim	
					Average earnings basis	Actual earnings basis
January	22	$ 1,000	$ 1,007.60	$ 1,000	$0	$ -
February	20	1,000	916.00	1,000	0	84.00
March	23	1,000	1,053.40	1,000	0	-
April	22	1,000	1,007.60	1,000	0	-
May	21	1,000	961.80	1,000	0	38.20
June	22	1,000	1,007.60	1,000	0	-
July	22	1,000	1,007.60	1,000	0	-
August	22	1,000	1,007.60	1,000	0	-
September	22	1,000	1,007.60	1,000	0	-
October	21	1,000	961.80	1,000	0	38.20
November	22	1,000	1,007.60	1,000	0	-
December	23	1,000	1,053.40	1,000	0	
Total		$12,000	$12,000.00	$12,000	$0	$160.40

Our review of MDA sample claims revealed that Conrail's use of this procedure to calculate claims resulted in a net reduction in MDA payments. Of claims we reviewed, 84 had been calculated using average rather than actual earnings. Table 13 shows that an additional $1,918.59 would have been paid in MDAs if actual earnings had been used to calculate the claim. A net reduction occurred even though 51 of the 90 actually received more money using average earnings and only 39 received less.

Table 13

Results of Sample Showing Effect When MDA Claims are Recalculated Using Actual Earnings Instead of Average Earnings

	Number of claims	MDA calculation using average pay	MDA calculation using actual monthly pay	Difference
	51	$10,366.35	$ 8,339.24	$2,027.11
	39	12,110.59	16,056.29	3,945.70
Total	90	$22,476.94	$24,395.53	$1,918.50

Conrail did not use total earnings as a claim offset for some employees

Conrail is computing MDA claims for certain clerical employees by discounting their earnings used to offset the claims rather than reducing the claim by the full amount earned. According to the hours principle, if a protected employee earns less than the average monthly compensation while working average monthly hours, the employee will be paid the difference between earnings and the guarantee. The difference in the hours principle is that any additional wages earned for time worked in excess of the average monthly time are not offset against the claim. Conrail informally agreed to use this procedure for processing claims of some clerical employees because of a union protest. The formal arbitration board is to rule on this issue. It could rule that the hours principle should be applied universally, which could increase MDA liability.

Although the Rail Act mentions both average monthly compensation and average monthly time paid, most claims are processed using total earnings as an offset regardless of the number of hours worked. In particular, the legislation states:

> "Said allowance shall be determined by computing the total compensation received by the employee, * * * and his total time paid for during the 12 full calendar months immediately preceding January 1, 1975 * * * and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and the average monthly time paid for; and, if an employee's compensation

in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less any time lost on account of voluntary absences other than vacations, but said protected employee shall be compensated in addition there to at the rate of the position filled for any time worked in excess of his average monthly time* * *."

Conrail has a number of clerks in one district whose MDA guarantees were computed based on an average monthly time of 174 hours or less. According to certain labor agreements, 174 hours is the minimum number of hours that a full-time, 8-hour a day employee can work in a month.

Because these employees now work more than 174 hours, they and their union leaders protested Conrail's practice of offsetting total earnings against their MDA claims and filed claims under the hours principle for the difference. The position of the employees and their union is that if an employee earns less than the average monthly compensation while working the same number of hours as the average monthly time, the employee should be paid the difference between those earnings and the guarantee. They feel that any additional wages paid for time worked in excess of the average monthly time should not be offset against the claim.

Conrail initially denied claim amounts calculated under the hours principle, but later agreed informally with the union leader to process claims under a variation of the hours principle. Conrail headquarters labor relations staff issued verbal instructions to one of its field supervisors to process claims from these particular employees using earnings applicable only to the average hours paid. However, the number of hours actually worked was to be computed by deducting paid sick time, paid holiday time, and the actual number of overtime hours worked from the total hours worked, not the number paid. Paid vacation time was to be considered as time worked.

Table 14, shows that since the amount of Conrail earnings is usually the largest offset to MDA claims, the application of the hours principle will reduce that offset and will result in a larger MDA payment or a MDA payment that otherwise would not have been made. The table shows 26 claims from eight clerks that were amended as a result of Conrail's informal agreement.

Table 14

Amended Claims Calculated under the Hours Principle Showing the Increased Liability

Employee	Number of claims	Original amount MDA paid	Excess earnings discounted due to recalculation under hours principle	Amended MDA amount	Increase liability
A	9	$1,113.67	$644.28	$1,757.95	$ 644.28
B	4	408.31	497.54	887.39	479.08
C	4	175.72	181.85	357.57	181.85
D	3	-0-	796.96	79.48	79.48
E	1	1,142.37	47.15	1,189.52	47.15
F	1	340.39	67.71	408.10	67.71
G	1	479.50	67.11	546.61	67.11
H	1	640.45	13.42	653.87	13.42
Total	26	$4,300.41		$5,880.49	$1,580.00

One field office is now processing MDA claims from 20 clerks, including the 8 listed above, according to the hours principle. If the arbitration board rules in favor of this procedure, all claims would have to be processed using it, thereby complicating claim verification and increasing liability.

CONCLUSIONS

Conrail overpaid some employees' title V claims and underpaid others. While the error rate was not large in relation to the number and dollar value of claims processed and paid by Conrail, some basic weaknesses exist in Conrail's system for processing and paying title V claims which need to be corrected. Conrail's internal audit does have responsibility for title V and at the time of our review had audited claims at two field offices for a limited period. However, we believe internal audit needs to increase its surveillance of the Title V Program by reviewing and evaluating internal controls to determine the specific causes of errors and what needs to be done to prevent or reduce errors.

We also identified several instances where the title V provisions could be interpreted differently from Conrail's interpretation. Conrail's procedures and instructions usually resulted in conserving the title V fund by reducing the amount of claims payable to employees. Of specific

note is the procedure to request RRB reimbursement before the employee's claim is paid.

RECOMMENDATIONS

We recommend that Conrail's internal auditors review the company's procedures and systems of internal controls for processing and paying title V claims to identify the specific causes of overpayments and underpayments and also to recommend what further checks and balances are needed to prevent or reduce errors in the future. Further, internal audit should more closely monitor the accuracy of claims processing in the future through a cyclical audit to ensure that procedures are being followed.

In addition, we recommend that Conrail revise its procedures to delay requesting reimbursement from RRB until after employees' title V claims have been paid.

AGENCY COMMENTS AND OUR EVALUATION

RECOMMENDATION THAT CONRAIL'S INTERNAL AUDITORS REVIEW THE COMPANY'S PROCEDURES AND CONTROLS FOR PROCESSING AND PAYING TITLE V CLAIMS AND PERFORM CYCLICAL AUDITS TO ENSURE THAT PROCEDURES ARE FOLLOWED

The draft we sent for comment recommended that Conrail's Chairman direct his internal auditors to review the company's procedures and system of internal controls for processing and paying title V claims to identify the specific causes of overpayments and underpayments and to recommend what further checks and balances are needed to prevent or reduce the occurrence of errors in the future. The report also recommended that the internal auditors should more closely monitor the accuracy of claims processing in the future through a cyclical audit to ensure that procedures are being followed.

Conrail stated that while some procedural deviations did occur, it felt that we had overstated the problem particularly given the overall error rate of 1.1 percent. Conrail said it has established programs to lessen these problems, such as periodic reviews of procedures with field offices, annual meetings of responsible field officers, and field spot checks.

While the rate of errors disclosed by our sample was not high, nevertheless we estimated that about $465,000 in overpayments and underpayments did occur during the 12-month period. Many of these payment errors resulted

from a failure to follow prescribed claim processing procedures; however, some were due to basic weaknesses in internal controls. At the time of our review, Conrail's internal auditors had performed only three audits at two field offices. Moreover, Conrail's external auditors had performed no audits of title V claim processing and payment. We believe Conrail's internal auditors should increase their surveillance of the Title V Program and should undertake cyclical audits at its field offices.

RECOMMENDATION THAT CONRAIL DELAY REQUESTING REIMBURSEMENT FROM RRB UNTIL EMPLOYEES' CLAIMS ARE PAID

Our draft report recommended that Conrail's Chairman ensure that the company revise its procedures to delay requesting reimbursement from RRB until after employees' title V claims have been paid. Conrail, commenting on our draft report, stated that it adopted this reimbursement procedure to prevent the company from having to use its own funds for title V payments. Conrail stated that initially it requested reimbursement for MDA claims after the payments were made to employees but that it later revised its procedure. We believe the procedure of seeking reimbursement from RRB for claims not actually paid is contrary to the Rail Act provisions. The law provides that Conrail and other employers shall pay employees' claims and then be reimbursed for the actual amount paid.

RRB and DOT did not comment on the recommendation.

APPENDIX I

OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

ASSISTANT SECRETARY
FOR ADMINISTRATION

SEP 18 1979

Mr. Henry Eschwege
Director
Community and Economic
Development Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

We have enclosed two copies of the Department of Transportation's (DOT) reply to the General Accounting Office (GAO) draft report, "Employee Protection Provisions Of The Rail Act Need Change."

The DOT generally agrees with the overall thrust of the GAO report that the present Title V program has produced results that Congress may not have either anticipated or intended when the legislation was adopted. The DOT welcomes the GAO's proposed amendments, and they will be given careful consideration as a Departmental position on Title V modifications is finalized.

If we can further assist you, please let us know.

Sincerely,

Edward W. Scott, Jr.

Enclosures

APPENDIX I

DEPARTMENT OF TRANSPORTATION REPLY

TO

GAO DRAFT OF A PROPOSED REPORT

ON

EMPLOYEE PROTECTION PROVISIONS OF THE RAIL ACT NEED CHANGE

SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

1. The Regional Rail Reorganization (3R) Act does not provide for adequate Federal administration and oversight of the Title V employee protection program. Congress should amend the Title V provisions of the 3R Act to assign to a Federal agency the responsibility to administer, control, and audit the Title V employee protection program. Because the eventual program cost is unknown but will exceed original estimates by a considerable amount (if the program is not restructured), the designated agency should also be required to make a complete and reliable estimate of Title V program costs as soon as practicable.

2. The law contains some provisions (and lacks others) which have produced program results that the Congress may not have envisioned or intended at the time the legislation was adopted. Accordingly, the Congress may want to revise the program so results will be more in line with original estimates. The recommended amendments are:

A. Suspend the provision which escalates annual employee compensation guarantees by the amount of any general wage increase. One approach would be to freeze all guarantees at the March 30, 1982 level, providing eligible employees six years of original program benefits.

B. Include a provision requiring an employee to file for monthly displacement allowance (MDA) benefits within a specified time period after the month he or she was adversely affected. A reasonable time period might be six months or one year.

C. Include a provision that would stop an employee's MDA payments in any year when earnings plus any MDAs reach his or her annual guarantee amount.

D. Include a provision requiring that the MDAs of laid-off employees be reduced by the full amount of any outside earnings which involve the same job skills.

E. Revise the law to permit Conrail to transfer surplus union employees skilled in certain kinds of work to job openings involving other skills. Also grant employers other than Conrail the same transfer rights with regard to all their protected employees.

F. Amend the law to ensure that union and non-union employees are provided equal protection and benefits in all cases including: (1) upgrading of monthly guarantees, (2) transfer procedures, and (3) payment of fringe benefits.

3. There appeared to be some basic weaknesses in Conrail's system for processing and paying Title V claims. While the error rate was not large in relation to the number and dollar value of the claims processed and paid by Conrail, Conrail should direct its auditors to review the company's procedures and system of internal controls for processing and paying Title V claims.

SUMMARY OF DEPARTMENT OF TRANSPORTATION POSITION

The DOT generally agrees with the overall thrust of the GAO report that the present Title V program has produced results that Congress may not have either anticipated or intended when the legislation was adopted. The DOT welcomes the GAO's proposed amendments, and they will be given careful consideration as a Departmental position on Title V modifications is finalized.

POSITION STATEMENT

With respect to the GAO recommendation that a Federal agency be made responsible for the administration, control, and auditing of the Title V employee protection program, certain aspects of the administration of Title V do appear to need strengthening. However, bringing the entire administrative function under a Federal agency would require a significant increase in Federal personnel and result in an unnecessary cost burden for the Government. The DOT therefore does not believe that a Federal agency should assume all Title V functions, but rather only oversight and audit responsibilities. For example, there does not appear to be any reason to transfer the actual payment of employee claims, now handled by Conrail staff, to a Federal agency, particularly if a Federal agency is given oversight and audit functions for the Title V program. In addition, DOT believes that the United States Railway Association (USRA) should be included as a logical choice for an agency to oversee and to audit the Title V program. As the organization whose primary function is to monitor all aspects of Conrail, including labor productivity, the USRA is already thoroughly familiar with Conrail labor relations, including the present Title V program.

With respect to freezing all guarantees at the March 30, 1982 level, the DOT agrees that this would ultimately reduce Federal liability as inflation and, consequently, employees' cost of living allowances and wages continue to rise. However, there are alternate methods of achieving the desired reduction in Federal liability. One example would be the elimination of an employee's overtime and arbitrary compensation from the calculation of the employee's monthly compensation guarantee. Another would be the termination of all Title V employee benefits at the end of a specified period of time, such as six years.

While DOT agrees in theory with the proposed modification that would stop an employee's MDA payments in any year when earnings plus any MDAs reach the employee's annual guarantee, in practice this could subject Conrail employees to possible overtime abuse. This is because, in addition to determining an employee's average monthly compensation guarantee by dividing an employee's total compensation received in the test period year by 12, the 3R Act also provides that the average monthly time an employee worked to earn this compensation is also determined by dividing the employee's total time paid for in the test period year by 12. The present program provides that only compensation received for time worked within the number of hours equating to the test period average monthly time can be credited against an employee's monthly compensation guarantee. If this provision were eliminated by adopting an annual guarantee, all of an employee's monthly earnings would be credited against his monthly compensation guarantee regardless of the number of hours worked. Thus, an employee could actually be adversely affected and placed on a job at a lower rate of pay, but if the employee had to work more hours than in the job the employee previously held at a higher rate of pay during the test period year, he would not receive an MDA (even though he was adversely affected) because his earnings would be more than the annual compensation guarantee. Furthermore, an employee does not have the option to decline the offer of additional hours since the compensation he would have received had he worked the hours is credited against his compensation guarantee.

The proposed amendment that would require the MDA of a laid-off employee to be reduced by the full amount of any outside earnings (instead of the present 50 percent) would be effective only if adopted in conjunction with the proposed modification that would allow Conrail to transfer surplus union employees in one craft to another craft after any necessary retraining. The 50 percent offset was included in the original legislation to provide displaced employees an incentive to seek outside employment. For an employee, displaced from Conrail, if 100 percent of the employee's outside earnings were credited against his monthly compensation guarantee, the employee would be encouraged not to work and thus would receive 100 percent of his monthly compensation guarantee in the form of an MDA. For example, under the current Title V program, if an employee with a $1000/month guarantee earns $1500/month in a job not subject to railroad retirement, 50 percent of the $1500 or $750 would be credited against

his $1000 guarantee. Thus, the employee would receive $250 in the form of an MDA, even though the employee received more total compensation than his monthly guarantee. However, if he had elected not to seek outside employment he would have received an MDA payment for $1000 instead of the $250. Consequently, if the craft transfer flexibility is not used in conjunction with the 100 percent offset, employees could be encouraged not to seek outside employment and thereby increase ultimate Federal Title V liability.

The statement in the GAO report that, to utilize the 100 percent offset, the outside job has to involve the same job skills as the employee's rail occupation appears to be unnecessarily restrictive. The individual skills of displaced rail employees are many and varied and attempting to equate skills used on one job with skills required on another could prove counterproductive to effectively using the 100 percent offset.

The GAO also criticized the present Title V provisions because protected employees continue to receive Title V protection benefits during periods of curtailed service due to snowstorms, strikes and other conditions over which Conrail has no control. However, the GAO did not suggest a modification to the present legislation to deal with this problem, and may want to do so.

APPENDIX II

CONRAIL

September 28, 1979

Mr. Henry Eschwege, Director
Community and Economic Development Division
U. S. General Accounting Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Eschwege:

This references your letter dated July 26, 1979 with which you furnished a copy of the "Draft of a Proposed Report" entitled "Employee Protection Provisions of the Rail Act Need Change."

Conrail sincerely appreciates the opportunity to review the report. Our reaction is that the draft report furnishes a comprehensive statement of the results produced by the employee protection provisions of the Regional Rail Reorganization Act of 1973, as amended, and also presents a fairly comprehensive study of Conrail's expenditure of funds from the Regional Rail Transportation Protective Account established under Section 509 of the Act.

The finding of an aggregate error rate of 1.1% in the twelve month period studied, conclusively shows that Conrail's administration of the program has been good, and that the administrative procedures Conrail has developed and implemented are sound and effective, particularly in light of the complexity and magnitude of the Title V program. Conrail further believes that the draft report clearly shows that the depletion of the fund was caused not by any maladministration of the program by Conrail but by the application of the provisions of the statute.

Although generally pleased with the overall draft report, Conrail desires to make comment on the following items. In Chapter 2, under the headings entitled "Assumed wage gains for union employees are most likely understated" and "Assumed level of business is less than forecast by Conrail Business Plan", it is alleged Conrail's forecasts of future Title V liability are weak because assumptions were not the same as the assumptions in the Corporation's Five Year Business Plan. The assumptions differ because (1) of the timing of the two reports and (2) the Title V forecasts involved a significantly longer study period than did the Business Plan.

CONSOLIDATED RAIL CORPORATION P. O. BOX 23451, WASHINGTON, D. C. 20024

The Title V forecasts were released January 12, 1979, while the 1979 Business Plan referred to was released March 15, 1979. At the time the Title V forecasts were released, the projections for the Five Year Business Plan were not finalized and therefore could not have been used even if it had been considered advisable to use them. Conrail does not feel such use would have been advisable since the Business Plan covered a 5 year period and the Title V forecasts a 40 year period.

In Chapter 2 and in Chapter 3 the draft report recommends that the Title V program be assigned to a Federal agency for oversight purposes, and that Congress require that Federal agency to make a complete and reliable estimate of the Title V program cost as soon as practicable. Conrail agrees that such a study should be undertaken.

With respect to assigning oversight responsibility to a Federal agency, Conrail asks that the precise extent of that agency's responsibility and authority be specifically stated in the statute. If the statute should be changed to provide that some Federal agency assume full responsibility for administering the Title V program, Conrail should be freed of all responsibility, the claims should be submitted to, processed and paid by the Federal agency, and all determinations regarding interpretations of the law and propriety of claims should be made by that agency.

However, if the Federal agency is to assume a supervisory function, making determinations and exercising control, while the actual work of receiving processing and paying claims is to be left to Conrail, then Conrail should be reimbursed for the administrative expenses incurred on behalf of the Federal agency. It should also be noted that a requirement to clear all questions of interpretation through a Federal agency will substantially increase the time period required to process and pay claims.

The draft report states that "Conrail has described Title V as the most complex legislation involving the application of unemployment type benefits". Conrail believes any review of other similar legislation or agreements providing for protective benefits in the event of an employee being deprived of employment or adversely affected with respect to compensation will fully support the statement. For example, Section 505(b)(1)(A) which requires an involved method of verifying employees' entitlements to benefits, is more difficult in its application than other similar unemployment compensation statutes.

In Chapter 4 and in its Conclusions and Recommendations the draft report notes that Conrail is requesting reimbursement from the RRB immediately after approving a claim, and in some cases was being reimbursed before the employee was actually paid his Title V payment.

Initially, Conrail requested reimbursement for MDA claims after the payments were made to employees. However, since this resulted in a considerable period elasping before Conrail received reimbursement, the procedure was changed in 1976 when programming was designed to expedite the verification process. At present, Conrail prepares a tape over the weekend for certification of MDA's keypunched for payroll input during the prior week. This certification is sent the following Monday or Tuesday, before employees are actually paid. However, by the time Conrail receives reimbursement, most of the employees have been paid.

Moreover, at times Conrail has temporarily devoted substantial company funds to Title V payments. Thus, on balance, Conrail has been in no way enriched by the occasional receipt of reimbursement prior to payment.

Comment is also made in the draft report that for some employees on leave of absence from Conrail and working full time for the Bost and Maine, Conrail only verified the mathematical accuracy of the claims.

In 1977, when Conrail began approving the claims of these employees the method of handling claims for monthly displacment allowances was thoroughly reviewed by Conrail's Title V Supervisor in New Haven with B&M representatives who intially handle the claims. Copies of Conrail's instructions were furnished to the B&M representatives and are followed in handling Title V claims. Copies of Conrail's CR12 claim form were furnished to the B&M and claims are being submitted on this form. Conrail's Title V Supervisor in New Haven maintains frequent contact with the B&M representatives who handle the claims. However, the validity of the claims is determined by B&M personnel, inasmuch as they compile and retain all records necessary for validation. Nowhere in the draft report is it noted that the current procedure has resulted in or invites an unacceptable level of errors. Nevertheless, Conrail is seeking to minimize errors through spot checks and other methods.

The draft report states "Conrail's administration procedures and instructions for processing claims not always followed".

While some procedural deviations did occur, Conrail believes this section of the draft report overstates the problem - particularly given the overall error rate of 1.1%. Moreover, Conrail has programs in place to mitigate this problem to the extent that it exists, such as periodic reivews of procedure with field offices; an annual meeting of responsible field officers; and field spot checks.

I wish to reiterate my thanks for your courtesy in permitting Conrail to review the draft report and comment on

it. Our Title V claim processing procedures have two objectives to protect the Federal government's investment and to pay claims as expeditiously as possible. We believe given the complexities involved, the draft report establishes that Conrail has performed a more than adequate job of interpreting and implementing the Title V provisions of the Act while at the same time protecting the Federal government's interests.

Very truly yours,

John L. Sweeney

John L. Sweeney
Senior Vice President

APPENDIX III

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

September 14, 1979

Mr. Gregory J. Ahart
Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Board appreciates the opportunity to comment on the draft.

Enclosed are the Board's comments on the draft report entitled, "Employee Protection Provisions of the Rail Act Need Change."

Sincerely yours,

FOR THE BOARD
R. F. Butler, Secretary

Enclosure

APPENDIX III

Comments on the GAO Draft Report Titled
"Employee Protection Provisions of the Rail Act Need Change"

Recommendations for Legislative Changes

1. Time Limit for Filing

The report recommends that a six-to-twelve-month time limit be placed on filing a monthly displacement allowance claim. Earlier this year, the Surveys and Investigations Staff of the House Committee on Appropriations recommended a three-to-six-month time limit. The Railroad Retirement Board agrees that a time limit should be established because it would be a step towards producing accurate budget and cost estimates for the Title V program. The Board prefers a six-month limit.

2. Single Agency Administration

The Railroad Retirement Board concurs with the recommendation that a single federal agency be charged with the responsibility for administering the Title V program. The Regional Rail Reorganization Act does not indicate Congressional intent to give any federal agency a legislative mandate to fund the program, consideration should be given to placing complete administration of Title V in a single agency. The agency should have the authority, personnel and funds to effectively administer the program.

The Comptroller General's Decision, B-114817, of August 2, 1976, placed responsibility for determining the propriety of protective payments made under Title V of the Regional Rail Reorganization Act of 1973 with the

Consolidated Rail Corporation, the United States Railway Association and the acquiring railroads. The Comptroller General's decision stated that the Board's sole responsibility is to reimburse carriers for protective payments made under the Act. Congress may wish to provide legislation which would resolve the apparent conflict of interest raised by the carriers' dual role of claimant for reimbursement and arbiter of the propriety of their claims. Lodging program policy and adjudication with a single federal agency would relieve the carriers of the responsibility of interpreting Title V.

To effectively administer Title V, the agency so empowered must have:

1. the authority to demand timely data from ConRail, the United States Railway Association and acquiring railroads on developments which impact the protective funds - specifically, data concerning the costs of tentative labor agreements, arbitration decisions, and manpower projections;

2. full authority for interpreting Title V and issuing policy guidance and instructions to insure that changes affecting the fund are communicated by the concerned parties as soon as possible; and

3. sufficient manpower and funding to administer the program.

Without the authority to gather the information needed to make accurate projections of protective account expenditures, the responsible agency can only react on an emergency basis as fund crises occur. Without the staff and budget necessary to exercise the authority granted, the agency will not be able to administer the program effectively.

The agency responsible for administering the program should report to Congress periodically on the status of the protective account, including the effects labor agreements, arbitration decisions and manpower adjustments may have on disbursements from the account.

3. Full Reduction for Outside Earnings

The Railroad Retirement Board has no objection to legislative changes to prevent the "windfall" benefits some employees are now receiving. When a protected employee secures non-railroad employment in his customary line of work, his monthly displacement allowance could be reduced by 100 percent of his earnings, rather than the 50 percent offset now provided in the law for earnings outside the railroad industry.

4. Reduce Coverage or Freeze Protection Levels

The Railroad Retirement Board neither opposes nor endorses the recommendation that the Act be amended either to set a time limit on the period of coverage or to freeze the annual guarantee amount as of a specified date. The Board does note, however, that while a lifetime guarantee may be unusual for federal protection programs, it is not unique in railroad labor-management agreements.

5. Suspend Payments When Total Income Equals Annual Guarantee Amount

The report recommends that payment of the displacement allowances be contingent not only upon the amount of earnings for each month but also upon the earnings for the year. As the report pointed out, an employee can be entitled to an allowance for one or more months even though his annual earnings exceed his annual guarantee amount. However, if annual earnings are to be a factor in determining entitlement to a displacement allowance, the employee's claims would have to be held until the end of the year. This would convert a monthly payment system to an annual payment.

6. Transfers to Jobs Requiring Other Skills

The report recommends that if an employee has no prospects for work with ConRail in his customary occupation, then ConRail should have the right to transfer him to another occupation. While the Board takes no position with respect to this recommendation, it appears that some limitations might be desirable. Under the present recommendation, a tug boat captain, for example, could be transferred to a job as a coach cleaner or track laborer. The Board suggests that the recommendation be modified to include consideration of the employee's age, education, past experience, and other similar factors so that the employee would be offered work which he is capable of performing and which is reasonably suited to his personal circumstances.

APPENDIX III

7. Give Acquiring Roads the Same Transfer Rights ConRail Has

The Board has no objection to this recommendation.

8. Equalize Treatment of Union and Non-Union Employees

The Board has no objection to this recommendation. However, it might be helpful to estimate the increased benefit costs of the proposal.

Comments Mentioning the Board

1. Recovery of Unemployment Benefits

The Board reaffirms its position that it is entitled to reimbursement for unemployment benefits paid to employees who later are paid monthly displacement allowances. This issue stems from an amendment made to Section 509 of the Regional Rail Reorganization Act on February 5, 1976 which added the provision that neither the protective account, ConRail, nor an acquiring railroad shall be charged for any amounts of benefits paid to protected employees under the provisions of the Railroad Unemployment Insurance Act.

If Section 2(f) of the Railroad Unemployment Insurance Act was not intended to apply to the monthly displacement allowances, the Board would never have paid unemployment benefits to the employees. Unemployment benefits are intended to provide income to employees who are out of work and who are not entitled to remuneration for their days of unemployment. Specifically, Section 1(k) of the Act provides that a "day of unemployment" means, among other things, a calendar day with respect to which no remuneration is payable or accrues to the employee.

Section 2(f) provides that the Board is to recover benefits paid to employees who later receive remuneration for their days of unemployment. In effect, the Board has the authority to "loan" benefits to employees until such time as they actually become entitled to and are paid remuneration for their days of unemployment. However, the Board does not have the authority to pay out benefits to protected employees and then take no steps to obtain a repayment of the "loaned" benefits.

The Board also is concerned that this issue may have arisen from a misunderstanding of the railroad unemployment insurance system. Unemployment benefits are provided by a tax on railroad employers. None of the benefits are funded by general Treasury revenues. Were the Board to pay benefits to a protected employee and then permit the employer to use those benefits as a credit against the monthly displacement allowance, the Board would be permitting railroad taxes to be used as a subsidy to the protective account. There is nothing in the history of Title V to indicate that such was the intent of Congress.

The Board recommends that Section 509 be amended to delete the language which has given rise to an opinion that it is in conflict with Section 2(f) of the Railroad Unemployment Insurance Act.

2. Cost Estimates

The Board recognizes that there are weaknesses in its estimate of the ultimate cost of the Title V program. However, the Board is concerned that the method recommended to produce a reliable estimate would require

APPENDIX III

substantial manpower and money. While the Board is not categorically opposed to the recommendation, we urge that you include in your report a statement of the magnitude of the resources that would be needed to do the job.

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