

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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FOR RELEASE OR DELIVERY
EXPECTED WEDNESDAY MORNING
APRIL 16, 1980

STATEMENT OF
HERBERT R. MCLURE, ASSOCIATE DIRECTOR
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION
GENERAL ACCOUNTING OFFICE

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BEFORE THE
SENATE SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE COMMITTEE ON COMMERCE,
SCIENCE AND TRANSPORTATION ✓
ON
THE [PROPOSED AMENDMENTS TO TITLE V OF
THE REGIONAL RAIL REORGANIZATION ACT OF 1973]

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

AS YOU REQUESTED, WE HAVE REVIEWED S. 2530 WHICH CON-
TAINS THE DEPARTMENT OF TRANSPORTATION'S (DOT'S) PROPOSED
CHANGES TO THE TITLE V EMPLOYEE PROTECTION PROVISIONS. WE
BELIEVE THE BILL WOULD SOLVE MANY OF THE PROBLEMS WE IDENTI-
FIED IN OUR DECEMBER 5, 1979 REPORT ENTITLED "EMPLOYEE PRO-
TECTION PROVISIONS OF THE RAIL ACT NEED CHANGE" (CED-80-16).
HOWEVER, WE BELIEVE THERE ARE SOME IMPORTANT AREAS OF CON-
CERN NOT ADEQUATELY ADDRESSED BY THE PROPOSED LEGISLATION.

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NEW ESTIMATE OF TITLE V
PROGRAM COSTS

AS WE POINTED OUT IN OUR DECEMBER 5 REPORT, ESTIMATES
OF HOW MUCH THE TITLE V EMPLOYEE PROTECTION PROGRAM WOULD
EVENTUALLY COST VARIED WIDELY, RANGING FROM \$884 MILLION TO
\$1.7 BILLION. WE FOUND VARIOUS PROBLEMS WITH THE ESTIMATING
PROCEDURES USED AND DID NOT FEEL THAT ANY OF THE ESTIMATES

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WERE RELIABLE. ACCORDINGLY, WE RECOMMENDED THAT THE CONGRESS REQUIRE A MORE CAREFULLY THOUGHT OUT ESTIMATE OF THE TITLE V LIABILITY BE CALCULATED. WE ALSO RECOMMENDED IN OUR REPORT THAT THE CONGRESS ASSIGN OVERSIGHT RESPONSIBILITY FOR THE TITLE V PROGRAM TO A FEDERAL AGENCY AND THAT THAT AGENCY WOULD BE A LOGICAL ONE TO DEVELOP THE ESTIMATE.

THE PROPOSED LEGISLATION INCLUDES AN ADDITIONAL AUTHORIZATION OF \$235 MILLION. ACCORDING TO THE FEDERAL RAILROAD ADMINISTRATION (FRA), THE ADDITIONAL \$235 MILLION AUTHORIZATION WAS BASED ON CONRAIL'S ESTIMATE THAT EMPLOYEE PROTECTION BENEFITS AS REVISED BY DOT'S AMENDMENTS WOULD COST \$213.2 MILLION UNDER CERTAIN ECONOMIC AND REGULATORY CONDITIONS, WITH A CONTINGENCY FACTOR OF ABOUT 10 PERCENT, OR \$21.3 MILLION THROWN IN. THE CONTINGENCY FACTOR WAS TO PROVIDE FUNDS FOR OTHER EMPLOYERS THAT HAVE FILED FOR EMPLOYEE PROTECTION UNDER THE ACT, AND TO PROVIDE A SMALL MARGIN FOR ERROR.

CONRAIL APPARENTLY AGREED TO PAY FOR ITS EMPLOYEE PROTECTION COSTS EXCEEDING THE ESTIMATE OUT OF ITS OWN REVENUES.

FRA REVIEWED CONRAIL'S ESTIMATE AND CONCLUDED IT WAS REASONABLE. FRA STATED IN TESTIMONY TO THE HOUSE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE ON FEBRUARY 21, 1980, THAT THE ESTIMATE WAS BASED IN PART ON THE ASSUMPTION THAT THERE WILL NOT BE A SEVERE BUSINESS DOWNTURN OR AN EXTENSIVE REDUCTION OF THE EXISTING CONRAIL SYSTEM. THESE ASSUMPTIONS APPEAR TO CONTRADICT CONRAIL'S PLANS FOR THE NEXT 5

YEARS AND THEIR 1980 BUDGET, WHICH CAUSES US TO BE SKEPTICAL THAT THE ADDITIONAL \$235 MILLION WILL BE ADEQUATE.

ON MARCH 10 OF THIS YEAR, WE ISSUED A REPORT TO THE CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE OUTLINING CONRAIL'S CAPITAL SPENDING PLANS THROUGH 1983 ("CONRAIL'S REDUCED CAPITAL PROGRAM COULD JEOPARDIZE THE NORTHEAST RAIL FREIGHT SYSTEM," CED-80-56). CONRAIL'S 5-YEAR BUSINESS PLAN DATED AUGUST 1, 1979, CALLED FOR REDUCED CAPITAL SPENDING DURING 1980 AND 1981, AND CATCH-UP SPENDING IN THE LATER YEARS. CONRAIL'S STRATEGY WAS TO STAY WITHIN THE CURRENT FEDERAL INVESTMENT LIMIT OF \$3.3 BILLION. THE KEY ASSUMPTION IN CONRAIL'S PLAN WAS THAT REGULATORY REFORM WILL MAKE IT POSSIBLE FOR CONRAIL TO EARN SUFFICIENT REVENUES TO REJUVENATE ITS CAPITAL PROGRAMS IN 1982.

CONRAIL HAS REDUCED ITS PLANNED CAPITAL SPENDING PROGRAMS FOR THE NEXT 2 YEARS BY ALMOST \$400 MILLION, REDUCTIONS THAT WILL SUBSTANTIALLY AFFECT MAINTENANCE-OF-WAY EMPLOYMENT LEVELS. FURTHER, CONRAIL'S STRATEGY FOR ACHIEVING FUTURE PROFITABILITY IS STRONGLY ROOTED IN REGULATORY REFORMS THAT WOULD PERMIT IT TO STOP PROVIDING SERVICE OVER A SUBSTANTIAL PART OF ITS SYSTEM, ANOTHER FACTOR THAT SEEMS LIKELY TO REDUCE CONRAIL'S EMPLOYMENT LEVELS AND INCREASE DEMANDS FOR EMPLOYEE PROTECTION PAYMENTS.

02/20/80 CONRAIL'S BUDGET FOR 1980, SUBMITTED TO THE U.S. RAILWAY ASSOCIATION (USRA) ON NOVEMBER 15, 1979, ANTICIPATED A SAGGING ECONOMY AND CONRAIL EXPECTED ITS PROJECTED LOSSES

TO INCREASE BY ABOUT \$100 MILLION. IT NOW SEEMS CLEAR THAT THE UNITED STATES IS ENTERING A RECESSION WHICH WILL AFFECT CONRAIL'S TRAFFIC LEVELS AND REVENUES, POSSIBLY ADDING TO ITS NEED FOR EMPLOYEE PROTECTION FUNDING. THESE FACTORS SEEM TO CONTRADICT THE ASSUMPTIONS UPON WHICH CONRAIL REPORTEDLY BASED ITS ESTIMATE.

NEVERTHELESS, IF CONRAIL IS WILLING TO ACCEPT RESPONSIBILITY FOR ITS EMPLOYEE PROTECTION COSTS THAT EXCEED ITS ESTIMATE, IT SEEMS LOGICAL TO BASE THE AUTHORIZATION ON THAT AMOUNT EVEN THOUGH WE THINK IT MAY BE LOW. WE DO NOT BELIEVE EMPLOYEE PROTECTION RESPONSIBILITIES WILL MAKE OR BREAK CONRAIL, AND IF CONRAIL IS NOT ABLE TO BECOME PROFITABLE IN THE NEXT FEW YEARS, A DIFFERENT SOLUTION TO NORTHEASTERN RAIL SERVICE AND MORE FEDERAL FUNDING WILL MOST LIKELY BE NEEDED ANYWAY. HOWEVER, WE ARE CONCERNED THAT A LOW ESTIMATE BY CONRAIL WILL UNFAIRLY PENALIZE THE OTHER EMPLOYERS SUBJECT TO THE TITLE V PROVISIONS, INCLUDING AMTRAK. IF CONRAIL'S ESTIMATE IS TOO LOW AND, AS A RESULT, IT GOBBLES UP ALL THE TITLE V FUNDING, THE OTHER EMPLOYERS WILL ALSO HAVE TO PAY FOR EMPLOYEE PROTECTION OUT OF THEIR OWN POCKETS. THEREFORE, WE SUGGEST YOU CONSIDER RESERVING 5 TO 10 PERCENT OF THE FUNDING FOR THE EMPLOYERS OTHER THAN CONRAIL.

LIMITING THE PERIOD OF
EMPLOYEE PROTECTION

THE EXISTING TITLE V PROVISIONS PROVIDE THAT AN EMPLOYEE WHO WAS WORKING FOR 5 OR MORE YEARS ON THE EFFECTIVE DATE OF THE RAIL ACT (JANUARY 2, 1974) IS ENTITLED TO EMPLOYEE PROTECTION BENEFITS UNTIL AGE 65, UNLESS THEY DIE, RESIGN, OR ARE 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 OLD WHEN THE RAIL ACT BECAME EFFECTIVE COULD BE ELIGIBLE TO RECEIVE BENEFITS FOR 40 YEARS. THE PROPOSED TITLE V MODIFICATIONS DO NOT CHANGE THIS PROVISION. WHEN THE CONGRESS PASSED THE RAIL ACT, IT HAD BEEN ADVISED THAT MOST OF THE PROTECTION PAYMENTS WOULD BE NEEDED FOR TERMINATION AND SEPARATION ALLOWANCES RATHER THAN FOR MONTHLY ALLOWANCES AND THAT THE \$250 MILLION FUND WOULD BE SUFFICIENT. BECAUSE MONTHLY ALLOWANCES HAVE CONSTITUTED THE BULK OF THE PROTECTION PAYMENTS AND HAVE INCREASED THE PROGRAM'S COST BEYOND ORIGINAL EXPECTATIONS, WE BELIEVE THE PROGRAM SHOULD BE LIMITED TO BRING IT MORE IN LINE WITH ORIGINAL INTENTIONS. ONE WAY TO DO THIS WOULD BE TO LIMIT PROTECTION TO A SPECIFIC PERIOD OF TIME. ANOTHER WAY WOULD BE TO FREEZE ANNUAL GUARANTEES. IF ANNUAL GUARANTEES WERE FROZEN, ESCALATING WAGES WOULD EXCEED GUARANTEES WITHIN A RELATIVELY SHORT TIME, THEREBY MAKING THE WORKING EMPLOYEE INELIGIBLE FOR A MONTHLY ALLOWANCE. ON THE OTHER HAND,

FULLY DISPLACED EMPLOYEES WOULD REMAIN ELIGIBLE FOR THE TYPE OF ASSISTANCE WHICH WAS APPARENTLY INTENDED IN THE RAIL ACT.

THE RAIL ACT PROTECTS EMPLOYEES MUCH LONGER THAN OTHER FEDERALLY ESTABLISHED EMPLOYEE PROTECTION PROGRAMS. THE PROGRAM DEVELOPED PURSUANT TO THE RAIL PASSENGER SERVICE ACT OF 1970, FOR EXAMPLE, HAD A 6-YEAR LIMIT. MORE RECENTLY, EMPLOYEE PROTECTION LEGISLATION FOR THE MILWAUKEE ROAD WAS PASSED IN NOVEMBER 1979 AND A BILL COVERING ROCK ISLAND EMPLOYEES IS NOW BEING CONSIDERED BY THE CONGRESS. BOTH OF THESE PROGRAMS LIMIT EMPLOYEE PROTECTION TO 3 YEARS.

FEDERALLY MANDATED EMPLOYEE PROTECTION PROGRAMS FOR OTHER INDUSTRIES ALSO HAVE SHORTER PROTECTION PERIODS THAN TITLE V. THE REDWOOD EMPLOYEE PROTECTION PROGRAM OF 1978, FOR EXAMPLE, LIMITED PROTECTION TO 6 YEARS FOR MOST EMPLOYEES.

WE RECOGNIZE THAT DOT'S PROPOSED CHANGES TO THE RAIL ACT WILL REDUCE THE SCOPE AND COST OF THE EMPLOYEE PROTECTION PROGRAM WHICH WAS ONE OF OUR INTENTS IN RECOMMENDING A TIME LIMIT FOR PROGRAM BENEFITS. HOWEVER, WE ALSO THINK THAT A MORE CONSISTENT FEDERAL APPROACH TO EMPLOYEE PROTECTION WITHIN THE RAIL INDUSTRY AND AMONG ALL INDUSTRIES IS DESIRABLE TO PROVIDE FAIR TREATMENT TO ALL WORKERS AFFECTED BY FEDERAL INTERVENTIONS. WE THEREFORE CONTINUE TO BELIEVE THAT A TIME LIMIT SHOULD BE PLACED ON THE BENEFITS PROVIDED UNDER THIS PROGRAM.

ASSIGNING RESPONSIBILITY FOR
MONITORING THE PROGRAM TO A
FEDERAL AGENCY

IN OUR DECEMBER 5 REPORT, WE CONCLUDED THE RAIL ACT DID NOT PROVIDE FOR ADEQUATE FEDERAL OVERSIGHT OF THE EMPLOYEE PROTECTION PROGRAM, AND RECOMMENDED THAT THE CONGRESS AMEND THE PROGRAM TO ASSIGN OVERSIGHT AND AUDIT RESPONSIBILITY TO DOT. DOT HAS PROPOSED THE RESPONSIBILITY BE ASSIGNED TO USRA. WE THINK DOT IS A BETTER CHOICE BECAUSE IT IS A PERMANENT PART OF THE EXECUTIVE BRANCH, WHEREAS USRA IS NOT A FEDERAL AGENCY AND IS APPARENTLY AN ORGANIZATION WITH A LIMITED LIFE EXPECTANCY.

RETRAINING PROVISIONS FOR MARINE
EMPLOYEES AND PENN TRUCK EMPLOYEES

DOT'S PROPOSAL WOULD ALLOW MARINE CRAFTS' EMPLOYEES AND UNEMPLOYED PENN TRUCK LINES, INC., WORKERS TO TRANSFER TO OTHER EMPLOYMENT CRAFTS OR CLASSES, AND PROVIDES FOR RETRAINING PROGRAMS TO MAKE THE CHANGES POSSIBLE. AS WE STATED IN OUR REPORT, WE BELIEVE THIS CHANGE IS NEEDED, BUT THINK IT SHOULD BE GENERALLY AVAILABLE RATHER THAN LIMITED TO THE TWO SPECIFIC WORKER CATEGORIES.

CLARIFYING HOW THE FUNDS
ARE INTENDED TO BE USED

AN AGREEMENT CONRAIL NEGOTIATED TO REDUCE THE SIZE OF ITS TRAIN CREWS PROVIDES FOR SEPARATION ALLOWANCES TO EMPLOYEES WHO GIVE UP THEIR JOBS AS A RESULT OF THE AGREEMENT. CONRAIL HAS BEEN USING TITLE V FUNDS TO PAY THESE SEPARATION ALLOWANCES. WE BELIEVE THE CONGRESS INTENDED

TITLE V TO PROTECT EMPLOYEES WHO WERE AFFECTED BY THE CONSOLIDATION ITSELF, AND NOT BY SUBSEQUENT, UNRELATED EVENTS.

CONRAIL AND THE UNITED STATES RAILWAY ASSOCIATION DO NOT AGREE WITH US. THEY BELIEVE TITLE V WAS INTENDED TO BE USED FOR PURPOSES SUCH AS THE SEPARATIONS RESULTING FROM THE AGREEMENT.

ALTHOUGH WE CONCLUDED CONRAIL'S USE OF THE FUND DOES NOT VIOLATE THE TERMS OF THE LAW, WE BELIEVE THE CONGRESS SHOULD CLARIFY ITS INTENT AS TO WHAT THE FUNDS MAY BE USED FOR. IF THE CONGRESS INTENDS THAT THE FUND BE USED FOR PURPOSES SUCH AS THE AGREEMENT TO REDUCE CREW SIZES, IT SHOULD MAKE THAT INTENT CLEAR.