



20 CFR Part 222

RIN 3220-AB79

Family Relationships

AGENCY: Railroad Retirement Board.

ACTION: Direct final rule; request for comments.

SUMMARY: The Railroad Retirement Board (RRB) amends its regulations to update who may qualify as an adopted child to be included in the computation of a railroad employee's annuity amount under section 3(f)(2) of the Railroad Retirement Act. The current regulation requires that a child adopted after the employee begins receiving an annuity must both live with the employee and receive one-half support from the employee. The amendment would eliminate this requirement for legally adopted children if the adoption proceedings commenced prior to the child attaining age 18. For adoptions commenced after the child attains age 18, the amendment would require only one of the above criteria to be met. This amendment is necessary to harmonize the RRB's regulations with the requirements of section 202(d)(8)(D) of the Social Security Act and section 3(f)(2) of the Railroad Retirement Act.

DATES: This rule becomes effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, the Railroad Retirement Board will publish a timely withdrawal of the rule in the *Federal Register*.

ADDRESSES: You may submit comments, identified by RIN 3320-AB79, through any of the following methods:

1. Internet – Send inquiries via e-mail to SecretarytotheBoard@rrb.gov
2. Fax – (312) 751-7102.

3. Mail – Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois, 60611-1275.

Do not submit the same comment multiple times or by more than one method. Regardless of which method you choose, please indicate that your comments refer to RIN number 3320-AB79.

Caution: You should be careful to include in your comments only information that you wish to make publicly available as comments are posted without change with any personal information provided. You are strongly urged not to include any personal information in your comments, such as Social Security numbers or medical information.

FOR FURTHER INFORMATION CONTACT: Peter J. Orlowicz, Senior Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-1275, (312) 751-4922.

SUPPLEMENTARY INFORMATION:

Background Information

The Railroad Retirement Act (RRA) provides monthly annuities for railroad employees based on age and years of service in the railroad industry. The RRA does not directly provide annuities for dependent children of living railroad employees. However, section 3(f)(2) of the RRA [45 U.S.C. 231b(f)(2)] guarantees that the annuity payable to an employee shall never be less than the amount which would have been payable to the employee under the Social Security Act (SS Act) if the employee's service was entirely covered by the SS Act. Because the SS Act does provide for annuities to dependent children of a wage earner under the SS Act, a railroad employee's annuity may be increased under section 3(f)(2) of the RRA when the employee has a dependent child who meets the definition of a child contained in section 216(e) of the SS Act [42 U.S.C. 416(e)]. The definition of "child" under section 216(e) of the SS Act includes adopted children and stepchildren of an individual, subject to certain limiting criteria.

Section 202(d)(1) of the SS Act [42 U.S.C. 402(d)(1)] provides that every child, as defined in section 216(e) of the SS Act, of an individual entitled to old-age or disability insurance benefits shall be entitled to a child's insurance benefit if the child was dependent upon

the individual, the child has filed an application for child's insurance benefits, and at the time of application the child was unmarried and either had not attained the age of 18 (age 19 if a full-time elementary or secondary school student) or was under a disability which began before the child attained age 22. Prior to December 19, 1989, a child had to both live with and receive one-half support from an individual to qualify as a dependent child. The current version of the RRB's regulations at 20 CFR 222.53 and 222.54 reflect this dual requirement.

On December 19, 1989, section 10301 of the Miscellaneous and Technical Social Security Act Amendments of 1989 [Pub. L. 101-239, title X, section 10301] amended section 202(d)(8)(D) of the SS Act [42 U.S.C. 402(d)(8)(D)] to allow legally adopted children to be deemed dependent on an individual receiving old-age or disability insurance benefits, regardless of residence or support, if the adoption was decreed by a court of competent jurisdiction within the United States and the adoption proceeding was commenced prior to the child attaining age 18. In the case of a child whose adoption was commenced after the child attained age 18, section 202(d)(8)(D) was amended to state the child shall be considered dependent if the child was either living with or receiving at least one-half of the child's support from the individual. Current regulations of the Social Security Administration at 20 CFR 404.362(b) are consistent with this amended requirement.

Regulatory Changes

We are amending §§ 222.53 and 222.54 of the RRB's regulations to reflect the statutory elimination of the residency and support requirements for children legally adopted prior to attaining age 18 to qualify for increases in the employee's annuity amount under section 3(f)(2) of the RRA, and to remove provisions that treat grandchildren or stepgrandchildren adopted as the children of an annuitant differently than other adopted children. Because a child legally adopted prior to attaining age 18 is considered a dependent child and is eligible for child's insurance benefits under section 202(d)(8)(D) and section 216(e) of the SS Act, section 3(f)(2) of the RRA requires that an employee's annuity must be increased accordingly when an employee

has adopted a child prior to that child attaining age 18. Furthermore, a child whose adoption was not commenced until after the child attained age 18 may still be considered dependent on an individual and qualify for child's insurance benefits if the child either lives with the individual or receives one-half support from the individual; the child need not meet both criteria. Accordingly, section 3(f)(2) of the RRA also requires that an employee's annuity must be increased when an employee has adopted a child after the child attains age 18 if the employee lives with the child or provides one-half of the child's support.

Prior to the Miscellaneous and Technical Social Security Act Amendments of 1989, the time period necessary for an adopted child to be dependent on an individual was different if the adopted child was also a grandchild or stepgrandchild of the individual than if the adopted child was not a grandchild or stepgrandchild of the individual. This distinction was eliminated in the Miscellaneous and Technical Social Security Act Amendments of 1989 because all adopted children whose adoptions were commenced prior to attaining age 18 were deemed dependent on the adoptive parents. Therefore, we are revising § 222.53 to reflect the absence of a residency or support requirement for children adopted prior to attaining age 18, to include a requirement of either residency or one-half support when a child's adoption proceedings were commenced after the child attained age 18 and removing § 222.54 entirely because we no longer have different rules for dependency when an adopted child is also a grandchild or stepgrandchild.

Regulatory Analysis

Executive Order 12866, as Supplemented by Executive Order 13563

The RRB, with the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

The RRB certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities because it only concerns benefit eligibility for

individuals and does not regulate or impose burdens on small entities as defined by the Regulatory Flexibility Act.

Paperwork Reduction Act

This direct final rule imposes no reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

List of Subjects in 20 CFR Part 222

Claims, Railroad retirement, Social security.

For the reasons set out in the preamble, the Railroad Retirement Board amends 20 CFR part 222 as follows:

PART 222—FAMILY RELATIONSHIPS

1. The authority citation for part 222 continues to read as follows:

Authority: 45 U.S.C. 231f

2. Revise § 222.53 to read as follows:

§ 222.53 When a legally adopted child is dependent – child adopted after entitlement.

A child who is not the employee's natural child or stepchild, and who is adopted by the employee after the employee could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), is considered dependent on the employee during the employee's lifetime only if –

(a) The child had not attained age 18 when adoption proceedings were commenced, and the child's adoption was issued by a court of competent jurisdiction within the United States; or

(b) The child had attained age 18 before adoption proceedings were commenced, the child's adoption was issued by a court of competent jurisdiction within the United States, and the child was living with or receiving at least one-half of the child's support from the employee for the year immediately preceding the month in which the adoption was issued.

§ 222.54 [Removed and Reserved]

3. Remove and reserve § 222.54.

Dated: May 28, 2024.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

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