



20 CFR Part 235

RIN 3220-AB78

Payment of Social Security Benefits by the Railroad Retirement Board

AGENCY: Railroad Retirement Board.

ACTION: Direct final rule; request for comments.

SUMMARY: The Railroad Retirement Board amends its regulations to add additional statutory conditions under which the Railroad Retirement Board will pay benefits certified to it by the Commissioner of Social Security. These updates are necessary to reflect the amendments to section 205(i) of the Social Security Act enacted by section 103(i)(3) of the Railroad Retirement and Survivors' Improvement Act of 2001 and section 843 of the Bipartisan Budget Act of 2015.

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-AB78, 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-AB78.

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. The Board strongly urges you not to include in your comments any personal information, 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:

Section 205(i) of the Social Security Act directs the Commissioner of Social Security, upon final decision of the Commissioner or upon final judgment of any court of competent jurisdiction that any person is entitled to payments under title II of the Social Security Act, to certify the name and address of the person entitled to payment, the amount of the payment, and the time at which payment should be made to the Managing Trustee of the Board of Trustees for the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund. The Managing Trustee is then directed to make the payments as certified by the Commissioner. 42 U.S.C. 405(i). However, for certain individuals defined in section 205(i), the Commissioner is instead directed to certify the payments to the Railroad Retirement Board, which shall provide for such payments to those individuals on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974.

In the Railroad Retirement and Survivors' Improvement Act of 2001, Congress amended the Railroad Retirement Act to allow individuals with less than ten years of railroad service to qualify for annuities under the Act if they had at least five years of railroad service, all of which accrued after December 31, 1995. Public Law 107-90 (Dec. 21, 2001). Section 103(i) of the Railroad Retirement and Survivors' Improvement Act of 2001 was a conforming amendment to section 205(i) of the Social Security Act, directing the Commissioner of Social Security to certify title II benefit payments to the Railroad Retirement Board for payment with respect to individuals who had five or more years of railroad service, all of which accrued after December

31, 1995. Accordingly, the Railroad Retirement Board is amending its regulations at 20 CFR 235.3 to reflect the Board's statutory obligation to pay title II benefits for railroad employees with at least 60 months of railroad service after December 31, 1995, the wife or husband of such an employee, a survivor of such an employee, and any other person entitled to title II benefits based on the social security wages of the railroad employee except survivors where the employee lacked a current connection with the railroad industry at the time of the employee's death.

Congress amended section 205(i) of the Social Security Act again in section 843 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015). Before these amendments, the Commissioner would certify (and the Board would pay) title II benefits to a divorced wife or husband of a railroad employee only if the divorced wife or husband claimed social security benefits based on the railroad employee's social security wages. Section 843 of the Bipartisan Budget Act of 2015 amended section 205(i) to provide that all divorced spouses of railroad workers with at least ten years of railroad service (or five years of service after December 31, 1995) would have their social security benefits certified to the Board for payment. Accordingly, the Railroad Retirement Board is amending its regulations at 20 CFR 235.3 to reflect the Board's statutory obligation to pay title II benefits for divorced wives and husbands of railroad employees if the railroad employee has at least 120 months of railroad service (or 60 months of railroad service after December 31, 1995).

Finally, the authority citation for part 235 does not currently reflect that the statutory authority for the Board to pay benefits certified by the Commissioner flows from section 205(i) of the Social Security Act. Accordingly, the Railroad Retirement Board is amending the authority for part 235 to include 42 U.S.C. 405(i).

This direct final rule is being issued without prior public notice or opportunity for public comments. The Board does not anticipate this rule will generate adverse comment, and the effective date of the rule is conditional on the non-receipt of adverse comments. If the Board

receives significant adverse comments prior to the effective date of this direct final rule, the Board will publish a timely notice in *the Federal Register* to withdraw the rule.

Regulatory Analysis

Executive Order 12866, as Supplemented by Executive Order 13563

The Board, 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 Board certifies that this direct final rule would not have a significant economic impact on a substantial number of small entities because it affects only a change in the disbursing agent for already-existing benefits.

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 235

Railroad retirement, Social security.

For the reasons set out in the preamble, the Railroad Retirement Board amends 20 CFR part 235 as follows:

PART 235—PAYMENT OF SOCIAL SECURITY BENEFITS BY THE RAILROAD RETIREMENT BOARD

1. The authority citation for part 235 is revised to read as follows:

Authority: 42 U.S.C. 405(i), 45 U.S.C. 231f.

2. Revise and republish § 235.3 to read as follows:

§ 235.3 Who is paid social security benefits by the Board.

The following individuals, if entitled to social security benefits, are paid such benefits by the Board:

(a) A railroad employee who has been credited with at least 120 months of railroad service (or at least 60 months of railroad service, all of which accrue after December 31, 1995);

(b) A wife or husband of a railroad employee who has been credited with at least 120 months of railroad service (or at least 60 months of railroad service, all of which accrue after December 31, 1995);

(c) A divorced wife or husband of a railroad employee who has been credited with at least 120 months of railroad service (or at least 60 months of railroad service, all of which accrue after December 31, 1995);

(d) A survivor of a railroad employee, including a surviving divorced spouse, remarried widow(er), surviving divorced mother or father, who is entitled, or upon application would be entitled, to an annuity under the Railroad Retirement Act; and

(e) Any other person entitled to benefits under title II of the Social Security Act based on the social security wages of a railroad employee who has been credited with at least 120 months of railroad service (or at least 60 months of railroad service, all of which accrue after December 31, 1995), except survivors of a railroad employee when the Social Security Administration has jurisdiction for survivor benefits. See part 221 of this chapter.

Dated: May 28, 2024.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.