



RAILROAD RETIREMENT BOARD

20 CFR Parts 216 and 222

RIN 3220-AB84

Eligibility For an Annuity and Family Relationships

AGENCY: Railroad Retirement Board.

ACTION: Direct final rule.

SUMMARY: The Railroad Retirement Board amends its regulations to remove facially unlawful provisions that define when the spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) of a railroad employee may receive an annuity under the Railroad Retirement Act for having the employee's minor child in care. As currently written, the regulations treat male spouses less favorably than female spouses by terminating annuity entitlement when the child turns age 16 instead of age 18 as for female spouses. If enforced, this disparity would violate the right to equal protection secured by the Due Process Clause of the Fifth Amendment to the United States Constitution.

DATES: This rule is effective [INSERT 45 DAYS FROM DATE OF PUBLICATION] without further action, unless adverse comment is received by [INSERT 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.

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

SUPPLEMENTARY INFORMATION: Sections 2(c) and 2(d) of the Railroad Retirement Act, 45 U.S.C. 231a(c) and (d), provides for annuities to be paid to the wife,

divorced wife, widow, surviving divorced wife, and remarried widow of a railroad employee if such person has the employee's child in care. Although the text of the Act does not provide for such annuities for husbands, divorced husbands, widowers, surviving divorced husbands, or remarried widowers who have the employee's child in care, the Supreme Court held in *Weinberger v. Wiesenthal*, 420 U.S. 636 (1975) that identical sex-based distinctions mandated by the provisions of the Social Security Act unjustifiably discriminated against female wage earners in violation of the right to equal protection secured by the Due Process Clause of the Fifth Amendment to the United States Constitution. Accordingly, the Board extends eligibility for such annuities to both male and female spouses who otherwise meet the eligibility criteria in the Act.

Although eligibility for railroad retirement annuities is controlled by the Railroad Retirement Act, the Act requires many calculations and definitions through reference to provisions of the Social Security Act. Beginning in 1981, the Board attempted to resolve a conflict between eligibility criteria in the Railroad Retirement Act and calculations of annuities guided by the Social Security Act by terminating child-in-care benefits when the child turned age 16, rather than age 18. This interpretation was successfully challenged on judicial review in several federal circuit courts. *Costello v. United States R.R. Retirement Bd.*, 780 F.2d 1352 (8th Cir. 1985); *Johnson v. United States R.R. Retirement Bd.*, 925 F.2d 1374 (11th Cir. 1991); *Johnson v. United States R.R. Retirement Bd.*, 969 F.2d 1082 (D.C. Cir. 1992). Nevertheless, the Board revised its regulations in 1989 and 1991, inserting into 20 CFR §§ 216.51, 222.17, and 222.18, without explanation, that a child in care meant a child under age 18, except with respect to male spouses, divorced spouses, surviving divorced spouses, or remarried widower annuities, when it meant a child under age 16. 54 FR 42949 (Oct. 19, 1989); 56 FR 28692 (Jun. 24, 1991). It is unclear whether the Board ever attempted to enforce this distinction

when making benefit payments, but it is not the Board's current policy or practice to apply sex-based distinctions between claimants for an annuity based on having the railroad employee's minor child in care.

As part of its review of regulations directed by Executive Order 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (Feb. 19, 2025), the Board identified these provisions distinguishing between male and female annuitants as unconstitutional and in direct conflict with the Supreme Court's decision in *Wiesenthal*. In accordance with the Presidential memorandum of April 9, 2025, directing the repeal of unlawful regulations, the Board is amending its regulations to remove this facially unlawful distinction. Pursuant to the memorandum, notice and comment proceedings are unnecessary when repeal is required as a matter of law to ensure consistency with a ruling of the Supreme Court. Therefore, no comments are being requested.

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 individuals.

Paperwork Reduction Act

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

List of Subjects

20 CFR Part 216

Railroad retirement, reporting and recordkeeping requirements.

20 CFR Part 222

Claims, railroad retirement.

For the reasons stated in the preamble, the Railroad Retirement Board amends 20 CFR parts 216 and 222 as follows:

PART 216—ELIGIBILITY FOR AN ANNUITY

1. The authority citation continues to read as follows:

Authority: 45 U.S.C. 231f.

§ 216.51 [Amended]

2. Amend § 216.51 by removing the phrase “disabled child or minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee” where it appears in paragraphs (b)(2), (c)(2), and (d)(2) and add, in its place, the phrase “child of the employee who either is under age 18 or is disabled”.

PART 222—FAMILY RELATIONSHIPS

3. The authority citation continues to read as follows:

Authority: 45 U.S.C. 231f.

§ 222.17 [Amended]

4. Amend § 222.17 by removing the parenthetical “(16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities)” where it appears in paragraphs (b), (c), and (d).

§ 222.18 [Amended]

5. Amend § 222.18 by removing the parenthetical “(16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities)” where it appears in paragraphs (a)(2) and (a)(3).

Dated: September 8, 2025.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

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