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## RAILROAD RETIREMENT BOARD

### 20 CFR Part 206

RIN: 3220-AB56

#### Account Benefits Ratio

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) amends its regulations to add a new part to explain how it will compute the account benefits ratio. The Railroad Retirement and Survivors' Improvement Act of 2001 amended the Railroad Retirement Act to require that on an annual basis the Board compute an account benefits ratio for the most recent 10 preceding fiscal years and a projection of the account benefits ratio for the next 5 succeeding fiscal years. In determining the account benefits ratio, the Board has interpreted several terms utilized in that computation. Since the account benefits ratio will be used to determine the tier II tax rate for calendar years after 2003, the Board is issuing this regulation to clarify how we will compute the account benefits ratio.

**DATES:** This final rule is effective August 26, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092, (312) 751-4945, TDD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** Effective for calendar years after 2003, the tier II tax rate will be determined in accord with a formula that relies on the average account benefits ratio. See section 3241 of the Internal Revenue Code as amended by section 204 of Public Law 107-90. The Board has decided to set forth how it will compute the account benefits ratio so that all parties, rail labor, rail management and the public, will be aware of how we intend to compute the account benefits ratio. Part 206 of the Board's regulations deals with the manner by which the account benefits ratio will be computed. Section 206.1 contains definitions of the terms that are used to compute the account benefits ratio. In making these calculations, the Board based its definitions on the language of the

statute and the purpose of computing the account benefits ratio.

The term "total benefits and administrative expenses paid" is computed on a cash basis, since the use of the word "paid" demonstrates that the computation should be made on a cash basis. In addition, "total benefits paid" is computed on the basis of net benefits paid, *i.e.*, the gross benefits paid in a particular fiscal year minus any benefit overpayments actually recovered in that fiscal year. The purpose of computing the account benefits ratio is to ensure that there are adequate funds to pay benefits due under the Railroad Retirement Act. Using net benefits paid more accurately reflects the amount of benefits paid in a given year.

The term "assets" is defined in the regulation as the total of the market value of all cash and investments held in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefit Account). Excluded from "assets" is the amount of accounts receivable. While a receivable may be viewed as an asset under certain circumstances, the language of the Railroad Retirement and Survivors' Improvement Act of 2001 leads the Board to conclude that Congress did not contemplate inclusion of accounts receivable in the computation of the account benefits ratio. By providing that the computation is to be made based on the fair market value of the assets in the Investment Trust and the accounts, Congress signaled that the computation should be made based on the amount of cash and the value of investments in the Investment Trust and the accounts. Moreover, disregarding accounts receivable in computing the account benefits ratio is consistent with the cash basis being used to determine total benefits and administrative expenses paid in a given fiscal year.

The term "administrative expenses paid" is also defined in the regulation. All Railroad Retirement Board administrative expenses are currently paid from a single administrative account. The only amounts recorded in the Railroad Retirement Account are "cash transfers" to that administrative account. The amount used for calculating the administrative expenses paid will be the amount of those cash transfers from the Railroad Retirement Account in each fiscal year. Also included in total administrative expenses will be those amounts transferred from the Railroad Retirement Account to the Limitation on the Office of Inspector General. The expenses of the Inspector General are appropriate

railroad retirement program expenses that must be considered in determining total administrative expenses. Finally, the administrative expenses of the National Railroad Retirement Investment Trust will also be included in this term.

#### Collection of Information Requirements

This rule does not impose additional information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

#### Regulatory Impact Statement

Prior to publication of the proposed rule, the Board submitted this rule to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of \$100 million or more annually. The proposed rule was not a major rule in terms of the aggregate costs involved. The costs associated with the addition of a new part to the Board's regulations are administrative in nature, and include the costs associated with drafting and publishing the regulation as a proposed and then a final rule. We have determined that this final rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of \$100 million or more per year.

OBM determined that the final rule did not need to be reviewed again under Executive Order 12866. Part 206 explains how the Railroad Retirement Board will compute the account benefits ratio in accordance with sections 108 and 204 of the Railroad Retirement and Survivors' Improvement Act of 2001. The purpose of the regulation is to provide a written explanation so that all parties, rail labor, rail management, and the public, will be aware of how the Board intends to compute the account benefits ratio. Thus, the final rule will benefit the agency's constituents, who will be aware of how the account benefits ratio is computed.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the

definition of "agency" contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

This rule was published as a proposed rule on December 18, 2002 (67 FR 77447). The proposed rule invited the public and interested parties to comment on the proposed rule. No comments were received.

#### List of Subjects in 20 CFR Part 206

Railroad retirement.

■ For the reasons set out in the preamble, the Railroad Retirement Board adds a new Part 206 to Title 20, chapter II of the Code of Federal Regulations to read as follows:

#### PART 206—ACCOUNT BENEFITS RATIO

Sec.

206.1 Definitions.

206.2 Computations.

**Authority:** 45 U.S.C. 231f(b)(5); 45 U.S.C. 231u(a).

##### § 206.1 Definitions.

Except as otherwise expressly noted, as used in this part—

*Account benefits ratio* means the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years prior to 2002, the Social Security Equivalent Benefit Account) as of the close of each fiscal year by the total benefits and administrative expenses paid from those accounts during the fiscal year.

*Administrative expenses paid* means the amount of the cash transfers from the Railroad Retirement Account to the agency's single administrative fund.

Also included in this term is the amount of the cash transfers from the Railroad Retirement Account to the Limitation on the Office of Inspector General and the administrative expenses paid by the National Railroad Retirement Investment Trust.

*Assets* means the market value of cash and investments in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefit Account).

*Average account benefits ratio* means for any calendar year, the average of the account benefits ratio for the 10 most recent fiscal years ending before such calendar year. If the amount computed is not a multiple of 0.1, such amount shall be increased to the next highest 0.1.

*Total benefits paid* means the total amount of benefits paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust in a fiscal year minus any benefit overpayments actually recovered during that fiscal year.

##### § 206.2 Computation.

(a) On or before November 1, 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratios for each of the most recent 10 preceding fiscal years; and

(2) Certify the account benefits ratio for each such fiscal year to the Secretary of the Treasury.

(b) On or before November 1 of each year after 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratio for the fiscal year ending in such year; and

(2) Certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) No later than May 1 of each year, beginning 2003, the Board shall compute its projection of the account benefits ratio and the average account benefits ratios for each of the next succeeding 5 fiscal years.

Dated: August 19, 2003.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AF37

#### Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of "Special Profile" Into Regulations

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** For purposes of this document, "we," "our," and "SSA" refer to the Social Security Administration and State agencies that make disability determinations for the Social Security Administration. "You" and "your" refer to individuals who claim benefits from the Social Security Administration based on "disability."

In this final rule we clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. This includes our rules about when we assess your residual functional capacity (RFC) and how we use this RFC assessment when we decide whether you can do your past relevant work or other work. These clarifications address issues of responsibility raised by some courts in recent cases; clarify that we may use vocational experts (VEs), vocational specialists (VSs), or other resources to obtain evidence we need to help us determine whether your impairment(s) prevents you from doing your past relevant work; add a special provision to our rules stating that, if you are at least 55 years old, and specific other circumstances are present, we will find that you are disabled; and make a number of minor editorial changes to clarify and update the language of our rules, and to use simpler language in keeping with our goal of using plain language in our regulations.

**DATES:** These rules will be effective September 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Martin Sussman, Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-1767 or TTY 800-966-5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 800-772-1213 or TTY 800-325-0778, or visit our Internet Web site,