



A bold voice for transportation workers

April 26, 2016

Mr. Charles Mierzwa
Chief of Information Resources Management
Railroad Retirement Board
844 North Rush Street
Chicago, Illinois 60611

**RE: Railroad Retirement Board Revised Forms
Information Collection Request
Docket No. 2016-04287**

Dear Mr. Mierzwa,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write to comment on the Railroad Retirement Board's (RRB) proposed renewal and revision of its AA-1 and AA-1d forms. By way of background, TTD consists of 32 affiliated unions that represent workers in all modes of transportation, including those employed in the railroad industry.¹ We therefore have a vested interest in this proceeding.

The railroad retirement system provides critical retirement, unemployment, disability and survivor benefits to several hundred thousand railroad employees, retirees and their families. These benefits are earned by rail workers through years of hard work and play a crucial role in sustaining workers' livelihoods after retirement or in times of need. Given the importance of these benefits, TTD supports RRB's efforts to ensure that the program remains strong and operates effectively.

In this notice, RRB requests comments on revisions to several forms that are due for renewal. These include AA-1, the form workers file at the time of retirement to begin receiving monthly annuity benefits, and AA-1d, the form workers must complete in order to receive disability annuities. RRB states that it is making revisions to these forms in order to enhance and improve case processing and overall program integrity.

TTD appreciates the utility of these forms – to collect information that RRB needs to determine whether applicants are eligible to receive certain benefits. And while we recognize the need to collect information in order to process benefit requests and ensure program integrity, we object to the inclusion of several proposed new questions which are invasive and do not assist

¹ Attached is a complete list of TTD's 32 affiliated unions.

Transportation Trades Department, AFL-CIO

815 16th Street NW / 4th Floor / Washington DC 20006

Tel 202 628 9262 / Fax 202 628 0391 / www.ttd.org

Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



examiners in determining whether an applicant is eligible for benefits. We are concerned that replies to these questions are unnecessary and could be used to unfairly deny benefits to workers. However, should RRB determine that such questions must be included in the revised forms, we urge the agency to address the issues we describe below.

AA-1

Question 35

With regard to form AA-1, Question 35 previously asked if an individual was giving up seniority rights, or the right to return to work. The proposed revision adds a series of questions asking why someone is giving up seniority rights. There are many reasons why providing this information could be problematic, including that workers may not have the information necessary to provide an accurate response, or, in cases of retaliatory termination, workers applying for benefits may provide different responses than their employers. As a result, an examiner could be influenced by inaccurate or conflicting information. Further, for workers applying for disability benefits, the cause behind their decision to waive seniority rights has little to do with the determination of whether they qualify for disability benefits. We are concerned that requiring workers to provide this unnecessary information will lead to workers being denied benefits.

AA-1d

Question 36-37

The revised form adds new questions addressing workers' volunteer and recreational activities. Workers are requested to provide information about the type of volunteer work they perform and the social and recreational activities they engage in, as well as the number of hours they spend doing both. If these questions remain on the form, it is imperative that examiners consider the applicant's specific impairment when weighing this information and understand that impairments may not affect the ability of an employee to participate in some recreational activities. An individual's participation in these activities must not be used as an automatic denial for disability benefits.

Question 52-53

Questions 52 and 53 are new questions that deal with sickness benefits and injury claims. Specifically, these questions ask workers if they have applied for sickness benefits because of a work-related injury or sickness, and whether they expect to file a lawsuit or claim for injuries. We are concerned that providing this information could unfairly penalize workers if their medical examiner holds a bias against claims or lawsuits. Rail workers injured on the job must continue to have access to legal recourse for legitimate injury claims without concern for whether their case or lawsuit will impact their request for RRB disability benefits.

Question 63

This question asks workers whether a non-family member facilitator, such as an attorney, assisted them in completing the form. Workers are permitted to use facilitators to file the form and many seek an attorney's support to better understand the form or because a physical impairment requires additional assistance. We urge RRB to ensure that affirmative responses to this question do not automatically cast doubt on the legitimacy of workers' disability claims. For

many, a facilitator is required in order to submit these forms accurately, and workers should be able to do so without fear of unfair scrutiny because of their need for assistance.

When gathering information from railroad workers and retirees, RRB must ensure that it uses this data appropriately. Worker replies to these forms must only be used for their proposed purposes and not to unfairly deny workers their earned benefits.

We appreciate the opportunity to comment on the proposed form changes, and we look forward to working with RRB on future issues concerning railroad workers and retirees.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a large, loopy initial 'E'.

Edward Wytkind
President



Transportation Trades Department, AFL-CIO
A bold voice for transportation workers

TTD MEMBER UNIONS

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal, Air, Rail and Transportation Workers (SMART)
SMART-Transportation Division
Transportation Communications Union/ IAM (TCU)
Transport Workers Union of America (TWU)
UNITE HERE!
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)

These 32 labor organizations are members of and represented by the TTD





UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
OFFICE OF PROGRAMS/POLICY & SYSTEMS
844 NORTH RUSH STREET
CHICAGO, IL 60611-1275
WWW.RRB.GOV

OFFICE HOURS: M-T-TH-F 9:00 AM TO 3:30 PM
WEDS. 9:00 AM TO 12:00 PM - CLOSED FEDERAL HOLIDAYS

TOLL-FREE NUMBER: 1-877-772-5772

June 23, 2016

Transportation Trades Department, AFL-CIO
Edward Wytkind, President
815 16th Street NW
4th Floor
Washington, DC 20006

Dear Mr. Wytkind:

This letter is in response to your comments dated April 26, 2016 regarding proposed changes to the Railroad Retirement Board's (RRB) Forms AA-1, *Application for Employee Annuity* and AA-1d, *Application for Determination of Employee's Disability*.

In order to improve program integrity in the RRB's disability program, the RRB has made significant enhancements to Forms AA-1, *Application for Employee Annuity* and AA-1d, *Application for Determination of Employee's Disability* based on suggestions from the RRB's Inspector General (IG). The IG suggested that the RRB: 1) require an explanation describing the circumstances of separation from railroad employment such as voluntary relinquishment of position through retirement, injury, etc.; 2) capture details regarding volunteer work activities; 3) capture details regarding injury and pending claims; and 4) require a statement disclosing whether a facilitator or an attorney was used to complete or aid in the completion of a current application. These changes along with other significant form enhancements, were published in the Federal Register on February 26, 2016 for review and comment.

The comments submitted identified specific issues with some of the proposed changes. Those comments are addressed in detail below. We appreciate you taking the time to review the forms and prepare your comments. We hope the following information will answer the questions you raised and address your concerns.

Form AA-1, Question 35 a-d

Under existing policy, when an employee applicant files Form AA-1, we collect information pertaining to the employee giving up his/her seniority and other rights to return to work if the employee is filing for an age and service annuity. This information is obtained because in order to be eligible for an annuity, an age and service applicant must relinquish his or her rights to return to railroad work. A disability applicant is not required to relinquish rights in order to receive an annuity and therefore application instructions currently provide that disability applicants should not complete those items related to relinquishment of rights. The proposed revision would require all employee applicants to answer questions related to the relinquishment of rights, as well as provide an explanation as to why such rights were relinquished.

The majority of the Board approved implementing this change, which was originally suggested by the RRB's IG in relation to a disability fraud scheme perpetrated on the agency. The annuitants

involved in the fraud scheme were also entitled to a private pension from their railroad employer and by combining the two benefits, the annuitants were able to equal their income from work activity. Though these individuals were not required to relinquish their rights for purposes of entitlement to a disability annuity, they were required to do so in order to receive the pension from their employer. The proposal of the additional information in Question 35 was to be able to monitor RRB records to detect and prevent similar fraud schemes in the future. However, included among the enhancements to Form AA-1 is the renaming of a section which asks questions regarding entitlement to private pensions. (See Section 16 of the proposed Form AA-1.). Taking this into consideration, the Board has agreed to remove question 35 since the question is superfluous to other questions on Form AA-1.

Form AA-1d, Questions 36-37

Under existing policy, the RRB has the authority to ask a disability applicant to provide evidence about his or her daily activities, both before and after the date the applicant says that he or she became disabled. See 20 C.F.R. § 220.45(b)(4). On the existing Form AA-1d, questions in Section 6 seek this information. The proposed revision to Section 6 adds questions regarding the performance of volunteer work and social/recreational activities. This additional information will serve to supplement information currently requested.

We agree with you that participation in social and recreational activities should never be the basis for an automatic denial of an application for a disability benefit. The RRB does not deny an application for disability benefits based on an individual participating in volunteer work and/or social/recreational activities and will not do so in the future. Participation in such activities is only one of many factors evaluated when adjudicating an application for a disability annuity and such participation does not preclude a disability allowance. This is routinely demonstrated in occupational disability cases. For example, if an employee develops a hearing loss, the employee may be considered occupationally disabled yet is fully capable of performing other social or recreational activities, such as gardening, riding a bicycle or taking care of grandchildren.

Form AA-1d, Questions 52-53

Under section 12(o) of the Railroad Unemployment Insurance Act, if sickness benefits are paid as a result of an injury, the RRB is entitled to reimbursement from any sum or damages paid or payable to the employee, regardless of liability. Information regarding injuries and damages is currently requested on the RRB's Form SI-1a, *Sickness Benefit*. However, if an employee does not anticipate that a lawsuit will be filed at the time of completing Form SI-1a, and then later receives damages, the sickness benefits can go uncollected. Questions 52-53 were added to Form AA-1d for the RRB to receive appropriate reimbursement in those situations.

You express concern that obtaining the requested information could result in unfairly penalizing an applicant for a disability annuity if the individual processing the claim has a bias against claims or lawsuits, or causing an applicant to fear their lawsuit will impact their request for a disability annuity. We can assure you that disability determinations will continue to be made based upon all evidence in the file, including relevant medical and vocational information. Upon further review of RRB's proposed changes to the forms, we recognized that the potentially "uncollected sickness benefits" scenario is not limited to a disability applicant, and can also apply to someone who opts not to file for disability, but instead to file for age and service. Therefore, we are relocating questions 52 and 53 to Form AA-1, *Application for Employee Annuity*.

Form AA-1d, Question 63

Under existing policy, the RRB does not inquire nor maintain information on whether an applicant has had assistance from someone in completing an application. The proposed changes will require the disability applicant to disclose if they had assistance from a non-family member in completing the form, the name and address of this individual providing the assistance, and indicate if they paid a fee for the assistance. You express concerns that applicants who use facilitators or seek an attorney's support in better understanding the application forms will be subject to unfair scrutiny simply because they sought assistance in completing the forms.

While the RRB has trained and knowledgeable staff to assist those filing for disability annuities, we agree that use of facilitators or attorneys is acceptable. We also agree that individuals should not be subject to unfair scrutiny simply because they sought the assistance of counsel or another individual in completing an application. However, in recent years, Federal disability programs have experienced financial losses due to some fraud schemes which have included as an element the use of compensated facilitators. The RRB proposes to collect information on the use of non-family facilitators for the sole purpose of assisting in data analytics to detect and prevent similar fraud schemes in the future.

Thank you again for your comments. As noted above, we hope this response addresses your concerns.

Sincerely,

Michael A. Tyllas, Ph.D.

Michael A. Tyllas
Director of Programs

cc: Cole Scandaglia, Policy Analyst