

# Program Letter

United States  
Railroad Retirement Board  
Office of Programs



---

**Quality Reporting Service Center**

**Phone: (312) 751-4992**

**Email: [QRSC@rrb.gov](mailto:QRSC@rrb.gov)**

**Fax: (312) 751-7123**

---

Circular Letter UI-C-220

Date: January 1, 1991  
[Rev. September 19, 2016]

**TO: Chief Executives Officers and  
Unemployment and Sickness Insurance Contact Officials**

**SUBJECT: Railroad Retirement Board Regulations Defining Supplemental Benefit Plans  
under the Railroad Unemployment Insurance Act**

---

## Background

This circular letter explains Part 323 of the Railroad Retirement Board's (RRB) regulations concerning supplemental benefit plans. Part 323 ([20 CFR 323](#)) defines for purposes of the Railroad Unemployment Insurance Act (RUIA), the phrase "nongovernmental plan for unemployment or sickness Insurance." Part 323 also defines the standards by which the RRB determines whether a proposed plan qualifies as a nongovernmental plan, and the procedure by which an employer may obtain a determination by the RRB as to whether a plan qualifies.

The RUIA provides for the payment of benefits to qualified railroad employees for their days of unemployment or days of sickness, as defined in section 1(k) of the RUIA. Under section 1(k), no day can be a day of unemployment or a day of sickness for an employee if "remuneration" is payable to or accrues to the employee for such day. Section 1(j) of the RUIA and Part 322 of the RRB's regulations define the term "remuneration" as meaning all pay for services for hire, including pay for time lost, and all other earned income payable or accruing with respect to any day. However, section 1(j) excludes from the definition of "remuneration" any payments received by an employee pursuant to a nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance.

Payments under a nongovernmental plan approved by the RRB are not to be confused with employer payments such as dismissal allowances, coordination allowances, monthly compensation guarantees and similar payments under merger or job protection agreements. A dismissal allowance or similar wage guarantee is a form of "remuneration" that prevents the payment of benefits under the RUIA, or causes such benefits to be recoverable by the RRB under section 2(f) of the RUIA. Part 323 of the RRB's regulations makes it clear that such payments are not made pursuant to a nongovernmental plan merely because a plan or agreement provides an offset for benefits received under the RUIA. Part 323 clearly distinguishes employer payments under nongovernmental plans from other payments to employees due to unemployment and sickness, and creates a formal procedure by which an employer may obtain from the RRB a ruling as to whether payments are to be regarded as "remuneration" within the meaning of section 1(j) of the Act.

## **Summary of Regulation**

### Section 323.1 - Introduction

This section gives an overview of the regulation, and explains that the regulation has no general applicability to private insurance contracts, or to relief plans established by a party other than a railroad employer.

### Section 323.2 - Definition of nongovernmental plan for unemployment or sickness insurance.

This section explains that nongovernmental plans are employer benefit plans in the nature of insurance and are designed to supplement RUIA benefits during an employee's unemployment or sickness. Payments under such plans are referred to as supplemental benefits and not as wages, salary or pay for time lost because the nature of the benefit payment is distinct from that of compensation.

### Section 323.3 - Standards for RRB approval of a nongovernmental plan.

Qualified plans have the features listed in this section. In general, those features are:

- a. The plan is published in writing;
- b. Plan benefits are payable only to employees who are involuntarily unemployed or who are off work because of infirmity;
- c. Plan benefits are payable only for days on which an employee is eligible for benefits under the RUIA, except for days in waiting periods, or days after an otherwise eligible employee has exhausted RUIA benefits or before he or she has sufficient service or compensation to qualify for benefits under the RUIA.
- d. Plan benefits are coordinated with RUIA benefits by supplementing them. This means that plan benefits are reduced by the amount of RUIA benefits payable for the same days, or are an "add-on" to RUIA benefits. Plans that merely compensate employees for low earnings are not coordinated with the payment of RUIA benefits because the purpose of such plans is to supplement earnings, rather than RUIA benefits. Payments supplementing low earnings are pay for time lost and, therefore, are "compensation" and "remuneration;"
- e. The plan confers a right to benefits that is not subject to management discretion as to whether a qualified employee will be paid;
- f. Plan benefits plus RUIA benefits must not exceed the employee's normal wage or salary; and
- g. The plan incorporates the features set forth in section 323.4 of the RRB's regulations, and has been approved by the RRB.

### Section 323.4 - Guidelines for content of a nongovernmental plan.

The following basic features must be in a nongovernmental plan:

- a. The title of the plan;
- b. A statement of purpose showing that the plan supplements RUIA benefits and is not meant to replace or duplicate them;
- c. A description of the class or craft of employees covered by the plan;
- d. Eligibility criteria;
- e. A statement of the amount and duration of payment, how payment is calculated, and disqualifying conditions; and
- f. The identity of the plan administrator and the rules for filing claims and protesting determinations.

**Section 323.5 - Submitting proposed plan for RRB approval.**

Employers are to submit proposed plans and proposed revisions to existing plans to the Director of Policy & Systems, U.S. Railroad Retirement Board, 844 N. Rush Street, Chicago Illinois 60611-1275.

**Section 323.6 - Treatment of benefit payments under a nongovernmental plan for purposes of contributions.**

Payments under approved plans are not "compensation" and, therefore, are not subject to contributions.

**Section 323.7 - Effective Date.**

Plans having documented approval by the RRB as "nongovernmental plans" as of June 7, 1991, are "grandfathered" in, but proposed revisions to such plans are subject to the regulation. Any existing plan intended as a "nongovernmental plan" but not submitted to and approved by the RRB must be submitted as if it were a newly proposed plan.

**Other Information**

The information a carrier needs to coordinate its supplemental benefit plan with RUIA benefit payments is available from the RRB in both paper and electronic media. After an employee files a claim and after the period allowed for prepayment verification of the claim by the employer, the claim is processed for payment. Notification of the determination made on the claim is then provided to the carrier by means of Form Letter ID-4E or by electronic data interchange. The notice shows, among other things, the claim period beginning date, the days for which the employee was determined to be eligible for benefits, and the gross amount of RUIA benefits payable for the claim. (See Circular Letter UI-C-229, Employer Appeals of RUIA Benefit Determinations, for additional information.)

Part 323 of the RRB's regulations reflects provisions of Internal Revenue Service Ruling 90-72, which was published in IRS Bulletin 1990-36, dated September 4, 1990.

Questions concerning the content of supplemental benefit plans, or on obtaining benefit payment information from the RRB in order to coordinate plan payments, may be directed to:

U.S. Railroad Retirement Board  
Office of Programs - Policy and Systems  
844 N. Rush Street  
Chicago, Illinois 60611-1275

Paperwork Reduction Act Notice: Under the Paperwork Reduction Act, Federal agencies are required to estimate reporting burdens associated with their programs. We estimate that reporting information about a job vacancy requires about 10 minutes, including the time for obtaining the needed data and furnishing the report (OMB 3220-0057). Federal agencies may not conduct or sponsor, and respondents are not required to respond to, a collection of information unless it displays a valid OMB number. If you wish, send comments regarding the accuracy of our estimate or any other aspect of this program, including suggestions for reducing reporting time, to the Chief of Information Resources Management, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-1275.