

Justification  
**Report of Stock Options and Other Payments**  
RRB Form BA-15

1. Circumstances of information collection - The Railroad Retirement Board (RRB) is directed by 45 USC 231f(c)(2) to establish a financial interchange (FI) between the railroad retirement and social security systems to place the Social Security Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds and the Centers for Medicare and Medicaid Services (CMS) Hospital Insurance (HI) Trust Fund in the same condition they would have been had railroad employment been covered by the Social Security Act and Federal Insurance Contributions Act (FICA). Each year, the RRB estimates the benefits and expenses that would have been paid by these trust funds, as well as the payroll taxes and income taxes that would have been received by them. To make these estimates, the RRB requires information on all earnings data that are not taxable under the Railroad Retirement Tax Act (RRTA), but would be taxable under FICA.

A recent court ruling, *Wisconsin Central Ltd. v. U.S.*, 138 S.Ct. 2067 (2018), determined that non-qualified stock options (NQSOs) are not taxable under Section 3231 of the RRTA but would be taxable under the FICA. Additionally, in *Union Pacific Railroad Co. v. U.S.*, 865 F.3d 1045 (8th Cir. 2017), the Eight Circuit Court of Appeals determined whether certain ratification payments were taxable under the RRTA. The RRB BA-15 requires railroad employers to provide information on the value of NQSOs and any ratification payments from the railroad employer separately from a railroad worker's reported RRTA compensation to determine the payroll taxes due to the Social Security Administration (SSA) and CMS and administer transfer of funds between the RRB, SSA and CMS accordingly.

For the collection of NQSOs and ratification payments, the relevant procedures are contained in Program Letter 2019-99, as required by 45 USC 231f(c)(4) and 45 USC 231f(d)(1) and 20 CFR § 209.2(d).

2. Purposes of collecting/consequences of not collecting the information - The RRB will use **Form BA-15, Report of Stock Options and Other Payments**, to request information from railroad employers with employees receiving NQSOs and/or ratification payments, including employer information and each employee's social security number, name, and compensation information. Employers will report this information annually to the RRB in a quarterly breakdown. The RRB will disseminate Form BA-15 by secure email to all employers as a part of a package that includes other forms and information. If an employer has any employees receiving NQSOs and/or ratification payments, the employer will complete and submit the BA-15. If the employer does not have any employees who are receiving NQSOs and/or ratification payments, the employer will not complete the BA-15 and will instead indicate the absence of employees receiving NQSOs and/or ratification payments on Form G-440.

The payroll information collected from the BA-15 is essential for the calculation of payroll taxes and benefits used by the FI. Failure to collect NQSOs and ratification payment information will result in understating the payroll taxes that should have been collected and the benefit amounts that would have been payable under the Social Security Act for FI purposes.

Accurate compensation file tabulations are also an integral part of the data needed to estimate future tax revenues and corresponding FI amounts. Without information on NQSOs and ratification payments, the amount of funds to be transferred between the RRB, SSA and CMS cannot be determined.

Employers must complete and submit RRB Form G-440, Report Specifications Sheet (OMB 3220-0008) in addition to Form BA-15. If an employer reports on Form G-440 that it has employees receiving NQSOs and/or ratification payments, the RRB requires that employer to complete and submit a BA-15. Employers may only submit Form BA-15 to the RRB on CD-ROM, by secure E-mail, or by File Transfer Protocol (FTP). If an employer submits a report by CD-ROM, secure E-mail, or FTP, the employer must also submit a signed fraud and certification statement that is provided on RRB Form G-440.

The instructions and format requirements for submitting these reports, the Paperwork Reduction Act Notice, and the burden statement are contained in Appendix 1 of the RRB's online RERI as well as in Program Letter 2008-05, FTP and E-mail Submission of Reporting Forms. The file layout will be contained in a circular letter sent annually to each employer as a reminder to file as well as in the RRB's online "Rail Employer Reporting Instructions (RERI)". Lastly, each year a reminder letter will be sent to inform the employers of the yearly compensation reporting requirements and due date.

3. Planned use of improved information technology or technical/legal impediments to further burden reduction - Currently RRB plans to receive Form BA-15 by secure E-mail, File Transfer Protocol (FTP), or via CD-ROM and in the future via the online Employer Reporting System.
4. Efforts to identify duplication – To our knowledge, no other agency uses a form similar to Form BA-15 and the information collection does not duplicate any other information collection.
5. Small business respondents - N.A.
6. Consequences of less frequent collection - Obtaining compensation information less frequently would affect the calculation of benefits under the Social Security Act.
7. Special circumstances - N.A.
8. Public comments/consultations outside the agency - In accordance with 5 CFR 1320.8(d), comments were invited from the public regarding the information collection. The notice to the public was published on page 14510 of the March 12, 2020, Federal Register. No comments pertinent to the information collection were received.
9. Payments or gifts to respondents - None
10. Confidentiality - Privacy Act System of Records, RRB-29, Railroad Employees' Annual Gross Earnings Master File-RRB. In accordance with OMB Circular M-03-22, a Privacy Impact Assessment (PIA) was completed and can be found at <https://www.rrb.gov/sites/default/files/2017-06/PIA-FI-Public.pdf>.

If clearance for the form is granted, the PIA statement will be revised, or a new one will be created.

11. Sensitive questions - N.A.

12. Estimate of respondent burden -

Proposed

Form Number	Annual Responses	Time (Minutes)	Burden (Hours)
BA-15 (by secure E-mail, FTP, or CD-ROM) - <b>Positive</b>	50	300 (5 hours)	250
BA-15 (by secure E-mail, FTP, or CD-ROM) - <b>Negative</b>	550	15 (.25 hours)	137.5
<b>Total</b>	<b>600</b>		<b>387.5</b>

13. Estimate of annual cost to respondents or record keepers - N.A.

14. Estimate of cost to Federal Government - N.A.

15. Explanation for change in burden - N.A.

16. Time schedule for data collection and publication - The BA-15 report will be obtained annually from railroad employers. The summaries and tables pertaining to the payroll tax and benefit calculations, based on the reports submitted by the employers, are published annually in the publication "RRB-SSA-CMS Financial Interchange."

17. Request not to display OMB expiration date - The form in this collection is a new form. Given the form is new, the time needed to help staff transition to incorporating OMB expiration dates on future forms, and the uncertainty of when OMB will approved the ICR, **the RRB requests the authority not to display the OMB expiration date on the form until after it is renewed.**

18. Exceptions to certification statement - None