

legal holiday or Federal nonwork day, an action filed on the next Federal workday is considered timely filed.

(b) *Extension of time for filing.* The Commissioner, for good cause shown, may upon written application by a State filed prior to the end of the two-year period, extend the time for filing the civil action.

§ 404.1299 Final judgments—for wages paid prior to 1987.

(a) *Overpayments.* Payment of amounts due to a State required as the result of a final judgment of the court shall be adjusted under §§ 404.1271 and 404.1272.

(b) *Underpayments.* Wage reports and contribution returns required as the result of a final judgment of the court shall be filed under §§ 404.1237–404.1251. We will assess interest under § 404.1265 where, based upon a final judgment of the court, contributions are due from a State because the amount of contributions assessed was not paid by the State or the State had used an allowance of a credit or refund of an overpayment.

Subpart N—Wage Credits for Veterans and Members of the Uniformed Services

AUTHORITY: Secs. 205(a) and (p), 210(l) and (m), 215(h), 217, 229, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and (p), 410(l) and (m), 415(h), 417, 429, and 902(a)(5)).

SOURCE: 45 FR 16464, Mar. 14, 1980, unless otherwise noted.

GENERAL

§ 404.1301 Introduction.

(a) The Social Security Act (Act), under section 217, provides for non-contributory wage credits to veterans who served in the active military or naval service of the United States from September 16, 1940, through December 31, 1956. These individuals are considered World War II or post-World War II veterans. The Act also provides for noncontributory wage credits to certain individuals who served in the active military or naval service of an allied country during World War II. These individuals are considered World War II veterans. In addition, certain in-

dividuals get wage credits, under section 229 of the Act, for service as members of the uniformed services on active duty or active duty for training beginning in 1957 when that service was first covered for social security purposes on a contributory basis. These individuals are considered members of the uniformed services.

(b) World War II or post-World War II veterans receive wage credits based on the length of active military or naval service, type of separation from service and, in some cases, whether the veteran is receiving another Federal benefit. However, a member of a uniformed service receives wage credits regardless of length of service, type of separation, or receipt of another Federal benefit.

(c) The Social Security Administration (SSA) uses these wage credits, along with any covered wages or self-employment income of the veteran or member of a uniformed service, to determine entitlement to, and the amount of, benefits and the lump-sum death payment that may be paid to them, their dependents or survivors under the old-age, survivors', and disability insurance programs. These wage credits can also be used by the veteran or member of the uniformed service to meet the insured status and quarters of coverage requirements for a period of disability.

(d) This subpart tells how veterans or members of the uniformed services obtain wage credits, what evidence of service SSA requires, how SSA uses the wage credits, and how the wage credits are affected by payment of other benefits.

(e) This subpart explains that certain World War II veterans who die are considered (deemed) fully insured. This gives those veterans' survivors the same benefit rights as if the veterans were actually fully insured when they died.

(f) The rules are organized in the following manner:

(1) Sections 404.1310 through 404.1313 contain the rules on World War II veterans. We discuss who may qualify as a World War II veteran, how we determine whether the 90-day active service requirement for a World War II veteran is met, what we consider to be World War II active military or naval service,

and what we do not consider to be World War II active military or naval service.

(2) Sections 404.1320 through 404.1323 contain the rules on post-World War II veterans. We discuss who may qualify as a post-World War II veteran, how we determine whether the 90-day active service requirement for a post-World War II veteran is met, what we consider to be post-World War II active military or naval service, and what we do not consider to be post-World War II active military or naval service.

(3) In §404.1325 we discuss what is a *separation under conditions other than dishonorable*. The law requires that a World War II or post-World War II veteran's separation from active military or naval service be other than dishonorable for the veteran to get wage credits.

(4) Section 404.1330 contains the rules on members of the uniformed services. We discuss who may qualify as a member of a uniformed service.

(5) In §§404.1340 through 404.1343, we discuss the amount of wage credits for veterans and members of the uniformed services, situations which may limit the use of wage credits for World War II and post-World War II veterans, and situations in which the limits do not apply.

(6) Sections 404.1350 through 404.1352 contain the rules on deemed insured status for World War II veterans. We discuss when deemed insured status applies, the amount of wage credits used for deemed insured World War II veterans, how the wage credits affect survivors' social security benefits, and when deemed insured status does not apply.

(7) Sections 404.1360 through 404.1363 contain the rules on the effect of other benefits on the payment of social security benefits and lump-sum death payments based on wage credits for veterans. We discuss what happens when we learn of a determination that a Veterans Administration pension or compensation is payable or that a Federal benefit is payable before or after we determine entitlement to a monthly benefit or lump-sum death payment based on the death of the veteran.

(8) Sections 404.1370 and 404.1371 contain the rules on what we accept as evidence of a World War II and post-World

War II veteran's active military or naval service, including date and type of separation, and what we accept as evidence of entitlement to wage credits for membership in a uniformed service during the years 1957 through 1967.

§ 404.1302 Definitions.

As used in this subpart—

Act means the Social Security Act, as amended.

Active duty means periods of time an individual is on full-time duty in the active military or naval service after 1956 and includes active duty for training after 1956.

Active service means periods of time prior to 1957 an individual was on full-time duty in the active military or naval service. It does not include totaling periods of active duty for training purposes before 1957 which are less than 90 days.

Allied country means a country at war on September 16, 1940, with a country with which the United States was at war during the World War II period. Each of the following countries is considered an allied country: Australia, Belgium, Canada, Czechoslovakia, Denmark, France, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Union of South Africa, and the United Kingdom.

Domiciled in the United States means an individual has a true, fixed, and permanent home in the United States to which the individual intends to return whenever he or she is absent.

Federal benefit means a benefit which is payable by another Federal agency (other than the Veterans Administration) or an instrumentality owned entirely by the United States under any law of the United States or under a program or pension system set up by the agency or instrumentality.

Post-World War II period means the time period July 25, 1947, through December 31, 1956.

Reserve component means Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, National Guard of the United States or Air National Guard of the United States.

Resided in the United States means an individual had a place where he or she

lived, whether permanently or temporarily, in the United States and was bodily present in that place.

Survivor means you are a parent, widow, divorced wife, widower, or child of a deceased veteran or member of a uniformed service.

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Veteran means an individual who served in the active military or naval service of the United States and was discharged or released from that service under conditions other than dishonorable. For a more detailed definition of the World War II veteran and a post-World War II veteran, see §§ 404.1310 and 404.1320.

Wage credit means a dollar amount we add to the earnings record of a veteran of the World War II or the post-World War II period. It is also a dollar amount we add to the earnings record of a member of a uniformed service who was on active duty after 1956. The amount is set out in the Act and is added for each month, calendar quarter, or calendar year of service as required by law.

We, us, or our means the Social Security Administration.

World War II period means the time period September 16, 1940, through July 24, 1947.

You or your means a veteran, a veteran's survivor or a member of a uniformed service applying for or entitled to a social security benefit or a lump-sum death payment.

WORLD WAR II VETERANS

§ 404.1310 Who is a World War II veteran.

You are a World War II veteran if you were in the active service of the United States during the World War II period and, if no longer in active service, you were separated from that service under conditions other than dishonorable after at least 90 days of active service. The 90-day active service requirement is discussed in § 404.1311.

§ 404.1311 Ninety-day active service requirement for World War II veterans.

(a) The 90 days of active service required for World War II veterans do not have to be consecutive if the 90 days were in the World War II period. The 90-day requirement cannot be met by totaling the periods of active duty for training purposes which were less than 90 days.

(b) If, however, all of the 90 days of active service required for World War II veterans were not in the World War II period, the 90 days must (only in those circumstances) be consecutive if the 90 days began before September 16, 1940, and ended on or after that date, or began before July 25, 1947, and ended on or after that date.

(c) The 90 days of active service is not required if the World War II veteran died in service or was separated from service under conditions other than dishonorable because of a disability or injury which began or worsened while performing service duties.

§ 404.1312 World War II service included.

Your service was in the active service of the United States during the World War II period if you were in the—

(a) Army, Navy, Marine Corps, or Coast Guard, or any part of them;

(b) Commissioned corps of the United States Public Health Service and were—

(1) On active commissioned service during the period beginning September 16, 1940, through July 28, 1945, and the active service was done while on detail to the Army, Navy, Marine Corps, or Coast Guard; or

(2) On active commissioned service during the period beginning July 29, 1945, through July 24, 1947, regardless of whether on detail to the Army, Navy, Marine Corps, or Coast Guard;

(c) Commissioned corps of the United States Coast and Geodetic Survey and were—

(1) During the World War II period—

(i) Transferred to active service with the Army, Navy, Marine Corps, or Coast Guard; or

(ii) Assigned to active service on military projects in areas determined

by the Secretary of Defense to be areas of immediate military hazard; or

(2) On active service in the Philippine Islands on December 7, 1941; or

(3) On active service during the period beginning July 29, 1945, through July 24, 1947;

(d) Philippine Scouts and performed active service during the World War II period under the direct supervision of recognized military authority;

(e) Active service of an allied country during the World War II period and—

(1) Had entered into that active service before December 9, 1941;

(2) Were a citizen of the United States throughout that period of active service or lost your United States citizenship solely because of your entrance into that service;

(3) Had resided in the United States for a total of four years during the five-year period ending on the day you entered that active service; and

(4) Were domiciled in the United States on that day; or

(f) Women's Army Auxiliary Corps, during the period May 14, 1942, through September 29, 1943, and performed active service with the Army, Navy, Marine Corps, or Coast Guard after September 29, 1943.

§ 404.1313 World War II service excluded.

Your service was not in the active service of the United States during the World War II period if, for example, you were in the—

(a) Women's Army Auxiliary Corps, except as described in § 404.1312(f);

(b) Coast Guard Auxiliary;

(c) Coast Guard Reserve (Temporary) unless you served on active full-time service with military pay and allowances;

(d) Civil Air Patrol; or

(e) Civilian Auxiliary to the Military Police.

POST-WORLD WAR II VETERANS

§ 404.1320 Who is a post-World War II veteran.

You are a post-World War II veteran if you were in the active service of the United States during the post-World War II period and, if no longer in active service, you were separated from the

service under conditions other than dishonorable after at least 90 days of active service. The 90-day active service requirement is discussed in § 404.1321.

§ 404.1321 Ninety-day active service requirement for post-World War II veterans.

(a) The 90 days of active service required for post-World War II veterans do not have to be consecutive if the 90 days were in the post-World War II period. The 90-day requirement cannot be met by totaling the periods of active duty for training purposes before 1957 which were less than 90 days.

(b) If, however, all of the 90 days of active service required for post-World War II veterans were not in the post-World War II period, the 90 days must (only in those circumstances) be consecutive if the 90 days began before July 25, 1947, and ended on or after that date, or began before January 1, 1957, and ended on or after that date.

(c) The 90 days of active service is not required if the post-World War II veteran died in service or was separated from service under conditions other than dishonorable because of a disability or injury which began or worsened while performing service duties.

§ 404.1322 Post-World War II service included.

Your service was in the active service of the United States during the post-World War II period if you were in the—

(a) Air Force, Army, Navy, Marine Corps, Coast Guard, or any part of them;

(b) Commissioned corps of the United States Public Health Service and were on active service during that period;

(c) Commissioned corps of the United States Coast and Geodetic Survey and were on active service during that period; or

(d) Philippine Scouts and performed active service during the post-World War II period under the direct supervision of recognized military authority.

§ 404.1323 Post-World War II service excluded.

Your service was not in the active service of the United States during the post-World War II period if, for example, you were in the—

- (a) Coast Guard Auxiliary;
- (b) Coast Guard Reserve (Temporary) unless you served on active full-time service with military pay and allowances;
- (c) Civil Air Patrol; or
- (d) Civilian Auxiliary to the Military Police.

SEPARATION FROM ACTIVE SERVICE

§ 404.1325 Separation from active service under conditions other than dishonorable.

Separation from active service under conditions other than dishonorable means any discharge or release from the active service except—

- (a) A discharge or release for desertion, absence without leave, or fraudulent entry;
- (b) A dishonorable or bad conduct discharge issued by a general court martial of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or by the active service of an allied country during the World War II period;
- (c) A dishonorable discharge issued by the United States Public Health Service or the United States Coast and Geodetic Survey;
- (d) A resignation by an officer for the good of the service;
- (e) A discharge or release because the individual was a conscientious objector; or
- (f) A discharge or release because the individual was convicted by a civil court for treason, sabotage, espionage, murder, rape, arson, burglary, robbery, kidnapping, assault with intent to kill, assault with a deadly weapon, or because of an attempt to commit any of these crimes.

[45 FR 16464, Mar. 14, 1980; 45 FR 22023, Apr. 3, 1980]

MEMBERS OF THE UNIFORMED SERVICES

§ 404.1330 Who is a member of a uniformed service.

A member of a uniformed service is an individual who served on active duty after 1956. You are a member of a uniformed service if you—

- (a) Are appointed, enlisted, or inducted into—
 - (1) The Air Force, Army, Navy, Coast Guard, or Marine Corps; or
 - (2) A reserve component of the uniformed services in paragraph (a)(1) of this section (except the Coast Guard Reserve as a temporary member);
- (b) Served in the Army or Air Force under call or conscription;
- (c) Are a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessors, the Environmental Science Services Administration and the Coast and Geodetic Survey;
- (d) Are a commissioned officer of the Regular or Reserve Corps of the Public Health Service;
- (e) Are a retired member of any of the above services;
- (f) Are a member of the Fleet Reserve or Fleet Marine Corps Reserve;
- (g) Are a cadet at the United States Military Academy, Air Force Academy, or Coast Guard Academy, or a midshipman at the United States Naval Academy; or
- (h) Are a member of the Reserve Officers Training Corps of the Army, Navy or Air Force, when ordered to annual training duty for at least 14 days and while performing official travel to and from that duty.

AMOUNTS OF WAGE CREDITS AND LIMITS ON THEIR USE

§ 404.1340 Wage credits for World War II and post-World War II veterans.

In determining your entitlement to, and the amount of, your monthly benefit or lump-sum death payment based on your active service during the World War II period or the post-World War II period, and for establishing a period of disability as discussed in §§ 404.132 and 404.133, we add the (deemed) amount of \$160 for each month during a part of

which you were in the active service as described in § 404.1312 or § 404.1322. For example, if you were in active service from October 11, 1942, through August 10, 1943, we add the (deemed) amount of \$160 for October 1942 and August 1943 as well as November 1942 through July 1943. The amount of wage credits that are added in a calendar year cannot cause the total amount credited to your earnings record to exceed the annual earnings limitation explained in §§ 404.1047 and 404.1096(b).

§ 404.1341 Wage credits for a member of a uniformed service.

(a) *General.* In determining your entitlement to, and the amount of your monthly benefit (or lump sum death payment) based on your wages while on active duty as a member of the uniformed service after 1956, and for establishing a period of disability as discussed in § 404.132, we add wage credits to the wages paid you as a member of that service. The amount of the wage credits, the applicable time periods, the wage credit amount limits, and the requirement of a minimum period of active duty service for granting these wage credits, are discussed in paragraphs (b), (c), and (d) of this section.

(b) *Amount of wage credits.* The amount of wage credits added is—

(1) \$100 for each \$300 in wages paid to you for your service in each calendar year after 1977; and

(2) \$300 for each calendar quarter in 1957 through 1977, regardless of the amount of wages actually paid you during that quarter for your service.

(c) *Limits on wage credits.* The amount of these wage credits cannot exceed—

(1) \$1200 for any calendar year, or

(2) An amount which when added to other earnings causes the total earnings for the year to exceed the annual earnings limitation explained in §§ 404.1047 and 404.1096(b).

(d) *Minimum active-duty service requirement.* (1) If you enlisted for the first time in a regular component of the Armed Forces on or after September 8, 1980, you must complete the shorter of 24 months of continuous active duty or the full period that you were called to active duty to receive these wage credits, unless:

(i) You are discharged or released from active duty for the convenience of the government in accordance with section 1171 of title 10 U.S.C. or because of hardship as specified in section 1173 of title 10 U.S.C.;

(ii) You are discharged or released from active duty for a disability incurred or aggravated in line of duty;

(iii) You are entitled to compensation for service-connected disability or death under chapter 11 of title 38 U.S.C.;

(iv) You die during your period of enlistment; or

(v) You were discharged prior to October 14, 1982, and your discharge was—

(A) Under chapter 61 of title 10 U.S.C.; or

(B) Because of a disability which resulted from an injury or disease incurred in or aggravated during your enlistment which was not the result of your intentional misconduct and did not occur during a period of unauthorized absence.

(2) If you entered on active duty as a member of the uniformed services as defined in § 404.1330 *on or after* October 14, 1982, having neither previously completed a period of 24 months' active duty nor been discharged or released from this period of active duty under section 1171, title 10 U.S.C. (i.e., convenience of the government), you must complete the shorter of 24 months of continuous active duty or the full period you were called or ordered to active duty to receive these wage credits, unless:

(i) You are discharged or released from active duty for the convenience of the government in accordance with section 1171 of title 10 U.S.C. or because of hardship as specified in section 1173 of title 10 U.S.C.;

(ii) You are discharged or released from active duty for a disability incurred or aggravated in line of duty;

(iii) You are entitled to compensation for service-connected disability or death under chapter 11 of title 38 U.S.C.; or

(iv) You die during your period of active service.

[45 FR 16464, Mar. 14, 1980, as amended at 52 FR 29663, Aug. 11, 1987]

§ 404.1342 Limits on granting World War II and post-World War II wage credits.

(a) You get wage credits for World War II or post-World War II active service only if the use of the wage credits results in entitlement to a monthly benefit, a higher monthly benefit, or a lump-sum death payment.

(b) You may get wage credits for active service in July 1947 for either the World War II period or the post-World War II period but not for both. If your active service is before and on or after July 25, 1947, we add the \$160 wage credit to the period which is most advantageous to you.

(c) You do not get wage credits for the World War II period if another Federal benefit (other than one payable by the Veterans Administration) is determined by a Federal agency or an instrumentality owned entirely by the United States to be payable to you, even though the Federal benefit is not actually paid or is paid and then terminated, based in part on your active service during the World War II period except as explained in § 404.1343.

(d) You do not get wage credits for the post-World War II period if another Federal benefit (other than one payable by the Veterans Administration) is determined by a Federal agency or an instrumentality owned entirely by the United States to be payable to you, even though the Federal benefit is not actually paid or is paid and then terminated, based in part on your active service during the post-World War II period except as explained in § 404.1343.

§ 404.1343 When the limits on granting World War II and post-World War II wage credits do not apply.

The limits on granting wage credits described in § 404.1342 (c) and (d) do not apply—

(a) If the wage credits are used solely to meet the insured status and quarters of coverage requirements for a period of disability as described in §§ 404.132 and 404.133;

(b) If you are the surviving spouse or child of a veteran of the World War II period or post-World War II period and you are entitled under the Civil Service Retirement Act of 1930 to a survi-

vor's annuity based on the veteran's active service and—

(1) You give up your right to receive the survivor's annuity;

(2) A benefit under the Civil Service Retirement Act of 1930 based on the veteran's active service was not payable to the veteran; and

(3) Another Federal benefit is not payable to the veteran or his or her survivors except as described in paragraph (c) of this section; or

(c) For the years 1951 through 1956, if another Federal benefit is payable by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, or the Public Health Service based on post-World War II active service but only if the veteran was also paid wages as a member of a uniformed service after 1956.

[45 FR 16464, Mar. 14, 1980, as amended at 49 FR 24118, June 12, 1984]

DEEMED INSURED STATUS FOR WORLD II VETERANS

§ 404.1350 Deemed insured status.

(a) *When deemed insured status applies.* If you are the survivor of a World War II veteran, we consider the veteran to have died fully insured as discussed in § 404.111 and we include wage credits in determining your monthly benefit or lump-sum death payment if—

(1) The veteran was separated from active service of the United States before July 27, 1951; and

(2) The veteran died within 3 years after separation from active service and before July 27, 1954.

(b) *Amount of credit given for deemed insured World War II veterans.* (1) When we compute a survivor's benefit or lump-sum death payment, we give credit for—

(i) \$200 (for increment year purposes) for each calendar year in which the veteran had at least 30 days of active service beginning September 16, 1940, through 1950; and

(ii) An average monthly wage of \$160.

(2) If the World War II veteran was fully or currently insured without the wage credits, we add increment years (years after 1936 and prior to 1951 in which the veteran had at least \$200 in creditable earnings) to the increment years based on the veteran's wages.

§ 404.1351 When deemed insured status does not apply.

As a survivor of a World War II veteran, you cannot get a monthly benefit or lump-sum death payment based on the veteran's deemed insured status as explained in § 404.1350 if—

- (a) Your monthly benefit or lump-sum death payment is larger without using the wage credits;
- (b) The Veterans Administration has determined that a pension or compensation is payable to you based on the veteran's death;
- (c) The veteran died while in the active service of the United States;
- (d) The veteran was first separated from active service after July 26, 1951;
- (e) The veteran died after July 26, 1954; or
- (f) The veteran's only service during the World War II period was by enlistment in the Philippine Scouts as authorized by the Armed Forces Voluntary Recruitment Act of 1945 (Pub. L. 190 of the 79th Congress).

§ 404.1352 Benefits and payments based on deemed insured status.

(a) *Our determination.* We determine your monthly benefit or lump-sum death payment under the deemed insured status provisions in §§ 404.1350 and 404.1351 regardless of whether the Veterans Administration has determined that any pension or compensation is payable to you.

(b) *Certification for payment.* If we determine that you can be paid a monthly benefit or lump-sum death payment, we certify these benefits for payment. However, the amount of your monthly benefit or lump-sum death payment may be changed if we are informed by the Veterans Administration that a pension or compensation is payable because of the veteran's death as explained in § 404.1360.

(c) *Payments not considered as pension or compensation.* We do not consider as pension or compensation—

- (1) National Service Life Insurance payments;
- (2) United States Government Life Insurance payments; or
- (3) Burial allowance payments made by the Veterans Administration.

EFFECT OF OTHER BENEFITS ON PAYMENT OF SOCIAL SECURITY BENEFITS AND PAYMENTS

§ 404.1360 Veterans Administration pension or compensation payable.

(a) *Before we determine and certify payment.* If we are informed by the Veterans Administration that a pension or compensation is payable to you before we determine and certify payment of benefits based on deemed insured status, we compute your monthly benefit or lump-sum death payment based on the death of the World War II veteran without using the wage credits discussed in § 404.1350.

(b) *After we determine and certify payment.* If we are informed by the Veterans Administration that a pension or compensation is payable to you after we determine and certify payment of benefits based on deemed insured status, we—

- (1) Stop payment of your benefits or recompute the amount of any further benefits that can be paid to you; and
- (2) Determine whether you were erroneously paid and the amount of any erroneous payment.

§ 404.1361 Federal benefit payable other than by Veterans Administration.

(a) *Before we determine and certify payment.* If we are informed by another Federal agency or instrumentality of the United States (other than the Veterans Administration) that a Federal benefit is payable to you by that agency or instrumentality based on the veteran's World War II or post-World War II active service before we determine and certify your monthly benefit or lump-sum death payment, we compute your monthly benefit or lump-sum death payment without using the wage credits discussed in § 404.1340.

(b) *After we determine and certify payment.* If we are informed by another Federal agency or instrumentality of the United States (other than the Veterans Administration) that a Federal benefit is payable to you by that agency or instrumentality based on the veteran's World War II or post-World War II active service after we determine and certify payment, we—

(1) Stop payment of your benefits or recompute the amount of any further benefits that can be paid to you; and

(2) Determine whether you were erroneously paid and the amount of any erroneous payment.

§ 404.1362 Treatment of social security benefits or payments where Veterans Administration pension or compensation payable.

(a) *Before we receive notice from the Veterans Administration.* If we certify your monthly benefit or a lump-sum death payment as determined under the deemed insured status provisions in § 404.1350 before we receive notice from the Veterans Administration that a pension or compensation is payable to you, our payments to you are erroneous only to the extent that they exceed the amount of the accrued pension or compensation payable.

(b) *After we receive notice from the Veterans Administration.* If we certify your monthly benefit or lump-sum death payment as determined under the deemed insured status provisions in § 404.1350 after we receive notice from the Veterans Administration that a pension or compensation is payable to you, our payments to you are erroneous whether or not they exceed the amount of the accrued pension or compensation payable.

§ 404.1363 Treatment of social security benefits or payments where Federal benefit payable other than by Veterans Administration.

If we certify your monthly benefit or lump-sum death payment based on World War II or post-World War II wage credits after we receive notice from another Federal agency or instrumentality of the United States (other than the Veterans Administration) that a Federal benefit is payable to you by that agency or instrumentality based on the veteran's World War II or post-World War II active service, our payments to you are erroneous to the extent the payments are based on the World War II or post-World War II wage credits. The payments are erroneous beginning with the first month you are eligible for the Federal benefit.

EVIDENCE OF ACTIVE SERVICE AND MEMBERSHIP IN A UNIFORMED SERVICE

§ 404.1370 Evidence of active service and separation from active service.

(a) *General.* When you file an application for a monthly benefit or lump-sum death payment based on the active service of a World War II or post-World War II veteran, you must submit evidence of—

(1) Your entitlement as required by subpart H of this part or other evidence that may be expressly required;

(2) The veteran's period in active service of the United States; and

(3) The veteran's type of separation from active service of the United States.

(b) *Evidence we accept.* We accept as proof of a veteran's active service and separation from active service—

(1) An original certificate of discharge, or an original certificate of service, from the appropriate military service, from the United States Public Health Service, or from the United States Coast and Geodetic Survey;

(2) A certified copy of the original certificate of discharge or service made by the State, county, city agency or department in which the original certificate is recorded;

(3) A certification from the appropriate military service, United States Public Health Service, or United States Coast and Geodetic Survey showing the veteran's period of active service and type of separation;

(4) A certification from a local selective service board showing the veteran's period of active service and type of separation; or

(5) Other evidence that proves the veteran's period of active service and type of separation.

§ 404.1371 Evidence of membership in a uniformed service during the years 1957 through 1967.

(a) *General.* When you file an application for a monthly benefit or lump-sum death payment based on the services of a member of a uniformed service during the years 1957 through 1967, you should submit evidence identifying the member's uniformed service and showing the period(s) he or she was on active duty during those years.

(b) *Evidence we accept.* The evidence will accept includes any official correspondence showing the member's status as an active service member during the appropriate period, a certification of service by the uniformed service, official earnings statements, copies of the member's Form W-2, and military orders, for the appropriate period.

Subpart O—Interrelationship of Old-Age, Survivors and Disability Insurance Program With the Railroad Retirement Program

AUTHORITY: Secs. 202(l), 205(a), (c)(5)(D), (i), and (o), 210(a)(9) and (l)(4), 211(c)(3), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(l), 405(a), (c)(5)(D), (i), and (o), 410(a)(9) and (l)(4), 411(c)(3), and 902(a)(5)).

CROSS REFERENCE: For regulations under the Railroad Retirement Act, see chapter II of this title.

§ 404.1401 General relationship of Railroad Retirement Act with the old-age, survivors and disability insurance program of the Social Security Act.

The Railroad Retirement Act sets up a system of benefits for railroad employees, their dependents and survivors, and has been integrated with the Social Security Act to provide a coordinated system of retirement, survivor, dependent and disability benefits payable on the basis of an individual's work in the railroad industry and in employment and self-employment covered by the Social Security Act. With respect to the coordination between the two programs, the Railroad Retirement Act distinguishes between "career" railroad workers and those individuals who may be considered "casual" railroad workers. The line of demarcation is generally 10 years of service in the railroad industry, including service prior to 1937. The Railroad Retirement Act transfers to the old-age, survivors and disability insurance system the compensation records of individuals who at the time of retirement, onset of disability or death have less than 10 years of service in the railroad industry and meet certain other requirements. Any compensation paid to such individuals for such service after

1936 becomes wages under the Social Security Act (to the extent they do not exceed the annual wage limitations described in § 404.1027(a)). Whatever benefits are payable to them, their dependents, and their survivors are computed on the basis of the combined compensation and social security covered earnings creditable to the individuals' records. The compensation paid to individuals with 10 or more years of railroad service remain under the Railroad Retirement Act, but in certain circumstances, the compensation of such workers who die may be transferred to the old-age, survivors, and disability insurance program (see §§ 404.1402(b) and 404.1407). Under certain circumstances (see § 404.1413), certification of benefits payable under the provisions of the Social Security Act will be made to the Railroad Retirement Board. The Railroad Board will certify such benefits to the Secretary of the Treasury.

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§ 404.1402 When services in the railroad industry are covered.

Services performed by an individual in the railroad industry which would, but for the provisions of this section, be excepted from "employment" by reason of § 404.1017 shall be considered to be included under "employment" as defined in section 210 of the Act in the following situations:

(a) For the purpose of determining entitlement to, or the amount of, any monthly benefits or lump-sum death payment on the basis of the wages and self-employment income of an individual where the years of service in the railroad industry are less than 10;

(b) For the purpose of determining entitlement to, or the amount of, any survivor monthly benefit or any lump-sum death payment on the basis of the wages and self-employment income of an individual whose years of service in the railroad industry were 10 or more but a "current connection", as defined in section 1(o) of the Railroad Retirement Act of 1974 (45 U.S.C. 228a), with the railroad industry did not exist at the time of death; (in such cases, survivor benefits are not payable under the Railroad Retirement Act);