

**Subpart D—Cancellation of Application**

**§ 217.25 Who may cancel an application.**

An application may be cancelled by the claimant or a person described in § 217.17. If the claimant is deceased, the person who is or could be eligible for any annuity accrual under part 234 of this chapter may cancel the application for the annuity.

**§ 217.26 How to cancel an application.**

An application may be cancelled under the following conditions:

(a) *Before an annuity is awarded.* The application may be cancelled if—

(1) The applicant files a written request with the Board at a place described in § 217.15 asking that the application be cancelled or stating that he or she wants to withdraw the application;

(2) The claimant is alive on the date the written request is filed or the claimant is deceased and the rights of no person other than the person requesting the cancellation will be adversely affected; and

(3) The applicant files the written request on or before the date the annuity is awarded.

(b) *After an annuity is awarded.* The application may be cancelled if—

(1) The conditions in paragraph (a)(1) and (2) of this section are met;

(2) Any other person who would lose benefits because of the cancellation consents to the cancellation in writing; and

(3) All annuity payments already made based on the application being cancelled are repaid or will be recovered.

**§ 217.27 Effect of cancellation.**

When a person cancels an application the effect is the same as though an application was never filed. When an employee cancels his or her application, any application filed by the employee's spouse is also cancelled. However, a request to cancel a survivor's application will cancel only the application of the survivor named in the written request. A person who cancels an application may reapply by filing a new application under this part.

**Subpart E—Denial of Application**

**§ 217.30 Reasons for denial of application.**

The Board will deny each application filed by or for an employee, spouse or survivor for one or more of the following reasons:

(a) The claimant does not meet the eligibility requirements for an annuity or lump sum under this chapter.

(b) The applicant does not submit the evidence required under this chapter to establish eligibility for an annuity or lump sum.

(c) The applicant files an application more than three months before the date on which the eligible person's benefit can begin except if the application is for an employee disability annuity or for a spouse annuity filed simultaneously with the employee's disability annuity application.

[47 FR 7647, Feb. 22, 1982, as amended at 67 FR 42714, June 25, 2002]

**§ 217.31 Applicant's right to appeal denial.**

Each applicant is given the right to appeal the denial of his or her application if he or she does not agree with the Board's decision. The appeals process is explained in part 260 of this chapter.

**PART 218—ANNUITY BEGINNING AND ENDING DATES**

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### Subpart A—General

#### §218.1 Introduction.

This part tells when a person's entitlement to a monthly railroad retirement annuity begins and ends. Ordinarily, an annuity begins on the earliest date permitted under the Railroad Retirement Act (Act). This part also tells when and how a person may select a later beginning date. Included is an explanation of how work and certain types of special payments affect the beginning date of an employee or spouse annuity.

#### §218.2 Definitions.

As used in this part:

*Applicant* means a person who signs an application for an annuity for himself, herself or for some other person.

*Application* means a form described in part 217 of this chapter.

*Award* means to process a form to make a payment.

*Claimant* means the person for whom an annuity application is filed.

*Filing date* means the date on which an application or written statement is filed with the Board.

*Tier I benefit* means the benefit calculated using the Social Security formulas and is based upon earnings, both in and outside the railroad industry.

*Tier II benefit* means the benefit calculated under a formula found in the Act and is based only upon railroad earnings.

#### §218.3 When an employee disappears.

(a) *General.* If an employee who is entitled to an annuity disappears, the employee annuity ends on the last day of the month before the month of the disappearance.

(b) *Employee has a current connection.*  
(1) The Board may pay survivor benefits from the month of the employee's disappearance if both of the following conditions are met at the time of the disappearance:

(i) The employee has a current connection with the railroad industry as defined in part 216 of this chapter, and

(ii) The employee's spouse is entitled, or would have been entitled if he or she had filed an application, to a spouse annuity in the month that the employee disappeared.

(2) If the employee is later found to have been alive during any month for which a survivor annuity was paid, the amount of any incorrect payment must be recovered under the rules of part 255, Erroneous Payments, of this chapter. The incorrect payment is the amount of any survivor benefits which were paid minus any spouse benefits which were paid minus any spouse benefits that would have been paid.

(c) *Employee has no current connection.* If the employee does not have a current connection and the employee's spouse is entitled to an annuity in the month of the employee's disappearance, the spouse annuity will continue to be paid until one of the following events occurs:

(1) The employee's death is established.

(2) The spouse annuity ends for another reason.

**Subpart B—When an Annuity Begins**

**§218.5 General rules.**

(a) An annuity begins either on the earliest date permitted by law, or on a specific date chosen by the applicant. If the applicant chooses a specific date, that date must not be before the earliest date permitted by law.

(b) An annuity may not begin on the thirty-first day of a month, unless the claimant would lose benefits if the annuity begins on the first day of the following month. No annuity is payable for the thirty-first day of any month.

**§218.6 How to choose an annuity beginning date.**

(a) *When application is filed.* The applicant may choose an annuity beginning date by—

(1) Naming the month, day and year in an application accepted by the Board; or

(2) Including with the application a signed statement which tells the date (month, day and year) when the annuity should begin.

(b) *After application is filed.* After an application is filed, the claimant may choose an annuity beginning date by submitting a signed statement which tells the month, day and year when the annuity should begin.

(Approved by the Office of Management and Budget under control numbers 3220-0002, 3220-0030 and 3220-0042)

**§218.7 When chosen annuity beginning date is more than three months after filing date.**

If the applicant for any type of annuity other than a disability annuity, or a spouse annuity based upon the disabled applicant's compensation, chooses an annuity beginning date in a month which is more than three months after the date the application is filed, the Board will deny the application as explained in part 217 of this chapter. The applicant must file a new application no earlier than three months before the month he or she wants the annuity to begin.

(Approved by the Office of Management and Budget under control numbers 3220-0002, 3220-0030 and 3220-0042)

**§218.8 When an individual may change the annuity beginning date.**

(a) *Before annuity is awarded.* A claimant may change the annuity beginning date if—

(1) The claimant requests the change in a signed statement; and

(2) The statement is received by the Board on or before the date of the claimant's death.

(b) *After annuity is awarded.* An award can be reopened to change the annuity beginning date to a later date if—

(1) The annuitant requests the change in a signed statement;

(2) The statement is received by the Board on or before the date of the annuitant's death;

(3) The annuitant shows that it is to his or her advantage to have a later annuity beginning date; and

(4) All payments made for the period before the later annuity beginning date are recovered by cash refund or setoff.

**§218.9 When an employee annuity begins.**

(a) *Full-age annuity*—employee has completed 10 years but less than 30 years of service. An employee full-age annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the month in which the claimant attains "full retirement age"; or

(3) The first day of the sixth month before the month in which the application is filed.

(b) *Reduced-age annuity*—employee has completed 10 years but less than 30 years of service. An employee reduced-age annuity begins on the later of either the date chosen by the applicant, or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the first full month in which the claimant is age 62; or

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(3) The first day of the month in which the application is filed if the claimant does not have a spouse (or divorced spouse) who would be entitled to a retroactive unreduced spouse (or divorced spouse) annuity. If the claimant has such a spouse (or divorced spouse) the claimant's annuity can begin on the first day of the month in which the spouse (or divorced spouse) annuity begins.

(c) *Disability annuity.* An employee disability annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the twelfth month before the month in which the application is filed;

(3) The first day of the sixth month after the month of disability onset; or

(4) The first day of the month of disability onset if the claimant was previously entitled to an employee disability annuity which ended within five years of the current disability onset month.

(d) *Annuity based on at least 30 years of service.* An employee annuity based on at least 30 years of service begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the first full month in which the claimant is age 60 and will accept a reduced annuity;

(3) The first day of the month in which the claimant attains age 62; or

(4) The first day of the sixth month before the month in which the application is filed.

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

### § 218.10 When a supplemental annuity begins.

An employee supplemental annuity begins on the latest of—

(a) The beginning date of the employee age or disability annuity;

(b) The first day of the month in which the employee meets the age and years of service requirements as shown in part 216 of this chapter; or

(c) The first day of the twelfth month before the month in which the employee disability annuitant under age 65 gives up the right to return to work as explained in part 216 of this chapter.

### § 218.11 When a spouse annuity begins.

(a) A spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law—(1) General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer;

(ii) The beginning date of the employee annuity;

(iii) The first day of the month in which the claimant meets the marriage requirement as shown in part 216 of this chapter; or

(iv) The first day of the month in which the employee annuitant meets the age requirement to qualify the claimant as shown in part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant meets the age requirement as shown in part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *“Child in care” annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant becomes eligible for a spouse annuity based on having a “child in care” as shown in part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(4) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

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- (i) The month shown in paragraph (b)(1) of this section;
- (ii) The first day of the first full month in which the spouse is age 62 if the employee has less than 30 years of service;
- (iii) The first day of the month in which the spouse is age 60, if the employee has at least 30 years of service;
- (iv) The first day of the sixth month before the month in which the application is filed; or
- (v) The first day of the month in which the application is filed if beginning the annuity in an earlier month would increase the age reduction factor applied to the annuity.

### § 218.12 When a divorced spouse annuity begins.

- (a) A divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.
- (b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the latest of—
  - (i) The day after the day the claimant last worked for a railroad employer;
  - (ii) The beginning date of the employee annuity;
  - (iii) The first day of the first full month in which the employee annuitant is age 62 if the employee has not been granted a period of disability;
  - (iv) The first day of the month in which the employee annuitant attains age 62 if the employee has been granted a period of disability; or
  - (v) The first day of the month in which the final decree of divorce is effective.
- (2) *Full-age annuity.* The earliest date permitted by law is the latest of—
  - (i) The month shown in paragraph (b)(1) of this section;
  - (ii) The first day of the month in which the claimant attains “full retirement age”;
  - (iii) The first day of the twelfth month before the month in which the application is filed if the employee is a disability annuitant or has been granted a period of disability; or
  - (iv) The first day of the sixth month before the month in which the application is filed if the employee is

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not entitled to a disability annuity or a period of disability.

- (3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—
  - (i) The month shown in paragraph (b)(1) of this section;
  - (ii) The first day of the first full month the claimant is age 62 if the application is filed in or before that month; or
  - (iii) The first day of the month in which the application is filed.

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

### § 218.13 When a widow(er) annuity begins.

- (a) A widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.
- (b) *Earliest date permitted by law*—(1) *Full-age annuity.* The earliest date permitted by law is the latest of—
  - (i) The first day of the month in which the employee dies;
  - (ii) The first day of the month in which the claimant attains “full retirement age”; or
  - (iii) The first day of the sixth month before the month in which the application is filed.
- (2) *Reduced-age annuity*—(i) *Widow(er) age 60 through age 62.* The earliest date permitted by law is the latest of—
  - (A) The first day of the month in which the employee dies;
  - (B) The first day of the month in which the claimant attains age 60; or
  - (C) The first day of the sixth month before the month in which the application is filed.
- (ii) *Widow(er) over age 62 but under “full retirement age.”* The earliest date permitted by law is the latest of—
  - (A) The first day of the month in which the employee dies;
  - (B) The first day of the month in which the claimant attains age 62 and one month; or
  - (C) The first day of the month in which the application is filed.
- (3) *Disability annuity.* The earliest date permitted by law is the latest of—
  - (i) The first day of the month in which the employee dies;
  - (ii) The first day of the month in which the claimant attains age 50;

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(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(4) *“Child in care” annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant becomes eligible for a widow(er) annuity based on having a “child in care” as explained in part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

### § 218.14 When a child annuity begins.

(a) A child annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law—(1) General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a child annuity as explained in part 216 of this chapter.

(2) *Child age annuity.* The earliest date permitted by law is the later of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

(3) *Child annuity based on full-time school attendance.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant is in full-time school attendance at an elementary or secondary educational institution; or

(iv) The first day of the month in which the claimant attains age 18.

(4) *Child disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant meets the definition of disability as explained in part 220; or

(iv) The first day of the month in which the claimant attains age 18.

### § 218.15 When a parent annuity begins.

A parent annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(a) The first day of the month in which the employee dies;

(b) The first day of the month in which the claimant attains age 60; or

(c) The first day of the sixth month before the month in which the application is filed.

### § 218.16 When a surviving divorced spouse annuity begins.

(a) A surviving divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law—(1) General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a surviving divorced spouse annuity as shown in part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains “full retirement age”; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the

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first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *“Child in care” annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

### §218.17 When a remarried widow(er) annuity begins.

(a) A remarried widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law—(1) General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a remarried widow(er) annuity as shown in part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains “full retirement age”; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the

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first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *“Child in care” annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

### Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

#### §218.25 Introduction.

The rules in this subpart apply only to an employee, spouse, divorced spouse, and supplemental annuity. They do not apply to any type of survivor annuity.

#### §218.264 Work started after annuity beginning date.

(a) *General.* An annuity can begin only after an employee, spouse, or divorced spouse stops any work for a railroad employer. However, if the employee, spouse or divorced spouse starts work after an “intent to retire” is established, that work will have no effect on the annuity beginning date. However, an annuity cannot be paid for any month the employee, spouse or divorced spouse returns to work for a railroad employer.

(b) *Intent to retire—*

(1) *Disability annuity.* An “intent to retire” is established to pay a disability annuity when—

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(i) The employee files for a disability annuity; or

(ii) The employee gives up all rights to return to work for a railroad employer before starting any new work.

(2) *Age annuity.* An “intent to retire” is established to pay an employee age, spouse or divorced spouse annuity when the employee, spouse or divorced spouse gives up all rights to return to work for a railroad employer before starting any new work.

### § 218.27 Vacation pay.

(a) *From railroad employer.* Vacation pay may be credited to the vacation period due the employee or to the last day of actual work for the railroad employer. If the vacation pay is credited to the vacation period, the annuity can begin no earlier than the day after the vacation period ends. (Part 211 of this chapter discusses how vacation pay is credited as compensation.)

(b) *From non-railroad employer.* Vacation pay will not affect the annuity beginning date.

### § 218.28 Sick pay.

(a) *From railroad employer.* If the employee is carried on the payroll while sick, the annuity can begin no earlier than the day after the last day of sick pay. However, sick pay is not considered compensation and does not affect the annuity beginning date if it is a payment described in § 211.2(c)(6) of these regulations.

(b) *From non-railroad employer.* Sick pay will not affect the annuity beginning date.

### § 218.29 Pay for time lost.

Pay for time lost because of personal injury must be credited to an actual period of time lost. The annuity can begin no earlier than the day after that period ends.

### § 218.30 Separation, displacement or dismissal allowance.

(a) *General.* When an employee receives a separation, displacement or dismissal allowance from a railroad employer, the annuity beginning date depends on whether the payments are a separation allowance as described in paragraph (b) of this section, or monthly compensation payments as described

in paragraph (c) of this section. (Part 211 of this chapter discusses how a separation, displacement or dismissal allowance is credited as compensation.)

(b) *Separation allowance.* When an employee accepts a separation allowance, the employee gives up his or her job rights. Regardless of whether a separation allowance is paid in a lump sum or in installments, the annuity can begin as early as the day after the day the separation allowance is credited.

(c) *Monthly compensation payments.* An employee who receives monthly compensation payments keeps his or her job rights while the payments are being made. The annuity cannot begin until after the end of the period for which payments are made.

## Subpart D—When an Annuity Ends

### § 218.35 When an employee age annuity ends.

An employee annuity based on age ends with the last day of the month before the month in which the employee dies.

### § 218.36 When an employee disability annuity ends.

(a) *Ending date.* An employee annuity based on disability ends with the earliest of—

(1) The last day of the month before the month in which the employee dies;

(2) The last day of the second month following the month in which the employee’s disability ends; or

(3) The last day of the month before the month in which the employee attains “full retirement age” (the disability annuity is changed to an age annuity).

(b) *Effect of ended disability annuity on eligibility for a later annuity.* The ending of a disability annuity will not affect an employee’s rights to receive any annuity to which he or she later becomes entitled. When a disability annuity ends before an employee attains “full retirement age”, any additional railroad service the employee has after the disability annuity ends can be credited as if no annuity had previously been paid.

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

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### § 218.37 When a supplemental annuity ends.

A supplemental annuity ends when the employee age or disability annuity ends.

### § 218.38 When a spouse annuity ends.

(a) *General rules.* A spouse annuity ends with the earliest of—

(1) The last day of the month before the month in which the spouse dies;

(2) The last day of the month before the month in which the employee dies or the employee's entitlement to an annuity ends;

(3) The last day of the month before the month in which the spouse's marriage to the employee is ended by absolute divorce, annulment, or other judicial action (the spouse may be entitled to a divorced spouse annuity as explained in part 216 of this chapter); or

(4) The month shown in paragraphs (b) and (d) of this section.

(b) *Annuity entitlement based on "child in care."* A spouse annuity based on having a "child in care" ends as shown in this paragraph if he or she is not also eligible for a full-age spouse annuity as explained in part 216 of this chapter. However, see also paragraph (c) of this section. If the spouse is eligible for a full-age spouse annuity when he or she is no longer entitled to the basis of a child, his or her annuity is changed to a spouse annuity based on age. A spouse annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care, as explained in part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(c) *Tier I benefit entitlement based on "child in care."* The tier I benefit of a

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spouse entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care as explained in part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

(d) *Entitlement based on deemed marriage.* If the spouse entitlement is based on a deemed valid marriage, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (b) of this section;

(2) The last day of the month before the month in which the deemed spouse enters a valid marriage with someone other than the employee; or

(3) The last day of the month before the month in which the Board approves an award to someone else as the employee's legal spouse.

### § 218.39 When a divorced spouse annuity ends.

A divorced spouse annuity ends with the earliest of the last day of the month before the month in which the—

(a) Divorced spouse dies;

(b) Employee's entitlement to an annuity ends;

(c) Divorced spouse marries;

(d) Employee dies; or

(e) Divorced spouse becomes entitled to a retirement or disability insurance benefit under the Social Security Act based on a primary insurance amount which equals or exceeds the amount of the full divorced spouse annuity before reduction for age.

## Railroad Retirement Board

## § 218.41

### § 218.40 When a widow(er) annuity ends.

(a) *Entitlement based on age.* When a widow(er)'s annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which—

- (1) The widow(er) dies;
- (2) The widow(er) remarries (the widow(er) may be entitled to benefits as a remarried widow(er) as explained in part 216 of this chapter);
- (3) The widow(er) becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or
- (4) The Board approves an award to someone else as the employee's legal widow(er) if entitlement is based on a deemed valid marriage.

(b) *Disabled widow(er).* If entitlement is based on the widow(er)'s disability, the annuity ends with the earliest of—

- (1) The last day of the month shown in paragraph (a) of this section;
- (2) The last day of the second month following the month in which the disability ends; or
- (3) The last day of the month before the month in which the widow(er) attains age 60 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Annuity entitlement based on "child in care."* A widow(er) annuity based on having a "child in care" ends as shown in this paragraph if he or she is not eligible for a widow(er) annuity based on age as explained in part 216 of this chapter. However, see also paragraph (d) of this section. If the widow(er) is eligible for a widow(er) annuity based on age, when he or she is no longer entitled on the basis of having a "child in care," his or her annuity is changed to a widow(er) annuity based on age. A widow(er) annuity based on having a "child in care" ends with the earliest of—

- (1) The last day of the month shown in paragraph (a) of this section;
- (2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the widow(er) attains "full retirement age" (the "child in care" annuity is changed to an age annuity);

(5) The last day of the month before the month in which the child marries;

(6) The last day of the month before the month in which the child dies; or

(7) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(d) *Tier I benefit entitlement based on child in care.* The tier I benefit of a widow(er), entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

### § 218.41 When a child annuity ends.

A child annuity ends with the earliest of—

(a) The last day of the month before the month in which the child marries;

(b) The last day of the month before the month in which the child dies;

(c) The last day of the month before the month in which the child attains age 18 if the child is not eligible for an annuity as a disabled or student child;

(d) The last day of the last month in which the child is considered a full-time student, as defined in part 216 of this chapter, if the child is a full-time student age 18 through 19; or

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(e) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

**§ 218.42 When a parent annuity ends.**

(a) *Tier I.* The tier I benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

- (1) Dies;
- (2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the tier I benefit of the parent annuity before any reduction for the family maximum, unless he or she is also entitled to a tier II benefit (reduction for the family maximum is discussed in part 228 of this chapter);
- (3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or
- (4) Remarries after the employee's death, unless he or she marries a person who is entitled to Social Security or Railroad Retirement Act benefits as a divorced spouse, widow, widower, mother, father, parent, or disabled child.

(b) *Tier II.* The tier II benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

- (1) Dies;
- (2) Remarries after the employee's death; or
- (3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

**§ 218.43 When a surviving divorced spouse annuity ends.**

(a) *Entitlement based on age.* When the surviving divorced spouse annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the surviving divorced spouse—

- (1) Dies;
- (2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full surviving divorced spouse annuity before reduction for age; or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the surviving divorced spouse annuity is based on disability, the annuity ends with the earliest of—

- (1) The last day of the month shown in paragraph (a) of this section;
- (2) The last day of the second month following the month in which the disability ends; or
- (3) The last day of the month before the month in which the surviving divorced spouse attains "full retirement age" (the disability annuitant then becomes entitled based upon age).

(c) *Entitlement based on "child in care."* When the surviving divorced spouse annuity is based on having a "child in care" as explained in part 216 of this chapter, the annuity ends as shown in this paragraph unless he or she is at least age 60 and was married to the employee for at least 10 years. In that case, the surviving divorced spouse annuity based on having a child in care is changed to an annuity based on age. If the surviving divorced spouse is not entitled to an annuity based on age, the surviving divorced spouse annuity based on "child in care" ends with the earliest of—

- (1) The last day of the month shown in paragraph (a) of this section;
- (2) The last day of the month before the month in which the child is no longer in the surviving divorced spouse's care, as explained in part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);
- (3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;
- (4) The last day of the month before the month in which the surviving divorced spouse remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the surviving divorced spouse attains "full retirement age" (the annuitant then becomes entitled to an annuity based upon age).

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

**§ 218.44 When a remarried widow(er) annuity ends.**

(a) *Entitlement based on age.* When the remarried widow(er) annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the remarried widow(er)—

- (1) Dies;
- (2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full remarried widow(er) annuity before reduction for age or the family maximum (see part 228 of this chapter); or
- (3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the remarried widow(er) annuity is based on disability, the annuity ends with the earliest of—

- (1) The last day of the month shown in paragraph (a) of this section;
- (2) The last day of the second month following the month in which the disability ends; or
- (3) The last day of the month before the month in which the remarried widow(er) attains "full retirement age" (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Entitlement based on "child in care."* When the remarried widow(er) annuity is based on having a "child in care," as explained in part 216 of this chapter, the annuity ends as shown in this paragraph unless the remarried widow(er) is at least age 60. In that case, the remarried widow(er) annuity based on having a "child in care" is changed to an annuity based on age. If the remarried widow(er) is not entitled to an annuity based on age, the remarried widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the remarried widow(er)'s care, as explained in part 216 of this chapter (in this case entitlement to the annuity does not terminate but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the remarried widow(er) remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the remarried widow attains "full retirement age" (the annuitant then becomes entitled to an annuity based upon age).

[54 FR 30725, July 24, 1989, as amended at 68 FR 39010, July 1, 2003; 68 FR 45315, Aug. 1, 2003]

**PART 219—EVIDENCE REQUIRED FOR PAYMENT**

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