

Social Security Administration

§404.1401

§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 we 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 What is the interrelationship between the Railroad Retirement Act and the Old-Age, Survivors and Disability Insurance Program of the Social Security Act?

(a) *Background.* The Railroad Retirement Act provides a system of benefits for railroad employees, their dependents and survivors, and is integrated with the Social Security Act to provide a coordinated system of retirement,

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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" or "vested" railroad workers and those individuals who may be considered "casual" or "non-vested" railroad workers based on the total amount of railroad service credited to the worker, as explained in paragraph (b) of this section. The Railroad Retirement Board transfers to the Social Security Administration (SSA) the compensation records of workers who at the time of retirement, onset of disability or death, are non-vested and meet certain other requirements. Any compensation paid to non-vested workers for service after 1936 becomes wages under the Social Security Act (to the extent they do not exceed the annual wage limitations described in § 404.1047). Any benefits payable to non-vested workers, their dependents, and their survivors, are computed on the basis of the combined compensation and social security covered earnings creditable to the workers' records. Once a railroad worker meets the vesting requirements, the record of the worker's railroad service and compensation generally may not be used for benefit purposes under the Social Security Act, but under certain circumstances may be transferred after the worker's death to SSA for use in determining social security benefit entitlement for the railroad worker's survivors (*see* § 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 Retirement Board will certify such benefits to the Secretary of the Treasury.

(b) *Who is a vested railroad worker?*
You are a vested railroad worker if you have:

- (1) Ten years or more of service in the railroad industry, or
- (2) Effective January 1, 2002, you have at least 5 years of service in the railroad industry, all of which accrue after December 31, 1995.

(c) *Definition of years of service.* As used in paragraph (b) of this section, the term *years of service* has the same meaning as assigned to it by section 1(f) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(f)).

[69 FR 5692, Feb. 6, 2004]

§ 404.1402 When are railroad industry services by a non-vested worker covered under Social Security?

If you are a non-vested worker, we (the Social Security Administration) will consider your services in the railroad industry to be "employment" as defined in section 210 of the Social Security Act for the following purposes:

(a) To determine entitlement to, or the amount of, any monthly benefits or lump-sum death payment on the basis of your wages and self-employment income;

(b) To determine entitlement to, or the amount of, any survivor monthly benefit or any lump-sum death payment on the basis of your wages and self-employment income provided you did not have a "current connection" with the railroad industry, as defined in section 1(o) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(o)), at the time of your death; (in such cases, survivor benefits are not payable under the Railroad Retirement Act);

(c) To determine entitlement to a period of disability (*see* subpart B of this part) on the basis of your wages and self-employment income; or

(d) To apply the provisions of section 203 of the Social Security Act concerning deductions from benefits under the annual earnings test (*see* subpart E of this part).

[69 FR 5693, Feb. 6, 2004]

§ 404.1404 Effective date of coverage of railroad services under the act.

Coverage under the act of services performed after 1936 by an individual in the railroad industry is effective as follows:

(a) The provisions of paragraphs (a) and (b) of § 404.1402 insofar as they relate to survivor monthly benefits are effective for months after December 1946 and insofar as they relate to lump-