

## § 228.18

## 20 CFR Ch. II (4-1-11 Edition)

year of the employee's death. Except for this limitation it is the earlier of

(1) The year the employee attained age 60, or would have attained age 60 had the employee lived, and

(2) The second year before the year in which the widow(er), remarried widow(er), or surviving divorced spouse becomes eligible for such an annuity, has attained age 60, or is age 50-59 and disabled.

(b) The tier I annuity component is increased if the employee's annuity was increased or would have been increased based on delayed retirement credits (see § 225.36 of this chapter).

(c) The tier I annuity component is reduced if the employee had been entitled to an age reduced annuity, including an annuity based on 30 years of service, which is reduced for age because it began before the employee attained age 62. In this instance, the widow(er)'s, remarried widow(er)'s, or surviving divorced spouse's tier I annuity component after applying any reduction for age is further reduced to the larger of amount the employee would have received as a tier I annuity component if still alive or 82½ percent of his or her primary insurance amount.

### § 228.18 Reduction for public pension.

(a) The tier I annuity component of a widow(er), remarried widow(er), surviving divorced spouse, or disabled widow(er) annuity, as described in the preceding sections of this part, is reduced if the survivor is in receipt of a public pension.

(b) *When reduction is required.* Unless the survivor annuitant meets one of the exceptions in paragraph (d) of this section, the tier I annuity component is reduced each month the survivor annuitant is receiving a monthly pension from a Federal, State, or local government agency (Government pension) for which he or she was employed in work not covered by social security on the last day of such employment. For purposes of this section, Federal government employees are not considered to be covered by social security if they are covered for Medicare but are not otherwise covered by social security, or if they are covered under social secu-

rity solely by an election to become subject to the Federal Employees and Retirement System made after December 31, 1987, and have not worked 60 months under that system.

(c) *Payment in a lump sum.* If the Government pension is not paid monthly or is paid in a lump-sum payment, the Board will determine how much the pension would be if it were paid monthly. If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly benefit for the life annuity can be determined, the reduction will be based on that monthly benefit amount. Where the period for the equivalent monthly pension benefit is not clear, it may be necessary for the Board to determine the reduction period on an individual case basis.

(d) *Exceptions.* The reduction does not apply:

(1) If the survivor is receiving a Government pension based on employment for an interstate instrumentality; or

(2) If the survivor receives or is eligible to receive a Government pension for one or more months in the period December 1977 through November 1982 and he or she meets the requirements for social security benefits that were applied in January 1977, assuming the employee's earnings had been covered under that Act (even though he or she did not actually claim such benefits or become entitled for such benefits until a later month). The January 1977 requirements are, for a man, a one-half support test (see paragraph (e) of this section), and, for a woman claiming benefits as a surviving divorced spouse, marriage for at least 20 years to the insured worker. A person is considered eligible for a Government pension for any month in which he or she meets all the requirements for payment except that he or she is working or has not applied; or

(3) If a survivor annuitant was receiving or eligible (as defined in paragraph (d)(2) of this section) to receive a Government pension for one or more months before July 1983, and he or she meets the one-half support test (see paragraph (e) of this section). If a survivor annuitant meets the exception in this paragraph but he or she does not meet the exception in paragraph (d)(2) of this section, December 1982 is the

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earliest month for which the reduction will not affect his benefits; or

(4) If a survivor annuitant was eligible for a Government pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, the Board will consider the annuitant to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (d)(2) and (3) of this section. If an annuitant meets an exception solely because of this paragraph, his or her benefits will be unreduced for months after November 1984 only.

(e) *The one-half support test.* For a man to meet the January 1977 requirement as provided in the exception in paragraph (d)(2) of this section and for a man or a woman to meet the exception in paragraph (d)(3) of this section, he or she must meet a one-half support test. One-half support is defined in part 222 of this chapter. One-half support must be met at one of the following times:

(1) If the employee upon whose compensation the survivor annuity is based had a period of disability which did not end before he or she became entitled to an age and service or disability annuity, or died, the survivor annuitant must have been receiving at least one-half support from the employee—

(i) At the beginning of his or her period of disability; or

(ii) At the time he or she became entitled to an age and service or disability annuity; or

(iii) At the time of his or her death.

(2) If the employee upon whose compensation the survivor annuity is based did not have a period of disability at the time of his or her entitlement or death, the survivor annuitant must have been receiving at least one-half support from the employee—

(i) At the time he or she became entitled to an age and service annuity or disability annuity; or

(ii) At the time of his or her death.

(f) *Amount of reduction.* (1) If a survivor annuitant becomes eligible for a Government pension after June 1983, the Board will reduce (but not below zero) the tier I annuity component by two-thirds of the amount of the month-

ly pension. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(2) If a survivor annuitant became eligible for a Government pension before July 1983 and he or she did not meet one of the exceptions in paragraph (d) of this section, the Board will reduce (but not below zero) the tier I component by the full amount of the pension for months before December 1984 and by two-thirds the amount of his or her monthly pension for months after November 1984. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(g) *Reduction not applicable.* This reduction is not applied to claimants who both filed and were entitled to benefits prior to December 1977.

**§ 228.19 Reduction for a social security benefit.**

The tier I annuity component is reduced for the amount of any social security benefit to which the survivor annuitant is entitled.

**§ 228.20 Reduction for an employee annuity.**

(a) *General.* If an individual is entitled to an annuity as a survivor, and is also entitled to an employee annuity, then the survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply (except as provided in paragraph (b) of this section) if the survivor or the individual upon whose earnings record the survivor annuity is based worked for a railroad employer or as an employee representative before January 1, 1975.

(b) *Tier I reduction.* If an individual is entitled to an annuity as a survivor, then the tier I component of the survivor annuity must be reduced by the amount of the tier I component of the employee annuity after reduction for age. Where the survivor is entitled to a tier II component and either the survivor or the employee had railroad earnings before 1975, a portion of this reduction may be restored in the computation of the tier II component (see § 228.52 of this part).