

## § 404.310

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record of any person, or receive any underpayment due a person, if you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony.

[44 FR 34481, June 15, 1979, as amended at 47 FR 42098, Sept. 24, 1982; 52 FR 19136, May 21, 1987, 52 FR 21410, June 5, 1987; 58 FR 64888, Dec. 10, 1993]

### OLD-AGE AND DISABILITY BENEFITS

#### § 404.310 When am I entitled to old-age benefits?

We will find you entitled to old-age benefits if you meet the following three conditions:

- (a) You are at least 62 years old;
- (b) You have enough social security earnings to be fully insured as defined in §§ 404.110 through 404.115; and
- (c) You apply; or you are entitled to disability benefits up to the month you attain full retirement age (as defined in § 404.409). When you attain full retirement age, your disability benefits automatically become old-age benefits.

[68 FR 4702, Jan. 30, 2003]

#### § 404.311 When does my entitlement to old-age benefits begin and end?

(a) We will find you entitled to old-age benefits beginning with:

- (1) If you have attained full retirement age (as defined in § 404.409), the first month covered by your application *in* which you meet all requirements for entitlement; or
- (2) If you have attained age 62, but have not attained full retirement age (as defined in § 404.409), the first month covered by your application *throughout* which you meet all requirements for entitlement.

(b) We will find your entitlement to old-age benefits ends with the month before the month you die.

[68 FR 4702, Jan. 30, 2003]

#### § 404.312 How is my old-age benefit amount calculated?

(a) If your old-age benefits begin in the month you attain full retirement age (as defined in § 404.409), your monthly benefit is equal to the pri-

mary insurance amount (as explained in subpart C of this part).

(b) If your old-age benefits begin after the month you attain full retirement age, your monthly benefit is your primary insurance amount plus an increase for retiring after full retirement age. See § 404.313 for a description of these increases.

(c) If your old-age benefits begin before the month you attain full retirement age, your monthly benefit amount is the primary insurance amount minus a reduction for each month you are entitled before you attain full retirement age. These reductions are described in §§ 404.410 through 404.413.

[68 FR 4702, Jan. 30, 2003]

#### § 404.313 What are delayed retirement credits and how do they increase my old-age benefit amount?

(a) *What are delayed retirement credits and how do I earn them?* Delayed retirement credits (DRCs) are credits we use to increase the amount of your old-age benefit amount. You may earn a credit for each month during the period beginning with the month you attain full retirement age (as defined in § 404.409) and ending with the month you attain age 70 (72 before 1984). You earn a credit for each month for which you are fully insured and eligible but do not receive an old-age benefit either because you do not apply for benefits or because you elect to voluntarily suspend your benefits to earn DRCs. Even if you were entitled to old-age benefits before full retirement age you may still earn DRCs for months during the period from full retirement age to age 70, if you voluntarily elect to suspend those benefits. If we have determined that you are entitled to benefits, you may voluntarily suspend benefits for any month beginning with the month after the month in which you voluntarily request that we suspend your benefits. If you apply for benefits, and we have not made a determination that you are entitled to benefits, you may voluntarily have your benefits suspended for any month for which you have not received a payment.

(b) *How is the amount of the increase because of delayed retirement credits computed?*—(1) *Computation of the increase*

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*amount.* The amount of the increase depends on your date of birth and the number of credits you earn. We total the number of credits (which need not be consecutive) and multiply that number by the applicable percentage from paragraph (b)(2) of this section. We then multiply the result by your benefit amount and round the answer to the next lower multiple of 10 cents (if the answer is not already a multiple of 10 cents). We add the result to your benefit amount. If a supplementary medical insurance premium is involved it is then deducted. The result is rounded to the next lower multiple of \$1 (if the answer is not already a multiple of \$1).

(2) *Credit percentages.* The applicable credit amount for each month of delayed retirement can be found in the table below.

If your date of birth is:	The credit for each month you delay retirement is:
Before 1/2/1917 .....	1/12 of 1%
1/2/1917—1/1/1925 .....	1/4 of 1%
1/2/1925—1/1/1927 .....	7/24 of 1%
1/2/1927—1/1/1929 .....	1/3 of 1%
1/2/1929—1/1/1931 .....	3/8 of 1%
1/2/1931—1/1/1933 .....	5/12 of 1%
1/2/1933—1/1/1935 .....	11/24 of 1%
1/2/1935—1/1/1937 .....	1/2 of 1%
1/2/1937—1/1/1939 .....	13/24 of 1%
1/2/1939—1/1/1941 .....	7/12 of 1%
1/2/1941—1/1/1943 .....	5/8 of 1%
After 1/1/1943 .....	2/3 of 1%

*Example:* Alan was qualified for old-age benefits when he reached age 65 on January 15, 1998. He decided not to apply for old-age benefits immediately because he was still working. When he became age 66 in January 1999, he stopped working and applied for benefits beginning with that month. Based on his earnings, his primary insurance amount was \$782.60. However, because he did not receive benefits immediately upon attainment of full retirement age (65), he is due an increase based on his delayed retirement credits. He earned 12 credits, one for each month from January 1998 through December 1998. Based on his date of birth of 1/15/1933 he is entitled to a credit of 11/24 of one percent for each month of delayed retirement. 12 credits multiplied by 11/24 of one percent equals a credit of 5.5 percent. 5.5% of the primary insurance amount of \$782.60 is \$43.04 which is rounded to \$43.00, the next lower multiple of 10 cents. \$43.00 is added to the primary insurance amount, \$782.60. The result, \$825.60 is the monthly benefit amount. If a supplementary medical insurance premium is involved it is then deducted. The result is

rounded to the next lower multiple of \$1 (if the answer is not already a multiple of \$1).

(c) *When is the increase because of delayed retirement credits effective?—(1) Credits earned after entitlement and before the year of attainment of age 70.* If you are entitled to benefits, we examine our records after the end of each calendar year to determine whether you have earned delayed retirement credits during the previous year for months when you were at or over full retirement age and you were fully insured and eligible for benefits but did not receive them. Any increase in your benefit amount is effective beginning with January of the year after the year the credits were earned.

(2) *Credits earned after entitlement in the year of attainment of age 70.* If you are entitled to benefits in the month you attain age 70, we examine our records to determine if you earned any additional delayed retirement credits during the calendar year in which you attained age 70. Any increase in your benefit amount is effective beginning with the month you attained age 70.

(3) *Credits earned prior to entitlement.* If you are full retirement age or older and eligible for old-age benefits but do not apply for benefits, your delayed retirement credits for months from the month of attainment of full retirement age through the end of the year prior to the year of filing will be included in the computation of your initial benefit amount. Credits earned in the year you attain age 70 will be added in the month you attain age 70.

(d) *How do delayed retirement credits affect the special minimum primary insurance amount?* We do not add delayed retirement credits to your old-age benefit if your benefit is based on the special minimum primary insurance amount described in §404.260. We add the delayed retirement credits only to your old-age benefit based on your regular primary insurance amount, *i.e.* as computed under one of the other provisions of subpart C of this part. If your benefit based on the regular primary insurance amount plus your delayed retirement credits is higher than the benefit based on your special minimum primary insurance amount, we will pay the higher amount to you. However, if

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the special minimum primary insurance amount is higher than the regular primary insurance amount without the delayed retirement credits, we will use the special minimum primary insurance amount to determine the family maximum and the benefits of others entitled on your earnings record.

(e) *What is the effect of my delayed retirement credits on the benefit amount of others entitled on my earnings record?*—

(1) *Surviving spouse or surviving divorced spouse.* If you earn delayed retirement credits during your lifetime, we will compute benefits for your surviving spouse or surviving divorced spouse based on your regular primary insurance amount plus the amount of those delayed retirement credits. All delayed retirement credits, including any earned during the year of death, can be used in computing the benefit amount for your surviving spouse or surviving divorced spouse beginning with the month of your death. We compute delayed retirement credits up to but not including the month of death.

(2) *Other family member.* We do not use your delayed retirement credits to increase the benefits of other family members entitled on your earnings record.

(3) *Family maximum.* We add delayed retirement credits to your benefit after we compute the family maximum. However, we add delayed retirement credits to your surviving spouse's or surviving divorced spouse's benefit before we reduce for the family maximum.

[68 FR 4703, Jan. 30, 2003, as amended at 75 FR 76259, Dec. 8, 2010]

### § 404.315 Who is entitled to disability benefits?

(a) *General.* You are entitled to disability benefits while disabled before attaining full retirement age as defined in § 404.409 if—

(1) You have enough social security earnings to be *insured for disability*, as described in § 404.130;

(2) You apply;

(3) You have a disability, as defined in § 404.1505, or you are not disabled, but you had a disability that ended within the 12-month period before the month you applied; and

(4) You have been disabled for 5 full consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a period of disability under § 404.320 any time within 5 years of the month you again became disabled.

(b) *Prohibition against reentitlement to disability benefits if drug addiction or alcoholism is a contributing factor material to the determination of disability.* You cannot be entitled to a period of disability payments if drug addiction or alcoholism is a contributing factor material to the determination of disability and your earlier entitlement to disability benefits on the same basis terminated after you received benefits for 36 months during which treatment was available.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21930, May 16, 1983; 51 FR 10616, Mar. 28, 1986; 51 FR 16166, May 1, 1986; 53 FR 43681, Oct. 28, 1988; 57 FR 30119, July 8, 1992; 60 FR 8145, Feb. 10, 1995; 68 FR 4704, Jan. 30, 2003]

### § 404.316 When entitlement to disability benefits begins and ends.

(a) You are entitled to disability benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement. If a waiting period is required, your benefits cannot begin earlier than the first month following that period.

(b) Your entitlement to disability benefits ends with the earliest of these months:

(1) The month before the month of your death;

(2) The month before the month you attain full retirement age as defined in § 404.409 (at full retirement age your disability benefits will be automatically changed to old-age benefits);

(3) The second month after the month in which your disability ends as provided in § 404.1594(b)(1), unless continued subject to paragraph (c); or (4) subject to the provisions of paragraph