

§ 228.51

have been payable in the month the survivors became entitled had the employee been alive and entitled to an annuity under the Railroad Retirement Act at that time, the individual tier II annuity components computed in paragraph (b) of this section shall be reduced proportionally so that the total of all such tier II annuity components totals no more than 80 percent of the employee's tier II annuity component.

(e) *Age reduction.* The tier II annuity component of a widow(er) or disabled widow(er) is subject to reduction by the same age reduction factor as is applicable to the tier I annuity component. See § 228.15 of this part.

§ 228.51 Takeback amount.

(a) The 1983 amendments to the Railroad Retirement Act provided that a portion of the cost-of-living increases payable on the tier I annuity component be offset from the amount of the tier II annuity. This amount is the takeback amount. The amount of the takeback and its application depends on the employee and survivor's annuity beginning dates.

(b)(1) The tier II takeback amount for survivors whose annuity beginning date is January 1, 1984 or later is usually the amount of the employee's takeback amount. That amount is equal to 5 percent of the employee's primary insurance amount, less all applicable reductions (net tier I), on November 1, 1983. However, if the employee's annuity was reduced for a social security benefit but the survivor's annuity is not, the takeback amount is the amount the employee's annuity would have been reduced for the takeback if the employee's annuity had not been reduced for a social security benefit. If the employee's annuity had not been tiered or was being paid under the overall minimum, the Board will compute the amount of the tier II takeback that would have been applicable to the employee's annuity.

(2) The tier II takeback amount for survivors whose annuity beginning date is before January 1, 1984 is equal to 5 percent of the survivor's net tier I annuity component, before deduction on account of work, on November 1, 1983.

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(3) The tier II takeback will be applied in accord with the above paragraphs in any case where the employee died or retired before January 1, 1984. If the employee died or retires after December 31, 1983, or the employee never retired and dies after December 31, 1993, no takeback will be applied to the survivor's annuity.

(c) No takeback is applied if the survivor tier II annuity amount before the takeback is applied is \$10.00 or less and cost-of-living increases have not increased the tier II annuity amount to more than \$10.00 (the takeback may never reduce the tier II to an amount less than \$10.00).

§ 228.52 Restored amount.

(a) *General.* A restored amount is added to the tier II annuity component of a widow(er)'s annuity whose annuity is reduced for receipt of an employee annuity under the Railroad Retirement Act provided either the employee or the widow(er) had ten years of creditable railroad service prior to January 1, 1975.

(b) *Amount.* The amount of the tier II restored amount for a widow(er) is the difference between the amount payable as a widow(er) under the Railroad Retirement Act of 1937 as increased by all annual social security cost-of-living percentage increases from January 1, 1975, until the later of the annuity beginning date of either the employee's annuity or the widow(er)'s annuity and the amount payable to the widow(er) under the Railroad Retirement Act of 1974 under the rules set forth in this part.

(c) *Widower.* In order to qualify for an annuity under the 1937 Act and thus for a restored amount, a widower must have been dependent on his spouse for at least 50 percent of his support in the year prior to her death or at the time the spouse's annuity began.

§ 228.53 Spouse minimum guarantee.

The Railroad Retirement Act provides that a spouse should receive no less as a widow(er) than he or she received as a spouse. However, if the widow(er) becomes entitled to a social security benefit, thus reducing his or her annuity, the spouse minimum guarantee is payable only to the extent

that it guarantees the amount that the widow(er) would have received as a spouse had he or she been entitled to a social security benefit in the month preceding the employee's death in an amount equal to the amount of the social security benefit payable at the time the widow(er) first became entitled to the social security benefit.

§ 228.60 Cost-of-living increase.

The tier II annuity component of a survivor annuity under the Railroad Retirement Act is increased by 32.5 percent of the percentage increase under section 215(i) of the Social Security Act at the same time that any such increase is payable. The amount of the increase is published in the FEDERAL REGISTER annually. The cost-of-living is payable beginning with the benefit payable for the month of December of the year for which the increase is due. The increase is paid in the January payment. In addition, in determining the amount of the tier II component at the time the survivor annuity begins, all cost-of-living increases that were applied or would have been applied after the employee's annuity beginning date or death and prior to the surviving annuity beginning date are taken into consideration.

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