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through § 234.34 for information about when and to whom each type of unpaid annuity is payable. An application for an unpaid annuity must be filed within two years after the death of the person originally entitled to the annuity.

(Approved by the Office of Management and Budget under control numbers 3220-0031 and 3220-0032 and 3220-0042)

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§ 234.31 Regular employee retirement and supplemental annuities.

A regular employee retirement annuity or a supplemental annuity which is unpaid at the death of the employee is payable in the following order and amounts:

(a) A surviving spouse, who was "living with" (see § 234.21) the employee at the time of the employee's death, receives the full amount of the unpaid annuity.

(b) Each person who paid the employee's burial expenses receives a share of the unpaid annuities in the same proportion that he or she paid the burial expenses, but only to the extent that he or she is not reimbursed by the LSDP. If a payer of the employee's burial expenses dies before negotiating his or her check, that payment becomes payable to his or her estate.

(c) Surviving children of the employee receive equal shares.

(d) Surviving grandchildren of the employee receive equal shares.

(e) Surviving parents of the employee each receive equal shares.

(f) Surviving brothers and sisters of the employee receive equal shares. Half blood brothers and sisters share equally with full blood brothers and sisters.

§ 234.32 Spouse or divorced spouse annuities.

A spouse annuity or divorced spouse annuity which is unpaid at the death of the spouse or divorced spouse is paid in the following order and amounts:

(a) The employee receives the full amount.

(b) If the employee died before negotiating the check in payment of the unpaid annuities, the unpaid spouse annuity or divorced spouse annuity is paid in the same order and amounts as described in § 234.31 (b) through (f).

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§ 234.33 Survivor annuities.

Any survivor annuity which is unpaid at the death of the survivor is paid in the same order and amounts as described in § 234.31(a) and § 234.31(c) through § 234.31(f).

§ 234.34 When an entitled relative of the employee dies before receiving payment of a due but unpaid annuity.

If a person, who is entitled to unpaid annuities based upon his or her relationship to the employee, dies before negotiating the check in payment of the unpaid annuities, the amount to which he or she was entitled becomes payable to other relatives of the employee in the same degree of relationship. If no relatives in that degree of relationship survive, the amount becomes payable to relatives in the next degree of relationship.

Subpart D—Residual Lump-Sum Payment

§ 234.40 General.

The residual lump-sum (RLS) is the means by which railroad employees and their survivors are guaranteed to receive at least as much in benefits as the employee paid in railroad retirement taxes during the years 1937 through 1974. An RLS payment can be made only if it appears that no other benefits based at least in part on railroad service will be payable under either the Railroad Retirement Act or Social Security Act in the future. The residual is reduced for any retirement benefits that were paid on the basis of the employee's railroad service, and for any survivor benefits based on the employee's earnings already paid by either the Board or the Social Security Administration. A widow(er) or dependent parent can, before attaining age 60, elect to waive future rights to monthly benefits based on the employee's railroad service in order to receive the RLS.

§ 234.41 Persons to whom an RLS is payable.

After the death of an employee, the RLS is payable, in the following order,

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to: beneficiaries designated by the employee; surviving relatives of the employee in order provided by law (see § 234.44); or the employee's estate.

§ 234.42 How the employee may designate beneficiaries.

The employee may designate one or more persons as beneficiaries of the RLS on a form available at any Board office. The employee may specify the share that each beneficiary is to receive. Also, the employee may designate alternate beneficiaries in the event that all primary beneficiaries die before the RLS becomes payable.

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§ 234.43 Payment to designated beneficiaries.

(a) *How designated beneficiaries are paid.* Primary beneficiaries are paid the RLS to the exclusion of alternate beneficiaries. If a designated beneficiary dies before the date on which the RLS becomes payable, his or her share of the RLS becomes payable to any other designated beneficiaries. If an entitled designated beneficiary dies before negotiating the RLS check, that share is payable to his or her estate.

(b) *Amount designated beneficiaries are paid.* If the employee specified the share that each beneficiary is to receive, payment is made in the proportion specified. Otherwise, if there is more than one designated beneficiary, each is paid an equal share of the RLS.

§ 234.44 Payment to surviving relatives.

(a) *How surviving relatives are paid.* If the employee either did not designate a beneficiary or was not survived by a designated beneficiary, the RLS is payable to surviving relatives of the employee in the following order of relationship to the employee:

- (1) Widow(er) who was "living with" the employee at the time of the employee's death (see § 234.21 for a definition of "living with");
- (2) Child;
- (3) Grandchild;
- (4) Parent;
- (5) Brother or sister, including half blood brother or sister.

(b) *Amount surviving relatives are paid.* If more than one relative in an equal degree of relationship survives the employee, each one is paid an equal share of the RLS. If an entitled relative of the employee dies before negotiating the RLS check, that share becomes payable to other surviving relatives of the employee in the same degree of relationship. If no relatives in that degree of relationship survive, relatives in the next degree of relationship are payable.

§ 234.45 Payment to the employee's estate.

(a) *When the employee's estate is paid.* If no designated beneficiaries or relatives survive the employee when the RLS becomes payable, the employee's estate may be paid the RLS. Employees may also designate their estates to receive all or a share of the RLS as beneficiaries.

(b) *How the employee's estate is paid.* If a legal representative of the employee's estate has been appointed and has not been discharged, the Board will pay the RLS to the legal representative. When no legal representative of the employee's estate has been or is expected to be appointed, or the estate of the deceased employee has been closed and reopening is not expected, the Board will pay the RLS according to state statutory procedures applicable when no formal probate or administration occurs.

§ 234.46 Amount of the RLS payable.

The gross RLS amount is equal to certain percentages of the employee's creditable compensation, including military service, as described in § 234.48. (Creditable compensation and military service are discussed in parts 211 and 212 of this chapter, respectively.) The amount of the RLS payable is equal to the gross RLS minus the sum of all retirement benefits that have been paid on the basis of the employee's railroad service and all survivor benefits based on the employee's earnings previously paid by either the Board or the Social Security Administration.