

§216.65

20 CFR Ch. II (4-1-01 Edition)

§216.65 Who is an employee's widow(er).

An individual who was married to the employee at the employee's death is the deceased employee's widow(er) if he or she:

- (a) Was married to the employee for at least 9 months before the day the employee died;
- (b) Is the natural parent of the employee's child;
- (c) Was married to the employee when either the employee or the widow(er) adopted the other's child, or they both legally adopted a child who was then under 18 years old;
- (d) Was married to the employee less than 9 months before the employee died but, at the time of marriage, the employee was reasonably expected to live for 9 months; and

- (1) The employee's death was accidental;
- (2) The employee died in the line of duty while he or she was serving active duty as a member of armed forces of the United States; or
- (3) The surviving spouse was previously married to the employee for at least 9 months;
- (e) Was entitled in the month before the month of marriage to either:

(1) A benefit under section 202 of the Social Security Act as a widow, widower, spouse (divorced spouse, surviving divorced spouse), father, mother, parent, or disabled child; or

(2) An annuity under the Railroad Retirement Act as a widow, widower, divorced spouse, or surviving divorced spouse, parent or disabled child; or

(f) Could have been entitled to a benefit listed in paragraph (e) of this section, if the widow(er) had applied and been old enough to qualify therefor in the month before the month of marriage.

§216.66 Who is an employee's surviving divorced spouse.

An individual who was married to the employee is the deceased employee's surviving divorced spouse if he or she:

- (a) Was married to the employee for a period of at least 10 years immediately before the date the divorce became final, and applies for an annuity based on age or disability; or

(b) Applies for an annuity based on having a "child in care" and either:

- (1) Is the natural parent of the employee's child;
- (2) Was married to the employee at the time the employee or the surviving divorced spouse adopted the other's child who was then under 18 years old; or
- (3) Was married to the employee at the time they adopted a child who was then under 18 years old.

§216.67 "Child in care."

(a) *Railroad Retirement Act.* Part 222 of this chapter sets forth what is required to establish that a child is in an individual's care for purposes of the Railroad Retirement Act. This definition is used to establish eligibility for the tier II component of a female spouse or widow(er) annuity under that Act. Under this definition a child must be under age 18 or under a disability before any benefit is payable based upon having the child in care.

(b) *Social Security Act.* In order to establish eligibility for the tier I components of a spouse or widow(er) annuity, and eligibility for a surviving divorced spouse annuity based upon having a child of the employee in care, the definition of "child in care" found in the Social Security Act is used. Under this definition, a child must be under age 16 or under a disability.

§216.68 Disability period for widow(er), surviving divorced spouse, or remarried widow(er).

A widow(er), surviving divorced spouse, or remarried widow(er) who has a disability as defined in part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which:

- (a) Begins in the later of:
 - (1) The month in which the employee died;
 - (2) The last month for which the widow(er) or surviving divorced spouse was entitled to an annuity for having the employee's child in care; or
 - (3) The last month for which the widow(er) or surviving divorced spouse was entitled to a previous annuity based on disability; and
- (b) Ends with the earlier of: