As an aid in answering inquiries requiring specific references to, or citations of, the Railroad Retirement Act and/or the United States Code equivalent, cross-references are provided both alphabetically by general subject matter and by RRA section number with the U.S. Code equivalent.

105.5 Alphabetic Subject Matter Cross-Reference RRA To U.S. Code

This subchapter contains a general subject matter cross-reference to sections of the Railroad Retirement Act and the United States Code. For a more detailed subject matter delineation, see FOM-I-105.10, which outlines the RRA numerically by section, with the corresponding U.S. Code equivalent.

General Subject Title	Section of 1974 Railroad Retirement Act	United States Code Equivalent
Annuity Beginning and Ending Dates	5	45 USC sec 231d
Annuity Eligibility Requirements	2	45 USC sec 231a
Automatic Benefit Eligibility Requirement Adjustments	19	45 USC sec 231r
Benefit Preservation	22	45 USC sec 231u
Computation of Employee Annuities	3	45 USC sec 231b
Computation of Spouse and Survivor Annuity	4	45 USC sec 231c
Court Jurisdiction	8	45 USC sec 231g
Crediting RR Service Under the Social Security Act	18	45 USC sec 231q
Definitions	1	45 USC sec 231
Erroneous Payments	10	45 USC sec 231i
Free Transportation	17	45 USC sec 231p
Incompetence	12	45 USC sec 231k
Inspector General	23	45 USC sec 231v

Lump Sum Payments	6	45 USC sec 231e
Penalties	13	45 USC sec 231l
Powers and Duties of the Board	7	45 USC sec 231f
Private Pensions	16	45 USC sec 231o
Railroad Retirement Account	15	45 USC sec 231n
Returns of Compensation	9	45 USC sec 231h
Separability	20	45 USC sec 231s
Social Security Equivalent Benefit Account	15A	45 USC sec 231n-1
Short Title	21	45 USC sec 231t
Taxation, Garnishment, Attachment or Legal Process	14	45 USC sec 231m
Waiver of Annuities	11	45 USC sec 231j

105.10 Numeric RRA Cross-Reference To Specific Subjects And U.S. Code Equivalents

This subchapter contains a detailed subject matter cross-reference in numerical order of sections of the RRA, with the corresponding U.S. Code equivalent.

Section of 1974 Railroad Retirement Act	**United States and Code Equivalent**	**Section Titles Subject Matter Covered By Subsections**
Section 1	**45 USC sec 231**	**Definitions**
1(a)	45 USC sec 231(a)	Employer
1(b)	45 USC sec 231(b)	Employee
1(c)	45 USC sec 231(c)	Employee Representative
1(d)	45 USC sec 231(d)	In Service of An Employer

1(e)	45 USC sec 231(e)	In Employment Relation
1(f)	45 USC sec 231(f)	Years of Service
1(g)	45 USC sec 231(g)	In Military Service
1(h)	45 USC sec 231(h)	Compensation
1(i)	45 USC sec 231(i)	Board
1(j)	45 USC sec 231(j)	Company
1(k)	45 USC sec 231(k)	Officers As Employees
1(l)	45 USC sec 231(l)	Person
1(m)	45 USC sec 231(m)	United States
1(n)	45 USC sec 231(n)	Social Security Act
1(o)	45 USC sec 231(o)	Current Connection
1(p)	45 USC sec 231(p)	Annuity
1(q)	45 USC sec 231(q)	Quarter; Calendar Quarter
1(r)	45 USC sec 231(r)	Permanently Insured Under the SS Act
Section 2	**45 USC sec 231a**	**Annuity Eligibility Requirements**
2(a)(1)	45 USC sec 231a(a)(1)	Employee Annuities
2(a)(2)	45 USC sec 231a(a)(2)	Standards for Occupational Disability
2(a)(3)	45 USC sec 231a(a)(3)	Proof of Disability
2(b)	45 USC sec 231a(b)	Supplemental Annuity
2(c)(1)	45 USC sec 231a(c)(1)	Spouse Annuity
2(c)(2)	45 USC sec 231a(c)(2)	Spouse or Divorced Spouse Age Reduction
2(c)(3)	45 USC sec 231a(c)(3)	Spouse Defined
2(c)(4)	45 USC sec 231a(c)(4)	Divorced Spouse Annuity

2(d)(1)	45 USC sec 231a(d)(1)	Eligibility Requirements for Survivor Insurance Annuities
2(d)(2)	45 USC sec 231a(d)(2)	Prescribed Period for Disabled Widow(er)'s Insurance Annuities and Disabled Surviving Divorced Spouse's Annuities
2(d)(3)	45 USC sec 231a(d)(3)	Standards for Survivor Disability Annuities
2(d)(4)	45 USC sec 231a(d)(4)	Determining Relationship to Employee, Child Dependency and Full-Time Elementary or Secondary School Students
2(e)(1)	45 USC sec 231a(e)(1)	Cessation of Service Except Elected Public Office
2(e)(2)	45 USC sec 231a(e)(2)	Relinquishment of Rights
2(e)(3)	45 USC sec 231a(e)(3)	Employer Service, Last Person Service
2(e)(4)	45 USC sec 231a(e)(4)	Deductions When Employee Disability Annuitant Earns More Than $880
2(e)(5)	45 USC sec 231a(e)(5)	Spouse or Divorced Spouse Annuities Not Payable for Month She or the Employee Are in RR Service or LPS
2(f)	45 USC sec 231a(f)	SS Work Restrictions for Employee, Spouse and Divorced Spouse
2(g)(1)	45 USC sec 231a(g)(1)	RR Work Restrictions for Survivors
2(g)(2)	45 USC sec 231a(g)(2)	SS Work Restrictions for Survivors
2(h)(2)	45 USC sec 231a(h)(2)	Reduction in Supplemental Annuities for Company Pension
2(h)(3)	45 USC sec 231a(h)(3)	Reduction in Spouse, Divorced Spouse or Survivor Annuity for Entitlement to Employee Annuity (When No RR Service Before 1975)

2(h)(4)	45 USC sec 221a(h)(4)	Reduction in Annuity for Entitlement to More than One Spouse or Survivor Annuity
Section 3	**45 USC sec 231b**	**Computation of Employee Annuities**
3(a)(1)	45 USC sec 231b(a)(1)	Tier I
3(a)(2)	45 USC sec 231b(a)(2)	Deeming Provisions for a Disabled Employee
3(a)(3)	45 USC sec 231b(a)(3)	Tier I for 60/30 Employee with an ABD prior to attainment of age 62
3(b)(1)	45 USC sec 231b(b)(1)	Tier II
3(b)(2)	45 USC sec 231b(b)(2)	AMC for Employees of Certain Government Agencies
3(e)	45 USC sec 231b(e)	Supplemental Annuity
3(f)(1)	45 USC sec 231b(f)(1)	RRA Maximum
3(f)(2)	45 USC sec 231b(f)(2)	Grandfather Clause
3(f)(3)	45 USC sec 231b(f)(3)	Overall Minimum Guaranty
3(g)(1)	45 USC sec 231b(g)(1)	December COL Increase for Tier II
3(g)(2)	45 USC sec 231b(g)(2)	Tier II Solvency Reduction
3(h)(1)	45 USC sec 231b(h)(1)	Windfall for Employee Vested on His Own E/R and Who Worked for a Railroad in 1974 or had 25 Years of Service Before 1974 or has a CC When He Retires
3(h)(2)	45 USC sec 231b(h)(2)	Windfall for Employee Vested on His Own E/R Who Left the Railroad Industry Before 1974
3(h)(3)	45 USC sec 231b(h)(3)	Windfall for Employee Vested on His Spouse's E/R and Who Worked for a Railroad in 1974 or had25 Years of Service Before 1974 or has a CC When He Retires

3(h)(4)	45 USC sec 231b(h)(4)	Windfall for Employee Vested on His Spouse's E/R Who Left the Railroad Industry Before 1974
3(h)(5)	45 USC sec 231b(h)(5)	COL Increase for W/F Prior to Earlier of 1-1-82 or Employee's ABD
3(h)(6)	45 USC sec 231b(h)(6)	Eliminates Windfalls for Employees Vested on Their Spouses E/R Unless They Were Determined to be Entitled to a Spouse W/F Before 8-13-81.
3(i)(1)	45 USC sec 231b(i)(1)	Subsequent Service
3(i)(2)	45 USC sec 231b(i)(2)	Creditable Military Service
3(i)(3)	45 USC sec 231b(i)(3)	Prior Service
3(i)(4)	45 USC sec 231b(i)(4)	Crediting Additional Service Months when Employee Has Maximum Compensation but Performed Service in Less than 12 Months.
3(j)	45 USC sec 231b(j)	Average Monthly Compensation
3(k)	45 USC sec 231b(k)	Employee Representative Treated the Same as an Employee
3(l)(1)	45 USC sec 231b(l)(1)	Age Reduction for Annuity Increases or Decreases
3(l)(2)	45 USC sec 231b(l)(2)	Separate Age Reduction for Annuity Components; Age Reduction for Cases Awarded Before 10-1-81
3(m)	45 USC sec 231b(m)	Reduction for SS Benefits
Section 4	**45 USC sec 231c**	**Computation of Spouse and Survivor Annuity**
4(a)(1)	45 USC sec 231c(a)(1)	Tier I for Spouse or Divorced Spouse
4(a)(2)	45 USC sec 231c(a)(2)	Deeming Provision for Spouse of 60/30 Employee Who Was At Least Age 62 on His ABD

4(a)(3)	45 USC sec 231c(a)(3)	Tier I for Spouse of a60/30 Employee With An ABD Prior to Attainment of Age 62
4(a)(4)	45 USC sec 231c(a)(4)	Tier I for Spouse of a Disabled Employee
4(b)	45 USC sec 231c(b)	Tier II for Spouse
4(c)	45 USC sec 231c(c)	RRA Maximum
4(d)(1)	45 USC sec 231c(d)(1)	December COL Increase for Tier II
4(d)(2)	45 USC sec 231c(d)(2)	Tier II Solvency Reduction for Spouses First Entitled 1/84 or Later When the Employee Was on the Rolls in 12/83
4(d)(3)	45 USC sec 231c(d)(3)	Tier II Solvency Reduction for Spouses on the Rolls in 12/83
4(e)(1)	45 USC sec 231c(e)(1)	RIB Windfall for a Spouse of a Vested Employee Who Worked for a Railroad in1974 or Had 25 Years of Service Before 1974 or Has a CC When He Retires
4(e)(2)	45 USC sec 231c(e)(2)	RIB Windfall for a Spouse of an Employee Who Left the Railroad Industry Before 1974
4(e)(3)	45 USC sec 231c(e)(3)	Wife's Windfall for a Spouse of a Vested Employee
4(e)(4)	45 USC sec 231c(e)(4)	COL Increase for W/F Prior to Earlier of 1-1-82 or Employee's ABD
4(e)(5)	45 USC sec 231c(e)(5)	Eliminates Windfall for Spouses Unless They Were Determined to be Entitled to a W/F Before 8-13-81.
4(f)(1)	45 USC sec 231c(f)(1)	Tier I for Survivors
4(f)(2)	45 USC sec 231c(f)(2)	Deeming Provisions for Aged Widow(er)s or Parents and Disabled Widow(er)s or Children

4(f)(3)	45 USC sec 231c(f)(3)	Tier I COL Increases for Widow(er)s Entitled to an Annuity Based Solely on Railroad Service Before1937
4(g)(1)	45 USC sec 231c(g)(1)	Basic Tier II for Survivors
4(g)(2)	45 USC sec 231c(g)(2)	Minimum and Maximum Tier II Amounts
4(g)(3)	45 USC sec 231c(g)(3)	Provides a Reduction in Tier II for Months Before the Application was Filed, if the new Entitlement Would Cause an Overpayment in the Tier II of Other Entitled Family Members
4(g)(4)	45 USC sec 231c(g)(4)	WIA Restored Amount/Spouse Minimum Guarantee
4(g)(5)	45 USC sec 231c(g)(5)	No Tier II for Remarried Widow(er)s and Surviving Divorced Spouses
4(g)(6)	45 USC sec 231c(g)(6)	Provides for Tier II COL Increases
4(g)(7)	45 USC sec 231c(g)(7)	Tier II Solvency Reduction for Survivor Annuitant on the Rolls in l2/83
4(g)(8)	45 USC sec 231c(g)(8)	Tier II Solvency Reduction for Survivors Coming on the Rolls After 12/83 Who Are Entitled to a 1981 Amendment Tier II
4(g)(9)	45 USC sec 231c(g)(9)	Tier II Solvency Reduction for Survivors Coming on the Rolls After 12/83 Who Are Entitled to a 1937 Act Tier II
4(h)(1)	45 USC sec 231c(h)(1)	Windfall for Widow(er)
4(h)(2)	45 USC sec 231c(h)(2)	Eliminates Windfall for Widow(er)s Unless They Were Determined to be Entitled to a W/F Before8-13-81. Also Provides that Remarried Widow(er)s and Surviving Divorced Spouses Are not Eligible for a W/F
4(i)(1)	45 USC sec 231c(i)(1)	Tier I Offset for Spouse or Divorced Spouse SS Benefit

4(i)(2)	45 USC sec 231c(i)(2)	Tier I Offset in Survivor Annuity for Employee Annuity Tier I
4(i)(3)	45 USC sec 231c(i)(3)	Tier I Offset in Remarried Widow(er)'s Annuity for a Spouse Benefit Under the SS Act
Section 5	**45 USC sec 231d**	**Annuity Beginning and Ending Dates**
5(a)	45 USC sec 231d(a)	ABD for Annuities
5(b)	45 USC sec 231d(b)	Application for Annuity
5(c)(1)	45 USC sec 231d(c)(1)	Termination of A&S and SUP Annuities
5(c)(2)	45 USC sec 231d(c)(2)	Termination of Employee Disability Annuities
5(c)(3)	45 USC sec 231d(c)(3)	Termination of Spouse or Divorced Spouse Annuity
5(c)(4)	45 USC sec 231d(c)(4)	Termination of Aged Widow(er)'s Annuity
5(c)(5)	45 USC sec 231d(c)(5)	Termination of Disabled Widow(er)'s Annuity
5(c)(6)	45 USC sec 231d(c)(6)	Termination of Mother's Annuity
5(c)(7)	45 USC sec 231d(c)(7)	Termination of Child's Annuity and Reentitlement Annuity
5(c)(8)	45 USC sec 231d(c)(8)	Termination of Parent's Annuity
5(c)(9)	45 USC sec 231d(c)(9)	No Annuity Is Payable for the Month of Death or for any Month in Which an Annuitant Disappears.
		This Section Also Provides Survivor Benefits for the Spouse of an Employee Who Disappeared
Section 6	**45 USC sec 231e**	**Lump-Sum Payments**
6(a)	45 USC sec 231e(a)	Annuities Due But Unpaid at Death
6(b)(1)	45 USC sec 231e(b)(1)	1937 Act Lump-Sum Death Payment

6(b)(2)	45 USC sec 231e(b)(2)	1974 Act Lump-Sum Death Payment
6(c)(1)	45 USC sec 231e(c)(1)	Residual Lump-Sum Eligibility Requirements
6(c)(2)	45 USC sec 231e(c)(2)	RLS Computation
6(d)(1)	45 USC sec 231e(d)(1)	Tax Refund Eligibility Requirements
6(d)(2)	45 USC sec 231e(d)(2)	Tax Refund Computation
6(e)	45 USC sec 231e(e)	Separation Allowance Refund
Section 7	**45 USC sec 231f**	**Powers and Duties of the Board**
7(a)	45 USC sec 231f(a)	Composition of the Board
7(b)(1)	45 USC sec 231f(b)(1)	General Authority to Administer RR Act
7(b)(2)	45 USC sec 231f(b)(2)	General Authority to Administer SS Act Provisions
7(b)(3)	45 USC sec 231f(b)(3)	Specific Powers and Authority to Delegate
7(b)(4)	45 USC sec 231f(b)(4)	Certification to the Treasury
7(b)(5)	45 USC sec 231f(b)(5)	Authority to Issue Rules and Regulations
7(b)(6)	45 USC sec 231f(b)(6)	Authority to Maintain Records and Secure Information
7(b)(7)	45 USC sec 231f(b)(7)	CMS, HHS and RRB Record Exchanges
7(b)(8)	45 USC sec 231f(b)(8)	Verifying Records of M/S and Benefits Based on It
7(b)(9)	45 USC sec 231f(b)(9)	Employees and Offices of the Board
7(c)(1)	45 USC sec 231f(c)(1)	Payments from RR and SUP Accounts and Dual Benefits Payments Account
7(c)(2)	45 USC sec 231f(c)(2)	Financial Interchange
7(c)(3)	45 USC sec 231f(c)(3)	Rate of Interest

7(c)(4)	45 USC sec 231f(c)(4)	Borrowing Authority for up to the Monthly Amount Due Through Financial Interchange from the General Fund When There Are Insufficient Funds in the Regular RR Account to Pay Benefits
7(d)(1)	45 USC sec 231f(d)(1)	Administration of Medicare Program
7(d)(2)	45 USC sec 231f(d)(2)	Qualified RR Medicare Beneficiaries
7(d)(3)	45 USC sec 231f(d)(3)	DIB Insured Status Deeming Provision
7(d)(4)	45 USC sec 231f(d)(4)	Medicare Provisions for Canada
7(d)(5)	45 USC sec 231f(d)(5)	Exchange of Information Between RRB, CMS, and HHS
7(e)	45 USC sec 231f(e)	Authority to Accept Gifts
7(f)	45 USC sec 231f(f)	Requirement to Send a Copy of Any Budget Information, Legislative Recommendation, or Testimony for Congressional Hearings to Congress When it Is Sent to the President or the Office of Management and Budget
Section 8	**45 USC sec 231g**	**Court Jurisdiction - Provisions for Court Review**
Section 9	**45 USC sec 231h**	**Returns of Compensation, Reports of Compensation and Finality of Such Reports**
Section 10	**45 USC sec 231i**	**Erroneous Payments**
10(a)	45 USC sec 231i(a)	Authority to Recover Erroneous Payments
10(b)	45 USC sec 231i(b)	Manner of Recovery
10(c)	45 USC sec 231i(c)	Authority to Waive Recovery
10(d)	45 USC sec 231i(d)	Certifying Officer Not Liable for Erroneous Payment
Section 11	**45 USC sec 231j**	**Waiver of Annuities - Makes Provision for Waiver of an Annuity**

Section 12	**45 USC sec 231k**	**Incompetence**
12(a)	45 USC sec 231k(a)	RRB Authority When Beneficiary Is Incompetent
12(b)	45 USC sec 231k(b)	Authority to Deal With Guardian
Section 13	**45 USC sec 231 l**	**Penalties**
l3(a)	45 USC sec 231 l(a)	Penalty Provision and Fines
l3(b)	45 USC sec 231 l(a)	Collection and Crediting of Fines
Section 14	**45 USC sec 231m**	**Taxation, Garnishment, Attachment or Legal Process**
		A Supplemental Annuity Is Subject to Taxes Under the Internal Revenue Code. All but the Tier I May Be Treated as Community Property in Connection with a Decree of Divorce, Annulment, or Legal Separation. An Annuity is Exempt from Other Legal Process Except for Legal Process for Enforcement of Support Obligations
Section 15	**45 USC sec 231n**	**Railroad Retirement Account**
15(a)	45 USC sec 231n(a)	Continuation of l937 Act Provisions for RR Account
15(b)	45 USC sec 231n(b)	Appropriation for M/S
15(c)	45 USC sec 231n(c)	Continuation of 1937 Act Provisions for SUP ANN Account
15(d)	45 USC sec 231n(d)	Appropriations for Windfall Payments and Borrowing Authority for up to the Amount Needed to Pay Windfall Benefits for One Month
15(e)	45 USC sec 231n(e)	Investment of Funds
15(f)	45 USC sec 231n(f)	Actuarial Advisory Committee
15(g)	45 USC sec 231n(g)	Annual Report to Include Status of Accounts

15(h)	45 USC sec 231n(h)	Authorization for Appropriation for Administrative Expenses
15(i)	45 USC sec 231n(i)	Checks Uncashed by the End of the Sixth Month After the Month of Issue Are Reaccredited to the RR Account Until the Checks Are Cashed
Section 15A	**45 USC sec 231n-l**	**Social Security Equivalent Benefit Account**
15A(a)	45 USC sec 231n-l(a)	Establishes the SS Equivalent Benefit Account
15A(b)	45 USC sec 231n-l(b)	Income to the SS Equivalent Benefit Account Includes Net Tier I Taxes, Income Tax Liabilities on Tier I, Financial Interchange Payments and Appropriations for Military Service
15A(c)(1)	45 USC sec 231n-l(c)(1)	The SS Equivalent Benefit Account Must First Be Used to Pay SS Equivalent Benefits
15A(c)(2)	45 USC sec 231n-l(c)(2)	Financial Interchange Transfers to the social security trust funds must be made from the SS Equivalent Benefit Account
15A(d)(1)	45 USC sec 231n-l(d)(1)	Borrowing Authority from the Railroad Retirement Account When There Are Insufficient Funds in the SS Equivalent Benefit Account to Pay Benefits
15A(d)(2)	45 USC sec 231n-l(d)(2)	Authority to Transfer Funds from the SS Equivalent Benefit Account to the RR Account When there Are Insufficient Funds in that Account to Pay Benefits
15A(e)	45 USC sec 231n-l(e)	Investment of Funds, Actuarial Advisory Committee and Annual Report Including Status of Account
15A(f)(1)	45 USC sec 231n-l(f)(1)	References in the RR Act to the RR Account Mean the SS Equivalent Benefit Account if Payment of SS Equivalent Benefits Is Involved

15A(f)(2)	45 USC sec 231n-l(f)(2)	Definition of "Social Security Equivalent Benefit"
Section 16	**45 USC sec 231o**	**Private Pensions - No Restriction on Payment of Private Pensions**
Section 17	**45 USC sec 231p**	**Free Transportation - Carriers Permitted to Furnish Free Transportation to Annuitants**
Section 18	**45 USC sec 231q**	**Crediting RR Service Under the Social Security Act**
18(1)	45 USC sec 231q(1)	When RR Service Cannot Be Used by SSA
18(2)	45 USC sec 231q(2)	When RR Service Can Be Used by SSA
Section 19	**45 USC sec 231r**	**Automatic Benefit Eligibility Requirement Adjustments**
19(a)	45 USC sec 231r(a)	SS Eligibility Changes Apply Similarly for SS Component of Annuity
19(b)	45 USC sec 231r(b)	New SS Beneficiaries Also Acquire RR Annuity Eligibility
19(c)	45 USC sec 231r(c)	New Medicare Benefits for SS Act Beneficiaries Apply to RR Act Beneficiaries
19(d)	45 USC sec 231r(d)	Limits Life Cases to Those With 10 Years of Service and Survivor Cases to Those Where the Employee Has 10 Years of Service and a C/C; Limits Duplication of Benefits
Section 20	**45 USC sec 231s**	**Separability - Invalidity of One Provision Does Not Affect Other Provisions**
Section 21	**45 USC sec 231t**	**Short Title - Railroad Retirement Act of 1974**
Section 22	**45 USC sec 231u**	**Benefit Preservation**

22(a)	45 USC sec 231u(a)	The Board Must Furnish the President and the Congress With an Annual Report Containing a Five year Projection of Revenues and Payments from the RR Account.
22(b)(1)	45 USC sec 231u(b)(1)	Representatives of Labor and Management Must Submit Funding Proposal(s) to the President and Congress When the Board's Report Indicates Insufficient Funding.
22(b)(2)	45 USC sec 231u(b)(2)	The President Must Submit a Plan to Congress to Preserve the RR Account, Including a Particular Proposal to Assure Continuous Payment of Social Security Equivalent Benefits
22(c)	45 USC sec 231u(c)	When the Board's Report Indicates There Is Insufficient Funding, the Board Must Issue Regulations to Provide for Reducing Benefits Which Will Be Effective Unless Legislation Is Enacted for this Purpose.
Section 23	**45 USC sec 231v**	**Inspector General**
		The President May Appoint an Inspector General for the Board Who Will Report Directly to the Chairman.

110.5 What Is An Application Filed With The RRB?

In general, an application filed with the RRB is one that is filed on an official form set up by the RRB for that purpose.

An application filed for benefits under Title II of the Social Security Act on a form set up by that agency can, under certain conditions, be considered an application filed with the RRB.

An application for survivor benefits filed with the Department of Veterans Affairs on one of its forms is also considered an application for a survivor annuity under the Railroad Retirement Act.

110.10 Need to File an Application

In addition to meeting other requirements, a person must file an application to become entitled to an annuity or lump sum under the Railroad Retirement Act. The filing of an application is necessary to:

- Permit a formal decision on whether the person is entitled to an annuity or lump sum;
- Protect the person's entitlement to an annuity for as much as 6 or 12 months before the application is filed, depending on the kind of annuity;
- Provide the right to appeal if the applicant disagrees with the decision on the claim.

110.15 Where to File an Application

110.15.1 Applicant in U.S., Mexico or Canada

An applicant who lives in the United States, Mexico or Canada may file an application at any RRB office in person, by telephone or by mail. An applicant may also give the application to a RRB field employee who is authorized to receive it at a place other than a RRB office. Refer to Appendices H and I which list Canadian provinces and territories and Mexican states and territories respective to field office locations.

110.15.2 Applicant Outside of U.S.

An applicant who lives outside of the United States, Mexico or Canada may correspond directly with the Chicago Field Office or file an application with the assistance of any United States Foreign Service office for transmittal to the Chicago Field Office.

110.20 Life of an Application/Limitations On Filing

110.20.1 Monthly Insurance Annuities

An application for an insurance annuity, other than a disability annuity, is not acceptable if it is filed more than 3 months before the first of the month in which the annuity could begin to accrue. The three months should be counted as the month of filing, plus 3 months or the month of the ABD minus 3 months.

Example 1: The applicant calls and wants an ABD of July 17, 2015. He may file any day in April 2015, 3 months prior to the ABD month.

Example 2: The applicant calls and his DLW RR is July 31, 2015. The earliest ABD is August 1, 2015. The earlies filing date is any day in May 2015

Example 3: The age reduced applicant files in April 2015. The DLW RR is July 28, 2015. The earlies ABD is July 29, but age reduced annuitants cannot have an ABD on the 29th or 30th of the month in RASI. RASI will change the ABD to the first day of the following month. Therefore, the ABD would be August 1, 2015, which is more than 3 months after the filing date. RASI will dump the case and refer to the examiner for the denial letter. If the applicant insists on an ABD on the 29th or 30th of the month, enter a manual review code on the application with an explanation in Remarks, and the examiner will pay the case on ROC.

A. Disability application filed more than 3 months before the ABD - An application for a disability annuity may be filed more than 3 months before the first of the month in which the annuity could begin to accrue. Disability applications for employee, widow(er)s and children are specifically exempted from the 3-month rule. If the waiting period of a disability annuitant causes the annuity to begin more than 3 months after the filing date, the application is filed timely.

   In theory, a disability applicant could file any time before a future annuity beginning date (ABD). However, it is RRB policy that an application for a disabled employee should not be filed until the date last worked or the date the applicant is off the payroll (see FOM-1-110.65.1 for an exception to this rule). The RASI (Retirement Adjudication System Initial) system will reject an application if the last day worked or on the payroll is a future date. In addition, we cannot verify lag service and compensation until the last day worked or on the payroll.

   A disabled employee who is off the payroll may wish to designate a future ABD, e.g., because he is receiving other employer benefits. Such an employee may file more than 3 months before the ABD. However, RASI will process the application only if it is filed within 6 months of the ABD.

The spouse of a disabled employee may file an application more than three months before the date on which the spouse's annuity can begin if the application is filed on the same day that the employee's disability application is filed.

The normal filing limitations apply to the spouse who does not file on the same day as the employee. Protected filing date procedures do not apply in this type of case. In cases where the employee's disability rating is not yet complete, make an estimate of the earliest possible spouse ABD based on the employee's DLW and claimed onset date as well as spouse age and eligibility factors.

- If the estimated ABD is within 3 months, take the application.
- If the estimated ABD is not within 3 months, advise the spouse to come back and file within 3 months of that estimated ABD. Make a record of the contact. If the spouse insists on filing anyway, submit the spouse application for denial. Send an email message explaining the situation to the RBD mailbox.

B. When a new disability application is required - Because a disability application may be filed more than 3 months before the ABD, a new application is not required if the disability onset date is after the application filing date, and the disability onset date is before the date of the final decision (e.g., date of the denial letter or the reconsideration determination). In that case, the disability onset date is deemed to be the application filing date.

EXAMPLE 1: The employee filed an AA-1 and AA-1d on 7-19-84, claiming a disability onset date of 5-13-84. He was found to be disabled as of 3-20-85. A new application is not required, because the disability onset date is before the date of the final decision. RASI will drop the application, and the annuity will be paid manually, because the ABD is more than six months after the filing date.

EXAMPLE 2: The employee filed an AA-1 and AA-1d on 2-18-84, claiming a disability onset date of 9-2-82. His application was denied on 10-12-84. He requested reconsideration within 60 days; upon reconsideration, he was found to be disabled as of 12-7-84. His annuity will begin 6-1-85, after the expirations of the waiting period. A new application is not required because his disability onset date is before the date of the final decision - in this case, the reconsideration determination.

If the denied applicant does not request reconsideration or submit new evidence within 60 days of the denial notice, a new application must be filed. A new application is also required when reconsideration is not requested within 60 days, and the disability onset date is after the date of the original denial notice.

110.20.2 Lump-Sum Death Payments (LSDP)

An acceptable application for an LSDP must be filed with the RRB on or before the second anniversary of the death of the employee.

110.20.3 Annuities Unpaid at Death

An application for annuities unpaid at death must be filed with the RRB on or before the second anniversary of the death of the person to whom such annuities were originally due. An exception is made for RESCUE cases. Because an accrued annuity may not be detected by RESCUE until more than two years after the employee dies, an application for the RESCUE accrued annuity is valid if filed within two years of the date of the RESCUE run. In addition, the Board waived the two-year filing limit for accrued annuities computed by RESCUE in a special backlog run performed in March 2007.

110.20.4 Residual Lump sum (RLS)

There is no time limitation on the filing of an acceptable application for an RLS.

110.20.5 Suspension of 2-Year Filing Limitation

A. The 2-year limitation on filing for an annuity unpaid at death or an LSDP can be waived if certain statutory provisions set forth in the Act of March 7, 1942, and in the Soldiers' and Sailors' Civil Relief Act are met.

The Act of 3-7-42 applies to any person who was reported "missing" or "missing in action" while on active duty as: an officer or enlisted person of the Army, Navy, Marine Corps, and Coast Guard, (including retired reserve personnel thereof), the Coast and Geodetic Survey and the Public Health Service. The Act may also encompass civilian employees of the executive departments, independent establishments and agencies during such time as the person may be assigned to duty outside the U.S.

The Soldiers' and Sailors' Civil Relief Act applies to all persons in the Armed Forces of the U.S.

If an otherwise valid application is filed after the two-year filing limitation has expired and it appears that the provisions of these statutes may apply, Headquarters will determine if the application is acceptable.

B. The 2-year limitation on filing for an annuity unpaid at death or an LSDP can be waived if the applicant has "good cause" for a delay in the filing of an application, if the delay was due to:

- Circumstances beyond the applicant's control, such as extended illness, mental or physical incapacity or communication difficulties; or
- Incorrect or incomplete information furnished by the RRB; or,

- Efforts by the applicant to secure evidence without realizing that evidence could be submitted after filing an application; or,

- Unusual or unavoidable circumstances which show that the applicant could not reasonably be expected to have been aware of the need to file an application within the set time limit. Headquarters will determine if "good cause" condition is met.

  An applicant does not have "good cause" for a delay in filing if he or she was informed of the need to file within the set time limit but neglected to do so or decided not to file.

110.20.6 Application Filed After Death

Usually, an applicant must be alive when an application is filed. The following are exceptions to this rule.

- A survivor eligible for an annuity or lump sum may file an application to establish a period of disability for an employee who died before filing an application for a disability annuity. The application must be filed within 3 months after the month the employee died.

- A widow(er) may file an application for a spouse annuity after the death of the employee if the widow(er) was eligible for a spouse annuity in the month before the month the employee died.

- A person who could receive payment for the estate of someone who paid burial expenses of the deceased employee may file an application if the person who paid burial expenses dies before applying for the LSDP. The application must be filed within two years of the employee's death in such cases.

110.20.7 Retroactivity of Application

The retroactivity of an application is explained in FOM-1-112.

110.25 Filing Date of an Application

An RRB application is officially filed on the date the completed, signed, application form is delivered into the custody of an authorized RRB or U.S. Foreign Service office representative. An application signed by Attestation is officially filed when the field representative annotates the completed application that the applicant:

- Intends to file the application;

- Understands the Penalty Clause; and

- Agrees to sign the application.

Under special circumstances an earlier date may be established as the official filing date, but consider another date ONLY if using the completed application receipt date will result in a loss or reduction of benefit to the applicant. The alternative official filing dates (postmark date, SSA filing date, VA filing date, intent to file, or protected filing date) are described below. You must determine that the application receipt date will not allow the applicant the greatest benefit before establishing an earlier official filing date based on these special provisions. See benefit retroactivity in FOM1 110.20.7.

Once an application is filed, the filing date cannot be changed to a later date based on the applicant's request. The application must be cancelled and a new application must be filed if an applicant wishes to have a later filing date than the original date on record. Refer to FOM1 110.110, Cancellation of Application for further information.

EXAMPLE:

An employee and spouse previously filed for a full 60/30 annuity with a date of filing of 8/12/2013 and an ABD of 11/1/2013. The employee and spouse then requested that their date of filing be changed to 11/27/2013 due to it affecting their retirement health insurance from the railroad. Despite the fact that this will not change the ABD, the filing date cannot be moved to a later date. The application must be cancelled and a new application must be filed in order to move the filing date to a later date.

NOTE: For an employee disability retirement benefit, Form AA-1d is one part of the application. If the Form AA-1d bears an earlier receipt date than the AA-1, use the receipt date of the Form AA-1d for the official file date only if that date is necessary to provide the greatest benefit permitted by law. See FOM-I-110.55 for protected file date details. Both applications should be date stamped upon receipt. If the AA-1 is cancelled and a new AA-1 is filed to change the date of filing to a later date, a new AA-1d and G-251 are not required. The original AA-1d and G-251 are still valid and the new AA-1 date of filing should be used as the official file date since that will continue to be the date that provides the greatest benefit to the annuitant per the annuitant's request. In any other situation, a new AA-1d and any other forms required should be secured.

110.25.1 Postmark Date

Applications made through the mail are considered filed when deposited in the U.S. mail, if this is more advantageous to the applicant than using the date of receipt at RRB. Enter the date and hour of the postmark in the upper right margin of the application form. Enter the postmark date as the filing date on APPLE when that is more advantageous than using the actual date received. Explain in remarks.

If an applicant died on a day observed by RRB as a non-work day, his or her application could be received by mail on the first business day following the non-work day. The application maybe considered officially filed on the non-work day if the postmark established that the application was mailed in time to have been received on the non-work day had it been a business day.

110.25.2 SSA File Date

The date the Social Security Administration considers their Title II benefits application officially filed may be used to establish the RRB official filing date if the conditions described in FOM-I-110.30 are met, and the applicant requests the Board use that date.

110.25.3 VA File Date

In certain RRB survivor benefit claims, a Department of Veterans Affairs application filing date may be used for the RRB application official filing date. See details in FOM-I-110.45.

110.25.4 Intent to File Date

The date the applicant first advised an RRB office that filing for benefits was intended may be considered for the official filing date if a loss of retroactive benefits can occur by using the completed application receipt date. Follow the requirements of this provision detailed in FOM-I-110.55.

110.25.5 Attestation File Date

The application filing date for an application filed by Attestation is the date the Field Representative confirms and annotates on the APPLE Document Printing screen, the applicant's:

- Intent to file an application;
- Agreement that the information provided is correct;
- Agreement to sign the application.

110.26 Recording the Filing Date

As soon as an application or form requiring an official filing date is received, enter the current date and your field office number on the face of the application or form in the pre-printed spaces provided. If a pre-printed space is not provided on a form, note the form as follows:

"Officially Filed (Field Office Number)

(Date)

(Signature and Title of RRB Employee)

(Location of Field Office)"

Stamp "Officially Filed" on an application, and enter the date of its receipt, even if the application may be unacceptable for some reason. See FOM-I-110.95.

NOTE: For employee disability retirement applications, the Form AA-1 and Form AA-1d may have different receipt dates. The date of the signed Form AA-1 is the official filing date to be entered on the application package and on mechanical claims systems.

110.30 When An Application Filed At SSA Can Be Considered An Application Filed At RRB

110.30.1 Life Cases

A. General - An application filed for benefits under Title II of the Social Security Act based in whole or in part on creditable RR service, can be considered an application filed with the RRB if entitlement exists or is subsequently acquired under the RR Act.

EXCEPTION: When an SSA DIB was terminated before the 120th month of RR Act service was performed, the SSA DIB application is not considered an application filed at RRB.

The acceptability of such applications is contingent upon one of the following conditions:

1. The application was filed because the applicant was unaware of RR Act eligibility, and there is evidence in file showing that there was a basis for the applicant's belief that there was no eligibility for an annuity under the RR Act; and,

   The applicant would have been entitled to an annuity if an RR application had been filed on the date the Social Security application was filed; and

   The applicant submits a written statement requesting that the Social Security application be used at RRB.

2. The SSA application was filed because the employee had less than 10 years of creditable railroad service, and having continued working in railroad service, subsequently acquired 10 years of railroad service. The acceptability of such application applies whether or not we had previously transferred compensation to SSA and whether or not credits previously thought to be under the SS Act were determined to be under the RR Act.

B. SSA Application Field on or Before 12-31-74 - Special consideration is given to cases in which an application filing date for SS Title II benefits before 1-1-75 can be used to "vest" an individual for payment of a windfall under the 1974 Railroad Retirement Act.

If the individual filed for such benefits at SSA on or before 12-31-74, that application can be considered a valid RRB application if the following conditions are met:

- The individual would have been entitled to an RR annuity and SS benefit when the SS application was filed; and

- The individual requests in writing that the SS application be considered an application for the RR annuity.

In these cases, the application filed at SSA need not have been based on any service covered under the Railroad Retirement Act. If the individual is vested under the 1974 RR Act without regard to the SSA filing date, this provision cannot be invoked solely to permit an earlier RR ABD. If an individual who meets these criteria inquires about this non-vested status, or an examiner notices that this provision can apply in a particular case, you will be asked to secure a statement electing use of the SSA application to protect the filing date for the RRB application. Information regarding the financial advantage for the beneficiary will be included in the assignment.

110.30.2 Death Cases

An application filed at SSA on or after 10-1-46 for monthly benefits or a lump sum death payment, due to the death of a person who performed service under the RR Act, can be considered an application for the corresponding survivor benefit under the RR Act.

If SSA transfers an appropriate and fully completed application to RRB, an annuity or LSDP can usually be awarded without obtaining an RRB application, as long as all other RR Act requirements are met.

EXCEPTION: A residual lump sum may not be awarded based on the SSA application.

All required information must be provided on the SSA application or on another SSA form, signed by the applicant, before an award can be made. Before an LSDP can be paid, sufficient information must be in the Headquarters file to ensure that no survivor is currently entitled to a monthly annuity.

If an LSDP will be paid based solely on a social security application, Headquarters personnel have been instructed to notify the appropriate RRB district office in order to prevent duplicate development. If a supplemental application or other development is necessary before payment can be made, an assignment will be sent to the servicing district office. When a social security application is used to pay a monthly survivor annuity at RRB, it is necessary to secure a signed certification form from the applicant. This can be obtained after the annuity is awarded. The assignment received to secure the certification form should include a summary of the case and state that payments are in force based on an application transferred from SSA.

To obtain the annuity certification form, detach the "Certification" page and the "Receipt for Your Claim" from the appropriate annuity application. Discard the rest of the application. Complete the certification form, and make all the entries on the "Receipt for Your Claim." Ask the annuitant for excess earnings information. The annuitant should

sign the certification and enter the date signed. Give the receipt and the appropriate informational booklet to the annuitant.

110.35 When an Application Filed At RRB Can Be Considered an Application Filed At SSA

Section 5(b) of the 1974 Railroad Retirement Act (RRA) provides that "an application filed with the RRB for an annuity under this act shall, unless the applicant specifies otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this act or the Social Security Act."

The intent of this section of the RRA is to protect the filing date of an application for any monthly benefit the applicant is entitled to under Title II or Title XVIII (Medicare) of the Social Security Act on any person's wage record. However, it is still necessary for the applicant to complete a separate SSA application to receive benefits from SSA.

If the applicant has less than 120 months of service but more than 60 months of service after 1995, complete the application so as to protect the filing date at SSA. Release an RR-8 to the appropriate SSA office and advise the applicant that he/she must file at SSA if he/she wants to receive SSA benefits. The applicant is not required to actually file with SSA.

NOTE: The RR annuity application cannot be used to protect the filing date of an application for SSI payments (Title XVI) from SSA.

110.40 Notifying Applicant Of Dual Filing Rights

The retirement and survivor application forms ask the applicants if they want the application filed at RRB used to protect the filing date for social security benefits. This provision applies only if the applicant has not yet filed for SS benefits, and is eligible or is within 3 months of being eligible for SS benefits.

When an applicant answers "Yes", (requesting protection of SSA filing date) complete form RR-8. Send the original to the SSA district office servicing the applicant's home address, and image a copy with the application.

110.45 Use of VA Application in Death Cases

A Department of Veterans Affairs application filed 1-1-57 or later by a widow(er), child, or parent who is a survivor of a former member of the uniformed services is recognized by the Social Security Administration as an application for a corresponding benefit under its Act.

The Department of Veterans Affairs uses a VA Form 21-4180 when transmitting notification of receipt of an application for benefits. If this form is transferred to RRB by SSA or is received directly at RRB, it will be considered to protect the filing date of a widow(er), child or parent for an RR insurance annuity.

The RRB considers VA Form 21-4180 to be a "lead" form of notification to secure an RRB application. If headquarters receives this notification, the appropriate field office will receive an assignment to develop an application when this happens.

NOTE: An VA Form 21-4180 is not considered an application for an LSDP. It does not protect the filing date for such a payment.

110.50 When One Application Satisfies Filing Requirement for Other Benefits

The filing of an application for one type of benefit can, under certain circumstances, eliminate the need to file for another benefit to which the applicant may be entitled. An applicant need not file another application to be entitled to any of the following benefits (even though supplemental forms or applications may be requested before payment can be made):

A. An employee annuity based on age if:

- The employee's application for a disability annuity is denied and the employee is eligible for the age annuity on the date the application was filed or on the date of the denial;
- The employee is entitled to a disability annuity in the month before attainment of full retirement age (FRA). Upon attainment of FRA, a disability annuity is automatically converted to an age-and-service annuity.

B. An employee annuity based on disability, if an application for an age annuity is denied and the employee is eligible for the disability annuity on the date the age annuity application is filed.

C. An accrued employee or supplemental annuity, or a residual lump-sum, if the applicant is eligible for any of these payments when filing an application for a survivor annuity or a lump-sum death payment.

D. A widow(er)'s annuity, if he or she is entitled to a spouse annuity in the month before the employee died.

E. An aged widow(er)'s annuity, if he or she was entitled to a disabled widow(er)'s annuity in the month before attainment of age 60.

F. A widow(er)'s annuity based on age or disability if the widow(er) (who was receiving an annuity, based on having the employee's child in care) is eligible for an age or disability annuity when the child is no longer in his/her care.

G. A widow(er)'s annuity based on child of deceased employee in care if he or she is entitled to a disabled widow(er)'s annuity.

H. A spouse annuity based on age for a wife or husband who is receiving an annuity for having the EE's child in care, if he or she is eligible for an unreduced age annuity when the child is no longer in care.

I. A child's annuity if, in the month before the employee died, a spouse was entitled to an annuity for having the child in care.

J. A benefit under Title II of the Social Security Act unless the applicant restricts the application only to a railroad annuity.

K. A lump-sum death payment, if the applicant is an eligible widow(er), who will be entitled to an insurance annuity within three months. The monthly annuity application can be used to award both the lump-sum death benefit and the monthly annuity.

110.55 Protected filing date

An individual may demonstrate intent to file an application for a RRB annuity or lump sum, but circumstances prevent the completion of the application process by the end of the same month. In such cases, using the completed, signed, application receipt date for the official filing date in a later month may cause the applicant a loss of retroactive benefits.

Refer to FOM1 110.20.7 for rules on the retroactivity of each type of benefit. If a written or oral communication with the applicant specifically expresses the intent to file a benefit application, and a later official filing date would result in a lesser total benefit to the applicant, the date of that earlier contact may be established as the official filing date. It is very important for RRB representatives to document such contacts whenever it appears that benefits may be lost by waiting for the completed application form to be received.

Refer to FOM-I-110.25 for additional information.

EXAMPLE 1

An age 62 employee sends a letter to the RRB for an estimate of annuity with age reduction, asking how much more he could receive at full retirement age, and what he would need to do if he decided to ”take retirement”. With no additional details provided, this is only an information request; the inquiry does not show that the person wants to file now.

EXAMPLE 2

An age 62 employee sends a letter to the RRB stating that he has been ill and doesn’t think his doctor will let him go back to work. He asks for his papers about “getting retirement” and what extra records would he need to “get disability”. This communication shows that the employee intends to file an application, possibly resulting in a retroactive disability annuity, and that the field may need the letter for protection of

the filing date if the person has been ill for a long time. This conclusion may be confirmed by a phone conversation with the prospective applicant.

Upon receipt of the communication expressing intent to file, the field office will respond with a notice stating that while the declaration of intent has been recorded, an official application will also be required to establish entitlement to benefits.

NOTE: The spouse of a disabled employee may file an application more than three months before the date on which the spouse's annuity can begin if the application is filed on the same day that the employee's disability application is filed. However, normal 3-month filing limitations apply to spouses who do not file on the same day as the employee. Do not protect filing date in these cases. See FOM1 110.20.1 and RCM 5.1.41B for more information on this type of case.

110.55.1 Written Statement Filed with the RRB

A written statement meeting the following requirements can be used to establish the official filing date of an application for an annuity or lump sum at the RRB. The written statement may be a letter or RRB form submitted by the prospective applicant. It may be delivered by hand or sent by mail, electronic mail (e-mail) or facsimile transmission (fax).

NOTE: If sent by mail, the postmark date may be used in the same manner as an application sent by mail. (See FOM 110.25.1)

A form set up by the RRB to solicit information about persons who may be eligible for an annuity or lump sum (e.g., RL-94-F) is not, by itself, considered a written statement for this purpose. When an individual transmits a RRB form to an authorized RRB representative, however, information may be included that indicates a claim is intended. Consider this to be so if all of the following conditions are met:

- The statement must express intent to claim benefits under the Railroad Retirement Act.
- The statement must be signed by the prospective applicant or by the person who will file as representative payee.
- The statement must be received by the RRB, not more than 3 months before eligibility exists, under the same requirements as described in FOM 110.25 for the actual official application.
- A completed application form must be filed with the RRB within 3 months of the date of your notice advising the prospective applicant that a formal application is required.
- The claimant must be alive when the application is filed.

110.55.2 Documented Telephone Contact

A declaration of intent to file an application is easier to determine when the inquirer can be interrogated during a telephone contact than when a judgment is based on information in a letter. It is appropriate to secure additional detail by telephone to supplement a written statement, or the telephone conversation may be the only contact.

When all of the following conditions exist, record the details of a telephone contact with a potential applicant, or the prospective representative payee, for purposes of protecting an application filing date.

- The inquirer expresses intent to claim benefits, and
- The inquirer appears to qualify for benefits or insists on filing, and
- A later filing date would cause loss of benefits.

When the earliest benefit beginning date is the month of filing, and the telephone contact is made during the last eight working days of the month, the completed application may not be received back by the field office before the end of the month. In such cases, use the telephone contact date for the official filing date.

Documentation of this type of telephone contact must be made immediately. The RRB representative's record of the telephone conversation becomes the written statement of an intent to file which can, later, be used as the official application filing date provided that:

- The telephone contact is not more than 3 months before eligibility exists; and
- The application form is filed within 3 months of the date an RRB reply to the applicant advises that an official application is required; and
- The claimant is alive when the application is filed. (See survivor benefit applicant exceptions in FOM 110.20.6.)

To record these telephone contacts, include the following information in the General File Notes section of the Contact Log Scratch Pad or complete a Form G-94, *Record of Retirement or Survivor Claim Inquiry*, with the following information:

- RRB Claim number and Employee's name;
- Prospective applicant's name and social security number;
- Name, address and telephone number of inquirer;
- Date of contact;
- RRB representative and office contacted; and

- Include the following statement: “This person expressed an intent to claim benefits under the RRA.”

110.55.3 Field Office Handling of Written Statements & Documented Telephone Calls

All written statements and documented telephone contacts indicating intent to claim benefits must be disposed of by:

- Securing an application as soon as possible; or
- Advising a claimant in writing that an application must be submitted within 90 days to protect that filing date; or
- Obtaining a signed statement that the inquirer does not wish to file for benefits.

Within 30 days of the receipt of a written statement or telephone contact expressing the intent to file for benefits, complete an application in person or over the telephone or schedule a date to meet with the inquirer to secure an application.

If you cannot develop an application within the 30 days after your receipt of the written statement or telephone contact, send the RL-346 letter (Protected filing date letter) to the inquirer but do not pend for reply. This letter informs the inquirer that we may be able to protect a filing date if an application is filed within 90 days of this letter. Keep the protective statement in the closed retirement file and image a copy of the RL-346 letter.

If you have a written statement and eligibility is doubtful, explain to the inquirer why he/she is not eligible for benefit. Also explain that the inquirer has the right to file an application to receive an official denial. Take the application if the inquirer insists on filing.

When mailing an application for completion, advise the applicant that the application must be filed within 90 days to protect the filing date. Various transmittal letters used by the field to send an application will include this notice. If the transmittal letter does not include the notice include the following information:

- The date of the applicant's initial contact.
- The enclosed application must be completed and returned within 90 days in order to protect the filing date of the application.
- If you do not file this application within 90 days, loss of benefits may occur.

When an application is transmitted with a protected date entered as the official filing date, enter the justification information from the G-94 or written statement in remarks section on APPLE. Enter the date for protected filing on the Summary Screen on APPLE. Image a copy of the G-94.

If no timely application is filed, image a copy of the telephone contact record (G-94) and the RL-346 letter. Retain the written statement closed retirement files.

110.55.4 Headquarters Handling of Written Statement Filed with the Social Security Administration

A written statement filed with the SSA, and sent to the RRB by the SSA, can be used to establish the RRB official application filing date in the same way as a written statement received directly from the prospective applicant. Such a statement must meet both the conditions for use of a SSA application at RRB and the conditions in FOM1 110.55.1.

110.60 Deterred From Filing Determinations

When a person (employee, spouse, or survivor) contacts an RRB office by telephone or in writing (this includes electronic mail (e-mail) and facsimile transmission (fax), stating a desire to file for an annuity or lump sum but does not file because of the action or inaction of a RRB employee, that person is entitled to have a filing date established based on such a contact if the following conditions are satisfied:

A. The RRB employee failed to:

- Inform the person that it was necessary to file an appropriate application; or
- Tell the person that a written statement could protect the filing date even though such a statement would not serve as an application; or
- Give the person the proper application form; or
- Correctly inform the individual of his or her eligibility.

B. The person files an application on the prescribed form within 3 months after the date a notice is sent advising of the need to file an application.

C. The claimant is alive when the application is filed except as provided in FOM1 110.20.6.

Prepare a memorandum, giving the allegations and/or facts in the case. The memo should be written by the contact representative who handled the original inquiry, if that individual is still working in your office. If the individual is no longer working in your office, the memo should be written by the district manager. The memo should include the dates and results of any previous inquiries made by the individual. If no record of a previous inquiry exists, the memo should state that fact. Also submit any evidence available in your file regarding the application inquiry and the RRB's action or inaction. Send the memorandum and any available evidence to the appropriate adjudication unit. The memorandum should be submitted through the district or branch manager, who should review the statement and add any pertinent information.

A decision on the merits of a deterred from filing claim is made at headquarters by a claims specialist or supervisor. If additional evidence or statements are required in order to make a decision, an assignment will be received.

110.65 Advance Filing of Employee And Spouse Applications

RRB regulations dictate that an application for an annuity must be denied if it is filed more than 3 months before the date an annuity can begin. Previously, the disadvantages outweighed the advantages and the practice of "advance filing" was discouraged. However, using Application Express (APPLE), the application now can be submitted to begin processing before the applicant actually stops railroad employment. The system will accept applications with railroad ending dates up to 3 months. The three months should be counted as the month of filing, plus 3 months or the month of the ABD minus 3 months. NOTE: The system does not count the days from the date the application is filed to determine the annuity beginning date (ABD). It only counts the months.

Example 1: The applicant calls and wants an ABD of July 17, 2017. Based on the requested ABD, the applicant is not restricted to filing his application April 17, 2017 or later. He may file any day in April 2017. The claims representative would advise the applicant accordingly.

Example 2: The applicant calls and reports his date last worked for the railroad will be July 31, 2017. Based on this information, the earliest allowed ABD would be August 1, 2017. The applicant indicates that he plans to file an application in April 2017. The claims representative would advise the applicant the earliest he or she would be allowed to file an application would be any day in May 2017.. If an application is filed before May 1, 2017, it will be denied.

Encourage applicants to schedule appointments when they wish to file an initial retirement application in advance. Prepare potential applicants during your pre-retirement counseling.

You must emphasize to the applicant his/her responsibility to advise you as soon as possible if any of the application data changes, or if (s)he changes his/her mind about filing for an annuity, because the application will begin processing immediately after the APPLE data has been released.

Advise the applicant that any non-railroad work that they begin before the annuity beginning date is considered LPE and MUST BE REPORTED.

If the annuity beginning date will be affected by any change or the applicant reports he is starting work, send an E-mail message to RIS immediately, notifying them of the change, so that action can be taken to prevent an incorrect payment.

Partial rates can be entered in APPLE (Summary screen) because payment will not be paid until the month after the first full month of retirement.

No G-88 will be required to confirm the DLW claimed unless the DLW entered on the application changes. The certification made by the applicant at the time of filing as to the anticipated date last worked is acceptable. However, if the DLW changes after filing, and the new date falls outside of the three month rule, the application will be denied.

See FOM 1720 for the special handling procedures of Forms G-88 and G-88A.2 in advance file cases.

EXCEPTION: Because survivor applications are not handled mechanically and last person service is not a consideration for entitlement to a survivor annuity, advance filing for this class of beneficiaries can be advantageous. However, it is important to stress the effect of earnings on such applicants if they are working.

Do not trace payment based on an advance-filed application until at least 45 days after a check could have been received. For example, if an individual files February 1, 2001 and has an April 1, -2001 ABD, the earliest date a payment could be received would be around mid-May, assuming a May 1, 2001 voucher date.

Disability Annuity Applications

A disability application may be filed more than 3 months before the ABD. A new application is not required if the disability onset date is after the application filing date, and before the date of the final decision (e.g., date of the denial letter or the reconsideration determination). The disability onset date is deemed to be the application filing date. As such an application for a disability annuity may be filed more than 3 months before the annuity beginning date. This includes disability application for employee, widow(er)s and children.

In theory, a disability applicant could file any time before a future ABD. However, it is RRB policy that an application for a disabled employee should not be filed until the date last worked or the date the applicant is no longer in compensated service (see FOM-1-110.65.1). The spouse of a disabled employee may file an application more than three months before the date on which the spouse's annuity can begin if the application is filed on the same day that the employee's disability application is filed. Note: The normal filing limitations apply to the spouse who does not file on the same day as the employee. Protected filing date procedures do not apply in this type of case. For an example, see FOM I 110.20.1a.

EXAMPLE 1: The employee filed an AA-1 and AA-1d on July 19, 2016, claiming a disability onset date of May13, 2016. His application for disability was granted on March 20, 2017. A new application is not required, because the disability onset date is before the date of the final decision.

EXAMPLE 2: The employee filed an AA-1 and AA-1d on February 18, 2016, claiming a disability onset date of September 2, 2015. His application was denied on March 12, 2017. He requested reconsideration within 60 days. On May 19, 2017, the Program

Evaluation and Management Services Reconsideration Section found he was disabled with an onset date of December 7, 2016. His annuity will begin June 1, 2017, after the expirations of the six month waiting period. A new application is not required because his disability onset date is before the date of the final decision.

110.65.1 Employee in Compensated Service Filing a Disability Application

In most cases, under the Railroad Retirement Act, an employee who is actively working for a railroad employer at the time of filing is, by definition, not disabled. The fact that they are working any railroad job shows that they are able to work. However the definition of compensated service includes not only compensation with respect to active service performed by an employee for an employer, but also includes pay for time lost, wage continuation payments, certain employee protection payments, and any other payment for which the employee will receive additional creditable service.

For applications filed on or after January 1, 2006,

An employee is allowed to still be in compensated service while filing a disability application provided that the compensated service terminates within 90 days from the date of filing **and** the compensated service is not active service. When an employee files a disability application while in compensated service, it is necessary for the employee to provide an identifiable ending date of the compensation. In cases where the compensated service exceeds 90 days the disability application will be denied. Any request for reconsideration or appeal from such a denial is to be limited to the issue of whether the employee was in compensated service to an employer within 90 days of the filing date.

Disability applications filed in advance can be handled as follows:

A. Employee Filing While in Active Service

   For cases in which an employee requests to file a disability application while still actively working the field should take steps to discourage the filing of the application. The field should inform the applicant that the application will be denied based on the employee still actively working. If the applicant insists on filing, have the employee complete the AA-1, AA-1d and G-251 and forward to DBD for denial.

B. Employee Filing Within 90 Days and in Compensated Service Other Than Active Service

   For cases in which an employee requests to file a disability application while still in compensated service (that is not active service), but within 90 days from the last day of compensated service the field should develop the disability application in the usual manner as described in FOM 1310. The field should request from the employee some documentation or proof that verifies the ending date for the period of compensation being claimed (i.e. settlements, wage continuation plan,

dismissal allowance, etc). The employee should be able to provide you with some form of documentation. In cases where the employee is not able to provide the necessary documentation to prove the date last in compensated service, you may continue to develop the disability application. When the employee is able to secure the necessary documentation, forward it with the application to DBD upon its receipt.

C. Employee Filing Over 90 Days From the Last Date of Compensated Service

For cases in which the employee requests to file a disability application while in compensated service that is 90 days or more from the last date of compensated service the field should take steps to discourage the filing of the application. The field should inform the applicant that the application will be denied based on the employee not being eligible. If the applicant insists on filing, have the employee complete the AA-1, AA-1d and the G-251, and if possible provide the documentation of the last day of compensated service. Forward the case to DBD for denial.

You may file the disability application under the same rules and procedures used for advanced Age and Service applications. On APPLE, enter the expected ending date of the compensation in the Employment Ended field. Code the application for manual review and indicate in Remarks that the disability application is being filed in advance and/or that the application is being submitted for denial. The DLW (or in this case, the date creditable compensation ended) will be verified through the monthly G-88a listings sent to individual employers.

110.70 Taking Applications

An application can be secured through in-person contact with the applicant (usually in the field office or at CORP), or it can be completed by telephone.

Applications which need a pen and ink signature can be given or mailed to the applicant for signature.

Upon request, a paper application package may be given or mailed for completion by the applicant.

You and the applicant should work out the method most suitable for the situation and the applicant's desires.

Before an application can be processed at headquarters, all applicable entries must be completed. Questions that do not apply can be skipped or marked as "N/A" for "does not apply".

110.70.1 Identifying Data

In all cases, the employee's social security number (and claim number, if different) must be entered on the application, as well as the name and address of the employee or

other applicant. The claim number/social security number of the employee, if not secured from an authoritative document in the applicant's possession, can be obtained through the use of the SCORE microfiche (see FOM-I-16). Completion of the name and address spaces should be done in accordance with forms instructions, keeping in mind the acceptability limitations imposed by computer/keypunch processing.

110.70.2 Certification

It is extremely important to review the events that may affect an annuitant's entitlement to an annuity. A clear explanation at the time of filing may prevent overpayments from occurring. Give each employee annuity applicant, spouse annuity applicant, or divorced spouse annuity applicant a booklet RB-9, "Employee and Spouse Annuities Events That Must Be Reported." Review the events in that booklet and the events that are listed in the application certification, either by telephone or in personal contact so the applicant has a clear understanding of how those events may affect his annuity.

110.71 Developing Applicant's Social Security Number

The RRB requires an applicant's social security number (SSN) for tax reporting purposes. Every annuity applicant who resides in the United States must report his SSN to the RRB. We also require an SSN from an individual who lives in the U.S. and applies for the following benefits:

- An accrued annuity,
- A lump sum death benefit, and
- A residual lump sum.

If an applicant residing in the U.S. does not have an SSN, he must apply for one, regardless of his age.

Refer him to the nearest SSA district office to file an application for an SSN (Form SS-5). Inform him that proofs of birth and United States citizenship (if he is a U.S. citizen) will be required by SSA at the time of application. Request the beneficiary to inform the RRB district office of his SSN, when received. Pend the field office file for beneficiary contact if the SSN is not received within 6 months.

Do not hold the application pending receipt of the SSN. Note the application checklist that the SSN will be submitted when it is received in the field office.

NOTE: Development of a new SSN is not required in retirement cases for a child who qualifies a spouse for an annuity, a spouse or child IPI (ineligible person included) in the overall minimum, a disabled child who has Medicare only, or a spouse or divorced spouse who receives court-ordered payments under a community property settlement. Development of a new SSN is not required for a widow(er) applying for Medicare only, or for a citizen of a foreign country who does not reside in the U.S.

110.72 Presumed Electronic Funds Transfer (EFT)

The Federal government has established a policy that requires Federal agencies to convert their payments to an electronic environment. EFT shall be the presumed method of making payments. Accordingly, effective January 1995, the RRB began implementing its Presumed EFT Policy with initial applicants. This policy does not mean "mandatory method" and waiver can be granted for specific reasons as provided in section 110.74. However, with the government's emphasis on providing a more efficient payment system, Federal agencies are expected to adopt Direct Deposit (DD) as the presumed method for paying individuals with bank accounts. Electronic Benefits Transfer (EBT) will be the presumed method of payment for unbanked annuitants. Currently, the EBT program is limited to the state of Texas. As it becomes locally available, it should be presented as the payment alternative.

110.73 Securing Direct Deposit Information

Due to the Presumed EFT Policy, it will now be necessary for applicants to furnish DD information during the initial application process. All applicants should be encouraged to bring DD information to the office. For detailed instructions on payment by Direct Deposit, refer to FOM1 115.20. For instructions on processing direct deposit forms, refer to FOM1 115.21. The IDDA (Initial Direct Deposit Application) system allows field office personnel to mechanically input the direct deposit information during the application process. The IDDA ENTRY SCREEN will hold DD information until a payment record is established. This screen is to be used in initial cases where payment has not been established.

NOTE: Occasionally, a beneficiary may request the field office to temporarily use the field office address to receive his/her annuity checks until a permanent address is available. Compliance with this request is discouraged. Instead, explain the benefits of DD and EBT. If the beneficiary is unable or unwilling to use one of these payment methods, encourage the use of a post office box until a DD account can be established.

110.73.1 DD Information Available When Application is Filed

If the applicant has the DD information during the initial application taking process, access IDDA and the IDDA ENTRY SCREEN according to FOM1 1572.15, and enter the DD data. The first (or initial) and succeeding payments will be released to the DD account. The award letter will advise the annuitant that payments will be deposited into the DD account.

110.73.2 DD Information Provided After the Application is Filed

If the DD information is provided after the application is filed, take the following action depending upon whether or not the claim has paid:

A. Claim Has Not Paid - If the DD information is furnished after the application has been taken and the claim has not paid, enter the DD information on IDDA according to the instructions in FOM-I-1572.15.

B. Claim Has Paid - If the DD information is furnished after the annuity is in pay status, enter the information via the FAST COA/DD Entry Screen as explained in FOM-I-1570.

110.73.3 Beneficiary Has No SSN

Since the beneficiary's social security number is required for the Initial DD Application (IDDA) screen, DD information for annuitants, who at the time of filing do not have a social security number, must be controlled. If DD information is available at the time of filing, take the information and do not enter it into IDDA. Control for the social security number and when it is received, enter the DD information on IDDA if the claim has not paid. Refer to section FOM 110.71 for information regarding development of the social security number. If payment has begun when the social security number is received, enter the DD information via the FAST COA/DD Entry Screen as explained in FOM-I-1570.15.

110.74 Waiver Of Presumed EFT

Waiver of Presumed EFT shall be granted to annuitants who meet one or more of the following conditions:

- Annuitants who have no established bank account and do not live in an area with EBT service;

- Annuitants who insist upon receiving a paper check,

Note: So that the annuitant can make an informed choice, field office personnel shall explain the advantages of DD and EBT, i.e., DD is more reliable, convenient, and safer than paper checks. If the waiver is granted, document the annuity application accordingly;

- Annuitants who reside in a foreign country.

110.75 Annuity Beginning Date

The annuity beginning date is explained in FOM-I-111.

110.80 When a New Application And Payee Substitution Forms Are Required From Representative Payee

If a representative payee is selected after an application is filed but before RR Act benefits are awarded, obtain an AA-5 from the representative payee. A new application will be required in addition to the AA-5 if the representative payee did not file the

previous application on behalf of the incompetent and it has been determined that the applicant was in fact incompetent at the time the first application was filed. The official filing date of the new application in such case will be the date the first application was received by RRB.

Conversely, if a representative payee files an initial application on behalf of an annuitant alleging the annuitant is incompetent and, before RR Act benefits are awarded, it is determined the annuitant was competent at the time the first application was filed, a new application must be secured from the annuitant. The official filing date of the new application in such a case will be the date the first application was received by RRB.

If a representative payee is selected after RR Act benefits are awarded, a new application is not required from the representative; obtain only an AA-5 and appropriate certification forms.

110.85 Signature on Application

110.85.1 Pen and Ink Signature

An application should be signed in longhand by the applicant, a person acting in behalf of the applicant, or by his fiduciary (guardian, trustee, administrator, executor, committee or conservator). The signature always must be the name of the person actually signing the form, even if acting on behalf of the beneficiary. A printed signature is acceptable if that is the usual manner in which the applicant signs his name. However, a printed signature should be verified by comparison with other signatures of the applicant, and an explanation should accompany transmittal of the application to headquarters.

The preferred method of signing an application is in ink or indelible pencil. However, an application signed with an ordinary pencil is acceptable if the applicant should die before an indelible signature can be obtained or the imprint will permanently remain as a record of the authentication and there is nothing to call the validity of the pencil signature into question.

The applicant should sign his or her full name; one or more given names may be represented by initials, even though the application forms indicate the first name and middle initial should be shown. A signature is acceptable if it is shown with only one given name and the surname, even though the signer may have other given names. Make sure the signature on the application and all related forms agree.

If the signer is a married woman or widow, she should use her given name and her husband's surname (or her maiden name if it was retained). If the application is signed using her husband's given names(s) preceded by "Mrs.", do not ask her to complete a new application for this reason alone.

110.85.2 Signature by Mark

If, because of illiteracy or physical disability, the applicant is unable to sign his name in the usual manner, he may sign by mark. Should he require assistance, his hand may be guided; it will suffice if he touches the pen or indelible pencil used.

The applicant's name, however shown, should be entered in the space provided for that purpose. A signature by mark must be witnessed by two persons, who should countersign their names and give their complete addresses. If an RRB employee signs as a witness to a mark, his signature alone will suffice, indicating that he or she is an RRB employee.

Other markings such as thumb prints are also acceptable as signatures if properly witnessed. Broadly speaking, whatever a person represents as his or her signature and recognizes as such for the purposes at hand, is a signature and is acceptable as such.

NOTE: Use a "check" mark to denote the place for the signature rather than an "X," since an "X" is often used as a signature by mark.

110.85.3 Signature by Fiduciary

When a fiduciary (guardian, trustee, administrator, executor, committee or conservator) files an application, he should show the capacity in which he acts for the person on whose behalf the application is filed (for example: "John Doe as guardian of Richard Doe"). However, an application bearing the signature of a fiduciary not followed by such a description is acceptable if otherwise in order.

When two or more persons have been appointed to act jointly for an estate or an individual with equal authority as co-administrator, co-executor, etc., the application should be signed by each person appointed. However, if it is received signed by only one of the persons so appointed, it is acceptable. A new application is not required solely to obtain the signature of the other fiduciary.

When an application is filed by a legal representative on behalf of a person who is or may be entitled to RR Act benefits (irrespective of intended payee's competence), he must submit evidence of his appointment. If such evidence is acceptable, but the fiduciary did not sign the application, to secure his signature furnish another application as explained in FOM-I-110.95.

110.85.4 Signature by a Person Other than a Fiduciary

A person other than a legal representative of an individual should sign his name and immediately following his signature show the word "for" followed by the name of the one for whom he is acting. For example: "John Doe for Richard Doe". However, if the name of the individual for whom he is acting is not shown after the signature of the person executing the application, the application is acceptable (for purposes of protecting a filing date) if there is a clear indication of the identity of the individual on whose behalf it is filed. If the potential beneficiary is not incompetent, however, an

application signed personally by the applicant must be secured before an award can be made.

110.85.5 Signature by Attestation

An application is considered signed by Attestation when the Field Representative documents and annotates the application that the applicant:

- Intends to file an application,
- agrees to sign the application, and
- understands the Penalty Clause.

110.86 Alternative Signature – Attestation

Attestation is an alternative method to sign an electronically completed application or form, taken in person or by telephone that confirms the applicant's intent to file an application, understanding the Penalty Clause and agreement to sign the application.

110.86.1 Definitions

Attestation – The action by a RRB employee of confirming the applicant's:

- Intent to file an application or form
- Affirmation under penalty of perjury that the information is correct, and
- Agreement to sign the application or form

110.86.2 Field Representative Responsibilities

When taking an application, either in person or by telephone, Field Representatives are required to do the following:

1. Advise applicant that RRB no longer requires a pen and ink signature.
2. Inform the applicant that you will confirm;
    a. their intent to file an application;
    b. under penalty of perjury, the information provided by the applicant is correct;
    c. that the applicant agrees to sign the application.
3. Read the scripted language at appropriate times during the interview. Refer to FOM 110.86.4 through .7 for the scripts.

4. Complete the application.

5. Confirm the applicant's intent to file and to sign the application or form.

6. Review the Penalty Clause with the applicant.

7. Complete the Attested Signature field on the APPLE Document Printing screen to annotate the application has been signed by Attestation.

8. Print the Attestation Summary. The Attestation Summary can be printed from the APPLE Document Printing screen.

9. Image the Attestation Summary.

10. Provide the applicant with a Summary of the information provided. If the Summary will be mailed to the applicant, use the RL-60a cover letter.

11. Advise the applicant if any additional documentation is needed.

12. Advise the applicant to review the Summary and contact RRB of any changes or additional information, within 10 calendar days.

13. Release the application when all documentation has been received.

110.86.3 Changes to the Attestation Summary

After the applicant receives the summary of the application information, the applicant is requested to advise of any changes or corrections within 10 calendar days. How the changes or corrections are handled, is determined by when the information is received. It is not necessary to release an updated Summary to the applicant. If the applicant requests a revised Summary, it can be printed from the APPLE Document Print Screen.

1. Before the application is released.

    a. Make changes or corrections to the application requested by the applicant.

    b. Print an updated copy of the Attestation Summary and send to the applicant.

    c. Document the change or correction on the Remarks screen.

2. Application has been released, award has not been paid

    a. Application is in a "Pend" status

        i. Unrelease the application. (Remove the "Y" in the Release field)

        ii. Make the appropriate changes or corrections requested by the applicant.

iii. Document the change or correction on the APPLE Remarks screen.

iv. Rerelease the application. (Reenter the “Y” in the Release field.)

b. Application is being processed by RASI.

i. Notify RBD of the changes by email.

ii. Document the change or correction on the APPLE Remarks screen.

c. Application Referred to Headquarters (application status REFHQ)

i. Notify the appropriate Operating Unit by email.

ii. Document the change or correction on the APPLE Remarks screen.

3. Award has been Paid

a. Field Office

i. Notify the appropriate Operating Unit by email.

ii. Document the change or correction on the APPLE Remarks screen.

b. Operating Unit

i. Determine if additional information affects the date of entitlement or annuity amount.

ii. Take any necessary actions.

110.86.4 Application Scripts for In Person Interview (Employee, Spouse, Divorced Spouse and Survivor Recurring)

1. Start of Interview

During this interview, I will ask you questions that will be used to process your application for (annuity type). Your answers will be stored electronically in our records. At the end of this interview, I will ask you to confirm the truthfulness of your answers under penalty of perjury. I will record your responses. You should be aware that if you provide false or fraudulent information you are committing a crime under Federal Law.

2. Obtaining Affirmation of Intent to File and Understanding the Penalty Clause

Prior to reading the following scripts, recite back to the applicant the applicant's social security number, date of birth and date last worked (if applicant is the employee) as shown on the application.

Do you understand that the information you have provided will be used to process your application for (annuity type)?

Do you understand that if you submit false or fraudulent information or withhold information, your action would be considered a crime punishable under Federal law which may include fines, imprisonment, or both?

Do you declare under penalty of perjury that this information is true and correct to the best of your knowledge?

3. End of Interview

Here is a printed summary of the information that you provided to be used to process your application. You should retain this summary for your records. Please review all the information carefully and let us know if anything needs to be corrected. You should also let us know if any of the information changes.

110.86.5 Application Scripts for Telephone Interview (Employee, Spouse, Divorced Spouse and Survivor Recurring)

1. Start of Interview

During this interview, I will ask you questions that will be used to process your application for (annuity type). Your answers will be stored electronically in our records. At the end of this interview, I will ask you to confirm the truthfulness of your answers under penalty of perjury. I will record your responses. You should be aware that if you provide false or fraudulent information you are committing a crime under Federal Law.

2. Obtaining Affirmation of Intent to File and Understanding the Penalty Clause

Prior to reading the following scripts, recite back to the applicant the applicant's social security number, date of birth and date last worked (if applicant is the employee) as shown on the application.

Do you understand that the information you have provided will be used to process your application for (annuity type)?

Do you understand that if you submit false or fraudulent information or withhold information, your action would be considered a crime punishable under Federal law which may include fines, imprisonment, or both?

Do you declare under penalty of perjury that this information is true and correct to the best of your knowledge?

3. End of Interview

You will receive a printed summary of the information that you provided to be used to process your application. You should retain this summary for your records. Please review all the information carefully and let us know if anything needs to be corrected. You should also let us know if any of the information changes. If you have not received the summary within 10 calendar days, contact us.

110.86.6 G-346 Scripts for In Person Interview with the Employee

1. Start of Interview

During this interview, I will ask you questions that will be used to process (Spouse's Name) application for a spouse annuity. At the end of this interview, I will ask you to confirm the truthfulness of your answers under penalty of perjury. I will record your responses. You should be aware that if you provide false or fraudulent information you are committing a crime under Federal Law.

2. Obtaining Affirmation of Intent to File and Understanding the Penalty Clause

Do you understand that the information you have provided will be used to process (Spouse's Name) application for a Spouse Annuity?

Do you understand that if you submit false or fraudulent information or withhold information, your action would be considered a crime punishable under Federal law which may include fines, imprisonment, or both?

Do you declare under penalty of perjury that this information is true and correct to the best of your knowledge?

3. End of Interview

Here is a printed summary of the information that you provided. You should retain this summary for your records. Please review all the information carefully and let us know if anything needs to be corrected.

110.86.7 G-346 Scripts for Telephone Interview with the Employee

1. Start of Interview

During this interview, I will ask you questions that will be used to process (Spouse's Name) application for a spouse annuity. At the end of this interview, I will ask you to confirm the truthfulness of your answers under penalty of perjury. I will record your responses. You should be aware that if you provide false or fraudulent information you are committing a crime under Federal Law.

2. Obtaining Affirmation of Intent to File and Understanding the Penalty Clause

Do you understand that the information you have provided will be used to process (Spouse's Name) application for a Spouse Annuity?

Do you understand that if you submit false or fraudulent information or withhold information, your action would be considered a crime punishable under Federal law which may include fines, imprisonment, or both?

Do you declare under penalty of perjury that this information is true and correct to the best of your knowledge?

3. End of Interview

You will receive a printed summary of the information that you provided. You should retain this summary for your records. Please review all the information carefully and let us know if anything needs to be corrected. If you have not received the summary within 10 days, contact us.

110.86.8 Forms Approved for Attestation

The following applications and forms have been approved to use an Alternative Signature Method (Attestation)

- AA-1, Application for Employee Annuity (Age and Service/Disability)
- AA-3, Application for Spouse Annuity (Spouse and Divorced Spouse)
- AA-17, Application for Survivor Annuity (All Survivors)
- G-346, Employee's Certification

110.90 Acceptable Application

If an application is completed and signed, it is valid if received by RRB on or before the date of the applicant's death. It is also acceptable if it is received on the first business day after a non-work day on which the death of the applicant occurred. When Form AA-1d is completed, signed, and filed by an employee who dies without filing an AA-1, the AA-1d meets the application filing requirement. The employee's survivors as listed in FOM1 615.5.2, may file an AA-1 so that a disability determination may be made. Use the date the AA-1d is received as the official filing date for the application. If the employee is found to be disabled prior to death and death did not occur during the waiting period or the first month after the waiting period, annuity entitlement is established. Survivors may then file Form AA-21 for annuities due but unpaid at death, as outlined in FOM1 615.5.5.

110.95 Unacceptable Application

110.95.1 Application Not Properly Signed

An application is not acceptable if:

- The pen and ink signature has been altered,
- It has not been signed properly by the applicant,
- The signature is substantially illegible or of doubtful authenticity,
- The application has been signed by someone other than the applicant and that person does not indicate he or she is the applicant's representative, and there is no clear indication as to the identity of the person on whose behalf the application is filed.
- An Alternative Signature has not been properly attested and notated by the Field Representative.

If one or more of the above conditions exist, a new application form should be sent to the applicant via "Certified Mail - Return Receipt Requested." The new application should have all of the legible information from the original application transcribed on it. Include a letter specifying the manner in which the application should be signed, informing the applicant that the new signed application must be returned within 30 calendar days in order to retain the original filing date. This rule applies to each application in both life and death cases in which the official filing date affects the rights of the applicant to benefits.

110.95.2 Application Signed Properly, But Otherwise Incomplete or Illegible

An application must be corrected by the applicant, or in the case of an incompetent, by his legal representative or person recognized by RRB to act in his behalf, if:

- Any portion of the application is substantially illegible or of doubtful authenticity, or
- There are substantial omissions on the application.

When such correction of an application is necessary, the applicant, his legal representative, or person recognized by RRB as filing on behalf of the applicant, should be notified that the deficiency must be corrected by submission of another properly completed application. This action does not mean that the original application is invalid. It does mean, however, that there is some question or doubt regarding its validity which can be remedied best by submission of a supplemental application.

Enter the applicant's name and other identifying information (RRB claim number and SS number) on the supplemental application and, with a red pencil, check the items that are

to be corrected. It is not necessary to transcribe acceptable information from the original application. Release the application by regular mail with a cover letter instructing the applicant to complete the items on the application that have been checked and to sign and date it in the designated places.

Remember to "Officially File" all applications as of the date of their receipt, even if they may be unacceptable due to omission, improper signatures, or illegibility.

An application cannot be altered in any way except by the person who executed and signed it, by the legal representative of such person, or by the one recognized by RRB to act in behalf of such person.

In the event of the death of an applicant, changes or alterations in the application made by a person who acted for or under authority of the applicant are considered as acts of the applicant.

110.95.3 Faxed Application

A faxed application does not meet the signature requirement to qualify as a valid application. A faxed application is considered the same as a photocopy and is not acceptable. RRB policy requires an original document or certified copy of a document. RRB policy requires a signed application with an original signature.

If a faxed application is received, it should be returned for an original signature.

110.100 Control and Transmittal Of Application

Effective 05-13-02, a new version of APPLE was put into production. All Retirement, Survivor, and Medicare applications and proofs are processed through APPLE.

NOTE: Applications, proofs, other forms and materials that cannot be processed through APPLE should be attached to Form G-626 and routed to headquarters as follows:

- Retirement Applications – RBD
- Survivor Applications – SBD
- Medicare Applications - MS

All disability applications, paper forms AA1-D, AA17b and AA-19a will continue to be placed in paper claim folders. If these cases are being submitted along with an annuity application, the field office prints the G-626 and attaches the summary/certification, forms and medical evidence being sent with application to the transmittal and sends the package in a separate envelope to Initial Folder preparation (IFP).

NOTE: For Medical evidence, terminally ill (TERI) and/or Compassionate Allowance (CAL) cases, disability freeze only applications, or other material which otherwise would

have been sent directly to the Disability Benefits Division (DBD) using Post Office Box 10695, send via overnight delivery to the Disability Benefits Division using 844 N. Rush Street, Chicago, IL 60611. Indicate "DISABILITY" on the Name line in item 2 "DELIVERY TO" on the overnight delivery Shipping Document. Again, a telephone number is not required.

If it is determined that overnight delivery is the appropriate method of shipping, always consider using the least expensive shipping option that is appropriate for the type of document or electronic media being sent. Currently, the RRB uses United Parcel Service (UPS) as the overnight delivery service, however, this may be subject to change. Two options for UPS are available.

- Use the "**UPS 2nd Day Air"** service delivery option whenever possible for routine shipment of documents or media containing PII.

- Use the **"UPS Next Day Air"** service delivery option when circumstances warrant overnight shipping, such as when submitting medical evidence to DBD which is needed to rate TERI/CAL case.

If an AA1d, AA17b, or AA-19a is being submitted without an annuity application in order to obtain other benefits such as early Medicare, O/M, etc., transmit the forms and medical evidence to DBD, via overnight delivery. Show "Disability" as the "Name" on the overnight delivery shipping document; no telephone number is necessary. Do not hold an officially filed application for outstanding supporting evidence unless it is obvious that the required evidence can be obtained within 15 calendar days for transmittal with the application. If the required evidence can be obtained within 15 days, the application may be held pending its receipt. Do not hold an officially filed application more than 15 calendar days even if the required evidence has not been received. Refer to section FOM1 110.105.2 for the appropriate submission of supporting material received after 15 calendar days.

Review the application for completeness before submitting it to headquarters. All answers that have been altered or whited-out need to be initialed and dated by the contact representative.

Do not forward the application until it is complete to insure proper mechanical handling (if appropriate) and to eliminate unnecessary assignments from headquarters for further development or supplemental applications.

Consider the application complete when all the required items have been answered.

EXCEPTION: Do not hold an application pending the receipt of a new SSA number for an applicant.

Review of the application should be completed as soon as possible after its development.

Use the appropriate transmittal form (G-626) in transmitting applications. Complete all applicable items on the check list for the application package. Use the "Remarks" section on the transmittal sheet to call attention to any peculiarities in the case that should be considered in its processing at Headquarters.

Manual review cases include those in which:

- The applicant (employee or spouse) is still employed, or an LPE/SEI determination must be made at RRB Headquarters;
- The applicant was discharged and has an appeal pending before the National Railroad Adjustment Board alleging wrongful discharge and requesting pay for time lost;
- Any case in which there is an established overpayment;
- Any case in which a Headquarters determination must be made before entitlement can be established (i.e., DOB discrepancy, C/C determination, etc).

An application is considered to be self-administered when it is given to the applicant for completion in the field office, or mailed to the applicant for completion. The application is self-administered even if a field office employee provides assistance to the applicant. However, if the applicant's attempt to complete the application is completely unsuccessful, and a field office employee completes the application, the application is considered to be personally filed. Also, consider an application that is completed wholly by a field office employee as personally filed.

In retirement cases, release the G-88A.2 as soon as possible in the course of developing an application, but not before the claimed DLW-RR. It is not necessary to hold the G-88A.2 until the application is released to Headquarters.

110.100.1 Handling of Carrier or Mail-Filed Claims

Officially file and develop a carrier-filed claim (application submitted by employer), or an application received by mail, in the same manner as one personally filed by a field office. Review the application for completeness and reconcile any discrepancies or deficiencies before submitting it.

110.100.2 Application Development by More than One Field Office

In the course of developing an application, a contact is occasionally required by another field office. When this is the case, the originating field office should request the other field office to obtain the data in question and submit it directly to Headquarters. The originating field office should send a copy of the request to Headquarters, along with the application and supporting evidence developed in the case.

The other field office should obtain the data in question and submit it to Headquarters, or take whatever action is appropriate. For example: the request may be to obtain a

statement that a parent is not dependent on a deceased employee. If dependency is claimed, the office should develop for a Parent's Insurance Annuity.

110.100.3 Identifying Third Party Facilitator in Initial DIB Applications

Field Service (F/S) staff should identify when an Initial Disability application is received from a third-party facilitator. For clarification, the term "third-party facilitator" specifically **excludes** all RRB field employees, individuals who are filing on a disability applicant's behalf as their representative payee, as well as any family members of the disability applicant (*i.e. spouse or son/daughters, etc.*).

If the initial employee disability application is received from a third-party facilitator (*i.e. "Mr. Jones' Office Services"* or an attorney/law firm), please make a brief notation in the Remarks section of Application Express (APPLE) as an alert to the Disability Benefits Division (DBD) examiner. The notation should include the name of the third-party facilitator, as well as any known contact information such as their address/phone number. Lastly, a "negative response" (*i.e. "No use of a third-party facilitator"*) is not required for any initial disability application.

NOTE: It is **not** necessary to submit these types of cases for Manual Review.

110.105 Tracing Development of An Application/Abandonment

Follow the procedures outlined below and in FOM-I-17 in the development of evidence and in the abandonment actions for cases in which requested data in support of an annuity application is not submitted following the initial development.

110.105.1 Application Officially Filed

Headquarters will formally deny filed applications when applicants fail to submit required proofs or other supporting data. Field offices will notify HQ by email that a case has been abandoned after documentation from the applicant has not been received within a reasonable time.

If the supporting documents have not been submitted within 15 days from the date of the application, send tracer letter RL-57-B-F. The letter advises the applicant has 15 days to submit requested documentation or advise if additional time is needed. If there is no contact from the applicant, final action on the application will be taken on the basis of the supporting evidence currently on record. A copy of the tracer letter should be imaged. If tracing action is done in person or by telephone, the contact should be documented in the file.

If more time is needed for applicant to secure information, notify HQ via email.

Abandon development and notify headquarters via e-mail in the following situations:

- Applicant/annuitant does not submit requested data within 15 days from the date of the tracer action and additional time has not been granted due to extenuating circumstances. Abandon development and notify headquarters by e-mail.

- Applicant/annuitant advises that he will not submit required or requested data within 15 days from the date of tracer action.

Inform applicant that a decision will be rendered in the case on the basis of the information in file and he will be notified by HQ.

Do not forward any material involving abandonment of development to HQ.

110.105.2 Summary/Certification Released for Signature and Not Returned

An application on APPLE can be abandoned by the field office when the Summary/Certification has been sent to the applicant and the summary/certification is not returned.

When an application and other requested data are not submitted after 30 days of the initial development, trace with the applicant via RL-57-B-F.

If the applicant cannot submit the requested material within 15 days of the date of the tracer and needs additional time, the field office may extend the period for submission of the material. Since each case is different, no rules can be set on what additional time can be granted in a case. Every effort should be made to give additional time and assistance to an applicant who is making a sincere effort to prosecute his claim.

If the applicant/annuitant decides not to submit the data, the applicant/annuitant should notify the field office, giving his reasons.

To abandon, access the APPLE Application Menu screen, enter the number of the application being abandoned in SELECT, and press PF20 twice. The status will change to from APP CERT to APPABND. Explain in remarks (PF12) why the case has been abandoned.

Do not forward any material involving abandonment of development to Headquarters. Only notify Headquarters that case has been abandoned when HQ has requested the development.

EXCEPTION: Refer to FOM1 1325.15.3 for information regarding abandoning development in disability cases.

110.105.3 Action to Take When Material Is Received After Denial of the Application

If no reply is received to a request for information or evidence after 45 days from the date of the last request, or if notice of abandonment is received from the district office, Headquarters will send the applicant a denial letter, which will be imaged. If the field office receives the requested material on an abandoned case within 60 days, submit the material in the usual manner.

If the evidence establishes that the applicant was eligible on or before the date of the formal denial notice, the case will be reopened to permit payment. However, if the evidence fails to show that the applicant was eligible on or before the date of the denial, a new application must be filed before an annuity can accrue; you will receive an assignment to secure one. In such a case, retroactivity will be on the basis of the new application.

When the requested material is received more than 60 days from the date of the denial, secure a new application and submit it to Headquarters along with the additional evidence. If you are unsure if 60 days have elapsed since the date of the denial, get a new application.

110.105.4 Special Situations in Survivor Cases

If an insurance annuity applicant fails to prosecute a claim and is denied for that reason, any decisions on payment of an LSDP or RLS in the case will be withheld for 1 year from the date of the formal denial.

An applicant for a lump sum payment in this type of case should be advised that RRB is unable to process the claim for the 1-year period because of the possibility that a person filing for an insurance annuity may preclude payment of the lump-sum. At the end of the 1-year period, the lump-sum claim will be considered further.

If a survivor insurance annuity applicant has submitted all required evidence and it is determined that the applicant is ineligible, the annuity claim will be denied. In such cases, any claims for an LSDP or RLS will be processed to a conclusion, provided there are no other persons potentially entitled to an insurance annuity in the case.

110.110 Cancellation of Application

An employee, spouse, survivor applicant or annuitant may cancel a previously filed application for an annuity.

A request to cancel must be in writing. When an applicant files a written request with the RRB to cancel the award and/or application, the field office should review the applicant's reason for cancelling. If the applicant states that the annuity will increase if the annuity beginning date (ABD) is postponed, compare the rates with the differing ABDs using REAP. If the comparison validates the applicant's understanding, image

the request and take the appropriate action on APPLE. Refer to FOM 110.111 and FOM 1581.35.7. If the comparison reveals that the applicant's understanding is incorrect, contact the applicant to explain why the rate will not increase.

Refer to FOM-I-110.25 for additional information.

NOTE: This is particularly important when tier 1 is reduced by social security benefits, public service pension, railroad retirement dual entitlement, etc. In these cases, postponing retirement to eliminate age reduction may not increase the net annuity. Make sure the applicant understands that age reduction is not the only factor reducing the annuity.

110.110.1 Effect of Cancellation

The effect of a cancellation is the same as if no application were filed.

- If an employee's application is cancelled, the spouse's application is also cancelled;

- If a spouse's application is cancelled, the employee's application is not affected.

EXAMPLES:

1. If a widow, who filed an AA-I8 cancels his/her application, only his/her application is cancelled. The application filed for the child(ren) will not be cancelled.

2. If the person who filed an AA-I9 for several children cancels the application of one child, only that child's application is cancelled. The other child(ren)'s applications are not cancelled.

3. If a widow(er) in a spouse to widow conversion case cancels his/her application, only the widow(er)'s application is cancelled. The spouse annuity due prior to the month of the employee's death is not impacted.

An individual whose application was cancelled may reapply by filing a new application. Any retroactivity would depend on the filing date of the new application.

When an application is cancelled on APPLE, Form letter RL-31, Acknowledgement of Application Cancellation, will be released automatically by the APPLE system to the claimant. A copy of this letter is imaged.

110.110.2 Development When Representative Payee Requests Cancellation

If a representative payee requests cancellation of an annuitant's application, determine if (s)he no longer wants to be representative payee, or wants to cancel the annuitant's application.

If (s)he wants to cancel the annuitant's application, take every precaution to protect the annuitant's interests, and thoroughly explain the effect of cancellation to the representative payee.

If the representative payee is a court-appointed guardian, (s)he must submit a court order authorizing him/her to cancel the application.

If (s)he is not a court-appointed guardian, (s)he must submit a statement showing why it would be to the annuitant's advantage to cancel the application.

If it appears that cancellation of the application would not be to the annuitant's advantage, select another representative payee and secure an application from that person.

110.110.3 Cancellation Requests in Spouse to Widow Conversion Cases

Although the spouse to widow conversion does not require a separate widow's application, the spouse annuity and the widow's annuity are two distinct types of annuities. The same cancellation rules that apply for an initial widow annuity also apply in the spouse to widow conversion.

Whether the conversion has been processed or not, the cancellation effective date is the employee's month and year of death. Any spouse or widow payments released for the month of the employee's death and later must be returned or repaid. Spouse payments for months prior to the employee's death do not have to be returned if only the widow's annuity is being cancelled.

The spouse to widow cancellation request must be processed by SBD.

110.111 Cancellation Before Annuity Is Awarded

An annuity application may be cancelled before award if the applicant:

- Files a written request with the RRB to cancel his application, and
- Files the request for cancellation on or before the date the annuity is awarded, and
- Is alive on the date the written request is filed or the applicant is deceased and the rights of no person other than the person requesting cancellation will be adversely affected.
- If a request for cancellation that meets the above requirements is received in a field office and the case is not a spouse-to-widow conversion, take the following actions:
- Cancel the application on APPLE in all cases. Select the application being cancelled on the APPLE menu and press the F5 key. This will change the

application status code to cancel. This will also result in the mechanical generation and release of RL-31. Pending applications will be dumped the night the denial or cancellation is processed. It is important that any new application for this applicant not be released until after the cancelled or denied application has been dumped from RASI or the new application will reject. It usually takes about a day or two for an employee or spouse case to be removed from the RASI master and REQUEST. Before submitting a new application, always check REQUEST. The new application can be submitted if the message "RECORD NOT FOUND" appears on the REQUEST screen after the claim and screen number is entered.

- Notify RIS or SIS, as applicable, of the cancellation by electronic mail. If it is a disability case, also notify DBD.

- Image the written cancellation request and supporting documentation.

- Prior to 9-22-2009, the cancellation request and documentation were forwarded to Headquarters to be imaged.

- If the cancellation request is for a spouse-to-widow conversion case, the F/O will release the case to Headquarters using the manual review code in APPLE.

110.112 Cancellation After Annuity Is Awarded (Partial or Final)

An annuity application may be cancelled after it is awarded if the annuitant:

- Files a written request with the RRB to cancel the award and application, and

- Submits the written consent of any person whose entitlement is affected by the cancellation, and

- Repays the annuity payments that he and any auxiliary beneficiary, whose application is also being cancelled, received. Repayment can be made by cash refund or by set off against the annuity.

NOTE: If an employee or spouse annuity was paid ***(partial or final)*** when the cancellation request is received, be sure to dump the case from RASI.

NOTE: A disabled widow(er) who has been awarded a DWIA may, at any time prior to attaining age 60, cancel the application for the DWIA and elect to receive the RLS. However, all annuity payments received must be refunded or set-off from the RLS.

Special consideration in RRA maximum cases before January 1, 2002: For cases with a spouse ABD before January 1, 2002, the RRA maximum can reduce total family income after the spouse files an annuity application. These are cases in which the RRA maximum reduction in the employee annuity exceeds the spouse annuity rate (for

example, when the annuity rate is zero after reductions for social security benefits and the RRA maximum).

In the past, we discouraged filing or solicited cancellations of spouse applications under these circumstances. With the repeal of the RRA maximum provision, this procedure is no longer necessary.

Special consideration for BNSF cases: When the field service receives a call from the annuitant asking to cancel the application because he/she intends to continue work in the railroad; or changes the Date Last Worked Railroad and this change will cause the ABD to be adjusted: the claims representative should check PREH to see if the annuitant has paid final. If YES, and the last railroad is BNSF, call Michelle Caywood at 847-352-0965. Advise that the RL-5a may have the annuitant's name, but the annuity will be suspended or canceled as the annuitant intends to continue railroad work.

110.113 Application Taken When Annuity in Suspense

If an application is filed for an annuitant who is currently on the rolls in a suspended status, determine if the annuitant has maintained entitlement to the annuity. If the annuitant has maintained entitlement, the application can be Closed Without Award (CWOA).

110.115 Waiver Of Annuity Payments

Effective 9-1-54, any annuitant is permitted to waive his annuity or pension in whole or in part. The purpose of the waiver provision is to permit an annuitant to waive payment of all or part of his annuity and thus reduce his total annual income in order to obtain some particular advantage. Advise the annuitant that although he has the right to waive a benefit under the RR Act, the effect of that waiver, so far as obtaining some particular advantage is concerned, rests strictly with the other party or governmental agency involved.

NOTE: Although an employee annuitant may waive a supplemental annuity in whole or in part, his entitlement to that annuity would not be affected; consequently, the reduction applied to the regular annuity (if applicable) in such a case would not be restored.

110.115.1 Effect of Waiver

A waiver has the following effects on an annuity:

A. The amount of annuity waived is deducted from the full amount of the annuity otherwise payable to the person who made the waiver (annuities payable to other beneficiaries are not affected); and

B. The part of the annuity that was not paid because of a waiver can never be paid to anyone for the period during which it was in effect.

Waiver of an annuity only affects the payment, not entitlement. Therefore, waiver of annuity payment does not make the LSDP or RLS payable, nor will it affect the amount of the LSDP or RLS. The total annuity payments which would have been payable had the annuitant not filed a waiver are deductible when computing the amount of the RLS. However, a deduction is not made from the RLS for any month in which the annuity was not payable for some other reason, e.g., any month in which an annuity could not be paid because work deductions applied.

Waiver of an RR Act annuity, which is due and payable, cannot transfer jurisdiction to SSA to make a survivor eligible for an SS Act LSDP or for an insurance benefit based on the employee's wages.

110.115.2 Effect of Employee Waiver on Spouse Annuity

The waiver of all or any part of an employee's annuity will not affect the amount of the spouse's annuity otherwise payable to such employee's spouse. The amount of the spouse's annuity is computed as if no part of the employee's annuity had been waived.

110.115.3 Effect of Waiver on O/M Increase

In any case in which the O/M is applicable, the amount of payment waived is deducted from the annuity as increased under the O/M provision, otherwise payable to the person who made the waiver.

110.115.4 Waiver of Vested Dual Benefit (VDB) Entitlement

When entitlement to a VDB causes a decrease in the annuity rate, the annuitant may wish to waive entitlement to the VDB.

An annuitant may initiate a request for VDB waiver at any time. However, ORSP will initiate development of VDB waiver only when the tier II reduction for the VDB exceeds the amount of VDB payable.

When ORSP initiates development for VDB waiver, you will receive a memorandum explaining the advantages of waiving the VDB. The memo will include the annuity rates with and without the VDB, and the effect on annuity payments if the VDB is not waived.

110.115.5 Waiver and VA Benefits

Section 20(b) of the l937 RR Act became effective 6-1-59. This amendment to the RR Act provided that a pension or annuity is not income for the purpose of determining a veteran's income in a case involving a non-service connected disability pension available to a veteran who is totally and permanently disabled. The Veteran's Pension Act of 1959 (Public Law 86-211) repealed section 20(b) of the 1937 Railroad Retirement Act.

Since the laws relating to veterans' pensions are not administered by the RRB, the RRB cannot give an authoritative opinion on the effect of those amendments. Therefore, if

you receive an inquiry about the effect of the amendment repealing section 20(b) of the l937 RR Act, refer the inquirer to the VA.

110.115.6 Manner of Waiving Payments

A person may waive all or part of the monthly annuity by furnishing an unambiguous signed statement expressing his desire to waive and specifying that he wishes to waive:

A. The full amount of his annuity beginning with the monthly payment due on the first day of a month and year, or

B. That part of his monthly annuity over a stated amount beginning with the monthly payment due on the first day of a month and year, or

C. A specific dollar amount of his annuity beginning with the monthly payments due on the first day of a month and year.

The annuitant may specify the amount of annuity that he wishes to waive in any other unambiguous manner. For example, he may state that he wishes to waive a lump-sum amount in one specified calendar month of a year.

Certain additional requirements must be met when a waiver is filed by the legal representative of the annuitant (see FOM-I-110.115.11).

110.115.7 Effective Date of Waiver

A. Annuity in force - When payments are in force, the waiver is effective with the later of:

- The payment due on the first day of the month specified in the waiver, or
- The payment due on the first day of the month following the month in which the RRB receives the waiver.

B. Annuity not in force - When an annuity has not been awarded or payments are in suspense, a waiver will be effective with the later of:

- The payment due on the first day of the month specified in the waiver, or
- The payment effective with the beginning date or reinstatement date of the annuity.

110.115.8 Duration and Revocation of Waiver

A waiver, once made, continues in effect until RRB receives an unambiguous statement signed by the annuitant or his legal representative requesting that the waiver be terminated. If a legal representative requests revocation of waiver, see FOM-I-110.115.11.

110.115.9 Effective Date of Revocation of Waiver

A. Annuity in force - A revocation is effective with the later of:

- The payment due on the first day of the month specified in the revocation, or
- The payment due on the first day of the month following the month in which RRB receives the revocation.

B. Annuity not in force - A revocation of the waiver affects reinstatement:

1. If annuity payments are in suspense for a reason other than the waiver, the revocation may be effective with the later of:

- The payment due on the first day of the month specified in the revocation, or
- The payment effective with the beginning date or the reinstatement date of the annuity.

2. If annuity payments are in suspense because of a waiver, the revocation may be effective with the later of:

- The payment due on the first day of the month specified in the revocation, or
- The payment due on the first day of the month following the month in which RRB received the revocation.

110.115.10 Handling Waiver Rights Inquiries

When an inquiry about a waiver is received, give the inquirer a full explanation of the waiver provision of the act and tell him that if he wishes to reduce his annuity to meet the income limitations set by VA or some other agency or organization he should seek full information from the agency concerned. He should find out whether his waiver of RR Act benefits would be honored by the other agency and, if so, exactly what amount he should waive.

Tell the person that he may waive payment of all or any part of the annuity by furnishing an unambiguous signed statement.

When an ambiguous request to waive benefits is received by mail, forward such correspondence to ORSP.

110.115.11 Handling Waiver Requests Filed by Annuitant's Legal Guardian

A waiver executed and filed by the guardian or legal representative of an annuitant may be given effect only if a court order, issued by the same court which appointed the representative, specifically authorizing the legal representative to waive payment of his

ward's annuity is submitted. The legal representative may waive no greater amount that the amount that is specified in the court order.

110.115.12 Unacceptable Waivers

If you receive an unacceptable waiver (one that is unclear, ambiguous or unsigned), inform the person of the reasons it is unacceptable and how an acceptable statement can be completed. If an acceptable waiver cannot be substituted immediately, submit the unacceptable statement to Headquarters. If an acceptable waiver is received within 30 days, the waiver may take effect based on the original unacceptable statement.

111.1 Definitions

The term "Annuity Beginning Date" (ABD) means the date on which an employee, spouse, or divorced spouse applicant first becomes entitled to a retirement annuity or any portion thereof.

The term "Original Beginning Date" (OBD) means the date on which a survivor applicant first becomes entitled to a survivor annuity or any portion thereof.

A designated annuity beginning date (ABD) or designated original beginning date (OBD) instructs the RRB to begin the annuity on a date that is later than the earliest date permitted by law.

111.2 General Rules - When an Annuity Can Begin

Annuities can begin when the annuitant satisfies the eligibility requirements, but not earlier than the conditions of retroactivity of the application will allow. Also remember that an annuity cannot begin to accrue if the applicant dies before the date on which he attains eligibility.

If an application is submitted without designation of ABD/OBD, the RRB will begin the annuity on the earliest date permitted by law, provided all eligibility and entitlement requirements have been met.

An annuity cannot begin on the 31st day of the month, unless the applicant designates that beginning date as explained in FOM-I-111.5. Even then, no annuity accrues or is payable for the thirty-first day of any month.

111.3 “First Full Month” Requirements

111.3.1 “First Full Month” Age Attainment for Reduced Age Retirement Annuities

For 1974 RR Act employee and spouse reduced age 62 cases (employee had less than 30 years of railroad service) that were paid partial or final before September 1, 1981, the age attainment rules for both Tier 1 and Tier 2 were the same. The ABD could be as early as the month “in which” the applicant attained age 62.

Effective for cases initially paid September 1, 1981, or later, for applications filed before 9-1-1983, different rules applied for Tier 1 and Tier 2:

- The Tier 1 benefit could have begun as early as the “first full month” the applicant attained age 62; and,
- The Tier 2 benefit could have begun as early as the month “in which” the applicant attained age 62.

The 1983 RR Act Conforming Amendments made the age attainment rules for both Tier 1 and Tier 2 the same effective with reduced age 62 retirement applications filed 9-1-1983 or later. The annuity (Tier 1 and Tier 2) could begin as early as the "first full month" the applicant attained age 62.

111.3.2 Date Applicant Attains a Given Age

Remember that "the day an employee, spouse or survivor attains a given age" means the day before that person's actual date of birth.

This can affect the "first full month" requirement for retirement and survivor annuities. If the birthday is on the first or second day of the month, the birth month is the first full month the person attains age 60 or 62.

Example 1 - An employee whose date of birth is 2-1-1943 attained age 62 on 1-31-2005. February 2005 is the first full month the employee is age 62.

Example 2 - An employee whose date of birth is 2-2-1943 attained age 62 on 2-1-2005. February 2005 is the first full month the employee is age 62.

111.3.3 "First Full Month" Spouse had Employee's Child-in-Care

For 1974 RR Act spouse annuities based on having the employee's child-in-care, that were paid partial or final before September 1, 1981, the rules for both Tier 1 and Tier 2 were the same. The ABD could be as early as the month "in which" the spouse had the employee's child-in-care.

Effective for cases initially paid September 1, 1981, or later, for applications filed before 9-1-1983, different rules applied for Tier 1 and Tier 2:

- The Tier 1 benefit could have begun as early as the "first full month" the spouse had the employee's child-in-care; and,

- The Tier 2 benefit could have begun as early as the month "in which" the spouse had the employee's child-in-care.

The 1983 RR Act Conforming Amendments made the effective date for both Tier 1 and Tier 2 the same effective with applications filed 9-1-1983 or later. The annuity (Tier 1 and Tier 2) could begin as early as the "first full month" the spouse had the employee's child-in-care.

111.3.4 "First Full Month" 60/30 Age Attainment

A. Reduced Age 60/30 Employee or Spouse 6-1-1989 or Later

The changes described in this section are effective for reduced age 60/30 employee annuities and reduced age spouse annuities and are based on legal opinion L-89-28.

If the employee was paid a reduced age 60/30 annuity before 1-1-2002, the employee's age requirement was age 60. If the employee's date of birth (DOB) was 6-2-1929 or earlier, the age requirement was met in the month "in which" the employee attained age 60. If the employee's DOB was 6-3-1929 or later, the employee must have met the age 60 requirement for a "full month".

If the employee was paid a reduced age 60/30 annuity or the employee was a 60/30 disability annuitant with an ABD 7-1-1984 or later, the spouse's age requirement for a reduced-age 60/30 spouse annuity was age 60. If the spouse's DOB was 6-2-1929 or earlier, the age requirement was met in the month "in which" the spouse attained age 60. If the spouse's DOB was 6-3-1929 or later, the spouse must have met the age 60 requirement for a "full month."

B. Full Age 60/30 Spouse 11-1989 or later

The changes for spouse 60/30 annuities described in this section are based on legal opinion L-89-28 and the month in which the Bureau of Field Service advised the district offices of this procedure.

If the employee was paid a full 60/30 age and service annuity or the employee was a 60/30 disability annuitant with an ABD before 7-1-1984, the spouse age requirement for a full age 60/30 spouse annuity was age 60. If the spouse's DOB was 11-2-1929 or earlier, the age requirement was met in the month "in which" the spouse attained age 60. If the spouse's DOB is 11-3-1929 or later, the spouse must have met the age 60 requirement for a "full month."

From July 1984 through December 2001, the employee age requirement for a full 60/30 annuity was met in the month "in which" the employee attained age 62. Therefore, L-89-28 did not affect those employees.

Under the Railroad Retirement and Survivors Improvement Act of 2001 (RRSIA) effective January 1, 2002 or later, the age requirement for an employee or spouse full 60/30 annuity is to have attained age 60 for a "full month."

111.4 Factors Applicant Should Consider When Designating ABD

The field office should advise applicants to designate an ABD/OBD if a later ABD/OBD is more advantageous. However, without the applicant's approval, the RRB has no authority to establish an ABD/OBD that is any later than the earliest date permitted by law.

Before an applicant designates their ABD/OBD, discuss any or all of the following factors, plus any known local or ascertainable factors so that the applicant can make an informed choice of the most advantageous annuity beginning date. Do not choose the ABD for the applicant. Confine your role to that of a source of information. All factors pertaining to Retirement ABD and Survivor OBD is provided in FOM-1-111.

111.4.1 Reduced Age Annuity Begins at End of Month

If the earliest ABD permitted by law for a reduced age annuity would fall on the 29th or 30th of a month, advise the applicant that designating the first day of the next month as his ABD may be to his advantage. In retirement cases, if the applicant's 62nd birthday is on or after the third day of the month, the annuity is usually not payable until the first day of the next month, anyway.

Changing the ABD will result in higher annuities payable, because the increase in the annuity rate with one less age reduction month will offset the annuity accrual that would otherwise be payable for one or two days. If the ABD would have been on the 30th, the difference will be recovered in 6 months; if the ABD would have been on the 29th, the difference will be recovered in 1 year.

RASI (Retirement Adjudication System Initial) and the Operations examiner will automatically change the ABD for a reduced age annuity from the 29th or 30th to the first day of the next month. You should consider this when the application is filed in order to properly advise the applicant. Be sure to explain that if (s)he chooses the "earliest date permitted by law", the ABD, in fact, will not be set to the 29th or 30th, which would be the "earliest date permitted by law", but to the first day of the following month.

111.4.2 60/30 Eligibility Year for Employees Under Age 62

Under current procedure, the 60/30 employee under age 62 is deemed to be age 62 in the ABD year for purposes of determining the eligibility year for the PIA#1 computation. If a 60/30 employee under age 62 is considering retirement in either December or January, he will usually maximize his and his spouse's benefits if he designates an ABD in January. The later ABD will qualify the employee to be "deemed age 62" in the later eligibility year.

However, an exception applied in 1999 (before the Railroad Retirement and Survivors Improvement Act of 2001) when employees who had an ABD before age 62 were paid reduced age 60/30 annuities. The field offices considered the increase in Full Retirement Age in addition to the eligibility year. If the employee's date last worked – railroad was December 30, 1999, a designated ABD of December 31, 1999, was allowed to provide an ABD month of December 1999 and an age reduction factor of (.2000). However, these annuities did not begin to accrue until January 2000. If these employees had chosen an ABD of January 1, 2000, they would have qualified for the later eligibility year, but the increased age reduction factor would have been (.21667).

111.4.3 ABD Month Work Deductions

When an applicant ends LPE employment in the month of eligibility, discuss the possibility of a designated ABD. By requesting an ABD following the date last worked, the applicant may avoid deductions for LPE and excess earnings. The disadvantage is that the annuity is payable for only part of the month.

Calculate alternative annuity accruals for the ABD month to see whether the earliest ABD or designated ABD produces the higher rate.

EXAMPLE: An employee ends LPE on 12/3/2005, expecting excess earnings for the year and the month of December. His gross tier I is $350.00. His tier 2 is $20.00. He is under age 70 and has a work deduction insured status.

With the earliest ABD of 12/1/05, tier I after excess earnings deductions is $210.00, and tier 2 after LPE work deductions is $10.00. The accrual for the month is $220.00.

With a designated ABD of 12/4/05, the employee is not subject to ABD month work deductions. The annuity rate of $370.00 is multiplied by 27/30, leaving an accrual for the month of $333.00. In this example, the designated ABD is more advantageous.

111.4.4 Disability Medicare

An earlier ABD for a disability annuitant may mean earlier entitlement to Medicare. A disability annuitant may be eligible for Medicare after being entitled to a disability annuity for 24 months, if all other requirements are met.

111.4.5 Pay For Time Lost

Payment for time lost (in a personal injury case against the railroad) allocated to a specific period will probably affect the ABD. If a settlement for injury is pending, advise the applicant to designate an ABD for the day after the last day of the pay for time lost.

111.4.6 Unemployment or Sickness Insurance Benefits

Conditions of eligibility for unemployment or sickness insurance benefits under the Railroad Unemployment Insurance Act (RUIA) are outlined in the FOM, Part II. If an applicant appears to be entitled to either of these benefits, he should consider whether he will receive larger benefits under the RUIA or the RRA. The employee should consider:

1. Amount of benefits under each Act - The amount payable to the employee under the RUIA may be greater than the amount payable to the employee under the RRA. However, if the employee has a spouse who is eligible for a spouse's annuity, the amount payable to the employee and spouse under the RRA may be the greater amount.

2. The residual lump-sum - If the applicant's life expectancy has been materially shortened, the applicant may wish to claim benefits under the RUIA rather than under the RRA possibly to allow survivors to receive a larger residual lump-sum.

   Note: If a surviving widow(er), child, or parent will be entitled to an annuity in the month of the employee's death, the residual will not be immediately payable.

3. Employer group health and accident policy - Several employers have group policies which are written by commercial insurance companies. An example is the sickness payments plan administered by the Provident Life and Accident Insurance Company. Generally, benefits from the policy must be repaid for any period in which a retirement annuity is paid. Also consider that payments made under the group policy may have already been adjusted for RUIA sickness insurance benefits.

111.4.7 Employer Benefits

The ABD may affect eligibility for employer pensions, group health and accident insurance, and long and short term disability plans. The employee should consider the requirements of various employer benefits in selecting an ABD.

A major consideration in selecting an ABD is eligibility for the United Health Care Early Retirement Major Medical Benefit Plan. For an employee who retires as an age and service annuitant, a basic eligibility requirement for this plan is that the employee's railroad annuity filing date be on or after his 60th birthday.

A disability annuitant who retires before age 60 may be covered under this health care plan, if he meets the specific disability requirements of the plan. A 60/30 annuitant who has a disability freeze may qualify under the disability requirements of the plan. Applicants with questions about eligibility should contact either United Health Care or their union.

111.4.8 Tier 2 Cost of Living Increase

In order to qualify for the tier 2 cost-of-living (COL) increase in the ABD year, the ABD must be on or before December 1.

111.4.9 RRA Max Cases Before 1983

Before 1983, if an employee and spouse were entitled to an ABD in either May or June, it was generally advantageous to choose the earlier ABD. This tended to lessen the impact of the RRA maximum reduction because it was considered before the June Tier 1 cost-of-living increase was added.

Note - The Tier 1 COL was changed to December in 1983 and the RRA Maximum was removed from the RR Act effective January 2002.

111.5 How Designation of ABD/OBD Can Be Made

111.5.1 Designation on Annuity Application

An applicant should select the ABD/OBD at the time an application is filed. The APPLE screen APMU250 (Beg Date, Filing Dts, Medicare) asks the applicant if they want the annuity to begin on the earliest date permitted by law.

If that item is answered "Yes," the applicant is, in effect, asking the RRB to determine the ABD/OBD based on such factors as legislative restrictions, age, service, date last worked, duration of marriage, etc.

If that item is answered "No," the applicant is asked to designate an ABD/OBD on that APPLE screen. If a designated ABD/OBD is earlier than the earliest date permitted by law, the annuity will not begin until the earliest permissible date.

111.5.2 Designated ABD/OBD is Indefinite or More Than 3 Months after Filing Date

If the age and service applicant insists on requesting an ABD/OBD more than 3 months after the date the application is filed or requests an indefinite postponement of the ABD/OBD, Headquarters should deny the application. In the denial letter, inform the applicant that (s)he must file a new application no earlier than 3 months prior to when (s)he is ready to have the annuity begin.

111.5.3 Unintelligible Designation

If an ABD/OBD designation is unintelligible the RRB will start the annuity as of the earliest date permitted by law.

Some examples of unintelligible ABD/OBD designations are two or more contradictory beginning dates shown on the application or related papers or an ABD/OBD is illegible, or so altered that the exact date desired is doubtful.

111.6 Work Continued through the Designated ABD

111.6.1 Railroad Service

Retirement Annuities

When railroad service is continued through the designated ABD, the designated ABD cannot be used. The ABD cannot be earlier than the day following the last day of such service. If a vacation allowance is involved, see FOM-I-330.80.

Survivor Annuities

Entitlement to a survivor annuity is not contingent upon ceasing railroad service. An OBD may be in a period in which the applicant continues working for a railroad employer. However, no annuity is payable to a survivor for any month in which (s)he renders service for compensation as an employee of a railroad employer.

EXAMPLE

A widow (DOB 01/18/1941) ceases railroad employment 7/2/2006 and files an AA-17 the next day. The earliest OBD permitted by law is 5/1/2006 (FRA), but the annuity is not payable until 8/1/2006 because she was still in railroad service in the months of May through July.

In reduced widow(er) annuity cases, the ARF rules that apply to months an annuity is withheld due to excess earnings also apply to months not payable due to railroad employment (see FOM1 1135.35).

Dual Annuities

An applicant eligible for both a retirement and a survivor annuity may decide to file for both at the same time. Because of the difference in beginning date rules, the survivor OBD may be before the retirement ABD, but the survivor annuity payable only after the retirement annuity has already begun.

> EXAMPLE
>
> The widow in the above survivor example also files for her retirement annuity the same day she files for her widow's annuity. The retirement annuity is payable effective with her ABD of 7/3/2006, even though the survivor annuity is not payable until 8/1/2006.

An applicant should not be advised to designate as the OBD the month following the month (s)he ceases railroad employment solely for the reason that the survivor annuity is not payable from the earliest allowable OBD due to that railroad employment. The only exception is in WIMA cases if changing the OBD increases the WIMA amount payable.

111.6.2 Nonrailroad Work

Retirement Annuities

Effective 12-1-1988 or later, nonrailroad work has no effect on a designated ABD. However, in retirement cases, nonrailroad employment may be Last Pre-retirement Nonrailroad Employment (LPE) as explained in FOM1 330.5.

Survivor Annuities

Nonrailroad work, as such, has no effect on a designated OBD. However, work deductions will apply and annuity payments may be withheld if the applicant is under FRA and has excess earnings. For a full explanation of survivor work deductions, refer to FOM1 1135.

In WIMA cases, if work deductions prevent payment of an annuity, it may be to the applicant's advantage to delay the OBD until an annuity is actually payable by filing at a later date (or cancelling a filed application).

111.7 Changing a Designated ABD/OBD

111.7.1 Before Award

An applicant has the right to change a previously designated ABD/OBD if:

1. The change is not inconsistent with other provisions of the RR Act or RRB Regulations; and

2. The change is requested in writing signed by the applicant or his legal representative; and

3. Notice of the change is received on or before the date of the applicant's death.

111.7.2 After Award

If an award has been certified either partially or fully and a final determination of the ABD/OBD has been made, a change in the ABD/OBD is permitted only if it is to the annuitant's advantage to select a different ABD/OBD. See RCM 6.2.41.

HISTORICAL NOTE: If a reduced age and service annuity or disability annuity with an ABD before 7-1-74 has been certified, an employee may neither cancel his application nor request an ABD of July 1, 1974 or later to qualify himself for an unreduced age and service annuity on the basis of having attained age 60 an completed 30 years of service, or to qualify his spouse for an annuity at age 60.

NOTE 1: Changes in the ABD resulting from the use of the SS Act application filing date should be handled according to RCM 5.1.4.

NOTE 2: When a change in ABD is at the request of the annuitant, due process procedures do not apply, even if an overpayment is created by the change. The same is true when an annuitant requests cancellation of the application after annuity payments have been made. See RCM 5.1.31.

111.8 Designation of SUP ANN Begin Date

An employee applicant or annuitant can designate a later beginning date for a supplemental annuity than for a regular annuity even though a separate application is not required for a supplemental annuity. No specific item is provided for such a designation on the APPLE screen APMU250 (Beg Date, Filing Dts, Medicare) itself. A signed statement can be used for this purpose. Notify RBD by email when requesting a designated SUP ANN begin date that is later than the ABD.

111.10 Current Employee ABD Rules

111.10 1 Current Rules for All Employees Age and Service Applicants (After Railroad Retirement and Survivors Improvement Act - RRSIA)

To find the earliest possible age and service employee annuity ABD, locate the column describing the type of age and service annuity. Continue down the column, considering all of the eligibility factors shown. The ABD is the date which corresponds to the latest of the factors.

Under Current Rules the Employee Age and Service ABD is the Latest of the Following:	Full Retirement Age (Less than 30 Years Service)	Full Age 60 With at Least 30 Years Service)	Reduced Age 62 With Less than 30 Years Service)	Based on 60-119 Months of Railroad Service
Section of RR Act	2(a)(1)(i)	2(a)(1)(ii)	2(a)(1)(iii)	2(a)(1)(i) or 2(a)(1)(iii)
Earliest ABD (Legislation Date) Females	6-24-1937	1-1-2002	6-1-1959	1-1-2002
Earliest ABD (Legislation Date) Males	6-24-1937	1-1-2002	10-1-1961	1-1-2002
First Day of Month After Month Employee Meets the RR Service Requirement	X	X	X	X
Day after DLW	X	X	X	X
Day after DLW - Last Pre-Retirement Nonrailroad Employment (LPE)	<12-1-1988	<12-1-1988	<12-1-1988	N/A
Designated ABD	X	X	X	X
First Day of Month Application Filed	N/A	N/A	X*	Reduced Age 2(a)(1)(iii) only*
First Day of Month 6 Months Prior to Employee Filing Date	X	X	N/A	Full Age 2(a)(1)(i) only
First Day of Month FRA Attained	X	N/A	N/A	Full Age 2(a)(1)(i) Only
First Day of First Full Month Age 62	N/A	N/A	X	Reduced Age 2(a)(1)(iii) only
First Day of First Full Month Age 60	N/A	X	N/A	N/A
*See retroactivity rules in FOM-I-112.5.3.				

111.10.2 Current Rules for Employee Disability Applicants

To find the earliest possible disabled employee annuity ABD, locate the column describing the type of disability annuity. Continue down the column, considering all of the eligibility factors shown. The ABD is the date which corresponds to the latest of the factors.

Under Current Rules, the Employee Disability Annuity ABD is the Latest of the Following:	Occupational Disability	Total and Permanent Based on at least 120 months RR Service	Total and Permanent Based on 60-119 Months RR Service
Section of RR Act	2(a)(1)(iv)	2(a)(1)(v)	2(a)(1)(v)
Earliest ABD (Legislative Date)	1-1-1975	1-1-1975	1-1-2002

Under Current Rules, the Employee Disability Annuity ABD is the Latest of the Following:	Occupational Disability	Total and Permanent Based on at least 120 months RR Service	Total and Permanent Based on 60-119 Months RR Service
Designated ABD	X	X	X
First day of Month After Month Employee Meets the RR Service Requirement	X	X	X
Day after DLW for RR or Pay for Time Lost	X	X	X
Day after DLW for Last Pre-retirement Nonrailroad Employment (LPE)	<12-1-1988	<12-1-1988	N/A
First Day of Month 12 Months Prior to Filing Date	X	X	X
First Day of Month Age 60 Attained If Less Than 20 Years of Service	X	N/A	N/A*
First Day of Sixth Month After RR Act Disability Onset Date (Disability Waiting Period) or First Day of Month Disabled Under RR Act If Previously Disabled and Re-entitled Within Prescribed Period.	X	X	X
*For total and permanent disability annuities where the annuitant has 60-119 total railroad service months, tier 2 is not payable until the annuitant attains age 62.			

111.11 Current Spouse ABD Rules

An employee disability annuitant under Full Retirement Age must relinquish whatever rights (s)he may have to return to work for any RR before a spouse annuity may be paid. However, the date of the relinquishment of rights will not affect the retroactivity of the spouse ABD.

111.11.1 Current Spouse 60/30 Applicants (After Railroad Retirement and Survivors Improvement Act - RRSIA)

To find the earliest possible spouse 60/30 annuity ABD, locate the column describing the type of spouse annuity. Continue down the column, considering all of the eligibility factors shown. The ABD is the date which corresponds to the latest of the factors

If the Employee has at Least 30 Years Service and an ABD effective 01-01-2002 or later, the Spouse ABD is the Latest of the Following:	Full Age (60/30)	Based on Child-in-Care
Section of RR Act	2(c)(1)	2(c)(1)
Earliest ABD (Legislative date)	1/1/2002	1/1/2002 (Male Spouse Entitled to Tier 1 Only)
Designated ABD	X	X
Day after DLW for RR (or any Pay for Time Lost)	X	X
Employee's ABD	X	X
First Day of Month of First Anniversary of Marriage or First Day of Month In Which Marriage Occurred if the Spouse was Natural Parent of EE's child or if Spouse Entitled to WIA or PIA in Month Before Marriage	X	X
First day of the Month in which Remarriage to the Employee Occurred, if Divorced and Previously Entitled as a Spouse	X	X
The First Day of the Month in Which the Disabled Employee Annuitant Attains Age 60	X	X
First Day of the Month 6 Months Prior to Filing Date	X	X
First Day of the First Full Month the Spouse Attains Age 60	X	N/A
First Day of First Full Month Spouse has Child-in-Care	N/A	X
First Day of Month in Which Spouse No Longer Entitled Based on Child-in-Care	X	N/A

NOTE: If the employee has 30 years of service, an ABD between 08-1984 and 12-2001, and an age reduction, the spouse will also have an age reduction. See the chart in FOM1 320.12.1 for how to determine when to compute an age reduction for a spouse of a 60/30 annuitant.

111.11.2 Current Spouse Annuities When the Employee Has Less Than 30 Years of Railroad Service (9-1-1983 or Later)

To find the earliest possible spouse annuity ABD, locate the column describing the type of spouse annuity. Continue down the column, considering all of the eligibility factors shown. The ABD is the date which corresponds to the latest of the factors:

Based on Less Than 30 Years Service, the Spouse ABD is the Latest of the Following:	Full Retirement Age	Reduced Age	Based on Child-in-Care
Section of RR Act	2(c)(1)	2(c)(2)	2(c)1

Based on Less Than 30 Years Service, the Spouse ABD is the Latest of the Following:	Full Retirement Age	Reduced Age	Based on Child-in-Care
Earliest ABD (Legislative Date) for Living-With Female and Dependant Living-With Male	1/1/1975	1/1/1975	1/1/1975
Earliest ABD (Legislative Date) for Non-Dependant Living-With Male	3/1/1977	3/1/1977	5/1/1983- (Male Spouse Entitled to Tier 1 Only)
Earliest ABD (Legislative Date) for Non-Living-With Spouse (Male or Female)	8/12/1983	8/12/1983	8/12/1983 (Male Spouse Entitled to Tier 1 Only)
Designated ABD	X	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X	X
Day After DLW for LPE (Last Pre-Retirement Nonrailroad Employer)	< 12-1-1988	< 12-1-1988	< 12-1-1988
Employee's ABD	X	X	X
First Day of Month of First Anniversary of Marriage or First Day of Month In Which Marriage Occurred if the Spouse was Natural Parent of EE's child or if Spouse Entitled to WIA or PIA in Month Before Marriage	X	X	X
First day of the Month in which Remarriage to the Employee Occurred, if Divorced and Previously Entitled as a Spouse	X	X	X
The First Day of the Month in Which the Disabled Employee Annuitant Attains Age 62	X	X	X
First Day of the Month 6 Months Prior to Filing Date	X	N/A	X
First Day of Month in Which Application Filed	N/A	X	N/A
The First Day of the Month in Which the Spouse Attains *Full Retirement Age*	X	N/A	N/A
First Day of First Full Month Spouse Attains Age 62	N/A	X	N/A
First Day of First Full Month Spouse has Child-In-Care	N/A	N/A	X
First Day of Month in Which Spouse No Longer Entitled Based on Child-In-Care	X	X	N/A

111.12 Current Divorced Spouse ABD Rules

An employee disability annuitant under Full Retirement Age need not relinquish rights to railroad employment before a divorced spouse annuity may be paid.

To find the earliest possible divorced spouse annuity ABD, locate the column describing the type of divorced spouse annuity. Continue down the column, considering all of the eligibility factors shown. The ABD is the date which corresponds to the latest of the factors:

The Divorced Spouse ABD is the latest of the following: (see note below for PL 109-280 cases)	**Full Retirement Age**	**Reduced Age 62**
Earliest ABD (Legislative Date)	10-1-1981	10-1-1981
Designated ABD	X	X
Day After DLW for RR (or Pay for Time Lost)	X	X
Day After DLW for LPE	<12-1-1988	<12-1-1988
The First Day of the Month in Which the Decree of Absolute Divorce Becomes Final	X	X
First Day of the Month in which any Marriage Subsequent to Marriage to the EE Ended, if that Marriage Precluded Entitlement	X	X
Employee's ABD	X	X
First Full Month the Employee is Age 62, if the Employee has not been Granted a Disability Freeze	X	X
First Day of Month in Which the Employee is Age 62, if the Employee has been Granted a Disability Freeze	X	X
First Day of the Month 12 Months Prior to Filing Date if EE is a Disability Annuitant or a 60/30 with a Disability Freeze	X	N/A
The First Day of the Sixth Month Prior to the Month Application is Filed if EE is a Not a Disability Annuitant and is not a 60/30 with a Disability Freeze	X	N/A
The First Day of the Month in Which the Application is Filed	N/A	X
The First Day of the Month in Which the Divorced Spouse Attains Full Retirement Age (FRA)	X	N/A
The First Day of the First Full Month the Divorced Spouse Attains Age 62	N/A	X

NOTE: PL 109-280, effective August 17, 2007, allows spouses who have been divorced for two full years to become entitled to a divorced spouse annuity even if the employee is not yet entitled. The following requirements must be met.

- The employee and the spouse must have been married for at least ten years.
- The employee and the divorced spouse must have been finally divorced for a full 2 years.
- The divorced spouse must file an application.
- Both the employee and the divorced spouse must be 62 years of age for a full month.
- The employee must have sufficient months of service to be eligible for an annuity.

In addition, the employee will not have to stop work in the railroad industry and will not have to relinquish rights in order for the divorced spouse to receive an annuity.

The earliest date of filing is May 2007, and the earliest ABD is August 17, 2007. After August 17, 2007, all ABDs for Independently Entitled Divorced Spouses will be the first day of the first full month all requirements for eligibility are met.

Effective August 17, 2007, no divorced spouse will have the annuity suspended if the wage earner, whether entitled or not, is in compensated railroad service.

The Independently Entitled Divorced Spouse must stop compensated work in the railroad industry, relinquish rights, will have the tier 1 reduced for earnings over the yearly limit, be subject to PSP and SSA reductions, etc. Normal retroactivity rules will apply to these annuities, with the exception that no annuity may begin before August 17, 2007.

111.20 Current Survivor OBD Rules (9-1-1983 or Later)

To find the earliest possible survivor annuity OBD effective 9-1-1983 or later, locate the column describing the type of annuity. Continue down the column, considering all of the eligibility factors shown. The OBD is the date which corresponds to the latest of the factors.

The Survivor OBD is the Latest of the Following:	Full Retirement Age	Reduced Age	Widow(er) Based on Disability	Based on Child in Care	Minor Child, Disabled Child or Student
Earliest OBD (Legislative Date) for Widow(er), Sole-Survivor Parent, Child or Student	1/1/1975	1/1/1975	1/1/1975	1/1/1975	1/1/1975
Earliest OBD (Legislative Date) For Remarried Widower and Surviving Divorced Spouse	10/1/1981*	10/1/1981*	10/1/1981*	10/1/1981*	N/A
Earliest OBD (Legislative Date) For Parent (Tier 1 Only) with other Survivors	1/1/1983	1/1/1983	N/A	N/A	N/A
Designated OBD	X	X	X	X	X
First Day of Month in Which Employee Died	X	X	X	X	X
First day of the month in which any marriage subsequent to her (his) marriage to the EE ended, if that marriage precluded entitlement	X	X	X	X	N/A
First Day of the Month 12 Months Prior to Filing Date	N/A	N/A	X	N/A	N/A
The first day of the sixth month after the month in which the RR	N/A	N/A	X	N/A	N/A

The Survivor OBD is the Latest of the Following:	Full Retirement Age	Reduced Age	Widow(er) Based on Disability	Based on Child in Care	Minor Child, Disabled Child or Student
Act disability onset occurs unless a waiting period is not required.					
First Day of the Month 6 Months Prior to Filing Date	X	If survivor is < =age 62 and not a KW or RW	N/A	X	X
First Day of Month in Which Application Filed	N/A	If survivor > age 62 (age 60 if KW or RW) and < FRA	N/A	N/A	N/A
The First Day of the Month in Which the Survivor Attains *Full Retirement Age*	X	N/A	N/A	N/A	N/A
First Day of Month in Which Widow(er) Attains Age 50	N/A	N/A	X	N/A	N/A
First Day of Month in Which Survivor Attains Age 60	N/A	X	N/A	N/A	N/A
First Day of First Full Month Survivor has Child-In-Care	N/A	N/A	N/A	X	N/A
First Day of Month in Which Survivor No Longer Entitled Based on Child-In-Care	X	X	X	N/A	N/A
First Day of Month of FTA, if student over age 18	N/A	N/A	N/A	N/A	X

*The legislative date is 1/1/1984 if the surviving divorced spouse married after age 60 or married after age 50 and was entitled to a disabled surviving divorced spouse's annuity before the marriage occurred.

111.30 60/30 ABD Rules Before 1-1-2002 for Employee

111.30.1 Employee 60/30 Age and Service Annuitants (7-1-1984 to 12-31-2001)

If the age and service 60/30 employees attained either age 60 or 30 years of railroad service after 6-30-1984, the employee's ABD must have been at or after the month in which the employee attained age 62 to qualify the employee for a Full Age 60/30 annuity. The Railroad Retirement and Survivors Improvement Act of 2001(RRSIA) removed this requirement for employee's with an ABD of 1-1-2002 or later.

To find the ABD, locate the column describing the 60/30 annuity. Continue down the column, considering all of the eligibility factors shown. The ABD was the date which corresponded to the latest of the factors.

If the 60/30 Employee ABD was 7-1-1984 through 12-31-2001, that ABD was the Latest of the Following:	Full Age 60 2(a)(1)(ii) When Age 60 and 30 Years Attained Before 7/1/1984	Full Age 60 2(a)(1)(ii) When Age 60 and 30 Years Attained After 6/30/1984	Reduced Age 60 2(a)(1)(ii) When Age 60 and 30 Years Attained After 6/30/1984
Section of 1974 RR Act	2(a)(1)(ii)	2(a)(1)(ii) and 3(a)(3)	2(a)(1)(ii) and 3(a)(3)
Earliest ABD (Legislation Date)	1-1-1975	7-1-1984	7-1-1984
Day After Employee Meets the RR Service Requirement	X	X	X
Day after DLW - RR (or Pay for Time Lost)	X	X	X
Day after DLW - LPE (Last Pre-Retirement Nonrailroad Employment)	<12-1-1988	<12-1-1988	<12-1-1988
Designated ABD	X	X	X
First Day of Month 6 Months Prior to Filing Date	X	X	X
First Day of Month in Which Age 60 Attained	X	N/A	If DOB < 6-3-1929*
First Day of First Full Month Age 60	N/A	N/A	If DOB > 6-2-1929*
First Day of Month in Which Age 62 Attained	N/A	X	N/A
*See First Full Month rules in FOM-I-111.3.4			

111.30.2 Employee 60/30 Age and Service Annuitants (1-1-1975 to 6-30-1984)

If the age and service 60/30 employees attained both age 60 and 30 years of railroad service before 7-1-1984, the employee's ABD for a Full Age 60/30 annuity could have been as early as age 60.

To find the ABD, locate the column describing the 60/30 annuity. Continue down the column, considering all of the eligibility factors shown. The ABD was the date which corresponded to the latest of the factors.

Based on at Least 30 Years Service, the Employee ABD Before 7-1-1984 was the Latest of the Following:	Full Age 60/30 2(a)(1)(ii)
Section of RR Act	2(a)(1)(ii)
Earliest ABD (Legislation Date)	1/1/1975
Day After Employee Meets the RR Service Requirement	X
Day after DLW - RR (or Pay for Time Lost)	X
Day after DLW – LPS (Last Person Service)	X
Designated ABD	X
First Day of Month 12 Months Prior to Filing Date	Tier 1 < 6/1/1982 and Tier 2 < 9-1-1983*

Based on at Least 30 Years Service, the Employee ABD Before 7-1-1984 was the Latest of the Following:	Full Age 60/30 2(a)(1)(ii)
First Day of Month 6 Months Prior to Filing Date	9-1-1983 or later*
First Day of Month in Which Age 60 Attained	X
First Day of Month in Which Attained Age 60	X
*See retroactivity rules in FOM-I-112.20.1	

111.40 60/30 ABD Rules before 1-1-2002 for Spouse

111.40.1 Spouse of 60/30 Age and Service Employee Annuitant (7-1-1984 to 12-31-2001)

Before RRSIA, the age and service 60/30 employee's ABD must have been at or after the month the employee attained age 62 to qualify the spouse for a full age 60/30 spouse annuity.

To find the ABD, locate the column describing the 60/30 annuity. Continue down the column, considering all of the eligibility factors shown. The ABD was the date which corresponded to the latest of the factors.

ABD of Spouse of 60/30 A&S Annuitant Before 1-1-2002 was the Latest of the Following:	Full Age 60/30 Annuity	Reduced Age 60/30 Annuity	Based on Child-in-Care
Earliest ABD (Legislative Date)	7/1/1984	7/1/1984	7/1/1984
Designated ABD	X	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X	X
Day After DLW for LPE (Last Pre-Retirement Nonrailroad Employment)	<12-1-1988	<12-1-1988	<12-1-1988
Employee's ABD	X	X	X
First Day of Month of First Anniversary of Marriage or First Day of Month In Which Marriage Occurred if the Spouse was Natural Parent of EE's Child or if Spouse Entitled to WIA or PIA in Month Before Marriage	X	X	X
First day of the Month in which Remarriage to the Employee Occurred, if Divorced and Previously Entitled as a Spouse	X	X	X
First Day of the Month 6 Months Prior to Filing Date	X	If either age and service employee or spouse <= age 62*	X

First Day of Month Application Filed	N/A	If both age and service employee and spouse > age 62*	N/A
First Day of Month Spouse Attained Age 60	If spouse DOB < 11-3-1929**	If spouse DOB < 6-3-1929**	N/A
First Day of First Full Month Spouse Age 60	If spouse DOB > 11-2-1929**	If spouse DOB > 6-2-1929**	N/A
First Day of First Full Month Spouse Has Child-In-Care	N/A	N/A	X
First Day of Month in Which Spouse No Longer Has Child-in-Care	X	X	N/A

* See ABD rules before 1-1-2002 in FOM-I-111.40
**See rules for First Full Month 60/30 in FOM-I-111.3.4

111.40.2 Spouse of 60/30 Disability Annuitant (7-1-1984 to 12-31-2001)

Before RRSIA, the 60/30 disability annuitant had to have an ABD before 7-1-1984 to qualify the spouse for a full age 60/30 annuity. Otherwise, the spouse had to have attained Full Retirement Age (FRA) to qualify for a full age 60/30 annuity.

To find the ABD, locate the column describing the 60/30 annuity. Continue down the column, considering all of the eligibility factors shown. The ABD was the date which corresponded to the latest of the factors.

ABD of Spouse of 60/30 Disability Annuitant Before 1-1-2002 was the Latest of the Following:	Full Age 60/30	Reduced Age 60/30 Annuity	Based on Child-in-Care
Earliest ABD (Legislative Date)	7/1/1984	7/1/1984	7/1/1984
Designated ABD	X	X	X
Day After DLW for RR (or Pay for Time Lost)	X	X	X
Day After DLW for LPE (Last Pre-Retirement Nonrailroad Employment)	<12-1-1988	<12-1-1988	<12-1-1988
First Day of Month of First Anniversary of Marriage or First Day of Month In Which Marriage Occurred if the Spouse was Natural Parent of EE's child or if Spouse Entitled to WIA or PIA in Month Before Marriage	X	X	X
Employee's ABD	X	X	X
The First Day of the Month in Which the Disabled Employee Annuitant Attains Age 60	X	X	X
First Day of the Month 6 Months Prior to Filing Date	X	If spouse <= age 62	X

ABD of Spouse of 60/30 Disability Annuitant Before 1-1-2002 was the Latest of the Following:	Full Age 60/30	Reduced Age 60/30 Annuity	Based on Child-in-Care
First Day of Month Application Filed	N/A	If spouse > age 62 and spouse is < FRA	N/A
First Day of Month FRA Attained	X	N/A	N/A
First Day of Month Age 60 Attained	N/A	If DOB < 6-3-1929*	N/A
First Day of First Full Month Age 60	N/A	If DOB > 6-2-1929*	N/A
First Day of First Full Month Spouse Has Child-In-Care	N/A	N/A	X
First Day of Month in Which Spouse No Longer Has Child-in-Care	X	X	N/A
*See rules for First Full Month 60/30 in FOM-I-111.3.4			

111.40.3 Spouse of 60/30 Age and Service Annuitant or 60/30 Disability Annuitant (9-1-1983 to 6-30-1984)

To find the ABD, locate the column describing the 60/30 annuity. Continue down the column, considering all of the eligibility factors shown. The ABD was the date which corresponded to the latest of the factors.

ABD for Spouse of 60/30 Employee Before 7-1-1984 was the Latest of the Following:	Full Age 60/30 Annuity	Based on Child-in-Care
Section of 1974 RR Act	2(c)(1)	2(c)(1)
Earliest ABD (Legislative Date)	1/1/1975	1/1/1975
Designated ABD	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X
Day After DLW for LPS (Last Person Service)	X	X
First Day of Month of First Anniversary of Marriage or First Day of Month In Which Marriage Occurred if the Spouse was Natural Parent of EE's child or if Spouse Entitled to WIA or PIA in Month Before Marriage	X	X
Employee's ABD	X	X
The First Day of the Month in Which the Disabled Employee Annuitant Attained Age 60	X	X
First Day of the Month 6 Months Prior to Filing Date	X	X
First Day of Month Spouse Attained Age 60	X	N/A
First Day of First Full Month Spouse Has Child-In-Care	N/A	X
First Day of Month in Which Spouse No Longer Entitled Based on Child-In-Care	X	N/A

111.40.4 Spouse of 60/30 Age and Service Annuitant or 60/30 Disability Annuitant 1-1-1975 through 8-31-1983

To find the earliest possible spouse 60/30 annuity ABD, locate the column describing the type of spouse annuity. Continue down the column, considering all of the eligibility factors shown. The ABD is the date which corresponds to the latest of the factors

ABD for Spouse of 60/30 Employee Before 9-1-1983 was the Latest of the Following:	**Full Age (60/30)**	**Based on Child-in-Care**
Section of RR Act	2(c)(1)	2(c)(1)
Earliest ABD (Legislative Date) for Living-With Female	1/1/1975	1/1/1975
Earliest ABD (Legislative Date) for Dependant Living-With Male	1/1/1975	5/1/1983- (Male Spouse Entitled to Tier 1 Only)
Earliest ABD (Legislative Date) for Non-Dependant Living-With Male	3/1/1977	5/1/1983- (Male Spouse Entitled to Tier 1 Only)
Earliest ABD (Legislative Date) for Non-Living-With Spouse (Male or Female)	8/12/1983	8/12/1983 (Male Spouse Entitled to Tier 1 Only)
Designated ABD	X	X
Day after DLW for RR (or any Pay for Time Lost)	X	X
Day After DLW for LPS (Last Person Service)	X	X
First Day of Month of First Anniversary of Marriage or First Day of Month In Which Marriage Occurred if the Spouse was Natural Parent of EE's child or if Spouse Entitled to WIA or PIA in Month Before Marriage	X	X
Employee's ABD	X	X
The First Day of the Month in Which the Disabled Employee Annuitant Attained Age 60	X	X
First Day of the Month 12 Months Prior to Filing Date	Tier 1<6/1/1982 and Tier 2<9-1-1983*	Tier 1<6/1/1982 and Tier 2<9-1-1983*
First Day of the Month 6 Months Prior to Filing Date	Tier 1>=6/1/1982 and Tier 2>=9-1-1983*	Tier 1>=6/1/1982 and Tier 2>=9-1-1983*
First Day of the Month in Which the Spouse Attained Age 60	X	N/A
First Day of Month in Which Spouse had Child-In-Care	N/A	Tier 1<9/1/1981 and Tier 2<9-1-1983**
First Day of First Full Month Spouse had Child-In-Care	N/A	Tier 1>=9/1/1981 and Tier 2>=9-1-1983**
First Day of Month in Which Spouse No Longer Entitled Based on Child-In-Care	X	N/A
* See retroactivity rules in FOM-I-112.20.1 **See First Full Month rules FOM-I-111.3		

111.50 1974 RR Act ABD Rules Before 9-1-1983 for Employee and Spouse Based on Less Than 30 Years Service

111.50.1 Employee Age and Service Annuity Less Than 30 Years Service

To find the ABD, locate the column describing the employee annuity. Continue down the column, considering all of the eligibility factors shown. The ABD was the date which corresponded to the latest of the factors.

Based on Less than 30 Years Service, the Employee ABD Before 9-1-1983 was the Latest of the Following:	Full Age 65	Reduced Age 62
Section of RR Act	2(a)(1(i))	2(a)(1)(iii)
Earliest ABD (Legislative Date)	1/1/1975	1/1/1975
Designated ABD	X	X
Day After Employee Meets the RR Service Requirement	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X
Day After DLW for LPS (Last Person Service)	X	X
First Day of the Month 12 Months Prior to Filing Date	Tier 1 < 6/1/1982 and Tier 2 < 9-1-1983*	Tier 1 < 6/1/1982 and Tier 2 < 9-1-1983*
First Day of the Month 6 Months Prior to Filing Date	Tier 1 >= 6/1/1982 and Tier 2 >= 9-1-1983*	Tier 1 >= 6/1/1982 and Tier 2 >= 9-1-1983 only when spouse/ divorced spouse annuity could retroact for same 6 month period*
First Day of Month in Which Application Filed	N/A	Tier 1 >= 6/1/1982 and Tier 2 >= 9-1-1983 when no spouse/divorced spouse annuity could retroact for 6 month period*
First Day of the Month in Which Attained Age 65	X	N/A
First Day of the Month In Which Attained Age 62	N/A	Tier 1 < 9/1/1981 and Tier 2 < 9-1-1983**
First Full Month Attained Age 62	N/A	Tier 1 >= 9/1/1981 and

Based on Less than 30 Years Service, the Employee ABD Before 9-1-1983 was the Latest of the Following:	Full Age 65	Reduced Age 62
		Tier 2 >= 9-1-1983**
*See retroactivity rules in FOM-I-112.20.1 ** See First Full Month rules in FOM-I-111.3		

111.50.2 Spouse of Age and Service Annuitant or Disability Annuitant Who Had Less Than 30 Years Service

To find the earliest possible spouse annuity ABD, locate the column describing the type of spouse annuity. Continue down the column, considering all of the eligibility factors shown. The ABD is the date which corresponds to the latest of the factors.

Based on Less than 30 Years Service, Spouse ABD Before 9-1-1983 was the Latest of the Following:	Full Age 65	Reduced Age 62	Based on Child in Care
Section of RR Act	2(c)(1)	2(c)(2)	2(c)(1)
Earliest ABD (Legislative Date) for Living-With Female	1/1/1975	1/1/1975	1/1/1975
Earliest ABD (Legislative Date) for Dependant Living-With Male	1/1/1975	1/1/1975	5/1/1983- (Male Spouse Entitled to Tier 1 Only)
Earliest ABD (Legislative Date) for Non-Dependant Living-With Male	3/1/1977	3/1/1977	5/1/1983- (Male Spouse Entitled to Tier 1 Only)
Earliest ABD (Legislative Date) for Non-Living-With Spouse (Male or Female)	8/12/1983	8/12/1983	8/12/1983 (Male Spouse Entitled to Tier 1 Only)
Designated ABD	X	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X	X
Day After DLW for LPS (Last Person Service)	X	X	X
First Day of Month of First Anniversary of Marriage or First Day of Month In Which Marriage Occurred if the Spouse was Natural Parent of EE's child or if Spouse Entitled to WIA or PIA in Month Before Marriage	X	X	X
Employee's ABD	X	X	X
The First Day of the Month in Which the Disabled Employee Annuitant Attained Age 62	X	X	X

Based on Less than 30 Years Service, Spouse ABD Before 9-1-1983 was the Latest of the Following:	Full Age 65	Reduced Age 62	Based on Child in Care
First Day of the Month 12 Months Prior to Filing Date	Tier 1<6/1/1982 and Tier 2<9-1-1983*	Tier 1<6/1/1982 and Tier 2<9-1-1983*	Tier 1<6/1/1982 and Tier 2<9-1-1983*
First Day of the Month 6 Months Prior to Filing Date	Tier 1>=6/1/1982 and Tier 2>=9-1-1983*	N/A	Tier 1>=6/1/1982 and Tier 2>=9-1-1983*
First Day of Month in Which Application Filed	N/A	Tier 1>=6/1/1982 and Tier 2>=9-1-1983*	N/A
The First Day of the Month in Which Spouse Attains Age 65	X	N/A	N/A
First Day of Month In Which Spouse Attained Age 62	N/A	Tier 1>=9/1/1981 and Tier 2>=9-1-1983**	N/A
First Day of First Full Month Spouse Attained Age 62	N/A	Tier 1>=9/1/1981 and Tier 2>=9-1-1983**	N/A
First Day of Month in Which Spouse had Child-In-Care	N/A	N/A	Tier 1>=9/1/1981 and Tier 2>=9-1-1983**
First Day of First Full Month Spouse had Child-In-Care	N/A	N/A	Tier 1>=9/1/1981 and Tier 2>=9-1-1983**
First Day of Month in Which Spouse No Longer Entitled Based on Child-in-Care	X	X	N/A
*See retroactivity rules in FOM-I-112.20.1 ** See First Full Month rules in FOM-I-111.3			

111.51 1974 RR Act OBD Rules Before 9-1-1983 for Survivor Annuity

To find the earliest possible survivor annuity OBD before 9-1-1983, locate the column describing the type of annuity. Continue down the column, considering all of the eligibility factors shown. The OBD is the date which corresponds to the latest of the factors.

Before 9-1-1983, the Survivor OBD was the Latest of the Following:	Full Age	Reduced Age 62	Based on Disability	Based on Child in Care	Child or Student
Earliest OBD (Legislative Date) for Widow(er), Parent, Child or Student	1/1/1975	1/1/1975	1/1/1975	1/1/1975	1/1/1975
Earliest OBD (Legislative Date) For Remarried Widower and Surviving Divorced Spouse	10/1/1981	10/1/1981	10/1/1981	10/1/1981	N/A
Earliest OBD (Legislative Date) For Dependent Grandchildren,	N/A	N/A	N/A	1/1/1975	1/1/1975
Designated OBD	X	X	X	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X	X	X	X
Employee's DOD	X	X	X	X	X

Before 9-1-1983, the Survivor OBD was the Latest of the Following:	Full Age	Reduced Age 62	Based on Disability	Based on Child in Care	Child or Student
12 Months (to the Day) Prior to Application Filing Date if the Application was Filed on or after 9-1-1954	X	X	X	X	X
The First Day of the Month in Which the Widow(er) Attained Age 65	X	N/A	N/A	N/A	N/A
The First Day of the Month in Which the Parent Attained Age 60	X	N/A	N/A	N/A	N/A
The First Day of the Month in Which Widow(er) Attained Age 62	N/A	X	N/A	N/A	N/A
The First Day of the Month in Which Widow(er) Attained Age 50	N/A	N/A	X	N/A	N/A
The First Day of the Month in Which Widow(er) had Child-In-Care	N/A	N/A	N/A	X	N/A
The First Day of the Month in Which the Widow(er) No Longer Entitled Based on Child-in-Care	X	X	X	N/A	N/A
First Day of Month of FTA, if over age 18	N/A	N/A	N/A	N/A	X

111.60 1937 RR Act ABD/OBD Rules

111.60.1 Employee Age and Service 1937 RR Act Annuities

To find the earliest possible 1937 RR Act employee annuity ABD, locate the column describing the type of employee annuity. Continue down the column, considering all of the eligibility factors shown. The ABD was the date which corresponded to the latest of the factors.

Under the 1937 RR Act, the Employee Age and Service ABD was the Latest of the Following:	Full Age 65	Full Age 60	Reduced Age 60 30 or More Years Service	Reduced Age 62 Less than 30 Years Service
Section of 1937 RR Act	2(a)(1)	2(a)(2)	2(a)(3)	2(a)(3)
Earliest ABD (Legislative Date) - Male	6/24/1937	7/1/1974	6/24/1937	10-1-1961
Earliest ABD (Legislative Date) – Female	6/24/1937	1/1/1947	6/24/1937	6-1-1959
Designated ABD	X	X	X	X
Day After Employee Meets the RR Service Requirement	X	X	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X	X	X
Day After DLW for LPS (Last Person Service)	X	X	X	X

Under the 1937 RR Act, the Employee Age and Service ABD was the Latest of the Following:	Full Age 65	Full Age 60	Reduced Age 60 30 or More Years Service	Reduced Age 62 Less than 30 Years Service
12 Months (to the Day) Prior to Filing Date if the Application was Filed on or after 9-1-1954	X	X	X	X
The First Day of the Month Attained Age 65	X	N/A	N/A	N/A
Day Attained Age 62	N/A	N/A	N/A	X
Day Attained Age 60	N/A	X	X	N/A

111.60.2 Employee Disability 1937 RR Act Annuities

Under Current Rules, the Employee Disability Annuity ABD is the Latest of the Following:	Occupational Disability	Total and Permanent Based on at least 120 months RR Service
Section of RR Act	2(a)(4)	2(a)(5)
Earliest ABD (Legislative Date)	1-1-1947	6-24-1937
Designated ABD	X	X
First Day of Month After Month Employee Meets the RR Service Requirement	X	X
Day after DLW for RR or Pay for Time Lost	X	X
Day after DLW for Last Person Service (LPS)	X	X
First Day of Month 12 Months Prior to Filing Date	X	X
First Day of Month Age 60 Attained If Less Than 20 Years of Service	X	N/A

111.60.3 Spouse 1937 RR Act Annuities

To find the earliest possible 1937 RR Act spouse annuity ABD, locate the column describing the type of spouse annuity. Continue down the column, considering all of the eligibility factors shown. The ABD was the date which corresponded to the latest of the factors. Note that the 1937 RR Act did not provide for a spouse annuity at age 60.

Under the 1937 RR Act, the Spouse ABD was the Latest of the Following:	Full Age 65	Reduced Age 62	Based on Child in Care
Earliest ABD (Legislative Date) for Living-With Female	11/1/1951	6/1/1959	11/1/1951 when Child Qualified for CIA 11/1/1966 when Child Did Not Qualify for CIA
Earliest ABD (Legislative Date) for Dependant Living-With Male	11/1/1951	8/1/1959	N/A
Earliest ABD (Legislative Date) for Dependant Stepchild	N/A	N/A	2/1/1968
Earliest ABD (Legislative Date) for Dependant Grandchild or Child disabled Before Age 22	N/A	N/A	1/1/1973
Designated ABD	X	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X	X
Day After DLW for LPS (Last Person Service)	X	X	X
First Anniversary of Marriage or Day of Marriage if the Spouse was Natural Parent of EE's Child or if Spouse Entitled to WIA or PIA in Month Before Marriage	X	X	X
Employee's ABD	X	X	X
Day the Employee Annuitant Attained Age 65	X	X	X
12 Months (to the Day) Prior to Application Filing Date if the Application was Filed on or after 9-1-1954	X	X	X
The First Day of the Month in Which the Spouse Attained Age 65	X	N/A	N/A
Day Spouse Attained Age 62	N/A	X	N/A
Day Spouse had Child-In-Care	N/A	N/A	X

111.60.4 Survivor 1937 RR Act Annuities

To find the earliest possible 1937 survivor annuity OBD, locate the column describing the type of annuity. Continue down the column, considering all of the eligibility factors shown. The OBD is the date which corresponds to the latest of the factors.

Under the 1937 RR Act, the Survivor OBD was the Latest of the Following:	Full Age	Reduced Age 60	Based on Disability	Based on Child in Care	Child or Student
Earliest OBD (Legislative Date) for Widow(er) or Child Under Age 18	1/1/1947	1/1/1947	2/1/1968 for Widows	1/1/1947 for Widow	1/1/1947

Under the 1937 RR Act, the Survivor OBD was the Latest of the Following:	Full Age	Reduced Age 60	Based on Disability	Based on Child in Care	Child or Student
			3/1/1977 for Non-dependent Widowers	11/1/1966 for Widower	
Earliest OBD (Legislative Date) Sole-Surviving Dependent Parent	1/1/1947	N/A	N/A	N/A	N/A
Earliest OBD (Legislative Date) for Disabled Child If Disabled Before Attaining Age 18	N/A	N/A	N/A	9/1/1954	9/1/1954
Earliest OBD (Legislative Date) for Child Adopted Within 2 Years of Employee's Death	N/A	N/A	N/A	9/1/1958	9/1/1958
Earliest OBD (Legislative Date) for Child Adopted (More than 2 Years) After Employee's Death or Dependant Stepchild	N/A	N/A	N/A	2/1/1968	2/1/1968
Earliest OBD (Legislative Date) for Dependant Grandchild or Child Disabled Before Attaining Age 22	N/A	N/A	N/A	1/1/1973	1/1/1973
Earliest OBD (Legislative Date) for Student Under Age 22	N/A	N/A	N/A	N/A	1/1/1973
Designated OBD	X	X	X	X	X
Day After DLW for RR (or Pay For Time Lost)	X	X	X	X	X
Employee's DOD	X	X	X	X	X
12 Months (to the Day) Prior to Application Filing Date if the Application was Filed on or after 9-1-1954	X	X	X	X	X
The First Day of the Month in Which the Widow(er) or Parent Attained Age 65	X	N/A	N/A	N/A	N/A
Day Widow(er) Attained Age 60	N/A	X	N/A	N/A	N/A
Day Widow(er) Attained Age 50	N/A	N/A	X	N/A	N/A
Day Parent Attained Age 60 9/1/1954 or later (age 65 before 9/1/1954)	X	N/A	N/A	N/A	N/A
Day Widow(er) had Child-In-Care	N/A	N/A	N/A	X	X
Day Widow(er) No Longer Entitled Based on Child-In-Care	X	X	X	N/A	N/A
First Day of Month of FTA, if over age 18	N/A	N/A	N/A	N/A	X

115.5 Issuance of Payments

The Kansas City Financial Center of the Department of the Treasury prepares and issues payments for the RRB.

The monthly payment issue file for recurring annuity payments is electronically transmitted to the Kansas City Financial Center (KFC) usually on the 4th to last working day in the month prior to the month of issue. KFC prints the checks and prepares EFT payments. KFC makes the checks available to the U.S. Postal Service in time for delivery on the 1st business day of the month. They transmit the EFT payments to the Federal Reserve Bank for distribution to the financial institutions for posting to accounts on the first business day of the month.

Accrual payments are separate checks/EFT releases. This includes initial awards and accrual payments released after an adjustment or reinstatement award. Accrual payments made by check are generally received within 2 weeks of the date payments are processed (the voucher date). Accrual payments made by EFT are generally received within 2 days of the date payments are processed (the voucher date).

A. Retirement Benefits - An employee annuitant receiving both a regular annuity and a supplemental annuity receives one recurring payment covering both benefits.

An employee annuitant whose SS benefit is paid by the RRB receives one recurring payment covering the regular retirement annuity, supplemental annuity (if he or she is entitled to one), and Social Security Act benefit.

A spouse annuitant whose SS benefit is paid by the RRB receives one recurring payment covering the spouse annuity and SS benefit.

Checks representing combined benefits have a legend printed under the check amount ("RR COMB BEN") with additional legends printed at the bottom of the check identifying the type and amount of each benefit included in the check.

If either the RR or the SS benefit has been suspended, a separate payment will be issued for the benefit that continues to be paid. If payment is by check, the legend under the check amount will indicate which benefit is being paid. When the suspended benefit is reinstated, the accrual payment will be separate as usual, and the first monthly payment released on a regular recurring basis will be for combined RR/SS benefits.

A one-payment-only to an annuitant in suspended or terminated status may be made using paper check or EFT. An EFT routing number is maintained on the record unless a death termination has been processed.

B. Survivor Payments - Each survivor annuitant receives a separate check/payment.

A survivor annuitant whose SS benefit is paid by the RRB receives one recurring payment covering the survivor annuity and the SS benefit.

If payment is by check, a legend is printed under the check amount ("RR COMB BEN") with additional legends printed at the bottom of the check identifying the type and amount of each benefit included in the check.

If either the RR or the SS benefit has been suspended, a separate payment will be issued for the benefit that continues to be paid. The legend on the check under the check amount will indicate which benefit is being paid. When the suspended benefit is reinstated, the accrual payment will be separate as usual, and the first monthly payment released on a regular recurring basis will be for combined RR/SS benefits.

If either the RR or the SS benefit has been suspended, a separate payment will be issued for the benefit that continues to be paid.

If payment is by check, the legend under the check amount will indicate which benefit is being paid. When the suspended benefit is reinstated, the accrual payment will be separate as usual, and the first monthly payment released on a regular recurring basis will be for combined RR/SS benefits.

A one-payment-only to an annuitant in suspended or terminated status may be made using paper check or EFT. An EFT routing number is maintained on the record unless a death termination has been processed.

C. Separate Social Security Payments - Separate social security payments are issued when:

- Two SS benefits are paid by the RRB; and

- One of the two SS benefits is paid from the OASI (Old Age and Survivors Insurance) Trust Fund, and the other is paid from the DI (Disability Insurance) Trust Fund. These are the two separate trust funds from which SS benefits are paid; separate checks/EFT payments are necessary to charge the benefit against the correct trust fund for accounting purposes. Retirement and survivor benefits are paid from the OASI fund. Disability benefits, including family benefits based on a wage earner's disability, are paid from the DI fund.

If a railroad annuity is payable in this situation, the SS OASI benefit is combined with any RR annuity payable and issued in one payment. The SS DI benefit is paid in a separate payment.

When paying the SS disability benefit in a separate check, we use:

1. The following symbols and prefixes for the SS disability benefit:

   - Employee: WCA
   - Spouse: WCA
   - Survivor: WCA or WCD

2. The next available payee code (i.e., one that has not been used already or has not been reserved for the spouse), and

3. The RR employee's claim number.

When a person receiving an SS disability benefit attains age 65, SSA will convert that benefit to a retirement benefit and the RRB will begin to issue one payment covering payment of any RR annuity plus the SS benefits.

115.10 Distribution Of Payments

Treasury's Kansas City Financial Center issues all RRB payments. Payments are made by check and electronic funds transfer (EFT). Award letters are prepared and released by the RRB directly to the annuitant. The award letter is usually received within 2 weeks of the payment date.

Receipt of the check/EFT payment may be delayed if the award voucher rejects. If the award letter was processed on ALTA, it will not be released until the voucher is corrected. If, however, the award letter was produced by RASI or prepared manually, it may be released even if the payment is not. Any rejects are re-vouchered on a priority basis. If it is necessary to extend the accrual amount through another month, the examiner will send the annuitant a Form Letter RL-121d explaining that there will be a delay in the check/EFT payment release. A corrected award letter will be sent providing the revised accrual amount. In both instances, a copy will be sent to the servicing field office or be available for viewing on the imaging system.

115.15 Release Of Large Accrual Paper Checks ($10,000 Or More)

Award accruals over $10,000 paid by a paper check, must be preceded by advance notice. We do not send advance notice in direct deposit/EFT, mechanical award, or residual lump sum payments situations even if the accrual is over $10,000. An Outlook Form e-G-115, Large Accrual Notice, is prepared by the claims examiner and sent to the servicing field office for annuitants residing in the United States, Canada and Mexico. Form e-G-115 is available under the "ACTIONS" tab of the Office of Programs public folder. The examiner uses RCM 10.3 Appendices B and C to identify Canadian provinces and Mexican states serviced by RRB field offices.

The e-mail notice includes the examiner's name and unit location, and identifying information on the recipient, i.e., name, address, claim number, social security number

(if different), telephone number, representative payee (if applicable), the type of payment (recurring or OPO), and the reason for accrual. The gross accrual amount before tax withholding is shown.

Advance notification allows the field office to assist the beneficiary in making arrangements to negotiate or deposit the check. The advance notice is released by the examiner when sending the case to authorization. If authorization results in a substantial change to the accrual amount, a modified e-G-115 Large Accrual Notice should be sent.

DO NOT notify the annuitant until the award appears on DATAQ or PREH. The net accrual will be available on DATAQ.

If, in your judgment, the release of a large accrual check (not necessarily $10,000 or more) will cause a hardship to an annuitant, you can request in advance that arrangements be made for mailing the check to the field office for personal delivery.

115.20 Payment by Direct Deposit (Electronic Funds Transfer)

The Department of the Treasury (Treasury) now requires all Federal benefit and nontax payments to be made electronically. This requirement applies to both Railroad Retirement Act (RRA) and Railroad Unemployment and Sickness Insurance Act (RUIA) benefit payments. Applicants who apply for benefits on or after May 1, 2011 will need to choose an electronic payment option to receive their benefit payments. Annuitants/claimants currently receiving their benefit payments via paper check will need to switch to electronic payments by March 1, 2013. Annuitants/claimants who are already receiving their benefit payments electronically are not affected.

Exceptions: Treasury will allow benefit payments to be paid via paper check to individuals who meet one of the following exemptions:

- age 90 or older (born before May 1, 1921),
- had a Direct Express® card that was suspended or cancelled,
- have a mental impairment (non-representative payee situations), or
- live in a remote area of the country that lacks the infrastructure to support electronic financial transactions.

The individual must provide notarized documentation attesting that he or she meets one of the exemption criterions. Treasury is responsible for obtaining the notarized documentation from the individual and for making the waiver determination. The advantages of Direct Deposit should be explained to any applicant or beneficiary who is thinking about claiming a waiver from mandatory EFT. Those advantages include:

- Direct Deposit payments are sent electronically to the beneficiary's checking or savings account at a bank, savings and loan, credit union or other financial institution. Direct Deposit payments cannot be delayed or lost in the mail, misplaced or stolen.

- For nonrecurring payments, Direct Deposit payments are generally available to a beneficiary on the first or second business day following the day the RRB approves a payment. This is 2 to 5 days sooner than payment by check. (NOTE: Treasury regulations require that financial institutions make benefit payments available for withdrawal by the beneficiary no later than the opening of business on the payment date. The payment date is the date on which the financial institution's Federal Reserve account is credited by the Federal Reserve Bank for the amount of the payment.)

- Direct Deposit is a safe, convenient and reliable way to receive benefit payments.

- Direct Deposit saves the Railroad Retirement Trust Fund money, money that can be used to pay future benefit payments.

- Beneficiaries have a permanent record of their benefit payments through their bank records.

The beneficiary must be reminded of the importance of keeping the RRB informed about changes in his or her mailing address. Although payments will not be sent to the home address, important correspondence such as tax statements and the RRA rate notices will be mailed to the home.

115.20.1 Treasury Department "Tools"

The Financial Management Service of the Department of the Treasury provides these references and services to assist in the Direct Deposit program:

Financial Organization Master File (FOMF)	The Treasury Department's list of financial institutions receiving government automated payments. An on-line version is available on RRAPID.
Canadian Financial Institutions Branch Directory	The list of financial institutions and their bank codes, branch codes, and addresses. To view the on-line web version click on the link Canadian Financial Directory.
IBAN Decoder Tool	A website tool that is used to decode the International Bank Account Number (IBAN), secure bank code, branch code, and account number.

	Http://www.xe.com/idt/
The Green Book	The Treasury Department's manual on Direct Deposit. Financial Institutions receive the Green Book and periodic updates from Treasury. The Green Book is available on-line at www.fms.treas.gov.
Marketing Materials	The Treasury Department assists the RRB by designing, publishing and issuing check stuffers, brochures and posters.
Notification of Change (NOC)	NOC is an automated method used by financial institutions to notify Federal agencies through the Federal Reserve Bank of corrections or changes in account information.

115.20.2 Direct Deposit Terminology

This section lists terms frequently used in Direct Deposit procedure and Treasury publications.

Account Title	The account title provides individual identification and may include the names of others that are also authorized to withdraw funds from the account. The RRB requires that the annuitant's name be included in the account title. Note: For International Direct Deposit (IDD), if other individuals are authorized to withdraw funds from the account, each individual must read the special notice contained on Form OF 1199-I and sign Section E of the form.
Account Type	The letter code C or S preceding or following the Depositor Account Number (DAN). C = checking; S = savings.
Automated Clearing House (ACH)	A central distribution and settlement point that performs inter-bank clearing of paperless entries for participating financial institutions to exchange funds electronically.
Check Digit	The ninth number of the routing transit number (RTN) which is actually a result of a mathematical

	formula applied to the RTN. It is used to verify the accuracy of the RTN.
Depositor Account Number (DAN)	Account identification assigned by the financial institution. The DAN may be up to 17 characters in length and consist of numbers and/or letters. Note: Some foreign financial institutions have depositor account numbers that exceed 17 characters. .
Direct Deposit (DD)	A Federal government payment program for individuals, firms and other entities, which authorize the deposit of payments automatically into a checking or savings account. Payments are sent by Automated Clearing House (ACH), thereby eliminating the need to print and mail checks.
Direct Deposit Specialist	The RRB agency representative responsible for resolving Direct Deposit questions, discrepancies, and processing of all International Direct Deposit enrollment requests. This individual also maintains records of financial institution addresses and RTN. The telephone: (312) 751-4704, Email address: TCIS-CSU Group.
Electronic Funds Transfer (EFT)	A system using electronic means to transfer payment data and funds from an originator (RRB) to a recipient's account at a receiving financial institution.
Federal Reserve Bank (FRB)	Serves as the nation's central bank. Its functions include: processing EFT payments, (including ACH) for the Federal government, handling Federal government deposits and checks, and supervising and regulating Federally chartered financial institutions.
Financial Institution (FI)	Acceptable financial institutions for Direct Deposit purposes are: banks, savings and loans, and credit unions.
International Direct Deposit (IDD)	A Federal government payment program for individuals living outside the United States, which authorizes the deposit of payments automatically into a checking or savings account with a financial

	institution outside the US. Payments are sent by ACH, thereby eliminating the need to print and mail checks.
ITS.GOV	International Treasury Services which enables federal agencies to issue foreign currency payments using the Automated Clearing House (ACH) network. The supporting web based application is used for processing IDD enrollments and maintaining bank address information for foreign benefit recipients.
Magnetic Ink Character Recognition (MICR) Coding	A special type font printed with magnetic ink on the bottom line of checks. The MICR-encoded line is used by the banking industry to sort and process checks. The RTN and DAN are found within the MICR coding.
Power-of-Attorney	A legal instrument authorizing one individual to act as an agent for the other. An individual appointed as power-of-attorney may not sign the Form SF-1199A or the Form OF 1199-I on behalf of another, since the Form SF-1199A and the Form OF 1199-I is a power-of-attorney itself. If advised that an annuitant has granted power-of-attorney to another individual, develop for a possible representative payee.
Representative Payee	A person who receives payments on behalf of a person who has applied for and is entitled to Federal benefits payable by law. The account of an individual with a representative payee must reflect that the representative payee has a fiduciary and not a personal interest in the funds. It also must indicate that the annuitant has ownership of the funds.
Routing Transit Number (RTN)	An eight-digit identification number assigned to financial institutions by an agent of the American Bankers' Association. This number is the identification by which Direct Deposit/EFT payments are distributed to financial institutions. The eight-digit identification number for all International Direct Deposit accounts is **02105306**. This RTN is assigned to the International Treasury Services by which Direct Deposit/EFT payments

	are distributed to financial institutions in foreign countries through the Federal Reserve Bank of New York.
SF-1199A Direct Deposit enrollment (sign-up form)	A form providing the necessary information to initiate Direct Deposit. Its use is optional. The RRB does not maintain a supply of Forms SF-1199A. They may be obtained from a financial institution.
OF 1199-I International Direct Deposit	A form providing the necessary information to process Direct Deposit for payments sent to beneficiaries living outside the United States. This is an Optional Form that can be downloaded from the RRB.gov website.
Trust Account	A trust account is one that is set up between two individuals refer to section 115.21.6.

115.20.3 Initiating Direct Deposit

An RRB annuitant may initiate domestic (a U.S. bank) Direct Deposit in one of several ways:

- automated enrollment (ENR) at bank savings and loan, credit union or other financial institution where the annuitant wants payments deposited. (see section 115.24),
- simplified formless enrollment,
- completion of Form SF-1199A at a financial institution.

An RRB annuitant who lives outside the United States may initiate International Direct Deposit by completing Form OF 1199-I. The form is available on the rrb.gov website. Completed forms are to be forwarded to the Direct Deposit Specialist in TCIS.

If both the employee and spouse want to have payments sent by Direct Deposit, two enrollments, one for each annuitant, must be completed. Combined RR/SS benefit checks need only one enrollment to effect Direct Deposit.

Note: When an SS disability benefit is paid by the RRB in a second check, the annuitant will have to complete two Direct Deposit enrollments.

A. Direct Deposit of Initial Payment - The APPLE system allows field office personnel to input the Direct Deposit information during the application process. The APPLE entry is simultaneously transmitted to the Initial Direct Deposit Application (IDDA) system. The information will remain on IDDA until a payment

record is established or 270 days from the date the data was entered. See FOM-I-110.73 and FOM-1-1572.35.

Note: Field office personnel must refer all International Direct Deposit requests to the Direct Deposit Specialist who will enter the information on the ITS.gov application and on IDDA. If the beneficiary does not have a social security number, the Direct Deposit Specialist will process the enrollment once the annuity is in recurring payment status.

B. Treasury Department Guidelines on Direct Deposit - Guidelines for the Direct Deposit program are outlined in the Treasury Department's Green Book. Important information supplementing information in the Green Book and this section will be provided to field offices by the Payment Analysis and Systems section of Policy and Systems. Field offices should disregard other "Direct Deposit" materials, e.g. promotional materials received from financial institutions, currency exchanges, etc.

If you receive procedural questions about Direct Deposit of RRB benefits from a financial institution that you cannot answer, refer the financial institution to the Direct Deposit Specialist (by mail to P.O. Box 10792, Chicago, IL 60610; by telephone to 312-751-4704). If the financial institution needs general information about the Direct Deposit program or a copy of the Green Book, direct them to www.fms.treas.gov/greenbook.

115.20.4 Financial Institutions

Direct Deposit enrollment is permitted at most traditional financial service organizations. Listed below are acceptable and unacceptable types of financial institutions. Do not attempt to enroll a beneficiary for Direct Deposit at any of the financial institutions shown as unacceptable.

A. Acceptable Financial Institutions:

- Banks
- Savings and Loans
- Credit Unions

B. Unacceptable Financial Institutions:

- Credit Card Companies
- Finance Companies
- Mutual Funds
- Brokerage Houses

- Insurance Companies
- Other non-traditional financial service organizations

115.20.5 Types of Accounts

Determine what type of account the annuitant has before processing the enrollment.

A. Acceptable Accounts - Funds may be deposited by EFT into these types of accounts:

- Checking
- Savings
- Transaction account (Now/Share Draft), but must be entered as a checking or savings account

B. Unacceptable Accounts - Direct Deposit cannot be processed for the following types of accounts:

- Commercial Accounts
- Credit Card Accounts
- Loan Accounts
- Accounts from which funds cannot be withdrawn

115.20.6 Sources of Bank Data

Bank data is found on a variety of documents. Some, however, do not provide complete and accurate information.

Acceptable Documents	**Unacceptable Documents (Do Not Use)**
Bank statement	Deposit tickets
Check	IRS forms
Passbook	Starter checks
Information received directly from the financial institution or annuitant	

115.20.7 Where to Find Direct Deposit Information

The easiest way to secure accurate Direct Deposit information is by telephoning the financial institution. When provided with sufficient customer identification, the financial institution is usually able to confirm the account number and routing transit number.

When attempting to secure information from a financial institution outside the US, contact the Direct Deposit Specialist in TCIS. The Direct Deposit Specialist will telephone the financial institution or request assistance from the U.S. Embassy or the Consulate in foreign countries.

Other sources for payment information include:

A. TYPE OF ACCOUNT AND DEPOSITOR ACCOUNT NUMBER

- Voided check
- Passbook
- Bank statement
- Telephone the annuitant

B. NAME AND ADDRESS OF FINANCIAL INSITUTION

- On-line Financial Organization Master File (FOMF,
- Canadian Financial Directory
- Envelope/Correspondence from financial institution
- Local telephone directory
- Telephone the Direct Deposit Specialist
- Telephone financial institution,
- Telephone the annuitant

C. ROUTING TRANSIT NUMBER AND CHECK DIGIT

- Voided check
- Telephone the Direct Deposit Specialist
- Telephone financial institution
- Telephone the annuitant

HELPFUL HINT: If the annuitant desires Direct Deposit into a savings account, ask if he or she also has a checking account at the same financial institution. The savings account passbook will not show the RTN; a check will. Always verify the routing transit number using the FOMF or by calling the financial institution.

D. ACCOUNT TITLE

- Voided check
- Passbook
- Bank statements
- Telephone financial institution

E. BANK CODE AND BRANCH CODE

- Voided check
- Documents from the foreign financial institution

115.20.8 Acceptable Account Titles

The account title must reflect the exact title of the account into which the payment is to be credited. It must include the name of the RRB annuitant either as the sole owner or one of the joint account holders.

Generally, if the following requirements are met in the account title, honor requests to forward annuity payments for credit to these accounts. If there is any doubt as to the acceptability of an account title, clarify it with the financial institution.

Payee Is Recipient of Benefits - Persons entitled to benefits in their own right may have their payments directed to either a single signature savings or checking account maintained in their own name or to a joint ownership savings or checking account. The title of the account must show that the recipient is co-owner of the funds in the account.

Note: If the IDD enrollee is not the sole owner of the account, the other account holders must read the special notice on the enrollment form and certify in section E of Form OF 1199-I that they have read the notice.

EXAMPLES:

Check payable to: John Doe. Savings or checking account title may be:

- John Doe;
- Mr. and Mrs. John Doe;

- John or Mary Doe; or,
- variations of the above

Check payable to widow: Mary Doe. Savings or checking account title may be:

- Mary Doe, or;
- Mrs. John Doe

Note: If the IDD enrollee is not the sole owner of the account, the other account holders must read the special notice on Form OF 1199-I and certify in section E of the form that they have read the notice.

115.20.9 Account Title in Representative Payee Direct Deposit Cases

A. Representative Payee is Other than Parent or Spouse - If the representative payee is a person other than a parent or spouse, payments may be directed to a savings or checking account which is titled to show clearly that the representative payee has only a fiduciary and not a personal interest in the funds. In addition, the account title must not allow the annuitant direct access to the funds. Instruct representative payees using Direct Deposit, that annuitants should not have access to the account. Examine the bank documents carefully to determine compliance with account title guidelines. If there is any question about the validity of the account title, telephone the financial institution for confirmation.

EXAMPLES:

Check payable to: Ann Smith for John Doe.

Checking or savings account titles may be:

- John Doe by Ann Smith, Representative Payee
- Ann Smith for John Doe.

Note: The representative payee must be shown as a trustee or guardian of the account. The representative payee cannot authorize us to send payments to an account to which he or she has no access.

Under RRB regulations (20 CFR 266.11(d)), a representative payee is prohibited from commingling his/her personal funds with the annuitant's funds. However, a representative payee may consolidate and maintain an annuitant's funds in an account with other annuitants, as long as the representative payee maintains a separate, accurate, and complete accounting of each annuitant's funds. Field offices are responsible for ensuring that the representative payee sets up the collective account according to the following guidelines:

- The collective account must be properly titled to show the beneficiaries as the owners of the account.

- Any interest earned on the account belongs to the beneficiaries and must be credited to them on a prorated basis, based on their share of funds in the account.

- The account title must show that the funds belong to the beneficiaries and not the representative payee. Examples of acceptable collective titles are: (1) Northshore Nursing Home, representative payee for Railroad Retirement Beneficiaries, or (2) Franklin Home, representative payee for Social Security and Railroad Retirement Beneficiaries.

- The account must be separate from the representative payee's personal account or institution's operating account.

- There must be clear and current records showing the amount of each individual beneficiary's share in the account and that proper procedures are followed for documenting credits and debits for the individual beneficiaries.

- The accounts and supporting records must be made available to the RRB, upon request.

Additionally, field office records of representative payees are to be flagged to show when funds are being deposited into a collective account. Field offices are responsible for reviewing the account and related records to ensure continued compliance with the guidelines.

B. Representative Payee is the Parent or Spouse - If the representative payee is the parent or spouse of the person(s) for whom payment is made, payments may be directed to a checking or savings account jointly owned by the representative payee and the annuitant.

EXAMPLES:

- Acceptable checking or savings account titles include:

- Sally Doe by Mary Doe, Representative Payee;

- Mary Doe for Jimmy Doe;

- Patty Doe by Mary Doe, Trustee

- Mary Doe and Sally Doe, or

- Mary Doe or Jimmy Doe.

A representative payee who is the parent or spouse of the beneficiary may also request Direct Deposit into his or her own checking account if the following conditions are met:

- The payee is the spouse, parent, or stepparent of the beneficiary.
- The payee and the beneficiary live in the same household.
- The payee requests direct deposit to his or her personal checking account and,
- The field office has verified with the payee that benefits will be used for the beneficiary's current expenses and will not be accumulated in the account.

The title of the checking account does not need to indicate the beneficiary's ownership of the funds. (This exception does not apply to direct deposit to a savings account.)

Example: A widow files for survivor's benefits for her three children upon the death of their father. She requests direct deposit of the children's benefits to her checking account, stating that the children live with her and that all benefits will be used for the children and no money will be accumulated in the account.

115.20.10 Depositor Account Number (DAN)

The DAN may be all numerals, all letters, or a combination of both. Dashes (-) may be used as part of the number (i.e., 1234-5678), but other symbols such as slashes (/) or asterisks (*), and spaces are not acceptable. If a symbol other than a dash is used, contact the financial institution.

- Editing Account Numbers – Some financial institutions do not have depositor account numbers, but instead use names. If the depositor's name is used as the account number, insert dashes between the first name (or initial), middle initial and last name. If there is a period after an initial, edit it out. If the name, including dashes, exceeds 17 characters and is not for an International Direct Deposit, contact the financial institution and attempt to resolve the problem.
- Domestic account number exceed 17 characters - A numerical domestic account number, including dashes, cannot exceed 17 characters. If the account number, including spaces, exceeds 17 characters, edit out the spaces. If after editing out the spaces (do not edit out dashes), the number still exceeds 17, contact the financial institution.
- International depositor's account numbers can exceed 17 characters. However, even if an International depositor's account number is less than 17 characters, it will not be displayed on FAST-COA-DD. All International depositors' account number are entered and maintained in ITS.gov. DATAQ will only display the payee's

identification number in the account number field. This is a 14 character string consisting of the RRB 9-digit claim number; follow by the beneficiary symbol, prefix and payee code. The ACCOUNT TYPE/NO on DATAQ must adhere to a specific format. It is advisable that you contact the Direct Deposit Specialist, if you require assistance.

115.20.11 Account Type

The account type may be either checking (C) or savings (S). Canadian financial institutions will return a payment if the type of account is not correct, so always secure the correct account type for Canadian enrollments.

115.20.12 Understanding Bank Documents

The RTN, check digit, account number and type of account are found in different formats on various bank documents.

A special type font is used to produce characters on the bottom line of checks. This type of printing is referred to as Magnetic Ink Character Recognition (MICR). These characters are used to print or encode information on documents so they can be processed electronically.

Refer to Form G-1199A, Desk Guide, for examples of MICR coding.

Note: Checks from a credit union account do not reflect the correct RTN. Refer to section 115.20.7 for references on locating the RTN.

Neither savings account passbooks nor bank statements show the RTN. The RTN must be secured from another source.

Note: It is not necessary to secure the RTN for IDD because all IDD enrollments will be processed with an RTN of 02105306 and check digit 5.

115.21 Processing Direct Deposit Enrollment Requests

Enrollment in the Direct Deposit program will be processed based upon a written request, a verbal (telephone or in-person) request, receipt of a Form SF-1199A or receipt of a Form OF 1199-I.

A separate request and corresponding enrollment is required for each payee.

For documentation purposes, a copy of the direct deposit forms (Form SF-1199A, Form OF 1199-I, or Form G-94F), the written request from the annuitant, or the email request from the U.S. Embassy must be sent to the imaging system. If the request was received verbally, an entry must be made on the Contact Log.

A letter verifying enrollment, Form RL-79E, is automatically issued for each Direct Deposit enrollment or modification processed on FAST. There are three versions of the Form RL-79E for each of the direct deposit programs: Domestic Direct Deposit, Direct Express, and International Direct Deposit. A copy of the direct deposit confirmation notice will be available in the imaging system.

"Formless enrollment" is permitted in field offices only. Enrollment requests without the Form SF-1199A received at Headquarters will be referred to the servicing field office for processing. SF-1199A enrollment forms are processed according to section115.23.

115.21.1 Written Requests

An annuitant can submit a written request to initiate Direct Deposit enrollment. The written request must be signed by each payee desiring Direct Deposit. The request should include this information:

Domestic Direct Deposit	International Direct Deposit
Account title	Account holder
Routing Transit Number and check digit **	Bank Code***
Depositor Account Number **	Branch Code***
Account type (checking/savings)	Depositor Account Number
	Account type (checking/savings)
	Currency type ****
	Account Title or Ownership (individual/joint)

** Refer to section 115.20.6 for an explanation of acceptable sources of bank data.

***The bank code and branch code are required for processing all Canadian International Direct Deposit enrollments. Other countries may provide a bank code that includes the branch code or, provide an IBAN that includes the bank code, branch code, and depositor account number.

****With the exception of Canadian claims, all International Direct Deposit enrollments are processed in the country's local currency. Canadians are the only group of individuals that can have a U.S. dollar account, a Canadian dollar account, or both. In which case, the account number they provide must match the type of currency or the payment will be returned by the bank.

115.21.2 Verbal Requests

Annuitants can telephone or visit a field office to enroll for domestic and International Direct Deposit. As appropriate, the contact representative will ask the enrollee a series of questions meant to verify that the caller is the RRB annuitant (see FOM-1-130.50).

A. Use Form G-94F, Record of Direct Deposit Inquiry, as a checklist for verbal requests. Suggested questions are:

- What is your full name?
- What is your RRB claim number?
- What is your address?
- What is your date of birth?

(The answers to the above questions must match the information available on DATA-Q).

B. The payee should also be able to provide most, if not all, of the information listed below:

- Account title,
- Name and location of financial institution,
- Routing Transit Number and check digit (the RTN is not needed for IDD requests),
- Account number,
- Account type (savings or checking)
- Currency type (required for Canadian IDD requests)
- Bank Code and Branch Code for all Canadian IDD enrollment requests
- IBAN or International Bank.

(Refer to section 115.20.7 for additional sources of this information.)

When making a change to a beneficiary's address or adding/changing direct deposit; document the contact log showing we confirmed the identity of the caller (see FOM1 130.50 for instructions on confirming identity of callers), and state the additional piece of information that was obtained. Also, if there is an alert in the contact log indicating the customer made a special request, such as to require a password before allowing a

change, make a note in the contact log indicating we have honored that request. For example:

- MA called to request change of Direct Deposit. Confirmed identity, MA provided employee's last railroad employer and current Direct Deposit account number.
- EE called to request Change of Address. Confirmed identity, EE gave date last worked and provided the correct password as indicated in the Contact Log alert.

115.21.3 Requests for Deposit of Payments in Banks Outside the U.S.

Not all foreign countries are participants of the International Treasury Services (ITS) program. Some countries are not eligible because they do not have adequate system security or because their financial systems are not equipped for routing electronic payments. Other countries are restricted from receiving payments. (See Eligible Countries for a list of countries that meet the system requirements and are active participants in the International Direct Deposit program).

In addition to the country's eligibility requirement, the payment recipient must reside in a foreign country. Payment recipients, who do not have a foreign mailing address in our systems, cannot be enrolled in IDD. Investigate all conflicting mailing addresses. Process a change of address before sending the enrollment request to the Direct Deposit Specialist. If the payment recipient resides in a domestic address, release a modified Form RL-199 to explain that we cannot process the request for IDD because we have a U.S. address listed for them. However, if they have an account at a bank in the U.S., they will need to complete form SF-1199A to request Direct Deposit through the domestic bank.

IDD enrollment requests are processed by the Direct Deposit Specialist. The Direct Deposit Specialist will accept IDD requests by telephone, fax, or email. Send emails to: TCIS-CSU Group. However, the preferred method of enrollment is by securing a completed form OF 1199-I, International Direct Deposit Sign-Up Form, with signatures from the bank official and the payment recipient. Payment recipients requesting enrollments for a checking account should be encouraged to submit a voided check along with Form OF 1199-I.

Form OF 1199-I can be downloaded from the rrb.gov website and can be mailed or faxed to the Direct Deposit Specialist at:

US Railroad Retirement Board
Direct Deposit Specialist
844 N. Rush Street
Chicago IL 60611

Telephone: (312) 751-4704
Fax: (312) 751-7157

115.21.4 The Request Made by Annuitant when Payments Are in Force to Representative Payee

If a request is received by a beneficiary and payments are being made to a representative payee:

- Advise the requestor that the enrollment cannot be processed at this time and state the reason;
- Investigate to determine if the representative payee is no longer needed;
- If the annuitant will now be paid directly, process the domestic Direct Deposit request after the representative payee has been deleted; or if the request is for IDD, send the enrollment request to the Direct Deposit Specialist.
- If payments should continue to be made to the representative payee, the new enrollment request should be destroyed.

If the request was received in headquarters and there is a representative payee on record, the request will be referred to the field office for investigation. Headquarters will advise the financial institution of the reason the Direct Deposit request was not processed and the field office to which it was directed.

115.21.5 Processing Direct Deposit Request Made By a Representative When We Are Paying the Annuitant

At times, the enrollment request will be made by a representative when we are paying the annuitant directly. These situations should be handled as follows:

- Advise the financial institution (if Form SF-1199A was completed) or the requestor that the enrollment will not be processed at this time and state the reason;
- Investigate to determine if a representative payee is needed;
- If the individual who made the request is selected as representative payee, process the domestic enrollment;
- If the request is for IDD and the individual who made the request is selected as representative payee, send the enrollment request to the Direct Deposit Specialist.
- If the payments should continue to be paid directly to the annuitant, the request submitted by the representative should be destroyed.

- If the request is received in headquarters and there is no representative payee on record, the request will be referred to the field office for investigation.

Headquarters will advise the financial institution of the reason the Direct Deposit request was not processed and the field office to which it was directed.

NOTE: A request for enrollment (verbal, written, by Form SF-1199A or Form OF 1199-I) from an individual holding power-of-attorney for an RRB annuitant cannot be processed unless that individual has also been appointed representative payee by the RRB.

115.21.6 Trust Accounts

EFT can be established for a Trust account if benefit payments made to a representative payee are not needed for the annuitant's current maintenance, reasonably foreseeable needs, support of legal dependents, or to pay creditors [creditors as defined in 20 CFR 266.10(d)]. The funds are to be invested in accordance with the rules applicable to investment of trust estates by trustees. Any investment must show clearly that the representative payee holds the property in trust for the annuitant.

115.21.7 Guardian/Conservator

If the account title indicates that there is a guardian or conservator involved, begin development for a representative payee.

115.21.8 Direct Express Card Enrollment Requests

The Direct Express® Debit MasterCard®--issued by Comerica Bank as the Treasury Department's financial agent – is a prepaid debit card and electronic payment option for federal benefits. The card is a Treasury-recommended, safe, convenient alternative to paper checks that does not require a bank account to sign up. Benefit payments are directly deposited to the card for use to make purchases, pay bills or get cash.

If an individual chooses the Direct Express® Debit MasterCard® and calls the toll free number (1-800-333-1795), the enrollment process will be initiated with Comerica Bank. Information about the enrollment will automatically be sent to the RRB via the Automated Enrollment (ENR) process (see section 115.24). The ENR serves as confirmation that that Direct Express® account has been established and the annuitant has activated the card. The Direct Deposit Specialists (DDS) in the Unemployment and Programs Support Division are responsible for processing all ENR enrollments.

RRB employees in the field office and most headquarters employees do not process Direct Express enrollments. This is because the annuitant is not provided the actual account number assigned to the Direct Express® account. The annuitant is only provided the card number, which is not the actual account number. The DDS will process a change of address/direct deposit transaction to add the Direct Express® account information to the RRB record, based on the ENR.

Additional action may be required in Direct Express® card cases if:

- The annuitant states they have enrolled in Direct Express®, have activated the card, but no payments are being posted

- A payment posted to a Direct Express® Debit MasterCard® account needs to be returned to the RRB

- A change in representative payee has occurred (also see section 115.22.1)

For these situations, and all other inquiries concerning Direct Express®, forward the inquiry to the Direct Deposit Specialists via the TCIS-CSU Group Mailbox.

115.22 Changes In Annuitant Pay Status

115.22.1 Automatic Cancellation

These situations will cause automatic cancellation of Direct Deposit:

- Appointment or change of representative payee

  NOTE 1: If the annuitant was enrolled in IDD or there is an IDD enrollment request, notify the Direct Deposit Specialist of the change or appointment of representative payee. IDD enrollments are processed through ITS.gov by the Direct Deposit Specialist and any change in the Direct Deposit information on our internal systems will require an update in the ITS.gov application.

  NOTE 2: If the annuitant was enrolled in a Direct Express® Debit MasterCard® account, notify the Direct Deposit Specialist of the change of appointment of representative payee, Direct Express® enrollments are received via ENR and processed by Direct Deposit Specialists (DDS) and any change in the Direct Deposit information may require a new enrollment and account number update on our internal systems. In addition, funds previously issued to the card may need to be returned requiring manual investigation and handling.

- Erroneous report of death – (This situation will cause the annuity to be terminated. See section 145.20 for additional required actions). If the payment recipient was enrolled in IDD prior to the erroneous death termination, send an email via TCIS-CSU Group to the Direct Deposit Specialist so that the Direct Deposit information can be re-entered in ITS.gov.

- Invalid account number (In this situation, the payment is returned to the RRB as a code 92 and could cause the annuity to be suspended. (See section 115.25.8 if a payment is returned for this reason)

- Closed account (In this situation, the payment is returned to the RRB as a code 91 and could cause the annuity to be suspended. (See section 115.25.8 if a payment is returned for this reason)

115.22.2 Annuitant Initiated Cancellation

The Financial Management Service does not require that agencies obtain a signed certification from individuals who invoke a hardship waiver from mandatory Direct Deposit. Because there is no regulatory requirement to obtain a signed statement, cancellation of Direct Deposit may be initiated by a telephone, in-person or signed written request. If, despite a contact representative's efforts to discourage such a change, a beneficiary determines that continued participation in the Direct Deposit program would impose a hardship, the contact representative should document the change and process the necessary FAST transaction to cancel Direct Deposit. If the request is verbal, the contact representative should carefully verify the identity of the caller (see FOM-1-130.50) and confirm that the correct address is shown on our records. Document the cancellation request on the Contact Log.

Secure this information from the payee:

- Name,
- Address,
- RRB Claim Number,
- Date of Birth,
- Name of Bank/Account Number.

Once the request for cancellation of Direct Deposit is received, input the cancellation using FAST-COA. If both an employee and spouse wish to cancel Direct Deposit, each annuitant must request cancellation. Two FAST-COA transactions must also be created.

A letter confirming cancellation, Form RL-79C, is issued for each cancellation processed on FAST with a code C or D.

Always remind the annuitant of the need to keep the RRB informed of address changes.

115.22.3 Financial Institution Initiated Cancellation

The financial institution may cancel Direct Deposit enrollment with a 30-day written notice to the recipient. The notice should remind the recipient to make other arrangements for handling of the payments.

The annuitant should notify the RRB immediately if the enrollment is cancelled by the financial institution. DO NOT accept cancellation requests directly from the financial institution.

115.22.4 Representative Payee is Appointed or Changed

When a representative payee is appointed or changed, the Direct Deposit enrollment request completed by the annuitant or the former payee is no longer valid. The FAST-Representative Payee change will delete Direct Deposit when the records are changed to show the new payee's name and address. The new payee must complete a separate enrollment if he wants Direct Deposit to continue. Process the new Direct Deposit enrollment only after the new representative payee data shows on DATA-Q.

Note: If the new payee's enrollment request is for IDD, image the enrollment request form, and send an email to: TCIS-CSU Group after the new representative payee data shows on DATA-Q. All IDD enrollments are processed through ITS.gov by the Direct Deposit Specialist.

115.22.5 Reinstatements and New Entitlements

When an individual previously entitled to one type of annuity, subsequently qualifies for a different type of annuity, the adjudication units do not know if Direct Deposit payments should continue to the same account, under the same name. The field office must secure information regarding the continuation of Direct Deposit payments, when information is being developed for entitlement to a different annuity type.

Examples of change in annuity type include: when a spouse annuitant and employee divorce; and a widow(er) remarries. If the spouse or widow(er)'s annuity was under Direct Deposit, obtain a statement from the divorced spouse or remarried widow(er) which indicates whether Direct Deposit will continue. Record what changes, if any, will be made (name, depositor account number, etc.)

If the annuity is in pay status or suspended, enter the new Direct Deposit data on FAST-COA. (Send all IDD enrollments to the TCIS-CSU Group so the enrollment can be entered in ITS.gov and FAST-COA.)

If the record is terminated, the record must be deleted before Direct Deposit can be reestablished. Request that Headquarters personnel process a code 62 termination. The request should be referred to the appropriate adjudication unit via electronic mail. Following reinstatement, Direct Deposit can be added to the payment record.

When there is no change in the financial institution, the account number or the annuitant's name, the annuity is paid using the existing Direct Deposit data. The annuitant does not have to take any action after requesting continuation of Direct Deposit. (Note: Refer all IDD enrollments to the Direct Deposit Specialist even if there is no change in the bank information.)

115.22.6 Direct Deposit Processed for Wrong Annuitant

Anyone entering Direct Deposit information should check the name, claim number, payee code, and mailing address for all annuitants, to make sure the enrollment is processed for the correct annuitant. However, there are cases in which Direct Deposit is processed for the wrong annuitant, usually when there is a divorced spouse or a remarried widow(er) on the rolls. This error causes one annuitant's payment to be deposited into another annuitant's account.

Special procedure should be followed when you become aware of this kind of problem. Process a transaction to enroll the correct annuitant for Direct Deposit and delete the Direct Deposit that was erroneously initiated. If the overpaid annuitant agrees to make immediate restitution directly to the underpaid annuitant, that is acceptable to the RRB. If your office can resolve the situation, do so, and send a report of events to Headquarters to be imaged. If repayment cannot be resolved at the field office level, report the case to the Direct Deposit Specialist. If the Direct Deposit Specialist is unable to resolve the situation, the case will be referred to P&S-PAS. P&S-PAS will determine whether to advise the retirement or survivor customer service group to make a special payment to the underpaid annuitant and make arrangements for recovery from the annuitant whom was overpaid.

(Note: All IDD enrollments processed for the wrong annuitant must be sent to the Direct Deposit Specialist for prompt handling.)

You may also use this procedure, with the exception of contacting the Direct Deposit Specialist, when you become aware of a similar problem caused when a change of address is processed for the wrong annuitant and the payment was issued as a paper check.

115.22.7 Erroneous Report of Death

Annuities are sometimes terminated when the RRB receives an erroneous report of death. The annuity is reinstated immediately when the retirement or survivor customer service representative is informed of the erroneous termination. If the financial institution erroneously returns a payment coded for death, they will notify the annuitant and the RRB of the error. The financial institution may send a copy of the Form SF 1199A to the RRB to reinstate Direct Deposit. (also see section 145.20)

NOTE: Upon receipt of a report of death, Direct Deposit data is deleted from the Checkwriting Master, but will still appear on the DATA-Q screen for reclamation purposes. In the situation of an erroneous report of death, reinstatement of the annuity will delete the Direct Deposit information from DATA-Q. The Direct Deposit information must be re-entered on IDDA. Otherwise, the reinstatement payment will be made by check. However, if the annuitant is receiving a combined railroad retirement/social security benefit, the first benefit to be reinstated will be sent via Direct Deposit. The other benefit will be made by check.

An erroneous report of death received for an IDD enrollment must be sent to the Direct Deposit Specialist. The Direct Deposit Specialist will enter the International Direct Deposit information on IDDA and on the ITS.gov application. Since most foreign payment recipients do not have a social security number, the Direct Deposit Specialist will pend the claim until an award has been reinstated. Due to the processing time, it is possible for the reinstatement payment to be made by check and other payments to be sent via direct deposit.

115.22.8 Death of Annuitant and Outstanding Payments

When an annuitant who has enrolled in Direct Deposit dies, the financial institution is required to immediately return payments to the RRB that are received after death as instructed in the Green Book. The financial institution releases a notice to the annuitant's last known address advising family members to contact the financial institution and the RRB if the date of death is incorrect.

When notice of death is received, the Automated Receivable, Reclamation, and Credit (ARRC) system will initiate reclamation action through the Department of the Treasury (Treasury). Treasury will send the reclamation notice, Form TFS-133, to the financial institution requesting the return of the outstanding payments. If there are not enough funds in the annuitant's account to cover the outstanding payments, the financial institution is required to provide the names and addresses of the persons who withdrew monies from the account after the annuitant's death on the TFS-133 and return it to Treasury. Treasury will forward a copy of the TFS-133 to the RRB who then requests the outstanding amounts from the withdrawers. If the RRB is unsuccessful at collecting the outstanding total from the withdrawers, the financial institution is liable for the entire outstanding amount if they knew of the annuitant's death at the time of the deposit. If they did not know of the death, they are liable for the amount sent within 45 days of the date of death, not to exceed the outstanding total. Regulations covering the liability of financial institutions are found in the Green Book.

Note: Reclamation of IDD payments are handled manually by the Bureau of Fiscal Operations-Debt Recovery Division (BFO-DRD). BFO-DRD will complete Form KFC-1710, IDD Reclamation Request Form, and forward it to the Kansas City Financial Center (KFC). KFC will send a reclamation notice to the foreign financial institution, requesting the return of the not-due payments. Unlike domestic financial institutions, foreign financial institutions operate on an honor system (best effort attempt) and Treasury has no authority to debit a foreign bank. If after 90 days the not-due payments have not been returned, the reclamation is closed and an alternative method of recovery, or decision to write the debt off, must be initiated by BFO-DRD.

Occasionally, refunds are made in excess of the amount released after the annuitant's death and/or a financial institution will erroneously return a payment received before the annuitant's death.

Refunds made in excess of the amount received after the annuitant's death, are considered over-reimbursements. The RRB will return the over-reimbursement as follows:

- If the financial institution returned the payments and the family refunded the amount of the payments later, the RRB will return the over-reimbursement to the family.

- If the financial institution returned the payments and Treasury debited the financial institution for the amount due, the RRB will return the over-reimbursement to the financial institution.

- If a financial institution erroneously returns a payment received before the annuitant's death, the payment is considered an annuity due but unpaid at death, even if the payment was returned/reclaimed based on a wrong date of death report. Annuities due but unpaid at death are paid as explained in FOM-1-615; they cannot be repaid to the financial institution.

  Exception: In the event the FI returns a payment from its own funds, i.e. the annuitant's account was not debited for the amount of the payment, RRB will settle with the FI. The FI must furnish a written statement that the annuitant's account was not debited.

115.22.9 Financial Institution Takeover/Liquidation

When one financial institution is taken over by another financial institution, no special action is necessary on the part of Direct Deposit participants. Changes that are made are done in such a way that provides for the continuity in payments.

An arrangement is usually made with a neighboring financial institution to be the bank of receivership that accepts EFT payments made in the interim. These payments are provided to the annuitant in the form of cashier's checks.

However, Treasury does not require the appointment of a bank of receivership. When a financial institution closes, and does not refer its Direct Deposit payments to another financial institution, the payments are returned to the RRB. The returned payment deletes Direct Deposit information from DATA-Q and may cause the annuity to be suspended. See section 115.25.8.

When a financial institution is liquidated, all of its assets are usually frozen and no further deposits are accepted. The Federal Savings and Loan Insurance Corporation arranges to provide cashier's checks for the balance in a depositor's account. Agencies issuing Direct Deposit payments are provided with a list of their affected beneficiaries so that Direct Deposit can be deleted as soon as possible. No more than one month's payment would have to be handled in this manner.

Treasury regularly notifies the RRB of changes in the financial community and provides the names and claim numbers of affected RRB annuitants. Corrections to the annuitants' records are generally handled by the Direct Deposit Specialist and the Retirement and Survivor Customer Service Group representatives.

115.22.10 Processing Payment Record Changes

Some payment record changes may be made at the field office on FAST-COA, while other changes are made by the financial institution through Treasury's automated notification of change (NOC) system. Foreign financial institutions cannot make changes through the automated NOC system. Record changes for IDD payments must be made by the Direct Deposit Specialist.

A. Changing Financial Institutions - It is not necessary to cancel Direct Deposit at the current financial institution for the annuitant to change to a different financial institution. A new Direct Deposit enrollment will delete the previous enrollment. Be sure to advise the annuitant of the effective date of the new enrollment; the old account should not be closed out until the benefits begin to be credited to the new account. Closing the account could result in the payments being returned to the RRB and could cause the annuity to be suspended. The returned payments will have a return reason code 91. See section 115.25.8 if payments are returned for this reason.

   Note: Send IDD financial institution changes to the Direct Deposit Specialist who will investigate with Policy & Systems-PAS.

B. Changing Home Address - A FAST-COA transaction with a change code 2, 4, or 5 will change the mailing address only; it will not affect Direct Deposit status. Use the FAST-COA system whenever possible to change the mailing address of an annuitant. Direct Deposit can be deleted using the FAST system.

   When you discuss Direct Deposit with an annuitant, impress upon him the necessity of keeping us informed of the home address. We must have an accurate and current home address for all of our Direct Deposit annuitants to ensure that mass adjustment notices, tax statements, and other informational material are delivered and received by the intended payment recipient.

   It often comes to our attention when material is returned as undeliverable that we do not have a current address. When this occurs, use Form Letter RL-697F to request from the financial institution the most current address on record for the annuitant. The name and address for the financial institution’s routing number displayed on DATA-Q can be found on the Financial Organization Master File (FOMF). FOMF can be accessed by selecting 31 from the RRAPID MAIN MENU. In some cases, a field assignment may be sent for you to investigate whether an annuitant is still alive and competent.

Form Letter RL-697F cites the U.S. Code which requires financial institutions to disclose this information to the RRB. The Form Letter RL-697F instructs the financial institution to respond to the letter even if the address on their records is the same as the one we have on our records.

Do not release Form Letter RL-697F to routing number 021053065. This routing number is used for International Direct Deposit and does not go to the payment recipient's foreign financial institution.

NOTE: The importance of keeping the RRB informed of the most current address cannot be overemphasized. The annuities of such persons can be suspended if mail delivered to the home address on record is returned as undeliverable. The handling of undeliverable mail is explained in FOM-I-139.

Note: After you process a change of address for a foreign mailing recipient, send an email to the Direct Deposit Specialist so that the address in ITS.gov can be updated. Any inconsistencies in our records and ITS.gov will generate a referral that will handled by the Direct Deposit Specialist.

C. Who Processes Changes - When an annuitant requests a change in the payment record, refer to this chart for proper processing.

RRB processing means field office or Headquarters initiated changes. NOC (Notification of Change) are mechanical changes created by the domestic financial institution and sent to the RRB through the Federal Reserve Bank. Foreign financial institutions will not be able to create mechanical changes that are submitted through the Federal Reserve Bank. Any notice of IDD change must be sent to the Direct Deposit Specialist for proper handling.

Processed By

Changed information	**RRB**	**NOC**	**What happens**
Annuitant's name	X		Direct Deposit information remains the same. Refer an IDD name change to the Direct Deposit Specialist.
Annuitant's address	X		Direct Deposit information remains the same. Refer an IDD address change to the Direct Deposit Specialist.

Representative Payee	X		Direct Deposit is deleted. Refer an IDD representative payee change to the Direct Deposit Specialist.
Account Title		X	A new enrollment is required. Refer an IDD representative payee change to the Direct Deposit Specialist.
	X		
Financial Institution		X	A new enrollment is required. Refer an IDD representative payee change to the Direct Deposit Specialist.
	X		
Routing Transit Number		X	These changes are processed automatically.
Depositor Account Number		X	Changes will be shown as changes of Direct Deposit information on DATA-Q Refer an IDD depositor account number change to the Direct Deposit Specialist.
	X		
Account Type		X	Changes will be shown as changes of Direct Deposit information on DATA-Q. Refer an IDD account type change to the Direct Deposit Specialist.
	X		

115.22.11 Answering Direct Deposit Inquiries

A. When There is Missing Information

In the event that missing or discrepant Direct Deposit information cannot be resolved by telephone, form letter RL-199 is used to return incomplete or incorrect requests for enrollment to the financial institution. Include your office's address and phone number in the spaces provided.

It is not necessary to control for the return of the enrollment request.

B. When an Annuitant Claims Non-Receipt

If you receive a claim of non-receipt for a Direct Deposit payment, refer to section 115.30, Reporting Non-Receipt in Direct Deposit cases.

115.23 Processing Direct Deposit Forms

Enrollment using the Form SF-1199A at a domestic financial institution or Form OF 1199-I at a foreign financial institution may be the preferred choice for some annuitants. The Direct Deposit sign-up form, Form SF-1199A, or Form OF 1199-I, is used to authorize the Direct Deposit of payments into an annuitant's checking or savings account at a bank, savings and loan or credit union. The enrollment is processed by the Direct Deposit Specialist.

115.23.1 Review of the Enrollment Forms for Acceptability

The Form SF-1199A and Form OF 1199-I must be reviewed carefully before processing. Unacceptable forms will involve contact with the financial institution, the annuitant or the U.S. Embassy. When possible, resolve errors or omissions by phone. If you must return any of the forms to the financial institution or the annuitant, use Form Letter RL-199. In some cases, representative payee development may be in order prior to processing the Direct Deposit enrollment forms.

A. Form SF-1199A – Domestic Direct Deposit Enrollment Request Form

Section 1	Section 1 is completed by the payee.
Item A	Name of Payee (last, first, middle initial). The name of the annuitant or representative payee must be shown in this block. Address. The payee's mailing address must be entered. If the ZIP code is missing, it can be entered from the National ZIP Code Directory or the RRB ZIP Code Master. Telephone Number. This item does not have to be completed.
Item B	Name of Person Entitled to Payment. The name of the annuitant should be entered here.
Item C	Claim or Payroll ID Number. The beneficiary symbol, prefix, claim number and payee code must appear in this block. • Beneficiary symbol or prefix missing - Check DATA-Q. • Claim number missing or impossible number - Check EDMA. • Payee Code Missing - This item must be checked carefully. If the prefix is "A" enter "1" in the suffix space. All other prefixes must be checked against DATA-Q to verify the

	payee's name and payee code on the SF-1199A with the name and payee code on the master record. If an incorrect payee code is entered payment could be sent to the wrong person.
Item D	Type of Depositor Account. If neither box is checked, contact the financial institution.
Item E	Depositor Account Number. Check this item carefully. The entry may be all numerals, all letters, or a combination of both. Dashes (-) may be used as part of the number (i.e., 1234-5678), but other symbols such as slashes (/) or asterisks (*) are not acceptable. If a symbol other than a dash is used, contact the financial institution. Account number is annuitant's name. Some financial institutions do not have depositor account numbers, but instead use names. If the depositor's name is used as his account number, insert dashes between the first name (or initial), middle initial and last name. If there is a period after an initial, edit it out. If the name, including dashes, exceeds 17 characters, contact the financial institution and attempt to resolve the problem. If a financial institution indicates that it does not use account numbers by showing "NAME" in the account number blank, enter the payee's name in the spaces as described above. Account number exceeds 17 characters. A numerical account number, including dashes, cannot exceed 17 characters. If the account number, including spaces, exceeds 17 characters, edit out the spaces. If after editing out the spaces (do not edit out dashes), the number still exceeds 17, contact the financial institution.
Item F	Type of Payment. If this item has not been completed and the payee is an RRB annuitant, do not return the form solely for the completion of this item.
Item G	This Box for Allotment of Payment Only. This item does not apply to RRB annuitants and may be disregarded. Payment/Joint Payee Certification. This space must be completed by the payee in his own handwriting. If the employee signs by a mark (X), two persons must witness the signature. A person holding power-of-attorney for the annuitant can witness the signature, but cannot sign for the annuitant. If the

	signature is missing or unacceptable, the Form SF-1199A must be returned to the financial institution. Joint Account Holder's Certification. This item does not need to be completed.
Section 2	Section 2 can be completed by either the financial institution or the annuitant. Although this section should show the name and address of the RRB, it does not have to be completed. Do not return the SF-1199A solely because this item is incorrect or incomplete.
Section 3	Section 3 is completed by the financial institution. It should be reviewed to ensure that all items have been completed. Name and Address of Financial Institution. If the name and address of the financial institution is missing, enter them from the return address shown on the envelope in which the form was received. If the envelope has been discarded and the form must be returned, the name and address of the financial institution can be taken from the Financial Organization Master File (FOMF). If the routing number is also missing, it may be obtained as explained in section 115.20.7. Routing Number and Check Digit. Each box must have a number in it. If any box is not filled, refer to section 115.20.7. Depositor Account Title. For annuitants enrolling who are also the payee, refer to section 115.20.8. If a representative payee is involved, refer to section 115.20.9 for additional information.

B. Form OF 1199-I – International Direct Deposit Enrollment Request Form

Section A	**Person to Receive Payment**
	Name of Payee (last, first, middle initial) - The name of the annuitant or representative payee must be shown in this block. Name of Person Entitled to Payment - The name of the annuitant should be entered here, if different from the name of payee. Address - The payee's mailing address must be entered.

	Note**:* If the address does not match what is on DATAQ, it must be reconciled before submitting an enrollment request for processing. To qualify for IDD the payment recipient must live in a foreign country. Telephone Number – The telephone number of the payment recipient is optional. RRB Claim Number or Bene SSN - The beneficiary symbol, prefix, claim number and payee code must appear in this block. ***Note: Verify the RRB claim number or beneficiary social security number to ensure the individual is a railroad retirement beneficiary.
Section B	**Type of Payment** (check only one)
	Payment recipients are instructed to check one payment type. If the payment type is other than 'RAILROAD RETIREMENT' and we can not verified the individual's claim number, social security number, or name through our systems, prepare a RL-199 to return the enrollment request back to the individual.
Section C	**Bank Information** (This section should be completed by a bank official.)
	Name of Bank: The name of the financial institution where the account has been established. Bank Phone Number: The telephone number provided in this line may not conform to our standard telephone number. In most cases, it may be necessary to contact the servicing American Embassy or Consulate for assistance rather than call the financial institution directly. Bank Address and Country: The financial institution must reside in a foreign country. If the financial institution provides a domestic address, the request will be considered and processed as a domestic direct deposit set up through a correspondent bank. Bank Code: The bank code is referred by countries by different names. Branch Code: A series of numbers that is used to identify banks around the world.

	Account Number or IBAN: International Bank Account Number is an international standard for identifying bank accounts across national borders. Account Title: Individual or joint account. If a joint account, Section E must be signed by the other person on the account. Type of Account: The type of account savings or checking. Type of Currency: Canada is the only foreign country that provides account holders the option to set up a U.S dollar account and/or a Canadian dollar account. While most Canadian payment recipients have only one Canadian account, others will open up a US dollar account and a Canadian dollar account. It is important that the account number provided matches the currency type or the payment will be returned. Bank Official's Certification: The signature of the financial institution official who completed the form.
Section D	**Certification:** (The payment recipient must sign and date this section.)
Section E	**For Joint Account Holders:** If this is a joint account, all account holders must read the back of the form and sign and date this section.

115.23.2 Direct Deposit Form is Acceptable

If all sections of the SF-1199A are completed correctly, input the Direct Deposit information on FAST. Refer to FOM-I-1570.26 for entry instructions.

If all sections of the OF-1199-I are completed correctly, send the form to the Direct Deposit Specialist in TCIS.

115.23.3 Direct Deposit Form is Not Acceptable

If review of the Direct Deposit enrollment forms indicates that an omission or error has been made that cannot be resolved as explained in section 115.20.7, it will be necessary to contact the financial institution, the annuitant, or the Direct Deposit Specialist in TCIS.

You may use the telephone to resolve minor matters, although some financial institutions will accept only written requests for information. Use Form Letter RL-199 when returning the Direct Deposit enrollment form to the financial institution. Refer to section 115.22.11 for guidelines on corresponding with financial institutions.

115.24 Automated Enrollments (ENR)

Beginning September 20, 1996, railroad retirement beneficiaries and other recipients of Federal benefit payments (including railroad unemployment and sickness benefits) could enroll for Direct Deposit at their financial institution. The automated enrollment process (ENR) was developed by the Social Security Administration, the National Automated Clearing House Association (NACHA) and the Department of Treasury with input from the RRB. ENR simplifies and improves the Direct Deposit enrollment process.

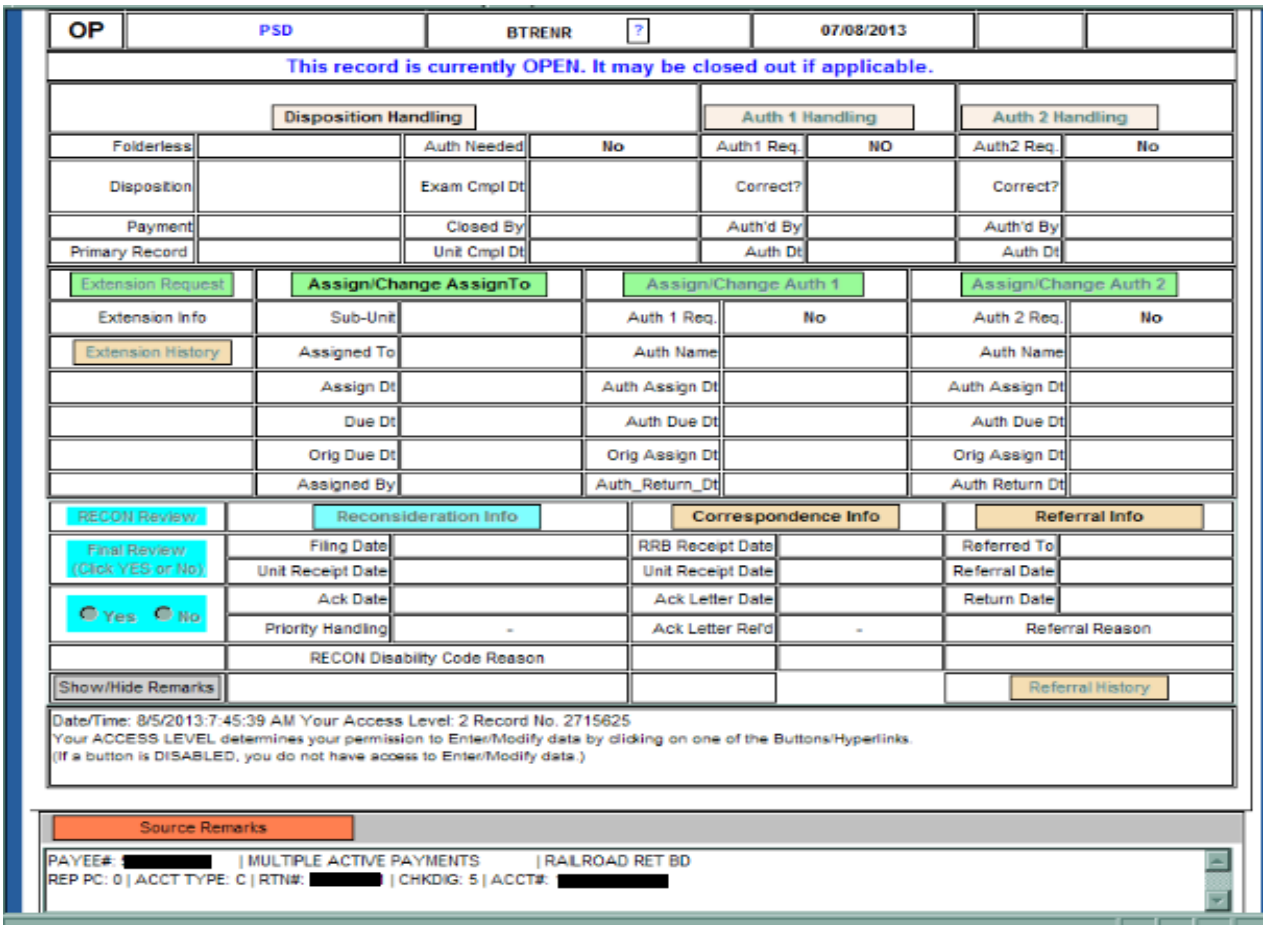
ENR involves the financial institution electronically transmitting Direct Deposit enrollment information to the Federal agency through the Federal Reserve Bank (FRB) using the Automated Clearing House (ACH) network.

115.24.1 RRB Processing of the ENR File

The RRB receives an ENR file from the FRB daily. This daily file contains the beneficiary's first and last name, social security number (SSN), representative payee code, bank routing number, check digit, account number, account type and a transaction code. An automated program "FAENR01" takes in the file and attempts to mechanically process the Direct Deposit enrollments. Enrollments that match on all identifying information are processed mechanically through a batch Change of Address (COA) process within the DAISY job stream. Annuitants who enroll using ENR will receive an RL-79E letter confirming that the RRB has processed their enrollment. If the program cannot match the enrollment information to an annuitant on our records, the enrollment is returned to FRB. A Universal STAR (USTAR) referral is created for enrollments that match based on SSN or claim number, but do not match on the other identifying information. Additional information about the ENR process is available in the Treasury's Green Book.

115.24.2 ENR Referrals

The Automated ENR process produces USTAR referrals for enrollment records that require manual handling. These referrals are handled by staff in the Unemployment and Programs Support Division's (UPSD) Clerical Services Unit (CSU). The identifying information from the ENR file is copied to the 'Source Remarks' section of the USTAR referral along with a referral reason. Below is a sample of the USTAR referral.



115.24.3 UPSD Handling of ENR Referrals

A description of the referrals and the actions to be taken by UPSD are as follows:

DUAL-BENEFICIARIES

This referral message is generated if a beneficiary is receiving payments under more than one claim number. UPSD will release and image an RL-79D letter to the beneficiary to determine whether the change should apply to both records. UPSD will close the referral using the 'HANDLED' disposition code and notate the remarks section to indicate a letter was released.

MULTIPLE-ACTVE-PAYMT

This referral message is generated if a beneficiary is receiving multiple payments under the same claim number. UPSD will release and image an RL 79D letter to the beneficiary to determine whether the change should apply to both records. UPSD will close the referral using the 'HANDLED' disposition code and notate the remarks section to indicate a letter was released.

MULTIPLE-ACTVE-ADDRS

This referral message is generated if PREH shows multiple active address records (3273 screen) for the beneficiary. UPSD will identify the correct record, process the enrollment, and close the referral with the 'HANDLED' disposition code. These cases should be rare and indicate an error in PREH information. Notify Policy and Systems by email if you encounter this referral.

REP-PAYEE-C-MISMATCH

This referral message is generated if there is a discrepancy with the representative payee code. UPSD will refer the case to the field office servicing the address on record and close the referral with the 'HANDLED' disposition code. UPSD will also notate the remarks section that the case was referred to the field office for handling.

NAME-MISMATCH

This referral message is generated if the name on the enrollment does not match the name on our records. UPSD will release and image an RL-79D letter to the beneficiary to determine if the enrollment was requested. UPSD will close the referral with the 'HANDLED' disposition code and notate in the remarks section that a letter was released.

SSN-N-EDM-UNKWN-PREH

This referral message is generated if the social security number is in EDM but not PREH. These cases are possible UI\SI Direct Deposit enrollments. UPSD will check UPC for an active UI\SI record. If there is an active record, UPSD will process the enrollment and close the referral with the 'HANDLED' disposition code. If there is a UI\SI record but it is not active, UPSD will release and image an RL-79D letter and close the referral with the 'HANDLED' disposition code. UPSD will notate in remarks section that a letter was released. If there is no UI\SI record, UPSD will not process the enrollment. UPSD will close the referral with the 'NO ACTION TAKEN' disposition code and notate in the remarks section that we are not paying any benefits.

SUSPENDED-PAY-STAT

This referral message is generated if an enrollment is received and the benefit is in suspense. UPSD will process the enrollment if the suspension code is 35, 36, 66, 67, 69, 88, or 98 and close the referral with the 'HANDLED' suspension code. For all other suspension codes, UPSD will refer the Direct Deposit information to the servicing field office and close the referral with the 'HANDLED' disposition code, notating in the remarks section that the case was referred to the field office for handling.

FAST-COA-TRAN-PEND

This referral message is generated if a FAST-COA transaction is pending. UPSD will refer the case to the servicing field office if the Direct Deposit information is different from the information pending on FAST. UPSD will close the referral with the 'HANDLED' disposition code with a notation in the remarks section that the case was

referred to the field office. If the incoming Direct Deposit information is the same as the information already pending in the FAST-COA transaction, UPSD will close the referral with the 'NO ACTION TAKEN' disposition code with a notation in the remarks section that the enrollment information has already been received. If the pending transaction is a change of address only, UPSD modify the pending transaction with a code 'B' to add the Direct Deposit information and close the referral with the 'HANDLED' disposition code.

FAST-ST-TRAN-PEND

This referral message is generated if a FAST Suspension\Termination (S\T) transaction is pending. UPSD will refer to the above instructions for handling suspended cases if the pending transaction is a suspension. If the pending transaction is a termination (see RCM 9.7.14 for a list of S\T codes), UPSD will not process the enrollment and close the referral with the 'NO ACTION TAKEN' disposition code, notating in the remarks section that the record is terminated.

FAST COA-AND-ST-TRAN-PEND

This referral message is generated if FAST-COA and S\T transactions are pending. If the pending S\T transaction is a termination, UPSD will not process the enrollment and close the referral with the 'NO ACTION TAKEN' disposition code, notating in the remarks section that the record is terminated.

If the pending S\T transaction is a suspension and the suspension code is 35, 36, 66, 67, 69, 88, or 98 UPSD will follow the above instructions for handling FAST COA pending referrals. If the pending transaction is a suspension with any other suspension code, UPSD will refer the Direct Deposit information to the servicing field office and close the referral with the 'HANDLED' disposition code, notating in the remarks section that the case was referred to the field office for handling.

CLAIM-NBR-WITHOUT-PC

This referral message is generated if an enrollment is received with a claim number but no payee code. UPSD will determine the correct beneficiary record, process the enrollment, and close the referral with the 'HANDLED' disposition code.

PREH-DATAQ-MISMATCH

This referral message is generated if there is different information on PREH and DATAQ for the beneficiary. UPSD will refer any case with this referral message to Policy and Systems by email. UPSD will close the referral with the 'HANDLED' disposition code and notate in the remarks section that the case was referred to Policy and Systems for handling. These cases should be rare and indicate an error on PREH or DATAQ.

DUP-DATAQ-FOR-CLM-PC

This referral message is generated if there are duplicate DATAQ records for the claim number and payee code. UPSD will determine which record the Direct Deposit should be entered, process the enrollment, and close the referral with the 'HANDLED' disposition code. These cases should be rare and indicate an error on DATAQ. Notify Policy and Systems by email if you encounter this referral.

FRAUD-WATCH

This referral message is generated when there have been previous fraudulent attempts to change the beneficiary's Direct Deposit information. UPSD will release and image an RL-79D letter to the beneficiary to verify the enrollment was authorized. UPSD will close the referral with the 'HANDLED' disposition code and notate in the remarks section that a letter was released.

SSN NOT ON RECORD

This referral message is generated when an enrollment is received for a valid claim number but there is no SSN on our records for the beneficiary. The ENR program is unable to check for fraud alerts on these records. UPSD will check the Contact Log for any fraud alerts. If there are no fraud alerts, UPSD will process the enrollment and close the referral with the 'HANDLED' disposition code. If there is a fraud alert on the record, UPSD will release and image an RL 79D letter to the beneficiary and close the referral with the 'HANDLED' disposition code, notating in the remarks section that a letter was released.

IDD ENR

This referral message is generated when an International Direct Deposit enrollment is received. UPSD will determine if the enrollment has been entered on FAST; if yes, UPSD will close the referral with the 'NO ACTION TAKEN' disposition code. If the enrollment has not been entered, UPSD will process a FAST-COA and close the referral with the 'HANDLED' disposition code.

BLOCKED RTN

This referral message is generated when an enrollment is received with a routing number that has been associated with multiple fraud cases. UPSD will release and image an RL-79D letter to the beneficiary to verify the enrollment was authorized. UPSD will close the referral with the 'HANDLED' disposition code and notate in the remarks section that a letter was released.

115.24.4 Field Office Handling of Direct Deposit Fraud Cases

A checkbox "D\D Fraud" has been added to the Contact Log to identify beneficiaries that have had fraudulent attempts to change their Direct Deposit information. The field offices will check this box when notified by the beneficiary that an unauthorized change was made to their account or, if the field office intercepts an attempt to change a

beneficiary's Direct Deposit information. Once the checkbox has been checked, the ENR program will not process any enrollments for that SSN until the check has been removed. Refer to FOM1 1592 for instructions on accessing and updating the Contact Log.

If an annuitant reports non-receipt of a Direct Deposit payment and there has been a recent unauthorized change to their Direct Deposit information, in addition to the Contact Log entry and checking the 'D/D Fraud' checkbox, immediately notify the Direct Deposit Specialist in UPSD via telephone or email. Send email notifications to the TCIS-CSU group mailbox. Provide the claim number, date of payment, and a brief explanation of the situation.

115.24.5 UPSD Handling of Direct Deposit Fraud Cases

When UPSD receives a notification from a field office reporting a fraudulently misrouted Direct Deposit payment, they will access PAYBACK to determine if the payment has been returned.

A. Payment Returned

- If the payment was returned and caused the annuity to be suspended code 98, UPSD will process a FAST-COA transaction to correct the Direct Deposit information. This action will reinstate the annuity and reissue the payment. See section 115.25.8 for instructions.

- If the payment was returned and caused the annuity to be suspended for reasons other than code 98 or caused the annuity to be terminated, UPSD will refer the case to the customer service representative in the Retirement Benefits Division (RBD) or Survivor Benefits Division (SBD). RBD/SBD will reinstate the annuity and reissue the payment.

B. Payment Not Returned

If the payment has not been returned, UPSD will take the following actions:

- Access the Treasury Check Information System (TCIS) to obtain the payment trace number and confirm the receiving financial institution (FI),

- Access the Financial Organization Master File (FOMF) to obtain the telephone number of the receiving FI,

- Contact the ACH department of the FI and explain that the payment was misrouted as a result of fraud and it must be returned, and

- Fax an R06 Indemnification Letter to the FI, formally requesting the return of the payment.

Upon receipt of the payment, UPSD will refer the case to the customer service representative in RBD or SBD. RBD/SBD will reinstate the annuity and reissue the payment.

NOTE: If the payment is not received within three business days, UPSD will call the FI to obtain the status of the request. If the FI advises the funds are no longer available in the account, RBD\SBD will determine if a replacement payment can be issued.

115.25 Return of Checks/Payments

115.25.1 Individual Checks

If an individual reports the receipt or possession of a Treasury issued check in the name of a deceased person, or a Treasury issued check in the name of a person who is not entitled for any reason to payment for the month covered by the check, and the check was issued within the last year, instruct the individual to make and retain a record of the check number, date, amount, and payee designation; and to return the check promptly to the Department of the Treasury, Philadelphia Financial Center, P.O. Box 51319, Philadelphia, PA, 19115-6319, with a note giving the reason for its return. If the check is more than a year old, see section 115.50.15.

If the check is brought to the field office, accept and forward the check to Treasury. If the individual requests a receipt, prepare Form G-27. See FOM-I-1720 for completion instructions. Enter on the face of the returned check, beneath the "pay to the order of" caption next to the Statue of Liberty emblem, information as follows and in the order shown here:

1. Reason for return (use the minimum number of words, e.g., "Died", "Emp. Serv.", "Working", "Remarried", etc.)

2. Month and year of the event.

3. Field office identification number.

EXAMPLE: Died
12-90
409

In addition, invalidate the check by imprinting the legend: "Not Negotiable For Payment and Credit in Treasurer's Account" on the check. Place this legend above the MICR line and over the disbursing officer's signature, but do not obscure the name of the payee, the amount of the check, the account number, or the coded area of the check. Treasury will cancel the payment and forward the credit to the RRB. The cancellation credit will appear on PAYBACK. If after a reasonable amount of time the cancellation credit does

not appear on PAYBACK, notify the Bureau of Fiscal Operations-Debt Recovery Division to place a stop payment against the check.

If the annuitant is deceased, process an APPLE First Notice of Death (FNOD) transaction to stop the beneficiary's payments and to document the return of the payment in the remarks section of the FNOD screen.

Complete a FAST-Suspension/Termination transaction to stop payments in cases involving non-death terminations. Refer to FOM-I-1565.25.2 for a list of termination/suspension codes that can be processed by field offices. Notify the appropriate unit in headquarters of the pending suspension/termination transaction. Headquarters must be notified because there may be additional actions to be taken on the case. Headquarters must also be notified when field personnel cannot process the suspension/termination transaction.

Do not under any circumstances advise an individual to endorse a check issued in the name of a deceased person. Even in a representative payee case, the payee has no right to the proceeds of a check after the death of the beneficiary.

Take the following action when it is too late to stop release of the next check or if there are outstanding non-negotiable check(s):

1. Instruct the informant to return any check(s) on hand and any checks that might be received in the future to Treasury. See the instructions in this section.

2. Document in the "Remarks" on the APPLE FNOD screen information or instructions that were given concerning any outstanding checks, e.g. "Widow states she returned 12-1-90 check", or "Son was advised to return 2-1-91 check".

115.25.2 Combined RR/SS Benefits

If a payee reports a disqualifying event that affects the RR benefit but not the SS benefit, or vice versa, inform the payee that the combined check may be negotiated, but the amount of the not-due benefit must be refunded by a check or money order made payable to the RRB. Instruct the payee to forward the refund either to headquarters or the field office. Make sure all refunds are identified with the claim number on the check.

Note: If an event occurs which terminates a beneficiary's entitlement to a railroad retirement annuity, responsibility for the payment of the social security benefit may have to be returned to SSA. If the beneficiary is not entitled to HIB/SMIB, RRB will pay the SS benefit for 3 months after RRB notifies SSA of the transfer of jurisdiction. If the beneficiary is entitled to HIB/SMIB, the SS benefit will be stopped as soon as possible.

115.25.3 Misrouted Checks

When a payee reports that a check for another person was included with his or her check in the same envelope, take the following action:

A. Request the payee to return the misrouted check to the field office.

B. Telephone the supervisor in P&S-PAS immediately and furnish the names and addresses of the payees, RRB claim numbers, and the amount and date of each check. Summarize your telephone conversation and document contact information in the Contact Log.

C. Process a non-receipt “C” stop request for each payee and notify them of the delay.

D. Shred the misrouted checks when they are received. There is no need to send Headquarters any documentation unless specifically requested.

115.25.4 Checks Returned As "Code 98" - Undeliverable Due to Incorrect Address

When a check is returned to the RRB as "undeliverable," the action causes benefits to be suspended, and a suspension code of "98" to be entered on the Checkwriting Master. This provides for the re-batching of the returned check, and mechanical reinstatement of recurring payments once a subsequent change of address or direct deposit enrollment is processed.

Note: Only a change code of 2, 3, 4, 5 or B will cause a mechanical reinstatement. Refer to FOM-I-1570.25.4 for more details on reinstating code 98 undeliverable suspensions.

Exception: Processing a change of address transaction to reissue a payment that was offset under the Treasury Offset Program (TOP) (see FOM-1-1245.35) and returned code 98 will not reissue the payment. Returned payments that have been offset by TOP require additional manual handling by Headquarters, as the payment amount will not match the amount shown in the Checkwriting Master file to initiate a suspension or termination transaction.

Example:

The debtor’s original benefit payment amount as shown in the Checkwriting Master file is $1350 (tier 1 benefits of $1150 and tier 2 benefits of $200). The TOP offset amount is $172.50. The amount of the payment sent to the debtor’s is $1177.50 ($1350.00 minus $172.50). The $1177.50 payment is returned as undeliverable (code 98). Because the amount of the payment does not equal the rate shown in the Checkwriting Master file, the annuity did not suspend. The payment must be manually reissued. Verify the address and contact the retirement or survivor Customer Service Group to have the payment reissued.

Note: When a benefit goes into a code 98 status for a period of 30 days but less than 60 days, a USTAR referral is generated and assigned to the servicing field office for investigation. Refer to section 115.25.9 for case handling instructions.

115.25.5 Uncashed Checks

A check may be cashed up to 1 year after it is issued. After 1 year, the check must be returned and a new check will be issued if the payment is still due the payee. Return all checks that are a year or older to UPSD-CSU. Do not send these checks to Treasury because it will only delay the reissuance of a new check.

If checks issued prior to death are located and reported after an annuitant's death, instruct the caller to return the checks and develop an application for annuities due but unpaid at death, if appropriate.

See section 115.50 for information about the investigation of uncashed checks and the return of checks that are at least a year old.

115.25.6 Duplicate Payment Received (Original and Replacement Checks)

At times, an annuitant reports non-receipt of payment, a replacement is issued and the original check is then received, causing duplicate payment for the month.

If the annuitant returns one of the checks to the field office, route the check to UPSD-CSU in a plain white envelope. Indicate why the check is being returned. This will reduce the chance of the annuity being erroneously suspended. If the annuitant is to return the check directly to headquarters, instruct the annuitant to send it to the attention of UPSD-CSU.

115.25.7 Damaged or Mutilated Checks

Process a non-receipt claim if an annuitant reports that a check has been damaged or mutilated, and cannot be cashed, or if the check was totally destroyed. If the check was damaged or mutilated, instruct the annuitant to return the check to the field office. Upon receipt of the check, shred it. Unless otherwise requested, it is not necessary to return the check to Headquarters.

115.25.8 Returned EFT Payments: Code 91/92

Codes 91 and 92 can only be used when an EFT payment is returned to Treasury by a financial institution. Code 91 means that the account is closed, and code 92 means that there is no such account number. To ensure that the returned payment is reinstated, process a COA as described in FOM-I 1570.25.4 after the case defaults to code 98status on DATAQ.

Note: When a benefit goes into a code 98 status for a period of 30 days but less than 60 days, a USTAR referral is generated and assigned to the servicing field office for investigation. Refer to section 115.25.9 for case handling instructions.

1. DAISY Processing of Code 91 and 92 Payments. Prior to November 1993, payments returned as code 91 or 92 were automatically reissued to the home

address. DAISY processing has been modified, however, to compare the payment date with the Electronic Funds Transfer (EFT) change date, and if necessary, the change of address date (COA), prior to reissuing payments. The following describes current DAISY processing. (Note: Date is defined as month/year; the day is not considered in this process by DAISY.)

- If the payment date is earlier than the latest EFT change date, the payment will be released to the current financial institution account.

- If the payment date is the same or later than the EFT change date, DAISY will then compare the payment date to the latest COA date.

- If the payment date is earlier than the COA date, DAISY will delete the direct deposit information from the payment master file and DATA-Q, and reissue the payment to the home address.

- If the payment date is the same or later than the COA date, DAISY will delete the direct deposit account and routing information and generate a letter (RL-87C) to the home address with a copy to the field office.

- Process the returned payment as a code 98 (refer to RCM 9.7.163 /FOM-I 1570.25.4), allowing reissuance by input of a change of address using change code 2, 4 or 5 or a new direct deposit enrollment with a change of address using change code B. No additional payments will be issued until a change of address is processed.

- Exception: Processing a change of address transaction to reissue a payment that was offset under TOP (see FOM1-1245.35) and returned code 98 will not reissue the payment. Returned payments that have been offset by TOP require additional manual handling by Headquarters, as the payment amount will not match the amount shown in Checkwriting Master file to initiate a suspension or termination transaction.

- Example: The debtor's original benefit payment amount as shown in the Checkwriting Master file is $1350 (tier 1 benefits of $1150 and tier 2 benefits of $200). The TOP offset amount is $172.50. The amount of the payment sent to the debtor's is $1177.50 ($1350.00 minus $172.50). The $1177.50 payment is returned as undeliverable (code 98). Because the amount of the payment does not equal the rate shown in the Checkwriting Master file, the annuity did not suspend.

- The payment must be manually reissued. Verify the Direct Deposit information and contact the retirement or survivor Customer Service Group to have the payment reissued.

- If the annuitant was enrolled in IDD and there is no change to the Direct Deposit entries in ITS.gov, you can re-enter the RTN and account

information; which can be found in PREH on the 3273 screen. The RTN for all IDD payments is **021053065**. The bank account number for all IDD enrollments is a 14-character long payee's identification number. This number must be typed exactly in the following format:

Employee annuitant – 123456789___A1 (three spaces between the claim number and prefix)

Spouse annuitant – 123456789__MA2 (two spaces between the claim number and beneficiary symbol)

Widow(er) annuitant - 123456789__WA1 (two spaces between the claim number and beneficiary symbol)

Survivor annuitant – 123456789_WCA2 (One space between the claim number and beneficiary symbol)

The best way to ensure the payee's identification number is correctly typed is to copy the bank account number value from the 3273 screen and paste it on the first position of the account number field in the Direct Deposit Entry Screen.

- If the annuitant was enrolled in IDD and the foreign bank account information has been changed, forward the reinstatement request to the Direct Deposit Specialist.

2. Verification of the Annuitant's Address - Form RL-87C is released to the home address under the conditions described above. This form is designed primarily to secure verification of the annuitant's address. The notice has a detachable bottom portion which is returned by the annuitant to the field office. (See RL-87C)

3. Actions by Field Office Upon Receipt of the RL-87C Letter. – If the detachable portion of the RL-87C is returned within 30 days with the correct address and is signed by the annuitant, the field office is to input the COA via FAST according to procedure in FOM-I-1572.25.4. If the annuitant telephones or writes the field office with new direct deposit (DD) information, the field office is to enter the data via FAST.

   Note: To reinstate a code 98 suspension to a DD account, enter a change code "B" (Add Direct Deposit and Change Home Address) on the FAST-DIRECT DEPOSIT ENTRY SCREEN. A change code "A" (Add Direct Deposit Information Only) will not activate the code 98 reinstatement process.

   Forward all IDD reinstate code 98 suspension requests to the Direct Deposit Specialist. The Direct Deposit Specialist will process the FAST-COA and also correct direct deposit entries on ITS.gov.

4. Actions by Headquarters Personnel if RL-87C is Mailed to Headquarters. - If the bottom portion of the RL-87C is inadvertently mailed to headquarters, the claims examiner will review the RL-87C for completeness and input the COA according to procedure in RCM 9.7.163. The claims examiner will document the Contact Log of actions taken.

115.25.9 Benefit Suspended Code 98 Over 30 Days

When a benefit is in a code 98 status for a period of 30 days but less than 60 days, a USTAR referral is generated and assigned to the servicing field office for investigation. Field offices should use the Code 98 referrals to begin address or direct deposit verification early in the process, and before the case defaults to code 97 status after 90 days. Relatively few of these cases must be investigated because the annuitant will usually have contacted either the field office or headquarters claiming non-receipt before the correct address is obtained and entered into our records. The time lapse between entry of this information and receipt of a replacement check is largely determined by when we receive and enter this information in relation to our reinstatement cut-off for that month.

If the case has a Canadian address, it will be routed to the appropriate field office based on the first character of the postal code of the city/province. If the case has a Mexican address, it will be routed based on the state/territory. The Houston Field Office will receive the case by default if the Mexican state/territory is not clearly identifiable. The case can be reassigned, if needed. All other foreign cases and cases with incorrect zip codes will be routed to the Chicago Field Office for handling or reassignment to the proper field office. If DATAQ indicates the case is in code 97 status a manual reinstatement will be required. Contact SBD or RBD, as appropriate.

115.25.10 Description of Code 98 USTAR Referrals

The Code 98 USTAR referral is comprised of the three digit field office number and the category indicator of “C98” (i.e. 296C98). The referral contains an initial screen containing identifying information and a remarks screen with detailed case information.

The initial screen of the referral contains the following information:

- Claim number and payee code
- Category Code (preceded by field office number)
- Date of the Code 98 Report file

The remarks screen of the referral contains the following case information:

- Last change of address date
- RR and/or SS suspension/termination status date

- Current name and mailing address
- Processing date of the payment
- Last date of code 98 mechanical reinstatement before code 97 status occurs

115.25.11 Field Office Handling of Code 98 USTAR Referrals

A USTAR referral will be created each time the monthly file is generated and the case remains in code 98 status. The case should be investigated for a change of address or direct deposit verification. While the investigation is being conducted, the case should remain open on USTAR. Based on the investigation results the field office will take the following action:

1. Change of address or direct deposit information is received

If an address or direct deposit change information is received, process the payment reinstatement using FAST-COA code “2”,”4”, “5" or “B”. Code 98 mechanical processing allows payment reissuance by input of a change of address using change code 2, 4 or 5, or a new direct deposit enrollment using change code B. Close the USTAR referral using the disposition code, “Handled-HND”. For additional information on code 98 mechanical processing, refer to FOM-1 1570.25.4.

2. Change of address or direct deposit information was previously received

If an address or direct deposit change was previously received and the payment has been reissued, no additional action is required. Close the USTAR referral using the disposition code, “NAN-No action necessary”. If the address or direct deposit was changed but the payment has not been reissued, contact RBD/SBD for manual award handling to reissue the payment.

3. Change of address or direct deposit information not received

If an address or direct deposit information has not been received, pend the case for additional development. Once the change information is received, process the payment reinstatement using FAST-COA code “2”,”4”, “5" or “B”. If the status of the case changes to code 97 before the information is received, send an email to SBD or RBD asking them to reinstate the benefits and, reissue the returned payment and any subsequent payments. If the information is not received and the case is in code 97 status, notate your action in the remarks section of the USTAR referral and close it out using the disposition code, “Handled-HND”. If applicable, notate the Contact Log with your investigative efforts.

115.25.12 Code 98 USTAR Referrals - International Direct Deposit (IDD) and Direct Express cases

All code 98 USTAR referrals that involve International Direct Deposit (IDD) and require reinstatement should be forwarded to the Direct Deposit Specialist. Close out the USTAR referral using the disposition code, "Handled-HND", and notate your actions in the Remarks section. The Direct Deposit Specialist will process the FAST-COA and also correct direct deposit entries on ITS.gov. If the case involves, Direct Express, the field office will verify the mailing address and process the payment reinstatement to the home address using FAST-COA code "2". If the annuitant chooses to continue using Direct Express, a new enrollment will have to be processed.

115.25.13 Code 98 USTAR Referrals – Possible Representative Payee Development

If investigation of the code 98 USTAR referral results in possible rep-payee development, suspend the benefit using FAST S/T. When suspending the benefit, use code 63 for employee annuitants, code 64 for spouse annuitants, and code 65 for survivor annuitants. The effective date of the code 63, 64, or 65 suspension entered on FAST S/T must be prior to the effective date of the code 98/97 in order to process this change. If SS benefits are involved, then contact RBD or SBD to request suspension of these benefits. Notate your actions in the remarks section of the USTAR referral, and close it out using the disposition code, "Handled-HND". If applicable, notate the Contact Log with your investigative efforts.

Note: When closing cases on USTAR check for multiple referrals that exist for the same payment. Close all related referrals once the case has been completed.

115.30 Handling Reports of Non-Receipt of RRA Direct Deposit Payments and Checks, and Destroyed, Lost, Stolen, or Misrouted Checks

Whenever the annuitant reports non-receipt of a Railroad Retirement Act (RRA) benefit check or Direct Deposit (DD) payment, check DATA-Q, FAST S/T, PREH, PACER, or the Treasury Check Information System (TCIS) to verify the payment status.

A. Benefits Suspended or Terminated - If a suspension or termination exists, ask the annuitant if he or she knows any reason why the payments may have been suspended or terminated. Check your files and/or the imaging system for a copy of a suspension or termination letter that may have been sent to the annuitant. If the annuity was suspended, advise the annuitant when to expect reinstatement. If the annuity was erroneously suspended or terminated, notify the Retirement Benefits Division (RBD) or the Survivor Benefits Division (SBD), as appropriate.

B. Benefits In Force - If there is an indication that the check or DD payment was issued, access PAYBACK to determine whether or not the check or DD payment was returned.

1. Check Cases

a. Check Appears On PAYBACK - If the check appears on PAYBACK and the return reason code is other than 98, contact RBD or SBD to arrange for the check to be reissued. If the return reason code is 98, process a change of address even if the address on record is correct. This will cause the check to be reissued. When the annuitant wants to also enroll in Direct Deposit, a code "B" change of address/enrollment must be used to reinstate benefits.

NOTE: Payments that were offset due to TOP and are returned code 98 will not suspend the annuity nor will processing a change of address transaction reissue the payment. This is because the amount of the returned payment will not match the payment rate shown in the Checkwriting Master file. After verifying the address, contact the RBD or SBD to have the payment reissued. See FOM1-1245.35 for more information on TOP.

IMPORTANT: If a replacement check is returned code 98 and the annuitant is not entitled to the payment, contact RBD or SBD. Benefits must again be suspended with a miscellaneous code (to override the code 98 suspension) and then reinstated. **Do not** process a change of address. Doing so will cause the replacement check to be reissued and the annuity to be overpaid.

b. Check Does Not Appear On PAYBACK - If the check does not appear on PAYBACK, follow the guidelines in section 115.30.1 and check the payment status on PACER to determine what non-receipt action is required for processing the claim.

NOTE: If the annuitant reports non-receipt of a payment before delivery of his or her mail on the seventh day of the month, explain to the annuitant that most payments which are not delivered on the expected delivery day are delayed in the mail and are usually delivered by the seventh day of the month. Instruct the annuitant to wait until he or she receives mail on the seventh of the month before again contacting the field office.

2. Direct Deposit Cases

a. Payment Appears On PAYBACK - If the payment appears on PAYBACK and the return reason code is 91 or 92, the payment will be reissued after confirmation of the address. Process a change of address even if the address on record is correct. When the annuitant wants to also enroll in

Direct Deposit, a code "B" change of address/enrollment must be used to reinstate benefits. For return reason codes other than 91 or 92, contact RBD or SBD to request that the payment be reissued.

NOTE: Payments that were offset due to TOP (See FOM1-1245.35) and are returned code 98 will not suspend the annuity nor will processing a change of address transaction reissue the payment. This is because the amount of the returned payment will not match the payment rate shown in the Checkwriting Master file. After verifying the Direct Deposit information, contact RBD or SBD to have the payment reissued.

b. Payment Does Not Appear On PAYBACK - If the payment does not appear on PAYBACK, follow the guidelines in section 115.30.1 and check the payment status on PACER or TCIS to determine what non-receipt action is required for processing the claim.

Note: If the status on PACER or TCIS indicates “EFT Payment Processed”, this means that the payment was received by the FI. Provide the annuitant with the trace number and advise the annuitant to confirm non-receipt with the financial institution. Most financial institutions do not send deposit receipts in Direct Deposit cases.

115.30.1 Guidelines for Questioning Individual Reporting Non-Receipt

Careful interviewing is necessary when an individual reports non-receipt of a payment. The questions asked may vary from case to case. However, they should be comprehensive enough to establish whether payments have been regularly received and whether the annuitant has any idea why the payment in question was not received. The responses to the questions will also determine what action, if any, needs to be taken. Questions may include:

- Has the annuitant been receiving payments regularly?
- Has the annuitant recently changed his or her address?
- Has he or she reported the change of address?
- Was the address as printed on the check received last month the current address? The annuitant may have moved some time before and never reported the change of address. The Postal Service, after forwarding payments for a while, may have stopped forwarding the annuitant’s mail.
- Has the annuitant been overpaid? Could the RRB be recovering an overpayment?
- Was the payment offset due to TOP (see FOM1-1245.35)?

- Has an event causing termination or adjustment occurred? For example, has a child stopped attending school?

- Has he or she previously reported any event that would have caused the annuity to be reinstated or adjusted?

- Has the annuitant submitted a report to the RRB changing his or her estimate of earnings to a higher amount than previously reported?

- Has he or she recently received a notice from RRB that might explain why payment was delayed?

- It is possible that some family member may have deposited the payment for the annuitant? This aspect of the questioning should be handled tactfully, but is necessary since Treasury Department statistics show that in approximately 60 percent of the cases in which a payment was negotiated, the payment was negotiated either by the intended payee or someone on his or her behalf.

- Does the annuitant believe the payment may have been illegally cashed? If so, explain that a replacement check will not be issued until the claim Form FMS-1133 is completed and returned to Treasury.

- If payment was made by check and it was lost or stolen, was it endorsed by the annuitant prior to being lost or stolen? If so, was it restrictively endorsed, i.e., for deposit only to Bank of America on account of John Doe C1234567? If not, explain to the annuitant that if the check has already been cashed, Treasury will not issue a replacement check. In addition, if Treasury issues a replacement check and the original check is later cashed, the individual is liable for the overpayment since the original check bears the genuine endorsement of the annuitant.

- If payment was made by Direct Deposit, did the annuitant recently cancel Direct Deposit, change accounts, or change financial institutions?

  Note**:** If the following has occurred:

  - our records show that a change was recently made to the Direct Deposit information; or,

  - the annuitant received an RL-79 series letter advising a change; and,

  - the annuitant did not authorize that change.

These events indicate fraud may have occurred and require special handling. Refer to section 115.24.2 for additional instructions.

- Did the annuitant recently elect to have payments made by Direct Deposit, i.e. a new enrollment? Check for new information pending on FAST-COA. If necessary, re-enroll the annuitant on FAST.

- After verifying that the payment was made by EFT, ask the annuitant if he or she contacted the financial institution. If not, refer the annuitant to the financial institution.

- If the annuitant contacted the financial institution, did the financial institution confirm that the payment was not received? Confirmation would include verifying that the payment was not posted before or after the payment date, or to another account and, checking their payment and bookkeeping records and their rejected and returned payment records.

Note: Unless processing of the payment file was delayed (in which case field offices would be notified of the problem), it is highly unlikely that the financial institution did not receive the EFT payment on or before the payment date. Therefore, it is important for the financial institution to confirm that the payment was not received. A replacement payment will not be issued until the status of the original payment is ascertained and returned to the RRB.

- Proof of confirmation would include field office contact with the financial institution verifying the actions taken by the financial institution, or completion by the financial institution of Treasury's Non-receipt Claim for Direct Deposit Payments form, according to the instructions in the Green Book.

115.30.2 Field Office Processing of Non-Receipt Reports

The field office is responsible for handling all routine non-receipt claims, i.e. the claim can be processed without additional information, instructions, or controls from headquarters. **Process the non-receipt claim when the annuitant is alive and entitled to the payment and :**

- The annuitant reports that a regular monthly Direct Deposit payment was not received on the payment date and the financial institution confirms non-receipt; or

- The annuitant reports that a regular monthly benefit check was not received **after** his or her mail was delivered on the 7th day of the month; or

- The annuitant reports that a regular monthly benefit check was lost or stolen before being endorsed; or

- The annuitant reports that a regular monthly benefit check was damaged, mutilated, or completely destroyed; and

- If a check, the check is less than one year old.

- Access FAST-PI ENTRY to process the claim. See FOM-1-1573 for FAST-PIENTRY Instructions.

IMPORTANT: In situations where there has been a change in payee, do not process a non-receipt claim against a payment that was issued to a former payee. Contact UPSD-CSU for assistance.

NOTE: If the annuitant or a representative for the annuitant reports non-receipt of a not-due payment, e.g. the payment was issued after death or loss of entitlement; contact the Bureau of Fiscal Operations-Debt Recovery Division (BFO-DRD) via Outlook at "DRD-BFO-Debt Recovery Division" or by telephone at x4630. Be sure to indicate that the payee was not entitled to the payment. Also, include the correct payee identification information, including full name. Indicate the exact payment date (month-year) and specify whether the claim is for a monthly or an accrual payment.

BFO-DRD will investigate the status of the payment and if necessary, initiate the appropriate reclamation action. Under no circumstances should you process a non-receipt claim against the payment. This could cause a replacement check to be issued.

115.30.3 UPSD-CSU Processing of Non-Receipt Reports

The Unemployment Programs Support Division-Clerical Services Unit (UPSD-CSU) will process the non-receipt claim or request when:

- The annuitant reports non-receipt of an accrual or adjustment payment;
- A mass loss situation has occurred;
- The annuitant reports that an endorsed check was lost or stolen;
- There is a change in representative payee and the payment in question was received by the previous representative payee;
- The annuitant is deceased and the family or a representative of the deceased annuitant reports that the annuitant did not receive one or more due payments before his or her death;
- The annuitant reports non-receipt of a check that is 12 months or older; or
- An FI reports that an endorsed check was lost or stolen after being cashed by the annuitant (Lost-in-Transit claims).
- The annuitant was enrolled in International Direct Deposit (IDD) and the foreign financial institution has not received one or more due payments.

Contact UPSD-CSU via e-mail at TCIS-CSU Group if non-receipt is reported for any of these situations. When reporting non-receipt claims via e-mail, be specific, include the

correct payee identification information, including full name. Indicate the exact payment date (month-year), payment amount, and specify whether the claim is for a monthly or an accrual payment.

UPSD-CSU will also process routine non-receipt requests that are received at headquarters.

115.30.4 FAST-PI Processing of Non-Receipt Claims

When a payment investigation transaction is entered into PIENTRY, a file is prepared and transmitted to Treasury's Financial Center. A letter is also sent to the annuitant acknowledging the non-receipt claim and notifying the annuitant that the matter has been referred to the Treasury. There will not be a field office copy of this letter.

Treasury will process our file and return a second file, the Status Disposition file, to the RRB showing the action taken on each non-receipt claim. The Status Disposition file serves as an acknowledgement, and consists of a confirmation or reject message of each transaction. This initial acknowledgement usually is received in a few days, but 30 days is allowed before tracing.

The Payment Investigation On-Line Status system (PISTATUS) is updated with the action taken on each claim. Both headquarters and field offices have access to this information on the PISTATUS screens.

A list of the initial confirmation and reject messages sent from Treasury is shown in FOM-I-1574.30.1.

Once a non-receipt claim is submitted to Treasury, the matter is between the annuitant and Treasury. Encourage the annuitant to promptly follow any instructions received regarding the non-receipt claim. This includes promptly returning the replacement check if the original check is located.

115.30.5 Treasury Processing of Non-Receipt Claims

When Treasury receives and processes our file, they screen their records to determine if the payment in question was issued and if issued, search their records to determine if a previous action was taken on the payment. If Treasury has no record of the payment being issued (payment date and/or amount on the request does not match their records) or if their records show that a previous action was taken on the payment (payment was previously returned or a previous non-receipt request was processed), we will receive a reject message and no further action will be taken by Treasury on the claim.

If their records show the payment was issued and no previous action was taken, Treasury will take action as described in A or B below.

A. Direct Deposit (DD) Cases - Treasury will prepare and release Form FMS-150.2 or Form 150.1, Payment Trace Requests, to the financial institution (FI). The

FMS-150.2 is used to trace payments dated the current or previous month. The FMS-150.1 is used to trace payments that were issued two months or more from the date of the trace request or as a follow-up notice to a previous trace request. Upon receipt of the FMS-150.2/FMS-150.1, the FI must verify the status of the payment and credit the payment to the annuitant's account, if it was not previously credited or returned. The FI will also advise the annuitant regarding the status of the payment.

NOTE: If the payment was offset by TOP, Treasury will forward the non-receipt request to its debt collection center in Birmingham, AL (BDMOC). BDMOC will process the trace request against the DD payment it issued after having applied the offset and forward the request to the financial institution.

If the payment cannot be credited to the account, the FI must return it to Treasury via the Automated Clearing House network and prepare a Notification of Change if corrections are needed for future payments. RRB will issue a replacement payment once the returned payment has been credited to the railroad account.

B. Check Cases - In check cases, Treasury will complete the check description (check symbol and serial number) and forward the non-receipt request to the Treasury office in Hyattsville, MD for further processing. That office will check their records to determine if the check has been cashed. If the payment was offset by TOP, Treasury will forward the non-receipt request to BDMOC. BDMOC will process a non-receipt request against the check it issued after having applied the offset and forward the request to the Treasury office in Hyattsville, MD for further processing.

1. Check Not Cashed - If the check has not been cashed, Treasury will issue a replacement check directly to the annuitant.

   Note: This processing applies only to requests submitted using stop reason code "C" (NON RECEIPT-RFC WILL REISSUE). For all other non-receipt codes, Treasury will forward the credit to the RRB. Upon receipt of the credit, UPSD-CSU will notify RBD or SBD to issue a replacement payment.

2. Check Cashed - If the check has been cashed, a replacement check will not be issued. The annuitant will receive a claim form (Form FMS-1133) and a photocopy of the check. The annuitant should examine the photocopy to determine if he cashed the check. No further action is necessary if the annuitant cashed the check.

   If the annuitant did not cash the check, he or she must complete the claim form and return it, along with the check photocopy, directly to Treasury at the address shown on the claim form. The claim form should not be sent to RRB; doing so will only delay processing the claim. Not returning the check photocopy also delays Treasury's handling.

Treasury will investigate the cashing of the check and make a determination as to whether or not forgery was involved. The matter will be handled between Treasury and the annuitant. The RRB is not involved in this process. If forgery is determined, Treasury will issue a replacement check directly to the annuitant. A replacement check will not be issued if Treasury determines the annuitant cashed and/or benefited from the check.

115.30.6 Trace and Follow-up Actions

If an annuitant contacts you regarding the status of the non-receipt claim, check the status message on the PISTATUS screen. A complete description of all PISTATUS messages is in FOM-I-1574.30.

- If the message reads "SENT TO TREASURY" and more than 30 days have elapsed since the RRB PROC DATE, notify Policy & Systems-Payment Analysis & Systems (P&S-PAS). P&S-PAS will investigate the matter.

- If the message reads "SF-1184 PROCESSED" and more than 45 days have elapsed since the RRB PROC DATE, notify P&S-PAS. P&S-PAS will investigate the matter.

- If the message reads "SF-1184 PROCESSED – PAYMENT WAS OFFSET", this would indicate that the initial processing by BDMOC for a payment that was offset by TOP is complete. If more than 45 days have elapsed since the RRB PROC DATE, notify P&S-PAS. P&S-PAS will investigate the matter.

- If the message reads "OUTSTANDING COURTESY DISBURSEMENT ISSUED", advise the annuitant that a replacement check has been released and to allow seven days for receipt of the payment. Add two business days to the RFC PROC DATE and use the result as the payment release date. If more than seven days have elapsed and the annuitant still claims non-receipt, notify UPSD-CSU. UPSD-CSU will process a non-receipt claim against the replacement check.

- If the message reads "COURTESY DISBURSEMENT ISSUED – PAYMENT WAS OFFSET", advise the annuitant that a replacement check has been released and it was offset by TOP. The annuitant should allow seven days for receipt of the payments. Add two business days to the RFC PROC DATE and use the result as the payment release date or, access PACER or TCIS to get the exact payment date. If more than seven days have elapsed and the annuitant still claims non-receipt, notify UPSD-CSU. UPSD-CSU will process a non-receipt claim against the replacement check.

- If the message reads "REJECT – PAYMENT WAS FULLY OFFSET", notify P&S-PAS to investigate. Because benefit payments must be greater than

$750.00 (or $166.67 for IRS tax levies) to be eligible for offset, this message should not be received from Treasury

- If the message reads "PAID-PHOTOCOPY AND CLAIM TO FOLLOW, advise the annuitant that the check has been cashed and that Treasury mailed the FMS-3858 Claims Document Package (copy of the check, FMS-1133 Claim Form, and payee instructions) to him/her. Advise the annuitant to allow 10 business days from the RFC PROC DATE for receipt of the FMS-3858.

If more than 10 business days have elapsed and the annuitant advises that he or she has not received the claims package, contact Treasury at (855) 868-0151, to request a duplicate claims package. The claims package can be sent directly to the annuitant or you can request that it be sent to your office.

If the annuitant advises that he or she has already completed and returned the FMS-1133 Claim Form and check photocopy to Treasury, but has not received any information regarding the status of the claim, and more than 45 days have elapsed since the claim form was mailed, contact Treasury at (855) 868-0151, or e-mail to: check.claims@fms.treas.gov .

Note: Treasury handles all claims according to the check's symbol and serial number. You will need to provide this information, which can be found on PISTATUS in the CK NUMBER-SYM field, PACER, and/or TCIS.

- Contact UPSD-CSU via e-mail at TCIS-CSU Group if you cannot locate a claim on the screens, or if you need additional information. Be sure to include the claim number, annuitant's name, and a brief description of the problem.

115.30.7 Routing and Handling of Referral Notices

If Treasury is unable to process a non-receipt claim based on the information submitted, the RRB will receive a reject message from Treasury on the Status Disposition file. When this file is processed and updated to PI STATUS, a referral notice is produced. Referral notices are received in UPSD-CSU. UPSD-CSU will notify the originating field office of the reject via e-mail. The field office should verify the information and resubmit a corrected transaction, if necessary. If assistance is needed in processing the claim, the field office should contact UPSD-CSU.

115.30.8 Mass Loss of Checks

An abnormally large number of inquiries or reports of non-receipt regarding regular monthly annuity checks received on or shortly after the normal receipt date from annuitants residing in a relatively concentrated geographical area indicates that a mass loss of checks may have occurred.

A mass-loss of checks usually occurs when a mailbag or mail tray containing the checks is lost, destroyed, or unaccountably disappears. In most instances involving lost mail, the loss is temporary and is resolved within a short time. A mass loss is declared when:

- We know the original checks will not be delivered; the checks have been damaged or lost in route, the mail truck or postal facility caught fire, or the mail was stolen from the carrier.

- We have exhausted all reasonable efforts to locate the checks. This is a judgment call made by P&S-PAS and Field Service based upon an evaluation of all of the information gathered from Treasury and the Post Office.

If it appears that a mass loss has occurred, immediately contact P&S-PAS via telephone on extension 4800. The secretary will refer the situation to the analyst responsible for handling check claims issues. **Do not use the P&S Inquiry email address, as doing so will only delay P&S-PAS' actions to resolve the situation.** Additionally, notify your regional office and UPSD-CSU. An email message is appropriate for notifying UPSD-CSU at TCIS-CSU Group. The chart below outlines the actions that will be helpful in resolving the situation.

	Field Office Actions	P&S-PAS Actions	UPSD-CSU Actions
Day 1	Gather zip codes and keep a list of annuitant names, claim numbers, and telephone numbers. Contact the local post offices involved to determine if they received and delivered the checks. Notify your network manager, P&S-PAS, and UPSD-CSU of the situation.	Contact Treasury and let them know we have a problem developing. Secure confirmation of the check turn over to the Post Office. Share turn over information with the affected field offices.	
Days 2-7	Provide the zip code information to P&S-PAS.	Share the zip code information with Treasury and secure the details concerning the trays;	

	Continue to establish contact with the local post offices. Contact the local SSA office to determine if they are experiencing similar problems. Follow-up with annuitants to see if checks were received. If there is any media involvement, notify the Office of Public Affairs. Keep your network manager, P&S-PAS, and UPSD-CSU posted about any advice received from the post offices or any changes in the situation.	e.g. what zip code ranges were contained in each tray, were there single or multiple trays, how were the trays labeled and sorted, etc. Share updated information from Treasury with the affected field offices.	
After Day 7	Following mail delivery on the 7th day, evaluate the situation: Is there a decrease in the volume of calls? Has any individuals reported that checks were received? Has the post office reported receiving the check? Are there checks still missing?	Declare a mass loss based on the results of the field office's evaluation. Determine if the field offices should assist UPSD-CSU in inputting claims. Notify the affected field offices on the mass loss decision. Prepare situation report according to office procedure. Monitor claims activity. Report, to	Input code "B" stops for individuals who reported non-receipt or authorize field offices to input the claims. Establish cut-off for processing "B" stops. After the cut-off date, all other reports of non-receipt are handled in accordance with the regular non-receipt process.

	Provide UPSD-CSU with the list of affected annuitants or, input "B" stops directly, if authorized by UPSD-CSU.	Treasury's Check Claims Branch, any patterns that appear to be forgery so that all claims are handled consistently.	Monitor claims activity. Report any patterns that appear to be forgery to P&S-PAS.

115.35 Requests For Descriptions And Photocopies Of Checks

Securing check descriptions and photocopies of checks is a time-consuming and costly process and must be held to a minimum. Requests for check descriptions and photocopies are limited to those needed for administrative purposes, such as:

A. When the RRB is attempting to recover an RRB overpayment; e.g., a not-due check;

B. When the payee failed to disclose the receipt of RRB benefits to a State welfare agency from which he or she is (was) also receiving benefits; or

C. When an FI needs information to file a Lost-in-Transit or Holder-In-Due Course claim with its servicing Federal Reserve Bank.

If a request for a check description or check photocopy is received, and the check was issued 10/1/1997 and later, access Treasury's PACER system. If the check was issued before this date, notify UPSD-CSU via e-mail at TCIS-CSU Group. However, Treasury is unable to provide a check photocopy if the issue date of the check is more than six and one-half years from the current date.

115.35.1 Photocopy Requests for Checks Less Than 12 Months Old

If the payee is requesting a photocopy of a check because he or she believes the check was never received, i.e., the payee is not contesting an overpayment, process the request as a non-receipt claim using stop reason code C.

If the photocopy request is being made by a family member or the representative of a deceased payee, because they believe that the payee did not receive a check to which he or she was entitled; i.e., they are not contesting an overpayment, notify UPSD-CSU via e-mail at TCIS-CSU Group. UPSD-CSU will process the request as a non-entitlement claim.

115.35.2 Photocopy Requests for Checks 18 or More Months Old

Treasury charges the RRB for check photocopies that are 18 or more months old. The current charge is $5.50 per check photocopy. Except to resolve claims of non-receipt,

the cost of securing check photocopies requested by a payee will be passed on to the requestor. Refer all requests received from the payee, family member of the payee, or representative of a deceased payee to UPSD-CSU. UPSD-CSU will process the request upon receipt of payment for the photocopies. Payment can be made by check or money order, payable to the Railroad Retirement Board and is to be forwarded to UPSD-CSU. Do not use the lockbox.

Note: Treasury is unable to provide a check photocopy if the issue date of the check is more than six and one-half years from the current date.

115.35.3 Lost-In-Transit/Holder-In-Due Course Claims

Occasionally the RRB will be contacted by an FI concerning a check that was lost after it was cashed or deposited by the payee. In this situation, the FI is considered to be the second endorser and legally entitled to the proceeds of the check. The FI must file a claim through their servicing Federal Reserve Bank. When this occurs, access PACER to secure the exact check symbol and check number. Under no circumstances should the RRB process a non-receipt claim for the FI.

115.40 Stopping Release Or Requesting Suspension Of A Monthly Annuity

115.40.1 First Party Reports of Suspension or Termination Events

When the annuitant or representative payee reports a suspension or termination event, if it can be processed on FAST (see FOM-I-1570.30.2), do so. If not, send an e-mail report to the Retirement Benefits Division (RBD) or Survivor Benefits Division (SBD) to stop the release of the monthly annuity payments. If the terminating event is death, complete a First Notice of Death (FNOD) transaction on APPLE. Normally you should not suspend or terminate a survivor beneficiary in a family group involving four or more payees. However, you should suspend or terminate any student beneficiary who loses entitlement regardless of the number of payees included in the family group. You should also suspend or terminate any survivor beneficiary belonging to a split family group who loses entitlement.

Be sure to furnish RBD or SBD with the following information in your report or telephone request:

- Correct RRB claim number ;
- Name of both payee and annuitant, if different;
- Complete mailing address, including Zip Code;
- Reason for suspension or termination.

115.40.2 Third Party Reports of Suspension or Termination Events

When a third party provides information that could cause suspension or termination of an annuity, attempt to verify the information through the annuitant or a family member. If you are able to verify the information, handle in accordance with section 115.40.1.

NOTE: Third-party notifications should not be processed without first verifying the information. With some modifications, it may be helpful to use the guidelines for securing address information for undeliverable mail (see section 139.40).

115.40.4 Death Notification Entry

Death Notification Entry (DNE) is an electronic process which transmits notification of the death of an annuitant to the financial institution (FI). DNE transactions are limited to annuities paid by Direct Deposit/Electronic Funds Transfer (DD/EFT).

DNEs are issued daily, without regard to monthly cut-offs. DNE transactions are created from APPLE First Notice of Death (FNOD) information and from FAST-Suspension/Termination (FAST-S/T) transactions. Returned payments, death terminations from the PAM system, and annuities in suspense prior to the death termination do not create a DNE transaction.

Important Note: If an FNOD or FAST-S/T transaction is erroneous or contains a wrong date of death and the transaction is not deleted or modified before close of business on the day the transaction is entered, a DNE with the incorrect information will be released to the FI. When this occurs, immediately notify the FI. Provide the FI with the correct date of death, or inform the FI that the report of death was in error and is to be disregarded. The Office of Programs/Operations must also be notified (see section 145.20).

A DNE transaction furnishes the FI with the following information:

- claim number
- name of the annuitant
- account number
- date of death
- annuitant's social security number
- the next recurring payment amount

Upon receipt of the DNE, FIs are encouraged to "flag" the deceased customer's account to prevent further acceptance of post-death payments. Federal payments received after the FI has been notified of a customer's death by DNE must be returned within 3

business days of the payment date. Prompt return of the payment by the FI reduces and in some cases, eliminates the need to recover outstanding payments via the reclamation process.

115.41 Reclamation Of Outstanding Checks/Direct Deposit Payments

Reclamation is the primary method for recovering last check/direct deposit (DD) payment debts. The Automated Receivable, Reclamation, and Credit (ARRC)) system will mechanically establish outstanding last check/DD debts, post returned payment data, and initiate reclamation. A simultaneous request for a cash refund is not made, nor is the amount of the outstanding last check/DD payment withheld or recovered from benefits due the survivors. This includes both recurring and non-recurring benefits; i.e., initial survivor cases, spouse-to-widow conversion cases, spouse death cases, lump sum death benefits, and accrued annuities.

If the outstanding check has been cashed or the funds were withdrawn from the annuitant's account, the Department of the Treasury (Treasury) will recover the checks/DD payments from the financial institution (FI). The FI will in turn seek recovery from the person who cashed the check or withdrew the funds from the account. In some instances, the Railroad Retirement Board's Office of Inspector General may be involved.

Note: In check cases, the "person" who cashed the check could refer to a merchant, e.g. a local grocer, who cashed the check for an individual. In this instance, the FI will seek recovery from the merchant. The merchant in turn can seek recovery from the person who presented the check to be cashed.

Continue to advise family members/applicants to return original checks to the local RRB office or to Treasury. Advise them to request the FI to return not-due DD payments to Treasury, and not to withdraw the money themselves. This could create an over-reimbursement at the RRB or an over-drawn situation in the annuitant's account.

Exception 1: In check cases, Treasury cannot reclaim the proceeds of a check that was made payable to the representative payee for the annuitant. Therefore, it is okay to accept a cash refund in this situation.

Exception 2: If a check or money order is received via mail or in person, the claims representative should check PISTATUS to determine if reclamation has been initiated and if yes, check PACER to determine the status of the reclamation before accepting a cash refund. If reclamation has already been initiated, an over-reimbursement could occur. If in doubt, contact the reclamation debt recovery specialist at (312) 751-4812 or send an email to **Zabrina.shelton@rrb.gov**. The debt recovery specialist will advise if the reclamation process can be stopped or prevented from initiating after reviewing the case. Remit the check or money order to the RRA lockbox, Retirement and Survivor Debt Collections, PO Box 979018, Saint Louis, MO 63197-9000, for handling based on her determination.

115.42 Over-reimbursement of Outstanding Checks

If a cash refund is received after reclamation has been initiated, an over-reimbursement will occur if Treasury is not instructed to terminate recovery action. If Treasury reclaims the funds from the FI that cashed the check, they are required to settle with the FI if the recovery action was in error, either because the date of death was wrong or refund was made directly to the RRB. The RRB will not return the money to the individual who submitted the cash refund or to the FI. The Bureau of Fiscal Operations' Debt Recovery Division (DRD) will take the following actions:

A. Reclamation Credit Not Received - When a cash refund is received after reclamation of the check has been initiated but before credit for the check is received, DRD will notify Treasury to abandon their stop payment action. Treasury will terminate their recovery action against the FI. If the money was recovered, Treasury will issue a settlement check to the FI. RRB has no further action.

B. Reclamation Credit Received - When a cash refund and a reclamation credit have been received, DRD will notify Treasury to abandon their reclamation action. Treasury will reverse the credit from the RRB and issue a settlement check to the FI. RRB has no further action.

Note: This handling applies only to check cases and not to payments made by DD. Refer to section 115.22.8 if an over-reimbursement of DD payment has occurred.

115.45 Tolerance

Tolerance rules have been established to avoid issuing adjustment checks for negligible amounts. The rules described below apply to most adjustments; however, some mechanical adjustments apply different limits. Unless procedure issued on a specific adjustment advises otherwise, you can presume the rules stated below were applied. Overpayment tolerance rules are covered in Article 12, Overpayments (see section 1205.26).

115.45.1 Recurring Monthly Annuity Rate Tolerance

The recurring rate tolerance is $1.00. Recurring annuity payments after a final award are not adjusted unless the monthly rate increases or decreases by more than $1.00.

115.45.2 Underpayment Tolerance

The tolerance amount for underpayments is $5.00. A recurring or one-payment-only award is not recertified unless the amount of the accrual payable is more than $5.00.

115.45.3 Exceptions to the Tolerance Rules

Tolerance does not apply in the following situations:

- An annuitant requests that his or her annuity be increased; or a beneficiary requests payment of a lump sum amount.
- A partial award was made and the annuitant dies before a final award is processed.
- A recurring annuity rate changes from the O/M to the RR formula, or vice versa.
- Tolerance would have applied to the recurring rate, but an overpayment over $25.00 exists.
- Tolerance would have applied to the recurring rate, but an underpayment over $5.00 exists.
- An RR/SS adjustment is involved.
- Tolerance would have applied to the underpayment, but the recurring annuity rate changes by more than $1.00.

115.45.4 Tolerance Situations

Described below are some situations involving tolerance and the action that will be taken.

A. The difference between the correct rate and the rate being paid is more than $1.00, and the underpayment amount is $5.00 or less.

The annuity is recertified and the underpayment paid.

B. The difference between the correct rate and the rate being paid is $1.00 or less and the underpayment is more than $5.00.

The annuity is recertified and the underpayment paid.

C. The difference between the correct rate and the rate paid is $1.00 or less and the underpayment is $5.00 or less.

Tolerance applies to both the recurring rate and the underpayment. PREH records are updated with the correct rate so future mechanical adjustments are done correctly. In addition, if a manual adjustment is required in the future or the annuitant makes a request, any underpayment will be paid.

115.45.5 Affects of Tolerance on Future Adjustments

Whenever tolerance is applied to an annuity adjustment, PREH records retain the correct (actual) tier rate information for future adjustments. Consequently, an adjustment which is not paid due to tolerance is not permanently lost. When cumulative adjustments cause a rate change in excess of $1.00, the annuity is adjusted beginning with the month in which the monthly tolerance limit is exceeded. No adjustment is made for the months for which the increase is within tolerance unless a manual award action is required for some other reason.

115.50 Uncashed Checks Investigation

Public Law 100-86 limits the payability of checks issued by the Department of the Treasury. Any check issued on or before September 30, 1989 was no longer payable effective October 1, 1990. Checks dated October 1, 1989 and later must be cashed within twelve months of the check issue date. While the period during which checks can be cashed is limited, the law does not affect annuitants' entitlement. If an annuitant allows a check to go uncashed for more than a year, the RRB can reissue payment for the period covered by that check, provided no event occurred which caused non-entitlement for that period.

Each month the RRB receives notice regarding uncashed check activity via an administrative cancellation file from Treasury. The administrative cancellation file contains notice of uncashed checks (checks which remain uncashed 6 months after issue) as well as reversal information for checks previously reported as uncashed. Reversals include reports that a check was subsequently cashed, reclaimed or reported as not received, lost or stolen, etc.

Each month, the latest administrative cancellation file is processed through the Uncashed Checks: Automated Investigation System (Uncashed Checks System). The system produces a letter for each annuitant for whom an uncashed check is reported. Address information for the letters is taken from the latest Checkwriting file. Where there is an uncashed check on the latest administrative cancellation file and there is a history of uncashed checks (three previously reported uncashed checks for which there are no reversals), no letter will be produced; instead, a request for field office investigation will be sent to the appropriate field office.

The purposes of the letters and the field office investigations are:

- To advise annuitants of the limitation on check payability so that checks will be cashed timely, eliminating the need for reissue after the payability period expires;

- To encourage annuitants to enroll in the direct deposit program because EFT payments are not subject to the limited payability provisions;

- To secure earlier notification of annuitant deaths, changes of address, or situations requiring representative payee development;

- To reduce the possibility of endorsement of checks by persons other than those to whom the check are payable.

115.50.5 Handling Requests for Field Office Investigation of Uncashed Checks

A request for field office investigation (Form G-236) is produced when the most recent administrative cancellation file from Treasury contains a report that an annuitant's check is uncashed 6 months after issue and the Uncashed Check System history file shows three or more checks previously reported to RRB as uncashed.

Upon receipt of Form G-236, attempt to contact the annuitant, either by telephone or in person. Inform the annuitant that our records show checks issued but never cashed. Sections A through H, below, provide examples of situations which will occur as you make these contacts. Use the right side of Form G-236 to indicate the results of these contacts.

The "Report" section has entries to complete which correspond to the situations in items A. through H. and/or are required for program integrity reporting. Put a check mark on the entry which most appropriately summarizes the results of the contact. If you are checking the Death/Other item, indicate "death" or "other" and enter the date of death or non-entitlement event in the Date of Non-Entitl. Event item. You can make dual entries, if applicable. For example, if you discover that the annuitant has died and that some of the checks issued to him/her may have been cashed fraudulently, requiring referral to the Office of the Inspector General, check "Death/Other" and "Ref. to OIG".

The "Remarks" section has space to provide information not provided for in the Report section. In the Remarks section, enter:

- Any special information requested in items A. through H., and

- Describe any unique situations which occur during the contact and cannot be adequately explained in the Report section.

A. Annuitant Has Possession of Checks - If the annuitant states that he/she has the uncashed checks, encourage the annuitant to cash the checks immediately. Explain the limited payability provisions described above. Explain that if the checks are not cashed within the payability period there may be a significant delay if the annuitant later requests that the payment be reissued.

   If the annuitant experiences difficulty or inconvenience in cashing annuity checks timely, encourage the annuitant to enroll in the direct deposit program. EFT payments are not subject to a limited period of payability. See section 115.20.1 for direct deposit enrollment information.

If the annuitant has not cashed the checks because the funds were not needed, encourage the annuitant to cash all checks before the expiration of the payability period so that, when needed, the funds will be available without a delay caused by the necessity to reissue payments after expiration of the payability period. Do not suggest that the annuitant waive his annuity or any portion of it. Waiver will preclude payment at a later date for any period covered by the waiver.

B. Annuitant Refuses to Cash Checks - You do not have to contact the same annuitants repeatedly. If you have contacted the annuitant and explained the importance of cashing the checks and he or she flatly refuses to cash them, you can limit contact with the annuitant to a yearly basis thereafter. Return a copy of subsequent Forms G-236 to Program Evaluation Section-UI/SI/DIS/FLD (PES-UI/SI/DIS/FLD) with the notation "Annual" in the remarks section.

C. Annuitant Reports that Checks Were Received and Cashed or Returned to Treasury - If the annuitant states the checks were cashed or returned within the last 60 days, assume that Treasury will send the RRB a reversal on the next month's administrative cancellation file. Take no further action, unless you receive another Form G-236 for the same checks in a subsequent month.

If the annuitant states that the checks were cashed or returned more than 60 days before the Form G-236 was issued, it may be that the Uncashed Checks System records are in error. Advise PES-UI/SI/DIS/FLD by copy of Form G-236 with notation of your findings. If necessary, PES-UI/SI/DIS/FLD will notify P&S-PAS.

D. Annuitant Reports that Checks Were Never Received or Were Destroyed, Lost or Stolen - If the annuitant reports non-receipt or that the checks were lost, stolen or destroyed, take appropriate action as indicated in section 115.30.

E. Annuitant Has Not Cashed Checks Because of an Event Causing Non-Entitlement - If current annuity entitlement is affected, take action to suspend or terminate annuity payments as appropriate. Secure return of any uncashed checks for which there is no entitlement, according to section 115.25. Notate your findings on the Form G-236 and send a copy to PES-UI/SI/DIS/FLD.

F. Annuitant Is Deceased - If the annuitant has died, process a first notice of death (FNOD) transaction on APPLE to stop future annuity payments and advise the informant that all uncashed checks issued in the annuitant's name must be returned. Develop for survivor benefits as described in section FOM-1-145, if applicable. If the informant has uncashed checks issued before the date of death, explain that a check cannot be negotiated by a person other than the payee. The checks must be returned for payment of the amount as an accrued annuity to entitled survivors. Develop for accrued annuities as described inFOM-1-615. Notate your action on the Form G-236 and send a copy to PES-UI/SI/DIS/FLD.

G. Representative Payee Appointment or Change in Representative Payee is Required - Take action to suspend the annuity, if appropriate, and to develop for a representative payee or to change representative payees in the usual manner. Uncashed checks should be forwarded to UPSD-CSU for reissue to the selected representative payee. Notate your action on the Form G-236 and send a copy to PES-UI/SI/DS/FLD.

H. Attempts to Contact Annuitant Are Unsuccessful - If the annuitant no longer resides at the address shown on the Form G-236, attempt to secure the annuitant's current address. Follow the methods outlined in section135.21.6. If a current address can be secured, contact the annuitant to determine whether the uncashed checks have been received. Take appropriate action as described above in addition to processing a change of address for future payments, if appropriate.

If the annuitant no longer resides at the address shown on the Form G-236 and you are unable to secure a current address, suspend the annuity (see section 135.21). Notate your action on the Form G-236 and send a copy to PES-UI/SI/DIS/FLD.

When you complete the contacts requested on the Form G-236 and note the results, sign and date the form and return a copy of the form to PES-UI/SI/DIS/FLD. The Form G-236 shows one annuitant per page. If several contacts are requested and they cannot be completed together, you can return completed pages separately. If this is done, be sure to keep full documentation of the fact.

You will receive another Form G-236 request for investigation when the latest monthly file shows a new uncashed check and there are still three uncashed checks in the history file.

If the second Form G-236 is dated 60 days or less after you investigate a previous Form G-236, it may be that reversal data resulting from your investigation (for example, checks cashed after you contacted the annuitant) will not be reflected on the second Form G-236. This is because the Uncashed Checks System uses only the data received from Treasury on a monthly basis. If this is the case, it is not necessary to conduct another investigation in this situation, even though the second Form G-236 will list one check which did not appear on the previous Form G-236. However, if the prior investigation resulted in a claim of non-receipt or more than 60 days have elapsed since your last investigation, another contact should be made and your findings should be reported by copy of Form G-236 to PES-UI/SI/DIS/FLD.

115.50.10 Handling Inquiries Regarding Uncashed Check Notices Sent to Annuitants

If a check has not been cashed 6 months after issue and no reversal activity has been reported (reclamation, notice of non-receipt, etc.), Treasury will notify RRB via the administrative cancellation file. As a result, the Uncashed Checks System will produce a

letter (RL-81) to the annuitant informing him/her that the check is uncashed and explaining the limited payability provisions. You may receive inquiries regarding these letters. There will be only one letter produced for each uncashed check. However, if an annuitant does not cash two annuity checks, he or she may receive a letter regarding the first check in one month and another letter regarding the second check in a subsequent month.

Handle the inquiries in the same manner as the field office investigation requests described in section 115.50.5.

115.50.15 Return and Reissuance of Checks After Expiration of Payability Period

A. Annuitant/Informant Has Possession of Checks - If an annuitant or an informant possesses checks remaining uncashed for 12 months or more, advise him/her to turn them in to the field office. Upon receipt, enter on the face of the returned check, beneath the name and address block next to the Statute of Liberty emblem, "Limited Payability--Not Negotiable" and forward the checks, in an envelope, to UPSD-CSU. The envelope should be notated "Do Not Open In Mailroom". Do not forward these checks to Treasury. Secure a statement from the annuitant requesting that the checks be reissued. If the annuitant is deceased, take the necessary action as described in FOM-1-145 and, if necessary, develop for accrued annuities as described in FOM-1-615. The appropriate headquarters unit will reissue the checks once it is determined that entitlement to the checks exists.

B. Annuitant Reports that the Checks Were Never Received Or Were Destroyed, Lost or Stolen - If the annuitant reports non-receipt or that the checks were lost, stolen or destroyed, access PAYBACK to determine whether or not a Limited Payability Cancellation credit (code 40) has been received for the checks in question. If a code 40 credit has been received, contact RBD or SBD to request reissuance of the check(s).

- If the check does not appear on PAYBACK, check PISTATUS to see if a previous non-receipt claim was processed. If a previous claim was processed, prepare and release Form RL-77 to advise the annuitant of the action that was taken. Form RL-77 is on RRAILS. Refer to FOM-1-1574.30 for a list and explanation of the status messages.

- If there is no previous claim shown on PISTATUS and the check in question was issued 10/1/1997 or later, look up the status of the check on PACER or TCIS. If the status on PACER or TCIS is “Reconciled Issue/Payment”, the check was cashed. Request an image of the check and release it, along with Form RL-77 (RRAILS), to the annuitant advising that check was cashed and no further action can be taken because the statute of limitations for filing a claim against the check has expired.

- If the check was issued prior to 10/1/1997 or additional assistance is needed, contact UPSD-CSU at TCIS-CSU Group. UPSD-CSU will check available headquarters records to see if the check was previously cancelled and/or if a prior non-receipt claim was processed.

- If UPSD-CSU finds that the check was previously cancelled or was never issued, they will refer the matter to the appropriate unit for handling.

- If a prior claim was processed, UPSD-CSU will release an RL-77 letter to tthe annuitant regarding the action that was taken on that claim. A copy of the letter will be imaged.

- If the check was not previously cancelled, and no prior claim was processed, UPSD-CSU will secure a photocopy of the check and upon receipt forward it, to the annuitant. UPSD-CSU will also release Form RL-77 (RRAILS) to the annuitant advising that no further action can be taken, as the statute of limitations for filing a claim against the check has expired.

  NOTE: If the issue date of the check is more than six and one-half years from the current date, Treasury is unable to provide a photocopy of the check. Treasury will use the message “PAID – NO PHOTOCOPY AVAILABLE”. If Treasury advised that the check was paid, UPSD-CSU will release Form RL-77 (RRAILS) to the annuitant, with a copy to the field office, advising that no further action can be taken as the statute of limitations for obtaining a photocopy of the check has expired.

C. Annuitant Reports That The Check Endorsement Is A Forgery - Public Law 100-86 limits the time period for initiating and filing a claim against a Treasury issued check. A non-receipt stop request must be initiated and then processed by Treasury within one year of the check issue date. If the check is found to be paid and the annuitant alleges forgery, the annuitant must also file a claim with Treasury, using Form FMS-1133, within one year of the check issue date. If forgery is involved, Treasury has up to six months to recover the proceeds of the check.

While the law limits the time period for initiating and filing a claim, it does not prohibit the annuitant from filing a claim against an alleged forged check. However, the law prohibits Treasury from initiating recovery action against the financial institution (FI) that cashed the check and from issuing the annuitant a replacement check, even if the claim is valid. Likewise, the Railroad Retirement Board has no regulatory authority to recover from the FI or to issue the annuitant a replacement check, if the claim is valid.

If the annuitant claims that the check endorsement is a forgery, explain to him/her the provisions of the law and that no further action can be taken. If the annuitant insists on filing a claim, have the annuitant return the check photocopy, along with the following items:

- a signed statement attesting that he or she did not cash the check;
- samples of the annuitant's handwriting that were written at the time the check was cashed; and,
- any other documentation the annuitant may have to support his/her claim.

Forward the requested items to UPSD-CSU. UPSD-CSU will forward the items to Treasury's Questioned Documents Branch (QDB). QDB will perform a handwriting analysis, render an opinion regarding the endorsement of the check, and notify UPSD-CSU of its findings. UPSD-CSU will release Form RL-77 advising the annuitant of Treasury's decision. If forgery is determined, UPSD-CSU will also advise the annuitant that no further action can be taken on the claim, as the statute of limitations for issuing a replacement check was expired.

125.5 Establishment And Maintenance Of Files

125.5.1 Field Office Files

Each office is required to maintain files to provide for the timely handling of inquiries and proper development of retirement and survivor claims. While the particular filing system used may be subject to the approval of the network director, it must readily indicate:

A. The present state of development of each active case; what forms, documents or other information has been previously submitted to Headquarters (such as check list forms) or is still to be obtained to complete field action in the case; and information indicating the return of any documents requested by the applicant; and

B. Cases on which field office action has been taken. Records from completed cases may be purged and destroyed after 12 months from the date the field office completes its handling. Anticipated need for material in particular cases is justification for its retention.

All Forms G-671 (third party disclosure) are to be marked “RRA File Only or RUIA General Correspondence File Only" and sent to imaging when all action has been completed.

All file entries should be complete and clear enough to permit all qualified personnel to be readily able to understand what has transpired in the case.

125.5.2 Headquarters Claim Folders

Claim folders at Headquarters are maintained either by the social security (terminal digit) number of the railroad employee or by a serial claim number preceded by “A” or “D”.

Generally speaking, if no contact (retirement pre-retirement, or notice of death) had been made prior to April 1, 1964, the claim folder is established by social security number. If a contact requiring the establishment of a claim folder was made prior to April 1, 1964, a serial claim number was assigned, a “D” prefix indicating that the death of the employee and subsequent adjudicative action called for the establishment of a file; an “A” prefix indicating a file has been established prior to the employee’s death.

The control over the movement of claim folders is done through a mechanical system called the Automated Folder Control System (AFCS). The AFCS is used to obtain the current location “charge” of a claim folder. For a detailed description of the procedure and information about the Automated Folder Control System see the AFCS Folder Control Directory or Administrative Circular BSS-6 which is on Boardwalk under Bureau of Information Services.

125.5.3 Preservation of Facsimile Transmissions

All thermal paper facsimile (fax) transmissions that must be kept as a folder record should be copied on plain paper prior to filing.

Incoming copies on some fax machines are printed on "thermal paper," as opposed to plain paper. The images on thermal paper are extremely unstable and may begin to deteriorate in as few as 6 months. Such thermal papers are sensitive to heat and light, will react with chemicals found in ordinary office environments (including markers, cosmetics, and some types of plastic folders), and may contain impermanent dyes. As a result, the text is likely to fade and become illegible or the whole paper surface may darken, making the image indistinguishable. Thermal paper can be recognized by its smooth sheen and tendency to curl, making it difficult to handle.

Facsimile transmissions received via personal computer fax/modems and software are the same as those transmitted via fax machine.

Most current models of fax machines produce copies on plain paper by xerographic means, which produces a much more stable image than a copy made on thermal paper. Plain paper is easier than thermal paper to mark, copy and file.

125.10 Tracing Procedure

In the interest of processing claims as quickly as possible, a tracing schedule has been established to secure information in a timely manner. An itemized breakdown of tracing procedures for various forms used to certify payment is contained in Appendix E at the end of this article.

Use judgment in contacting an employer. If the number of tracers for employer information (i.e., Forms G-88P, G-88A.2, G-3EMP, etc.) appears to be large in relation to the employer, discuss the matter with the appropriate contact official. Stress the importance of completing such forms promptly to permit RRB payment within a reasonable time.

125.15 Transmittal Of Original Documents

If it is necessary to submit to Headquarters an original document that must be returned, insert the document in an envelope marked, "Document - To Be Returned." Mark the claim number on the document. Be careful not to staple through the document when transmitting it with other material.

125.20 Application Defects

An application defect or error is generated by conflicting, omitted or incorrect information on forms necessary for the mechanical payment of a retirement annuity. RASI, the mechanical system responsible for awarding retirement annuities, relies on

the information it is furnished from forms completed by a contact representative for a person filing for an annuity. Information is entered into RASI by data entry operators who have no knowledge of the provisions of the Railroad Retirement Act.

Information is coded directly from various retirement-related forms. Any defect in a form's completion causes RASI to reject the application and/or produce a referral explaining the defect. Referrals from RASI require an examiner's action to verify or correct the data in question; the correct or verified information must be reentered into RASI. The additional handling required to correct defects may cause award delays.

Records of application errors are maintained for each office. When an error is charged, the original is sent to the field office involved; copies are retained in Headquarters and sent to the appropriate regional office.

Any questions you have regarding a particular error should be directed to the program services section of the bureau of field services.

125.25 Mailing Documents or Media with Personal Identifying Information

The following have been developed for shipping documents or media containing sensitive or personally identifiable information (PII).

- Large quantities (more than 20 pages) medical evidence including medical evidence on CD's
    - Should be shipped in a secure manner such as registered mail or private courier with tracking capabilities, such as United Parcel Service (UPS).
- Smaller quantities (20 or fewer pages)
    - Should be shipped using security envelopes. It is not necessary to use registered mail or private courier with tracking capabilities.

If UPS is used to ship material to RRB headquarters, "MAILROOM" should be shown on the Name line in box item number 2 (DELIVERY TO) on the UPS Shipping Document. A telephone number for the recipient is not required. The RRB agency name is shown on the Company line while the RRB's headquarters address is shown on the Street Address, City/State, and Zip Code lines.

Note: UPS cannot be used to ship material to a post office box.

NOTE: For Medical evidence, terminally ill (TERI) and/or Compassionate Allowance (CAL) cases, disability freeze only applications, or other material which otherwise would have been sent directly to the Disability Benefits Division using Post Office Box 10695, send via UPS to the Disability Benefits Division using 844 N. Rush Street, Chicago, IL

60611. Indicate “DISABILITY” on the Name line in box 2 “DELIVERY TO” on the UPS Shipping Document. Again, a telephone number not is required.

If it is determined that UPS is the appropriate method of shipping, always consider using the least expensive shipping option that is appropriate for the type of document or electronic media being sent. Two options are available.

- Use the **“UPS 2nd Day Air”** service delivery option whenever possible.
- Use the **“UPS Next Day Air”** service delivery option when circumstances warrant overnight shipping.

The UPS 2nd Day Air and the UPS Next Day Air have separate yet similar shipping forms. The requested information shown in the box items listed below must be completed when preparing either form manually:

1. Shipment From
2. Delivery To (for 2nd Day Air) / Extremely Urgent Delivery To (for Next Day Air)
8. Method of Payment – check box labeled “Bill Shipper’s Account Number”
10. Shipper’s Signature

NOTE: Instructions and training has been provided to individuals who have access to UPS website (www.UPS.com) to prepare shipping documents on-line.

125.30 Incoming Mail Distribution

Refer to RCM 10.2 Appendix D for Headquarters Mail Distribution chart.

130.1 Disclosure of Information

Release of information and records by RRB employees is governed by the Railroad Retirement Act, the Railroad Unemployment Insurance Act, the Privacy Act and the Freedom of Information Act. Release information only if authorized by the regulations and/or not specifically prohibited by the PA, or sections 12(d) and 12(n) of the RUIA.

The RRB-22 Privacy Act Systems of Records provides a complete list of routine uses for all of the RRB systems of records. You can access the RRB-22 by clicking on the System of Records. The Office of General Counsel (OGC) has the responsibility for responding to all requests that cite the Freedom of Information Act (FOIA). These requests should be forwarded to the OGC via facsimile machine (312)751-7102.

130.2 Definitions

Access - The term "access to record" refers to the subject individual's right under the Privacy Act to examine and request correction of RRB records indexed by his or her name, social security number, or other personal identifier.

Denials – Any information requested by an individual or business that cannot be released.

Disclosure of Information - This term refers to release of information about an individual to an authorized third party or to routine uses for which no authorization is required.

First Party – Refers to the person, usually a railroad employee, which the RRB maintains a record accessed by a personal identifier such as the employee's name or social security number.

First Party Request –This is a claimant request to access his or her personally identifiable record maintained in a Privacy Act system of records.

FOIA Request - Request for records of the RRB, any request that cites the FOIA for personally identifiable records about an individual from an unauthorized third party, or an inquiry about a deceased person's records. Also, any other request which specifically cites the FOIA.

Personal Identifier - Refers to an individual's name, SS number, claim number, DOB, POB, parent's names, or any means by which the individual's records can be identified.

Privacy Act Request - Any request made by the individual to whom the record pertains for records or information that is of a personal or private nature and located in a system of records indexed by a personal identifier.

Routine Uses - This term refers to furnishing information about an individual, without his or her authorization, to certain parties publicly identified by the RRB in the ***Federal Register*** as routine recipients of personal information. These parties such as the Treasury Department and the Department of Justice, are included in the Privacy Act Notification printed in the booklets describing the benefits paid by the RRB and are printed on various applications and claim forms used by the RRB. Refer to System of Records for categories of users.

System of Records - Records maintained by an agency which are retrieved by a personal identifier.

Third Party - A request made by a third party for records of a railroad employee maintained in a Privacy Act system of records

Third Party Request – A third party request for information about a record is from someone other than the first party.

130.5 The Privacy Act of 1974 (PA)

Congress intended the Privacy Act (PA) to protect the rights of individuals to privacy in the records pertaining to them maintained by Federal agencies. The PA requires that the RRB and other agencies publish in the ***Federal Register***, upon establishment or revision, a notice describing the types of records it maintains, the types of individuals on whom records are maintained, and the extra-agency uses of the information in the records. Upon request, the RRB must tell an individual whether any records pertaining to him are maintained.

The following types of requests for personally identifiable records granted under the Privacy Act:

- An individual's request to access to his or her own record and a request that a record pertaining to them be corrected;
- An authorized third party request for personal records; and
- A request by a "routine use" recipient wanting the record for the purpose published in the Privacy Act Notification.

NOTE: The Privacy Act does not cover information that we do not have.

130.6 Privacy Act Systems of Records

Privacy Act System of Records is a group of records which contain information about an individual and each of which is retrieved by some kind of identifier such as name or number. Below is a list of some of system of records maintained by RRB:

- RRB-6 Unemployment Insurance Record File

- RRB-7Application for Unemployment Benefit and Placement Service under the Railroad Unemployment Insurance Act
- RRB-21 Railroad Unemployment and Sickness Insurance Benefits Systems
- RRB-22 Railroad Retirement, Survivor and Pensioner Benefit System
- RRB-42 Uncollectible Benefits Overpayment Accounts

You can access these through the System of Records

130.10 The Freedom of Information Act of 1974 (FOIA)

Under the Freedom of Information Act (FOIA), the public has a legal right to see RRB documents of a policy-determining nature which affect the public, such as final legal decisions, policy decisions not related to establishing tolerance, Board Orders, and claims and administrative manuals (including FOM) to the extent that they affect any member of the public. However, when any of these types of documents are requested, any personal identification contained within must be purged before release to the requestor.

Under the FOIA, the public may also request records in a Privacy Act system of records. The requester must reasonably describe the records being sought, and has the right to a response within 20 working days of the date the request is received by the agency official who is able to answer it. If the agency denies the request, the requester may appeal. The agency must answer the appeal within 20 calendar days. If the appeal is denied, the requester may seek judicial review. If the agency fails to respond timely, the requester may file a civil action without waiting for the agency's response, and may recover attorney fees and court costs. Agency denials citing the FOIA are recorded for an annual report to Congress.

The FOIA contains exemptions that permit withholding under certain circumstances. RRB relies on exemptions three and six when denying request.

- Exemption three permits withholding of information the disclosure of which is prohibited by statute, such as the RUIA. For instance, when sections 12(d) or 12(n) of the RUIA prohibit compliance with a particular third party request for information, the FOIA does not require disclosure.
- Exemption six permits withholding if disclosure would be an unwarranted invasion of personal privacy. Exemption six may not apply, however, if there is a compelling public interest in disclosure.

The OGC handles all FOIA requests (click here for fax number).

130.15 Relationship of FOIA and PA

In order to correctly handle a request for records and to account accurately for any disclosure made, it is necessary to know under which act it was made.

Any requests from individuals for access to records pertaining to themselves are considered Privacy Act requests, but do not need to be accounted for. Requests for personally identifiable records made by persons other than the subject individual but who either have the consent of the subject individual or are "routine use" recipients are also Privacy Act requests and are subject to the accounting provisions of the Privacy Act.

Requests for non-personally identifiable records are covered under the FOIA. However, the FOIA accounting provisions are only applied to requests that specifically cite the FOIA.

130.20 General Provisions of the Privacy Act

130.20.1 Privacy Act Notification

Under the Privacy Act, whenever an RRB representative requests personal information from any source, whether by application, claim or standardized form or by interview, the RRB must furnish the informant with written Privacy Act Notification. The Privacy Act notification must contain the following elements:

1. The authority for requesting the information (e.g. section 5(b) of the Railroad Unemployment Insurance Act)

2. Whether furnishing the information is voluntary or mandatory

3. The purpose for which the information will be used (e.g. to determine entitlement to benefits)

4. The routine uses of the information (e.g. release to the U.S. Treasury to issue benefit payments)

5. The effects on the individual of not providing the requested information.

130.20.2 Time Limit For Replies To Requests Under The Privacy Act And The Freedom Of information Act.

According to the FOIA and PA, a request for information, whether granted or denied, should be answered within 20 work days of the date the request is received. However, the RRB customer service standards require that if the request cannot be processed within the 20-day limit, it must be acknowledged within 10 work days. The acknowledgement should advise the inquirer that the request has been received and is being processed, and that a reply will be made within 30 days.

Field offices should acknowledge in writing within 10 work days any request citing FOIA, before forwarding the request and copies of pertinent records to OGC (click here for fax number)

If release of the information will involve the payment of a fee, the request for the information will not be deemed received until the requestor is contacted, informed of the fee, and submits payment.

The request cannot be deemed received until delivered to the manager of the system of records. If the information is to be furnished by a section in the Office of Programs, the 20-day limit starts on the date received by that section.

130.20.3 Accounting Requirements Under The Privacy Act And the Freedom Of Information Act

The Privacy Act requires the RRB to account for all third party disclosures of personal information about a beneficiary. Form G-671 should be used to record any verbal disclosure (i.e., by telephone or in person) of such information and is to be imaged at the time of creation. G-671 is not needed for written disclosures, such as rate verifications, the written response which serves as an accounting record is to be imaged through RRAILS at the time of creation.

NOTE: This procedure is not intended to change the use of On-line Rate Verification Letters (ORVL). Field offices **must** follow retention schedule.

130.20.4 Types of accounting required for disclosures under the Privacy Act.

A. Record of Disclosure

Whenever personal information on an individual is released to a third party (including routine uses, see System of Records), a record of the disclosure should be imaged. This includes copies of all form letters, custom letters, or other paper records on which personal information was released AND a complete written record must include the:

1. Date, nature and purpose of each disclosure; and

2. Name and address of the person or agency to which disclosure is made.

It is important to make and retain accurate records of each disclosure to a third party because an accounting of these disclosures can be made to the individual named in the record at his request. If a request for such an accounting is received from an individual, forward the case to P&S - RAC.

Authorization for release of information for routine uses is not required. Therefore, there is no need to keep the request but the response to the request should be imaged at the time of creation. All non-routine uses' third party requests will be held in the field office files for five years and then destroyed.

Responses to non-routine uses' third party requests will be imaged at the time of creation and a copy of the response will be attached to the original request and placed in field office files for five years and then destroyed. The response to requests from routine uses should be imaged only, eliminating the need to retain a copy in the Field Office.

EXCEPTION: Rate verifications letter to third parties created using RRAILS should be imaged at the time of creation.

B. Accounting Record For Information Resources Management Group
The Information Resources Management Group must furnish OMB with an estimate of the number of inquiries handled under the Privacy Act. The cost of the Board implementing the PA will be imputed from these figures. Whenever a request **citing the PA** is granted, a photocopy of the inquiry should be sent to P&S – RAC, to record the number of PA requests that have been granted. Include the claim number. It is not necessary to include a copy of the reply.

C. Accounting Record for FOIA Requests
Accounting records of Freedom of Information Act requests will be kept by the OGC. All inquiries citing the FOIA should be forwarded to the OGC. A verbal request is NOT an FOIA request. Tell the inquirer to make the request in writing to the OGC.

130.20.5 Penalties For Disclosing And Securing Information

A. Penalty for disclosing information - Any officer or employee of the RRB who discloses information, knowing that disclosure of such information is prohibited by the Privacy Act and RRB Regulations may be charged with and found guilty of a misdemeanor and subject to a fine of not more than $5,000.

B. Penalty for securing information - Any person who knowingly requests and obtains under false pretenses any record from the RRB concerning an individual, may be charged with and found guilty of a misdemeanor and subject to a fine of not more than $5,000

130.25 Fees for Furnishing Copies Of Records

The RRB may assess fees for copies of any records furnished to an individual. The RRB also has the authority to waive any and all fees if it is determined to be in the best interest of the public to do so.

Generally, the amount of any applicable fee is determined by the relative bulk of the material and/or the amount of time required to extract it.

Requests that can be handled in district offices will not ordinarily involve a charge. Claims representatives will explain any fee involved to the requestor when a request is

forwarded. If the only method by which an individual may be granted access to review his or her records is by providing copies of the records, no fee is charged.

Under the RRB's regulations (20 CFR 200.4) requestors may be charged fees, not in excess of the cost of reproduction, in accordance with this schedule:

130.25.1 Fees for Records Requested under the FOIA

The OGC will assess any charges for FOIA requests. The following is general information about charges applicable to FOIA requests:

- The charge for copies is 10 cents per page.
- Making a manual search for records is the salary rate, including benefits, for a GS-7 Step 5 Federal Employee.
- The computer search charge is $2,250.00 per hour ($37.50 per minute)
- No fee will be charged if the cost of search time, computer time and photocopying is less than $10.00. (Most requests will fall into this category).
- If the fee is more than $10.00 it may be waived.
- No fees are charged member of Congress for a record request.

In cases where the fee would be $30 or more, the request for records (for purposes of the 20 day time limitation) will not be deemed received until the requester is contacted, informed of the fee, and submits such fee as determined applicable.

130.25.2 Fees for Records Covered Under the PA

Requests covered under the PA are not usually charged a fee if they come from the following sources:

- An attorney representing an applicant or the applicant requests medical or non-medical records to contest a denial of benefits by the Board
- The Bureau of the Census as provided by US code;
- The National Archives,
- Members of Congress;
- The Comptroller General;
- Requests pursuant to an order of a court
- Another government agency for a law enforcement activity.

Records can be furnished to individuals under the Freedom Of Information Act; charges for photocopying may be assessed. The person requesting the information incurs the charge.

130.25.3 Photocopying Charges Other Situations Covered Under the Privacy Act

Where a charge is allowed, the fee for copies shall be $.10 per copy per page, not to exceed the actual cost of reproduction. A fee of less than $10.00 may be waived by the Privacy Act System Manager (i.e., the responsible organizational head) if he/she determines that it is in the public interest to do so.) The fee is usually waived so the issue of charging fees for records covered under the Privacy Act applies only for requests for 100 or more pages of documents.

130.30 Handling Requests For Release Of Information

In this chapter, when we discuss the release of information, we are referring to information about a person which can be retrieved by a personal identifier such as name, SS number, claim number, etc. RRB employees may disclose information only if authorized by the regulations and/or not specifically prohibited by the PA or sections 12(d) and 12(n) of the RUIA.

Any person can be given general information about the Railroad Retirement Act (RRA) or the Railroad Unemployment Insurance Act (RUIA). Information that can be disclosed without authorization includes general explanation of reasons for termination or suspension of payments and the eligibility requirements for benefits under the RRA or RUIA.

A. Annuitant is living - If a request for specific information is received from a person or organizations not listed in this section or as a “routine uses” recipient, forward the request to P&S - RAC or to DSUBD if the request is for medical evidence.

B. Annuitant is deceased - The Privacy Act does not prohibit the disclosure of information about deceased individuals (such as employees, spouses, or widows), but it does not permit the unauthorized release of information about former annuitants (such as children) who are not known to be deceased. Information about deceased individuals may be furnished. Most requests concerning deceased individuals are received from relatives interested in settling an estate, compiling a family tree (Click here for information on these request), or other family-related matters.

130.30.1 Authorization to Release Information

There are two ways to have authorization for the release of information. You must be a routine user or have written authorization.

Individuals may authorize disclosure of information about themselves to a third party, i.e., friend, relative, attorney, employer, union, etc. The only persons or entities entitled

to receive information without specific authorization are those listed under "Routine uses" or those to whom information is required to be disclosed under the FOIA Act. Refer to System of Records for routine uses of records and categories of users (RRB-22). If there is any doubt as to whether disclosure may be made, forward the request to P&S – RAC for a decision. In any case, all requests for medical evidence should be forwarded specifically to Operations –DSUBD for handling in accordance with FOM1 130.40.8 even though accompanied by an authorization.

NOTE: If a request for specific information is received from a person or organizations not listed in this section or as a "routine users" recipient, forward the request to P&S-RAC or to DSUBD if the request is for medical evidence.

Proper authorization from the individual is sufficient basis for disclosing non-medical information. To be acceptable, the authorization must be:

- Signed by the individual within the past 12 months;
- Addressed to the Railroad Retirement Board, or reasonably include the RRB by use of a phrase such as "...Federal Agencies..."
- Specific about what information is to be disclosed. (The phrase "...all information about my claims under the Railroad Unemployment Insurance Act..." is sufficiently specific.); and
- Specific as to whom the information is to be disclosed. For example, an authorization for release of information to a specific law firm does not justify release of the information to a different party, such as a subpoena or records search service, acting on the law firm's behalf.

130.30.2 Verbal Requests For Information

An individual may call or come in to an RRB office to request information from his file. Before the information can be released the identity of the person must be verified.

In person

Beneficiary – If the person claims to be the beneficiary, verify the identity of the person. If the person is the beneficiary release the requested information.

If the identity of the person cannot be verified, explain to the individual that we cannot release any personal information until adequate proof of identity is established.

Third Person – If the person is not the beneficiary, determine if the inquirer is authorized to receive the information using the criteria in FOM1 130.30.1. Be sure to verify the identity of the person. If the identity and authorization can be verified release the information to the individual and complete a G-671 to record verbal disclosure of the personal information to a third party. (See FOM1 130.20.3 for handling of G-671)

If the identity of the individual cannot be verified and or the authorization to release the information cannot be verified according to FOM1 130.30.1, explain to the individual that we cannot release any information until adequate proof of identity is established and written authorization to release the information has been verified.

Inform the requestor that the information has been furnished to the employee.

Telephone

Beneficiary – If the caller claims to be the beneficiary or the beneficiary's spouse refer to guidelines for verifying callers and procedures to establish the caller's identity and what to do if the caller's identity cannot be identified. (See FOM1 130.50)

Third Party – If the caller claims to be an authorized representative verify that the caller has proper authorization in file (see FOM1 130.30.1) to receive the information being requested. If you are satisfied that the caller is authorized, release the information and complete the form G-671 to record any verbal disclosure (i.e. telephone or in person) of personal beneficiary information to a third party. (See FOM1 130.20.3 for handling of G-671)

If the caller does not have proper authorization, inform the requestor that the information cannot be released without written authorization from the individual to whom the records pertain.

130.30.3 Written Requests for Information

If the request is from the beneficiary, release the information requested to the address on record.

If the request is from an individual to whom the records do not pertain, determine if the requestor is a routine user or a third party that is authorized to receive the information requested. If the request is from a routine user or a third party that is authorized to receive the information, release the information.

If the request is from a third party that is not authorized to receive the information, disclosure of information cannot be provided. The request should be forwarded to P&S-RAC for denial.

Exception: Send the requested information to the annuitant and send an RL- 35 to the inquirer if,

- it appears to be in the annuitant's best interest, or the annuitant is apparently aware of the inquiry; and
- the Privacy Act or Freedom of Information Act is not cited.

If RRB does not have the information, advise the inquirer. Do not consider this a denial and do not send case to P&S-RAC.

130.35 Requests to Amend Information in a Record

An individual may request that a record pertaining to himself be amended by submitting a written request to the Director of Operations. The request may be made by mail or in person at the one of the RRB's field offices. The request should include the following:

- A statement of the information in the record which the individual believes is incorrect.
- A statement of any information not in the record which the individual believes would correct the record.
- A statement of any evidence which substantiates the individual's belief that the information presently in the record is inaccurate.

A. Acknowledging Request to Amend a Record - When such a request is received, it **MUST** be acknowledged within 10 work days from the date it is received in Operations.

B. Notifying Individual of Decision

1. Request to Amend Record Granted - Operations will make any corrections of any portion of the individual's record which he has requested be changed. OPNS will advise him in writing that the requested change has been made. Where an accounting of disclosures has been made, OPNS will advise all previous recipients of the record to whom disclosure of such record was made, and the substance of the change.

2. Request to Amend Record Denied - If the individual's request to amend his record is denied, OPNS will inform him of this and the reason for the denial and advise him of his right to appeal.

130.40 Handling Requests for Release of Specific Types Information

Guidelines for specific situational requests for information are contained in the following sections. These guidelines address the most common requests. Refer to the RRB-22 Privacy Act Systems of Records for a full listing of situations that are considered to be "routine uses". The RRB-22 is on the intranet and can be accessed by clicking on LIBRARY – IRM DOCUMENTS – INTERNAL DOCUMENTS.

130.40.1 Annuitants, applicants, and prospective applicants

If an employee, annuitant, applicant or prospective applicant requests information from his case that directly concerns him, furnish the information, except when medical

evidence is involved (see FOM1 130.40.8 if medical information is involved). Information regarding the determination and recovery of an overpayment made to an individual may be released to any other individual from whom any portion of the overpayment is being recovered.

130.40.2 Disclosing amounts paid and the names of survivors

If an applicant or prospective applicant in a death case claims to have a valid reason for believing himself to be the proper beneficiary you may furnish him:

- The amount payable in the case, and
- The name (but not the address) of the person found entitled to that amount.

130.40.3 Representative payee cases

If an annuitant or applicant has a representative payee, you may furnish the representative payee with information that is relevant to carrying out his functions.

You may furnish any court, in which proceedings are pending relating to an incompetent individual, the amounts payable to the incompetent under the RR Act.

130.40.4 Authorized person

An annuitant, applicant or representative payee may authorize release of information to another person by submitting a signed request. Honor the authorization to the extent that the annuitant's or applicant's request for information would be honored. The information released should be confined to the occasion for authorization and limited in scope to that which is understood to be authorized.

If the request for information would be denied the annuitant or applicant, then it must also be denied the person authorized by the annuitant or applicant. Forward such a request to P&S – RAC for handling.

If the request is for medical evidence, see FOM1 130.40.8.

130.40.5 Divorce proceedings

If an employee and spouse are in divorce proceedings and either party requests the annuity rate of the other, it can be provided. Both the request and the response should be in writing, however.

Current or future rates of a divorced spouse's annuity can be provided to an employee upon request. Similarly, rates for an employee can be given to a spouse upon request.

See FOM1 135.35.2 for handling inquiries regarding property settlements in divorce proceedings.

130.40.6 Requests for release of an Annuitant's Address

If a request for an annuitant's address is received from a third party, inform the inquirer that without the authorization of the annuitant the RRB to cannot release the requested information.

You may tell the inquirer that we MAY be able to forward the inquiry to the beneficiary if the inquiry is in writing and unsealed. Forward the written request, to P&S-RAC for reply.

If the request for an annuitant's address comes from a Member of Congress, it may be released if the intent is to communicate with the annuitant about legislation which affects the railroad retirement system.

If a request for the address comes from a person not related to the annuitant, or from an organization, refer the request to P&S-RAC for reply.

130.40.7 Telephone Requests Regarding RUIA Claims

Information more extensive than a general inquiry concerning the status of a claim should not be provided by telephone. Explain to the caller (claimant or third party) that a written request from the claimant or an authorized third party is required before the information may be released.

130.40.8 Requests for Medical Data

When a request is received for information about medical records on file in the RRB, route the request to the Disability Benefits Division (DBD). Be sure to advise the inquirer that there may be certain types of medical records in the file that are sensitive in nature that cannot be forwarded directly to the inquirer, but may be furnished to a physician designated by the individual. Obtain the name and address of a physician that the RRB can furnish these records to prior to submitting the request to DBD, if needed, and include it with the request to DBD. When an individual makes a written request for copies of medical records in his claim folder, DBD will determine (if necessary **and** with the guidance of the Chief Medical Officer (CMO)) whether disclosure of the records might be harmful to the individual's mental or physical health. Disclosure of records could be harmful to an individual if they mention psychiatric problems, contain information about possible abuse of alcohol or drugs, make reference to possible malingering, or were furnished the RRB on a "confidential" basis, regardless of reason. DBD will handle requests for medical evidence in the following manner:

A. **Disclosure of Records Might Be Harmful to Individual's Mental or Physical Health**

If, upon review of the medical records requested by the individual from his or her claim folder, it is determined that disclosure of the records or any part of them would be harmful to the individual, DBD will contact the CMO for opinion and determination. The CMO determination is on a case-by-case basis. If the CMO

determines the evidence should not be sent to the individual directly, DBD will forward copies of the medical records to the designated physician that was obtained from the individual using a secure and trackable mail method. DBD will advise the physician that the records are being provided for the purpose of making an independent determination as to whether release of the record directly to the individual would be harmful to him. The physician will be informed that:

- If, in his or her opinion, direct disclosure of the records would not be harmful to the individual's mental or physical health, copies may be sent to the individual using a secure and trackable mail method.

- If he or she should determine that disclosure of the records might be harmful to the individual, such records are not to be disclosed and should be returned to the RRB by the physician using a secure and trackable mail method. The physician may summarize and discuss the contents of the records with the individual.

B. **Disclosure of Records Determined Not to Be Harmful to Individual's Mental or Physical Health**

If upon receiving a written request from an individual to review medical records in his or her claim folder or to be furnished copies of such records it is determined that disclosure of the records or any portion of them would not be harmful to the individual's mental or physical health, the individual will be permitted to review the records or will be furnished copies of them using a secure and trackable mail method. DBD will determine with the guidance of the CMO whether disclosure of the records might be harmful to the individual's mental or physical heal

C. **Request for Records to Contest Decision**

Regardless of the above, if a determination made on the individual's claim for benefits under the RR Act or the RUIA Act is based in whole or in part on medical records, disclosure or access to such medical records will be granted to the individual or his/her representative when the records are requested for the purpose of contesting the determination either administratively in the RRB or judicially in the courts. The information will be sent using a secure and trackable mail method.

D. **Request for Medical Records for, or from Third Party**

An individual may not direct the RRB to disclose medical records to any third party other than a physician chosen to review the records in accordance with Subsection A above or to a representative in an action to contest a determination under the RRA or RUIA. However, when a third person shows compelling circumstances affecting the health or safety of the individual, records may be furnished to that person without written consent of the individual, provided notice is sent to the individual's last known address. Records also may be furnished to other governmental agencies under routine uses as published in the Federal Register. If a request for medical records is received from a third party, DBD will send the records to the RRB applicant or annuitant directly using a secure and

trackable mail method if the request meets the requirements of Subsection B above. The RRB applicant or annuitant will be informed that RRB regulations do not permit the release of medical records to a third party, but he may do so if he wishes. A copy of the letter will be sent to the third party.

When a request is received from or to furnish medical records to a third party other than governmental agencies that may be furnished such records under routine uses, and the request does not meet the requirements of B above, the request will be denied if from the third party, but handled as in A above if the request is from the RRB applicant or annuitant.

Requests for medical information pertaining to a deceased employee may be released to the estate or an authorized third party. The protection of medical records under the Privacy Act and section 12(n) of the RUIA does not extend to deceased persons, so the request is governed by section 12(d) of the RUIA, which allows the release of information if it "is clearly in the furtherance of the interest of the employee or his estate.

If the request cites the FOIA forward to the OGC (Click here for fax number).

E. **Request for Rating Form or Other Adjudicatory Documents**

The above procedures for access to medical records do not apply to request for the disability decision sheet in file. Such decision sheets are not considered medical data and may be released as provided in section FOM1 130.30.

130.40.9 Medical Information Request From a Medicare Provider

Without written consent from a Medicare enrollee or an authorized representative, disclosure of Medicare information cannot be provided in response to a telephone call or a written inquiry. Disclosure can be made only with the prior written consent of the subject of the record. Therefore, a public or private sector provider or supplier, such as a hospital, a doctor, a medical laboratory, a medical equipment company, an ambulance service, etc., must rely on the Medicare card for information such as verification of identity, verification of Medicare entitlement dates, verification of the Medicare health insurance claim number, etc

FOM1 130.50, Confirming the Identity of Callers, contains guidelines for verifying the identity of callers and procedures on what to do if a caller's identity cannot be verified. This section should ONLY be used to confirm the identity of active and former railroad employees and their spouses, and annuitants/beneficiaries (employee, spouse and survivors) and their spouses.

A. General Inquiries - Advise the provider or supplier that:

- The information may not be given over the telephone and that the enrollee is to show them the Medicare card or give them the Medicare health insurance claim number.

- The Medicare health insurance card is verification of identity, entitlement and/or the Medicare health insurance claim number and that they should be routinely verifying the information.

- The RRB can send the information directly to the enrollee at the address on our records and that the provider or supplier can obtain it from the enrollee.

B. Requestor claims they are unable to obtain needed information form enrollee. Direct the requestor to make a written request to the RRB. The written request must be accompanied by a consent statement signed by the enrollee or enrollee's representative and containing the following:

- A Statement directed to the RRB authorizing release of the information requested;

- The enrollee's name and address and the name and address of the enrollee's representative if applicable;

- The enrollee's RRB claim number and Medicare health insurance claim number if different from the RRB claim number;

- The specific information being requested;

- A penalty statement which states "I am the individual to whom the information/record pertains, or an authorized consent, on behalf of the individual, to the release of the information/record. I understand that any false representation to knowingly and willfully obtain information from RRB records is punishable by a fine of not more than $5,000 or one year in prison, or both";

- The enrollees signature (or representatives signature, if applicable);

- A timeframe for disclosing the information. (The information can be disclosed only once, unless a specific period of time was stated in the written consent statement.

C. Requestor Claims Enrollee is Unconscious or Comatose. Ask the requestor if an attempt was made to get the information from a family member. If the information cannot be obtained from a family member or other source, and the enrollee's health is at risk, the information may be released.

Upon such disclosure, however, send a notice to the enrollee's last known address. Information should only be disclosed when the time required to obtain the enrollee's consent might result in a delay which could impair the enrollee's health or safety.

Instances where disclosure without consent is permitted under this provision should be quite rare.

NOTE: If the requestor is from a dialysis center, process the request (with consent) as quickly as possible.

If the written inquiry is not accompanied by a written consent statement signed by the enrollee or representative containing all of the elements listed in FOM1 130.40.9 B. Inform the requestor, in writing that the information may not be released and to contact the enrollee for the information. If the requestor is unable to obtain the information form the enrollee, the requestor should obtain a written and signed consent statement from the enrollee or representative containing all of the elements listed in FOM1 130.40.9B.

130.40.10 Evidence Requested for Criminal Prosecution of Annuitant

If any government agency requests copies of annuity checks or certification of payments made to annuitants, refer the request to the OGC, (click here for fax number).

130.40.11 Requests For Medicare Information After the Death of an Enrollee

Medicare information obtained in the administration of Title XVIII may be disclosed to a surviving relative or legal representative of the estate of the individual or to others, for a determination as to what supplementary benefits or services such deceased individual was eligible to receive under a private or public hospital or medical insurance program which is consistent with the purposes and objectives of Title XVIII. Such information may be disclosed only if the individual has consented to such disclosure, or a surviving relative or the legal representative of the estate consents.

130.40.12 Disclosure of Tax Rates

Railroad Retirement Tax Act rates are considered general information. However, the employee's earnings to which the tax rates apply are considered as specific information and may be released only to authorized persons.

An employee's survivors are considered authorized persons. Field offices may furnish them the amount of the employee's RR earnings and applicable tax rates.

When it appears that the person inquired about tax rates because of a demand from a state tax agent, include in the reply some reference to the exemption from taxation of regular RR retirement annuities. Supplemental annuities are taxable under Federal income tax laws, but in the opinion of the RRB's general counsel, are exempt from state income tax laws.

If there an inquiry about the tax rate, information can be found on Boardwalk under Bureau of Actuary.

130.40.13 Data on RRB's Operations

"The Quarterly Review" is the official source for figures on current RRB operations for release outside the RRB. Data available in the review may be furnished to any inquirer.

130.40.14 Requests to Forward Letters

The RRB has a policy of not forwarding sealed letters to persons whose addresses we have on file. But if we receive a request to forward a letter and the information to be forwarded would be valuable to the recipient, we may comply with the request under the following conditions:

- The letter must be submitted to the RRB in a plain unsealed envelope.
- The envelope must bear the full name of the addressee.
- The letter must not be accompanied by anything of value.

Make no report to the sender on the RRB's efforts to forward the letter.

130.40.15 Requests for a Copy of the Railroad Retirement Act

Anyone requesting a copy of the Railroad Retirement Act (RRA) or Retirement Unemployment Insurance Act (RUIA) should be referred to the Superintendent of Documents, Government Printing Office (GPO) Washington, D.C. 20402. In cities where the GPO has a bookstore, inquire may be made through the bookstore.

If an attorney requests a copy of the RRA, tell him that he may find provisions of the law which apply to the particular points in which he is interested in the U.S. Code. Cite the section(s) of the code. Keep in mind that more than one section of the RRA or RUIA may govern a particular point (e.g., computation of an annuity).

130.40.16 Genealogical Inquiries

All requests for genealogical information must be referred to the Office of Public Affairs. The Railroad Retirement Board must assess a fee for processing these requests. Click here for information on genealogical requests.

The fee for searching our records is $27.00 for each individual on whom records are requested. This fee is payable before any search is attempted and is not refundable, even if we are unable to locate the information requested or if the file has been destroyed. The Office of Public Affairs will process these requests.

130.40.17 Requests and Fees for Check Photocopies 18 or More Months Old

The Department of the Treasury (Treasury) charges the RRB for check photocopies that are 18 or more months old. The current charge is $5.50 per check photocopy. The costs

for securing photocopies of checks are to be passed on to the requestor. Refer all requests received from the payee, family member of the payee, or representative of the payee to the Clerical Services Section (CSS) in the Programs Support Division. CSS will process the request upon receipt of the proper payment. Payment can be made by check or money order, payable to the Railroad Retirement Board, and is to be forwarded to CSS. Do not use the lockbox.

NOTE: Treasury is unable to provide a check photocopy if the issue date if the check is more than six and one-half years from the current date.

There is no fee for check photocopies that are less than 18 months old. However, securing check photocopies is a time-consuming and costly process and must be held to a minimum. Requests are to be limited to those made for administrative purposes, such as:

- When the RRB is attempting to recover an RRB overpayment; or,
- When the payee failed to disclose the receipt of RRB benefits to a State welfare agency from which the payee is or was also receiving benefits.

130.40.18 Request for records that are no longer available

If you determine that all or part of requested records has been purged in accordance with the RRB's schedule for records disposal, the requestor should be advised that the records are no longer available and cannot be furnished. Information concerning records disposal is found in the Records Disposition Schedule IRM-4 on Boardwalk.

- If the request is for **RUIA** information that is more than 6 years and 3 months old and/or unavailable release form letter ID-6D-2 to inform requestor that **RUIA** records have been destroyed.
- If the request is for **RRA** information that is more than 30 years old and/or unavailable release a letter to inform requestor that **RRA** records have been destroyed.

130.40.19 Requests Includes Subpoena or Affidavit

If the request includes a subpoena or the signing of an affidavit relative to the status of persons or companies under the Railroad Retirement Act or the Railroad Unemployment Insurance Act, refer the request to the OGC for review (click here for fax number).

EXCEPTIONS:

If the Inquiry concerns payment in a divorce proceedings, or payments for separated maintenance, alimony, or child support, refer the request to the OGC (click here for fax number).

Information in the RRB's possession concerning an individual is not subject to disclosure by a subpoena, which is a court order to produce certain records. The RRB's position that disclosure could not be compelled by subpoena received judicial support in Greene v. Yellow Cab Co., Exparte Railroad Retirement Board, No. 50 C 1144 (N.D. Ill., Oct. 10, 1951) (Order to Quash Subpoena)(see below); and Hubbard v. Southern Railway Company, 179 F. Supp. 244 (D.C. M.D. GA, 1959) (see below). Subpoenas are treated as requests for disclosure of information or records. Subpoenas received in a field office should be handled in accordance with FOM2 Chapter 155, while those received in SUBS should be forwarded to the OGC.

The text of the two legal opinions cited above is in the following sections; use this for reference if the inquirer questions the procedure.

A. Green v. Yellow Cab Company

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION
L-51-468

JOHN K. M. GREEN, plaintiff)
) 50 C 1144
V.)
)
YELLOW CAB COMPANY, a corporation)
Defendant)

M O T I O N

Comes now the Railroad Retirement Board by its attorney, OTTO KERNER, JR., United States Attorney for the Northern District of Illinois, and moves the court as follows:

That the subpoena duces tecum issued by this court on October 5, 1951, and directed to the Secretary or Custodian of the records, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, and served upon the aforesaid Myles F. Gibbons on October 5, 1951, returnable to this court on October 8, 1951, at 10:00 o'clock, A.M., and issued on behalf of the Yellow Cab Company, defendant in case No. 50 C 1144, entitled Greene v. Yellow Cab Company, be quashed.

And in support of this Motion the government submits its memorandum of law.

_____
OTTO KERNER, JR.
United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JOHN K. M. GREEN, plaintiff)

	)	50 C 1144
V.	)	
	)	
YELLOW CAB COMPANY, a corporation	)	
Defendant	)	

MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA

The subpoena calls for the production of "Any and all records, compensation or accident reports, medical reports, reports from doctors from time to time made to the Railway Retirement Fund, pertaining to medical examinations made from time to time by them, or any of them, whether in connection with injuries sustained by him at any time or for any other purpose; any and all x-ray films and Roentgenologists' reports in connection with such x-ray films taken of John K. M. Greene, all relating and pertaining to one John K. M. Greene residing at 492 West 1st Street, Galesburg, Illinois; also any and all books, records, documents, reports, papers and memoranda containing information relative to said John K. M. Greene's employment by the Chicago, Burlington Railroad, or any other Railroad, and showing absences from his work for any purpose or reason whatsoever, whether said reason be injury, illness or any other reason.

"The medical reports in the possession of the Railroad Retirement Board have been secured by the Board in the administration of the Railroad Unemployment Insurance Act in connection with the claims of the plaintiff, John K. M. Greene, for benefits under the Act. Similarly, the Board's detailed records of the employment of the plaintiff with the "Chicago, Burlington Railroad", which might be relevant, have been secured by the Board in accordance with the provisions of Section 6 of the Railroad Unemployment Insurance Act. (45 U.S.C., section 356).

Section 12(d), (45 U.S.C., section 362(d) provides as follows:

"Information obtained by the Board in connection with the administration of this Act shall not be revealed or open to inspection nor be published in any manner revealing an employee's identity: Provided, however, that (i) the Board may arrange for the exchange of any information with governmental agencies engaged in functions related to the administration of this Act; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; and (iii) any claimant of benefits under this Act shall, upon his request, be supplied with information from the Board's records pertaining to his claim."

Moreover, with specific reference to medical reports secured under the Act, section 12(n) (45 U.S.C., section 362(n)) provides, in pertinent part, as follows:

"Any doctor who renders any attendance, treatment, attention, or care, or performs any examination with respect to a sickness of an employee or as to the expected date of birth of a female employee's child, or the birth of such a child, upon which a claim or

right to benefits under this Act is based, shall furnish the Board, in such manner and form at such times as the Board by regulations may prescribe, information and reports relative thereto and to the condition of the employee. An application for sickness or maternity benefits under this Act shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness or maternity period upon which such application is based: Provided, that such information shall not be disclosed by the Board except in a court proceeding relating to any claim for benefits by the employee under this Act."

In the face of this plain statutory language there is no occasion for considering cases dealing with the power of government departments or agencies to issue regulations making their records confidential, under general statutory provisions authorizing them to maintain their offices, and to administer the acts under which they operate.

The authority and duty of the Board are fully stated in the statute itself. Under section 12(n) of the Railroad Unemployment Insurance Act the medical records of the Board, which apparently constitute the only possibly important information in the Board's possession, cannot be disclosed by the Board in any circumstance in this case. Under section 12(d) of the Act, the possibly relevant employment history of the plaintiff clearly cannot be disclosed by the Board in the absence of a showing to the Board, and a finding by the Board, that such disclosure would be in the interest of the plaintiff.

_____

OTTO KERNER, JR.
United States Attorney

MYLES F. GIBBONS
General Counsel
Railroad Retirement Board

EDWARD E. REILLY
Assistant General Counsel
Railroad Retirement Board
OF COUNSEL

B. Hubbard V. Southern Railway Company

B.

DECISION UNDER SECTIONS 12(d) and (n) OF THE RAILROAD UNEMPLOYMENT INSURANCE ACT (Hubbard v. Southern Railway Co., 179 F. Supp. 244 (M.D.) Georgia 1959)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

MRS. EMMA NORRIS HUBBARD
V. CIVIL ACTION No. 1593
SOUTHERN RAILWAY COMPANY,
A Virginia Corporation

BOOTLE, District Judge:

Plaintiff, widow of a former employee of the defendant, Southern Railway Company, brought suit for injuries to and for the death of her husband under the Federal Employer's Liability Act. The defendant caused a subpoena duces tecum to be served on H. H. Dashiell, Regional Director, Railroad Retirement Board, Atlanta, Georgia, requiring him to produce: "(a) The entire file related to Robert H. Hubbard, 704-14-0602, and payments made to him for sickness or injury benefits; (b) specifically, the application of Robert H. Hubbard dated March 25, 1956 for sickness benefits; (c) record showing payments made on account of such benefits; (d) any subsequent application made by Hubbard for sickness benefits; (e) any records pertaining to the determination that benefits paid Hubbard from June 19, 1956 through January 15, 1959 were for illness and not for injury; (f) any statement or application made or signed by the deceased in connection with any application made by him for sickness or injury benefits to the Railroad Retirement Board." Thereafter, Dashiell, through the United States Attorney, moved that the subpoena be quashed, contending that he was prohibited from producing the records by the provisions of the Railroad Unemployment Insurance Act, 45 U.S.C. 362(d), 362(n), the Railroad Retirement Board's regulations, 20 C.F.R. 262.16, and by instructions from his superior officers.

The courts have recognized the right of administrative agencies to make reasonable regulations regarding their records and reports and have upheld regulations forbidding agency employees from testifying in suits between private parties concerning the contents of secret official records. Appeal of United States Securities & Exchange Commissions, 226 F. 2d 501, 518, 6th Cir. 1955. The cited case holds that such regulations may be promulgated by important administrative agencies created by Act of Congress, as well as by heads of departments of cabinet rank, page 518. The instant motion to quash the subpoena duces tecum is supported by Mr. Dashiell's testimony to the effect that he complied with the applicable regulations by reporting to the Board the Fact that this subpoena duces tecum had been tendered to him, and was not thereafter authorized by the Board to comply with it.

The particular question before this court at this time is controlled by the cases of

Boske v. Comingore, 177 U.S. 459, 469, 470, 44 L. Ed. 846 (1900), and United States ex rel. Touhy v. Ragen, 340 U.S. 462, 468, 95 L. Ed. 417 (1951). In each case a subordinate employee was held justified in refusing to produce (in Boske, by attaching to a deposition, and in Ragen, in response to a subpoena duces tecum) documents belonging to the department of the United States Government in which the witness was employed, the witness in each case relying upon a regulation promulgated by the head

of his department. The Boske case involved a Collector of Internal Revenue and a regulation by the Secretary of the Treasury. The Ragen cased involved an agent in charge of the Federal Bureau of Investigation and a regulation by the Attorney General.

In the Boske case Mr. Justice Harlan, for the Court, wrote: "The papers in question, copies of which were sought from the appellee, were the property of the United States, and were in his official custody under a regulation forbidding him to permit their use except for purposes relating to the collection of the revenue of the United States. Reasons of public policy may well have suggested the necessity, in the interest of the government, of not allowing access to the records in the offices of collectors of internal revenue, except as might be directed by the Secretary of the Treasury... Great confusion might arise in the business of the department if the Secretary allowed the use of records and papers in the custody of collectors to depend upon the discretion or judgment of subordinates. At any rate, the Secretary deemed the regulation in question a wise and proper one, and we cannot perceive that his action was beyond the authority conferred upon him by Congress. . . In our opinion the Secretary, under the regulations as to the custody, use, and preservation of the records, papers, and property appertaining to the business of his department, may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of the revenue, and reserve for his own determination all matters of that character."

Mr. Justice Reed, for the Court, in the Ragen case said: "When one considers the variety of information contained in the files of any government department and the possibilities of harm from unrestricted disclosure in court, the usefulness, indeed the necessity, of centralizing determination as to whether subpoenas duces tecum will be willingly obeyed or challenged is obvious."

Accordingly, the court is of the opinion that the witness Dashiell, a regional director of the Railroad Retirement Board, and as such a subordinate employee of the Board, is justified in respectfully declining to produce, disclose or deliver the subpoenaed documents, his declination being in strict accord with Sections 262.16(a) and (b) of the Board's Regulations by which he is bound.

The court finds it unnecessary to pass upon the broad questions argued by counsel. It is not necessary here to consider the ultimate reach of the authority of the Board itself to refuse to produce by order of court government papers in its possession. Nor does the court reach the question whether by the provisions of 45 U.S.C.A. 362(d) Congress intended to place the documents here subpoenaed beyond the reach of court processes. Nor does the court reach the other broad question suggested by counsel, whether, if Congress so intended, such provisions might constitute an unconstitutional, unwarranted or impermissible legislative interference with or invasion into purely judicial functions. No opinion is expressed or intimated as to these questions. This ruling is based upon the very much narrower ground above stated.

Accordingly, the motion to quash subpoena duces tecum is hereby granted and sustained, and said subpoena duces tecum is hereby quashed.

This the 9th day of November, 1959

/s/ W.A. BOOTLE
UNITED STATES DISTRICT JUDGE

130.45 Handing Information Requests from Common Sources

130.45.1 Requests from Attorneys

Information, except when medical evidence is involved, can be released without prior written consent to an attorney who claims in writing to represent:

- A beneficiary or potential beneficiary in his claim for benefits under the RR Act; or
- Either party in a civil action involving payments for separate maintenance, alimony, or child support. In this type case, tell the attorney ONLY that there is entitlement and furnish the current benefit rate. See FOM1 135.35.2 for handling inquiries regarding property settlements in divorce proceedings.
- If attorney has an attachment or garnishment court order, see RCM 5.15.25, Court Orders Affecting Annuity Payments

  Note: If a denial of benefits is the issue, be sure to inform the attorney of section 5(i) of the Act concerning fees as explained in AIM 27.

A. Inquiry indicates attorney represents individual

An attorney may be furnished information about an individual if it is reasonably clear that the individual asked the attorney to inquire on his behalf. The following may be proof that the attorney represents the individual:

- The inquiry is accompanied by the individual's letter or quotes from it; or
- The inquiry contains facts that can be inferred to have been supplied by the individual; or
- The attorney refers to the individual as his client or states that he is representing the individual.

Release only the information requested by the attorney at this specific time. Any additional correspondence sent to the individual that pertains to the original request by the attorney should include a copy to the attorney. Always send the individual a copy of any correspondence addressed to the attorney.

For example, an individual files a disability application. A month later a letter is received inquiring on the status of the disability application from an attorney that represents the individual. DBD will reply to this letter. When the case is then rated, it

would be necessary to send the attorney a copy of the disability decision letter that is sent to the individual

B. Inquiry does not indicate that attorney represents individual

When it cannot be inferred from the attorney's letter that he has been authorized by the individual to secure information, release only general information to the attorney. If specific information is requested, furnish it to the individual and advise the attorney that we have furnished the information requested to the individual so that the information may be made available to him immediately if the individual so desires.

130.45.2 Requests from Power-of-Attorney

Filing Power-of-Attorney - Accept any written request as a power-of- attorney when it names and authorizes another person to act for the applicant or annuitant. The signature on the written request does not require formal authentication.

When a power-of-attorney has been filed in a case, take up all matters in the claim with the agent or attorney within the limitations or qualifications, if any, specified in the power-of-attorney.

A power-of-attorney only can be used for information requests; it cannot be used for payment purposes (e.g., change of address).

Cancellation of Power-of-Attorney - A signed request from the annuitant or applicant is sufficient authority to cancel a power-of-attorney. The signature of the person requesting withdrawal does not require formal authentication.

Once a power-of-attorney is withdrawn, do not recognize it again. If representation is desired after cancellation, inform the applicant that a new authorization is required.

130.45.3 Requests for Information from Employers

A. Information that may be disclosed to Employers

Identifying information such as full name, address, DOB, SS No., employee ID number, and date last worked may be released to the last employer to verify entitlement for benefits under the Railroad Retirement Act.

1. Disclosing annuity rates to employers

An employer or an organization under contract to an employer may be told the methods used to calculate the annuity rate, entitlement data, and present address for the purpose of determining entitlement to and rates of private supplemental pensions, sickness or unemployment benefits, and to calculate estimated benefits due.

NOTE: If an employer (with the exception of the Burlington-Northern Santa Fe) requests the annuity rate or other personal information about a person who is not a former employee, forward the request to P&S - RAC.

Benefit rate information of an annuitant may be disclosed to a railroad claims agent under the following circumstances:

- The railroad represented by the claims agent is a former employer to the annuitant.
- The claims agent submits a written request for the information.
- The request indicates that the information is needed to reach a settlement with the annuitant or is related to the litigation involving the annuitant.

2. Burlington Northern – Santa Fe

You may furnish Burlington Northern – Santa Fe (BNSF) the amounts of RRA payments made to its employees or survivors of its employees when this information is requested for purposes of the employer's scholarship plan. Under that plan, the BNSF gives financial help toward the college education of talented children of its employees, both living and deceased.

3. Filing date of employee application

The employee's last employer under the RRA may be furnished the date the employee filed an application for an annuity for use in determining entitlement to continued major medical benefits under insurance programs negotiated with labor organizations.

4. Base-year employers

Base-year employers have the right to protest RUIA payment of benefits to their employees and can be furnished the following information:

- The amount and periods for which benefits are approved.
- Prepayment and post-payment notifications.
- Medical information (if the employer protests the determination allowing benefits and the information is material to the protest).

Occasionally, employers will request information to be used in connection with a claim for damages based on liability for an on-duty injury, such as medical reports or evidence that an employee worked during a period of alleged infirmity. Because this information would be used in the railroad's

legal defense rather than to protest the payment of RUIA benefits, its release is not permitted under section 12(d) of the RUIA.

Only information necessary to administer the RUIA may be released to employers, insurance companies and their agents, such as attorneys or claim agents, without the claimant's authorization. Such information is generally limited to that needed to effect reimbursement under sections 12(o) and 2(f) of the Act and to verify eligibility, as with Form ID-5i. Refer inquiries about the amount of reimbursement due under sections 12(o) and 2(f) of the Act to the customer service section in accordance with DOP/FOM-11-165.

B. Restrictions on Disclosure of Information to Employers

1. DOB of employee - When an employer requests the DOB of an employee, furnish the information without a signed authorization from the employee ONLY if the employer indicates in the request that the data is required for identification purposes. In that event, furnish the birth date shown on service and compensation records (i.e., EDMA, MARC file or Form G-90). Tell the employer that the birth date is from the RRB's compensation records and that it has not been verified.

   If the request for an employee's DOB is for any reason other than identification purposes, the employee must authorize disclosure over his signature.

2. Employee's annuity filing date - Refer any request for the filing date of an annuitant's application to P&S - RAC, except for requests for employee filing date, for purpose shown in FOM1 130.45.3

130.45.4 Requests from Governmental Agencies

A. SSA

You may furnish SSA with the necessary information required for administration of the Social Security Act (SSA) or the SSI program. However, when SSA requests benefit rates for SSI purposes, furnish only the current RRB rate. Under an agreement with SSA, the RRB is not obligated to furnish retroactive annuity rates to SSA for the SSI program. Manually accessible records of past payments are forwarded to SSI. (For RUIA only) Restrict disclosure to benefit amounts, duration and entitlement.) Do not disclose the employee's address or employment history without his or her authorization.

B. Department of Veterans Affairs (VA)

Furnish VA the following information for use in the administration of its veterans benefit programs:

- The amount of the annuity or death benefit paid or payable under the RRA.

- Information about whether a person claimed to be missing is alive, or was alive, following the date of his disappearance.

- Medical records, if available; if not, forward request to DBD.

If the person's claim file does not contain sufficient information, or if the person does not have a file, forward the VA request to the Program Support Division/Clerical Services Section (PSD-CSS).

C. Internal Revenue Service (IRS)

Furnish the Internal Revenue Service (IRS) with information necessary for the administration of the Railroad Retirement Tax Act and the amount of RRA regular and SUP ANN payments. These benefits are taxable under Federal income tax laws.

If IRS requests information about the amount of the lump-sum death benefit, or residual lump-sum payment in a particular case, refer the inquiry to P&S-PAS.

We will furnish the IRS with the most current address for an individual with the assumption that they will use it solely for tax administration purposes only.

D. Government Welfare Agencies

Without authorization, furnish a government welfare agency (i.e., state and local welfare or relief agencies, or public housing authorities, etc.), requested information about the amount, effective date of benefits, or eligibility for benefits, of any person, for use in processing applications or calculating benefits under that agency's program(s). If such information is requested for a purpose other than a routine uses (for example, fraud investigation) see FOM1 130.45.4G

E. Members of Congress or Presidential Offices

RRB may recognize, without power-of-attorney, a Member of Congress or Presidential Offices as an applicant's or annuitant's duly authorized representative, if such recognition appears to be in his interest. Presume it is in his interest if there is no evidence to the contrary.

A Member of Congress may be given:

- Information about the award or denial of his constituent's claim,

- The amounts of annuities and accruals when necessary to explain the award,

- The annuitant's address if the intent is to communicate with the annuitant about legislation which affects the railroad retirement system,

- Any other information necessary to answer the inquiry and which it would be reasonable to assume the constituent would have contemplated being disclosed.

- Route any inquiry from a member of Congress to the Congressional Inquiry Section in the Office of Public Affairs.

Exception: Requests for address lists of constituents should be referred to P&S-RAC for handling.

F. State Authorities

Furnish the agency of any state of the U.S. charged with administration of taxing laws:

- The amount of lump-sum death payments, SUP ANN, or accrued annuities in death cases; and
- The name of the person(s) to whom such amount was payable.

A state taxing authority also may be furnished a beneficiary's SS number for tax purposes only.

Furnish the agency of any state of the U.S. charged with administration of unemployment laws the amount payable to a person under the RRA or RUIA. This applies to both life and death cases and to both recurring and non-recurring payments.

G. Law Enforcement Agencies

When a request for personal records is received from any governmental agency (Federal, state, or local), for the purpose of anticipated civil or criminal law enforcement activity, the information may be furnished if:

1. A written request is made by the head of the agency (this includes anyone from the requesting agency to whom authority has been delegated, down to the level of section head) specifying the portion of the individual's record that is desired; and
2. The request states the law enforcement reason the individual's record is required; and
3. Disclosure would not be prohibited by sections l2 (d) or l2 (n) of the RUIA.
4. The employee is liable for child support or alimony. Do not disclose the employee's address or employer without authorization.

130.45.5 Requests from Non-Governmental Organizations

A. Parent Locator Service

The last known addresses and employer information may be released to Department of Health and Human Services in conjunction with the Parent

Locator Service. If an inquiry is received from one of the State Parent Locator Services refer the inquirer to:

Department of Health and Human Services
Office of Child Support Enforcement
330 C Street, SW
Washington, DC 20201

If an inquiry is received from someone other than HHS or one of the state agencies, inform the inquirer that he must first contact the State Parent Locator Service. (Refer to FOM135.45 for State Parent Locator).

B. Labor Organization Representative

RRB may recognize, without power-of-attorney, a railway labor organization official as an applicant's duly authorized representative. The official:

- Must be a person designated by the employee's railway labor organization to act in behalf of members of that organization, and
- May be recognized only with respect to his own class or craft of employees and not with respect to any other class or craft of employees. The individual may be assumed to represent the employee if he is a member of the same class or craft as the employee.
- May be given information about the award or denial of the applicant's claim. He may also be furnished the amounts of annuities and accruals when necessary to explain an award.

Route any inquiry from an official of a labor organization (other than local lodge to Director of Operations).

C. Consular Officers

RRB may disclose information to a consular officer, even though he does not hold a power-of-attorney, when all of the following conditions are met:

The requested information does not appear to be detrimental to the interest of the applicant or to be against the public interest.

The requested information is pertinent to the applicant's RRA or RUIA claim and is information which we would release to the applicant himself if he requested it.

The consular officer represents a country to which U.S. Treasury checks are sent and is acting on behalf of an applicant who is a fellow countryman.

D. Public Advocacy Columns

We may answer news media requests (i.e., Action Line) made on behalf of the railroad public because the individual's consent is implied by his seeking the

assistance of the media entity. The extent of the data furnished to the media should be dictated by the scope of the individual's request.

When a copy of the individual's written request is not available, any response should not include personal data (e.g., age, marital status, benefit amounts, detailed employment history, etc.).

If the information to be released is sensitive, or if you believe that the employee may not have anticipated the release of such sensitive information to the advocacy service, release a general letter to the service and a detailed letter to the employee.

If the request received cannot be handled expeditiously in the field office, forward it to the Office of Public Affairs.

E. Insurance Companies

Some companies contract with Disability Insurance carriers who offset their benefits by amounts paid by the RRB. These companies help claimant's complete forms, organize and gather information, and keep them informed of the status of their claims

If an authorization for release of information and a designation of representation are received in connection with a claim for benefits, all information requested, including medical evidence can be provided. In addition, information about the award or denial of benefits should be sent to the designated representative.

If no designation of representation is filed, the only information which may be disclosed would be governed by the authorization for the release of information submitted with the request. In these cases, medical information could only be disclosed directly to the employee.

If a designation of representation is filed without an authorization for release of information, no information can be released to the designated representative until an authorization for release is received.

These requests are handled by the Retirement and Survivor Customer Service Representatives and DSUBD employees. Any questions about the release of information to insurance companies should be referred to Director of Operations.

NOTE: MetLife Requests

A special handling procedure is used for responding to group life insurance policy requests received from MetLife. Due to the high volume of monthly requests, and to expedite handling, RRB information is furnished to MetLife using email. An RRB designed Microsoft Word form is stored at MetLife for transmission. MetLife completes identifying information and sends the form to an Outlook mailbox named PSD-MetLife. Program Support Division/Clerical Service Section will open

the mail and complete information blocks on the form. The completed form is then returned to the MetLife benefit authorizer's email address.

F. Private Organizations

Information may not be released to private organizations for the purpose of soliciting memberships or any other reason. In Association of Retired Railroad Workers, Inc. v. U.S. R.R.B., the U.S. Court of Appeals in Washington, D.C. ruled that such disclosure is prohibited under exemptions in the FOIA.

130.50 Confirming Identity of Callers

An individual who requests access to or information about personally identifiable records must supply adequate identifying information (i.e., full name, social security number, claim number, date of birth, etc.), to ensure the release of personal information only to the correct party. This section contains guidelines for verifying the identity of callers and procedures on what to do if a caller's identity cannot be verified. **This section should ONLY be used to confirm the identity of active and former railroad employees and their spouses, and annuitants/beneficiaries (employee, spouse and survivors) and their spouses. For all other callers refer to the appropriate sections of FOM1 130, Release of Information, Disclosure of Information; Freedom of Information Act, Privacy Act and Release of Information.**

Note: The vast majority of questionable inquiries may come from an elderly person who is being assisted by a family member or friend. In these cases, the person helping the beneficiary is making the telephone call and should be able to hand the telephone over to the annuitant/beneficiary who can provide the identifying information. The annuitant/beneficiary can then verbally consent and authorize the RRB representative to speak and conduct business with the person providing the assistance.

* Special Instructions: Because claims representatives have frequent dealings with some individuals, claims representatives are not required to go through all the questions to verify the identity of a caller if the claims representative knows the person he or she is speaking with.

If the Contact is:	General caller
and **Type of Request is:**	General inquiry where no specific benefit information is divulged.
then **You Must:**	No verification is necessary
then **You Can:**	Release general information

If the Contact is:	The Beneficiary or Employee (* See Special Instructions Above)
and **Type of Request is:**	• Add or modify Direct Deposit; • Change address; • Inquiry regarding benefit payments (RUIA and RRA); • Retirement or Survivor annuity estimate; • Medicare entitlement or inquiry about the amount of Part B premium deductions; • Tax withholding amounts; • Status of Retirement annuity;
Then **You Must:**	Verify the identity of the beneficiary or employee by asking for his/her: • Social Security number and/or Railroad Retirement claim number; • Full name; • Address; • Current Direct Deposit Account Number (if request is to modify Direct Deposit). Exception: Direct Express account numbers are internal and not given out to annuitants. Nonetheless, ask for the card number to confirm that the caller is aware that payments are sent via Direct Express. The Direct Express card number is 16-digits and always starts with the digits "5332". • Date of birth; **and** • One additional piece of information such as: o Monthly benefit amount (RRA) or type of benefit – UI or SI **and** amount of last payment (RUIA) o RUIA PIN – If employee is receiving RUIA benefits o Name of last railroad employer and/or employee ID number
Then **You Can:**	Release any entitlement and claim information and answer any questions pertaining to that beneficiary/employee. You may add or change any Direct Deposit information, as well as change of address information.

If the Contact is:	The Beneficiary or Employee
and **Type of Request is:**	• Add or modify Direct Deposit; • Change address; • Inquiry regarding benefit payments (RUIA and RRA); • Retirement or Survivor annuity estimate;

	• Medicare entitlement or inquiry about the amount of Part B premium deductions; • Tax withholding amounts; • Status of Retirement annuity;
And:	The beneficiary or employee makes a mistake on the information (Social Security number and/or Railroad Retirement claim number; full name; address; date of birth; or additional piece of information) used to verify his/her identity.
then **You Must:**	Explain to the beneficiary or employee that the information does not match the information in the RRB's records. Ask him/her to repeat the information, and if still incorrect, suggest that the beneficiary look at his/her records to find the correct information, or ask a family member or friend to help secure the information.
then **You Can:**	If the beneficiary or employee is able to provide the correct information, handle according to the instructions above. If the beneficiary or employee is unable to provide the correct information, do NOT release any entitlement, claim information, add or modify Direct Deposit, make address changes or assist with a password request code (PRC). However, certain requested information may be mailed to the address on record. Likewise, if the caller's identity remains questionable require that any change to account information (COA or Direct Deposit) is submitted in writing. Advise the beneficiary or employee that the information is protected under the Privacy Act and it is for their protection that we will not release the information.

If the Contact is:	A Beneficiary's Spouse
and **Type of Request is:**	General inquiries where no specific benefit information is divulged.
Then **You Must:**	No verification is necessary
then **You Can:**	Release general information

If the Contact is:	A Beneficiary's Spouse
and **Type of Request is:**	• Add or modify Direct Deposit; • Change address; • Inquiry regarding benefit payments (RUIA and RRA); • Retirement or Survivor annuity estimate; • Medicare entitlement or inquiry about the amount of Part B premium deductions; • Tax withholding amounts; • Status of Retirement annuity;
And:	The beneficiary gives verbal consent or authorization for you to speak and conduct business with the spouse. (The beneficiary does not have to remain on the line during the conversation.)
then **You Must:**	Make sure you verify the identity of the beneficiary by asking the beneficiary for his/her: • Social Security number and/or Railroad Retirement claim number; • Full name; • Address; • Current Direct Deposit Account Number (if request is to modify Direct Deposit). Exception: Direct Express account numbers are internal and not given out to annuitants. Nonetheless, ask for the card number to confirm that the caller is aware that payments are sent via Direct Express. The Direct Express card number is 16-digits and always starts with the digits "5332". • Date of birth; **and** • One additional piece of information such as: o Monthly benefit amount (RRA) or type of benefit – UI or SI **and** amount of last payment (RUIA) o RUIA PIN – If employee is receiving RUIA benefits o Name of last railroad employer and/or employee ID number
then **You Can:**	Release any entitlement and claim information and answer any questions pertaining to that beneficiary. You may add or change any Direct Deposit information, as well as change of address information.

If the Contact is:	A Beneficiary's Spouse
and **Type of Request is:**	• Add or modify Direct Deposit; • Change address; • Inquiry regarding benefit payments (RUIA and RRA); • Retirement or Survivor annuity estimate; • Medicare entitlement or inquiry about the amount of Part B premium deductions; • Tax withholding amounts; • Status of Retirement annuity;
And:	The beneficiary is not available to verbally consent or authorize you to speak with the spouse and there is no written consent on file.
Then **You Must:**	Advise the spouse that you may not give out any information without the beneficiary's consent or authorization. The spouse may call back at a later time when the beneficiary is present to give consent or authorization. -or- The beneficiary could provide written consent or authorization to allow the spouse to obtain information about his or her record.
Then **You Can:**	DO NOT release any entitlement, claim information, add or modify Direct Deposit, make address changes or assist with a password request code (PRC). However, certain requested information may be mailed to the address on record. Likewise, if the caller's identity remains questionable require that any change to account information (COA or Direct Deposit) be submitted in writing. Advise the spouse that the information is protected under the Privacy Act and it is for the beneficiary's protection that we will not release the information.

If the Contact is:	A Beneficiary's Spouse
and **Type of Request is:**	• Add or modify Direct Deposit; • Change address; • Inquiry regarding benefit payments (RUIA and RRA); • Retirement or Survivor annuity estimate;

	• Medicare entitlement or inquiry about the amount of Part B premium deductions; • Tax withholding amounts; • Status of Retirement annuity;
And:	The RRB has a written consent or authorization on file that allows us to give beneficiary specific information to the spouse. See the Note at the end of this chart for information regarding written consent/authorization.
then **You Must:**	• The spouse must provide the beneficiary's: • Social Security number and/or Railroad Retirement claim number; • Full name; • Address; • Current Direct Deposit Account Number (if request is to modify Direct Deposit). Exception: Direct Express account numbers are internal and not given out to annuitants. Nonetheless, ask for the card number to confirm that the caller is aware that payments are sent via Direct Express. The Direct Express card number is 16-digits and always starts with the digits "5332". • Date of birth; **and** • One additional piece of information such as: o Monthly benefit amount (RRA) or type of benefit – UI or SI **and** amount of last payment (RUIA) o RUIA PIN – If employee is receiving RUIA benefits o Name of last railroad employer and/or employee ID number Ensure that the spouse is the authorized individual and the written authorization is still valid.
then **You Can:**	Only discuss information or take action as authorized by the written consent/authorization.

Note: A written consent/authorization must:

- Be signed and dated by the beneficiary;
- Specify the individual to whom information may be disclosed;
- Specify the type of information that may be disclosed; and

- Indicate whether the consent is a one-time, a limited time, or an ongoing release.

Exhibits

Exhibit 1 - Section of 1937 Railroad Retirement Act United States Code Equivalent

Section 1(a) through (q)	45 U.S.C. 228 a (a) through 228 a (q)
Section 2(a) 1	45 U.S.C. 228 b (a) 1
Section 2(a) 2	45 U.S.C 228 b (a) 2
Section 2(a) 3	45 U.S.C. 228 b (a) 3
Section 2(a)4	45 U.S.C. 228 b (a)4
Section 2(a) 5	45 U.S.C. 228 b (a) 5
Section 2(b) through 2(j)	45 U.S.C. 228 b (b) through 228 b (j)
Section 3(a) (1)	45 U.S.C. 228 c (a) (1)
Section 3(a) (2)	45 U.S.C. 228 c (a) (2)
Section 3(b) (1)	45 U.S.C. 228 c (b) (1)
Section 3(b) (2)	45 U.S.C. 228 c (b) (2)
Section 3(b) (3)	45 U.S.C. 228 c (b) (3)
Section 3(c) through 3(e)	45 U.S.C. 228 c (c) through 228 c (e)
Section 3(f)(1)	45 U.S.C. 228 c (f) (1)
Section 3(f)(2)	45 U.S.C. 228 c (f) (1)
Section 3(f)(3)	45 U.S.C. 228 c (f) (3)
Section 3(f)(4)	45 U.S.C. 228 c (f) (4)
Section 3(f)(5)	45 U.S.C. 228 c (f) (5)
Section 3(f)(6)	45 U.S.C. 228 c (f) (6)
Section 3(g) through 3(i)	45 U.S.C. 228 c (g) through 228 c (i)

Section 3(j)(1)	45 U.S.C. 228 c (j) (1)
Section 3(j)(2)	45 U.S.C. 228 c (j) (2)
Section 3(j)(3)	45 U.S.C. 228 c (j) (3)
Section 3(j)(4)	45 U.S.C. 228 c (j) (4)
Section 4(a)	45 U.S.C. 228 c -1(a)45 U.S.C. 228 c -1(p)
Section 5(a) 1	45 U.S.C. 228 e (a) (1)
Section 5(a) 2	45 U.S.C. 228 e (a) (2)
Section 5(b) through 5(e)	45 U.S.C. 228 e (a) through 228 e (e)
Section 5(f)(1)	45 U.S.C. 228 e (f) (1)
Section 5(f)(2)	45 U.S.C. 228 e (f) (2)
Section 5(g)(1)	45 U.S.C. 228 e (g) (1)
Section 5(g)(2)	45 U.S.C. 228 e (g) (2)
Section 5(h)	45 U.S.C. 228 e (h)
Section 5(i)(1)	45 U.S.C. 228 e (i) (1)
Section 5(i)(2)	45 U.S.C. 228 e (i) (2)
Section 5(i)(3)	45 U.S.C. 228 e (i) (3)
Section 5(i)(4)	45 U.S.C. 228 e (i) (4)
Section 5(i)(5)	45 U.S.C. 228 e (i) (5)
Section 5(j)	45 U.S.C. 228 e (j)
Section 6(a) through 6(c)	45 U.S.C. 228 f (a) through 228 f (c)
Section 8	45 U.S.C. 228 h
Section 9(a) through 9(d)	45 U.S.C. 228 i (a) through 228 i (d)
Section 19(a) and 19(d)	45 U.S.C. 228 s (a) and 228 s (b)
Section 20	45 U.S.C. 228 s -1

Section 21(a) through 21(e)	45 U.S.C. 228 s -2 (a) through 228 s -2 (e)

Exhibit 2 - Section of 1974 RR Act - US Code Equivalent

Section of 1974 Railroad Retirement Act	United States Code Equivalent	Section Titles and Subject matter Covered by Subsections
Title 1		
Section 1	45 U.S.C. 231	Definitions
1(a)	45 U.S.C. 231(a)	Employer
1(b)	45 U.S.C. 231(b)	Employee
1(c)	45 U.S.C. 231(c)	Employer Representative
1(d)	45 U.S.C. 231(d)	In Service of An Employer
1(e)	45 U.S.C. 231(e)	In Employment Relation
1(f)	45 U.S.C. 231(f)	Years of Service
1(g)	45 U.S.C. 231(g)	In Military Service
1(h)	45 U.S.C. 231(h)	Compensation
1(i)	45 U.S.C. 231(i)	Board
1(j)	45 U.S.C. 231(j)	Company
1(k)	45 U.S.C. 231(k)	Officers
1(l)	45 U.S.C. 231(l)	Person
1(m)	45 U.S.C. 231(m)	United States
1(n)	45 U.S.C. 231(n)	Social Security Act
1(o)	45 U.S.C. 231(o)	Current Connection
1(p)	45 U.S.C. 231(p)	Annuity
1(q)	45 U.S.C. 231(q)	Quarter: Calendar Quarter

1(r)	45 U.S.C. 231(r)	Permanently Insured Under the SS Act
Section 2	45 U.S.C. 231a	Annuity Eligibility Requirements
2(a)(1)	45 U.S.C. 231a(a)(1)	Employee Annuities
2(a)(2)	45 U.S.C. 231a(a)(2)	Standards For Occupational Disability
2(a)(3)	45 U.S.C. 231a(a)(3)	Proof of Disability
2(b)	45 U.S.C. 231a(b)	Supplemental Annuity
2(c)	45 U.S.C. 231a(c)	
2(d)	45 U.S.C. 231a(d)	Survivor Insurance Annuities
2(e)	45 U.S.C. 231a(e)	LPS, R or R, Return to LPS
2(f)	45 U.S.C. 231a(f)	SS Work Restrictions For Employee and Spouse
2(g)	45 U.S.C. 231a(g)	SS and RR Work Restrictions For Survivors
2(h)	45 U.S.C. 231a(h)	Reductions In Annuities
Section 3	45 U.S.C. 231b	Computation of Employee Annuities
3(a)	45 U.S.C. 231b(a)	Social Security Component
3(b)	45 U.S.C. 231b(b)	1937 Act Computation With Imputed SS Benefit Offset
3(c)	45 U.S.C. 231b(c)	Pre-1975 Service Computation
3(d)	45 U.S.C. 231b(d)	Post 1974 Service Computation Formula With COL Included
3(e)	45 U.S.C. 231b(c)	SUP ANN Computation
3(f)	45 U.S.C. 231b(f)	Maximum Payable At ABD, GF Clause, and the O/M Guaranty

3(g)	45 U.S.C. 231b(g)	COL Increase-ABD Before Effective Date of COL Increase
3(h)	45 U.S.C. 231b(h)	Windfall
3(i)	45 U.S.C. 231b(i)	Years of Service--S/S, M/S, and P/S
3(j)	45 U.S.C. 231b(j)	Average Monthly Compensation
3(k)	45 U.S.C. 231b(k)	Employee Representative Treated Same As Employee
3(l)	45 U.S.C. 231b(l)	Separate Reduction of increase
3(m)	45 U.S.C. 231b(m)	Reduction For SS Act Benefit
Section 4	45 U.S.C. 231c	Computation of Spouse and Survivor Annuities
4(a)	45 U.S.C. 231c(a)	SS Component For Spouse
4(b)	45 U.S.C. 231c(b)	RR Component For Spouse
4(c)	45 U.S.C. 231c(c)	Maximum Employee and Spouse Annuity
4(d)	45 U.S.C. 231c(d)	COL Increase For RR Component
4(e)	45 U.S.C. 231c(e)	Windfall For Spouse
4(f)	45 U.S.C. 231c(f)	SS Component For Survivor
4(g)	45 U.S.C. 231c(g)	RR Component For Survivor With Spouse Minimum Guaranty
4(h)	45 U.S.C. 231c(h)	Windfall For Widow
4(i)	45 U.S.C. 231c(i)	Spouse Reduction For SS Act WIB and Spouse and Survivor Reduction RR Annuity
Section 5	45 U.S.C. 231d	Annuity Beginning and Ending Dates

5(a)	45 U.S.C. 231d(a)	ABD For Annuities
5(b)	45 U.S.C. 231d(b)	Application For Annuity
5(c)(1)	45 U.S.C. 231d(c)(1)	Termination of A&S and SUP Annuities
5(c)(2)	45 U.S.C. 231d(c)(2)	Termination of Employee Disability Annuities
5(c)(3)	45 U.S.C. 231d(c)(3)	Termination of Spouse Annuity
5(c)(4)	45 U.S.C. 231d(c)(4)	Termination of Aged Widow(er)'s Annuity
5(c)(5)	45 U.S.C. 231d(c)(5)	Termination of Disabled Widow(er)'s Annuity
5(c)(6)	45 U.S.C. 231d(c)(6)	Termination of Mother's Annuity
5(c)(7)	45 U.S.C. 231d(c)(7)	Termination of Child's Annuity and Reentitlement
5(c)(8)	45 U.S.C. 231d(c)(8)	Termination of Parent's Annuity
Section 6	45 U.S.C. 231e	Lump-Sum Payments
6(a)	45 U.S.C. 231e(a)	Annuities Due But Unpaid At Death
6(b)	45 U.S.C. 231e(b)	Lump-Sum Death Payment
6(c)	45 U.S.C. 231e(c)	Residual Lump Sum
6(d)	45 U.S.C. 231e(d)	Tax Refund
Section 7	45 U.S.C. 231f	Powers and Duties of the Board
7(a)	45 U.S.C. 231f(a)	Composition of the Board
7(b)(1)	45 U.S.C. 231f(b)(1)	General Authority To Administer RR Act
7(b)(2)	45 U.S.C. 231f(b)(2)	General Authority to Administer SS Act Provisions

7(b)(3)	45 U.S.C. 231f(b)(3)	Specific Powers and Authority to Delegate
7(b)(4)	45 U.S.C. 231f(b)(4)	Certification To the Treasury
7(b)(5)	45 U.S.C. 231f(b)(5)	Authority to Issue Rules and Regulations
7(b)(6)	45 U.S.C. 231f(b)(6)	Authority to Maintain Records and Secure Information
7(b)(7)	45 U.S.C. 231f(b)(7)	HHS and RRB Record Exchanges
7(b)(8)	45 U.S.C. 231f(b)(8)	Verifying Records of M/S and Benefits Based on It
7(b)(9)	45 U.S.C. 231f(b)(9)	Employees and Offices of the Board
7(c)(1)	45 U.S.C. 231f(c)(1)	Payment From RR and SUP Accounts
7(c)(2)	45 U.S.C. 231f(c)(2)	Financial Interchange
7(c)(3)	45 U.S.C. 231f(c)(3)	Rate Interest
7(d)(1)	45 U.S.C. 231f(d)(1)	Administration of Medicare Program
7(d)(2)	45 U.S.C. 231f(d)(2)	Qualified RR Medicare Beneficiaries
7(d)(3)	45 U.S.C. 231f(d)(3)	DIB Insured Status Deeming Provision
7(d)(4)	45 U.S.C. 231f(d)(4)	Medicare Provisions for Canada
7(d)(5)	45 U.S.C. 231f(d)(5)	Exchange of Information Between RRB and HEW
7(e)	45 U.S.C. 231f(e)	Authority to Accept Gifts
Section 8	45 U.S.C. 231g	Court Jurisdiction Provisions for Court Review

Section 9	45 U.S.C. 231h	Returns of Compensation Reports of Compensation and Finality of Such Reports
Section 10	45 U.S.C. 231i	Erroneous Payments
10(a)	45 U.S.C. 231i(a)	Authority to Recover Erroneous Payments
10(b)	45 U.S.C. 231i(b)	Manner of Recovery
10(c)	45 U.S.C. 231i(c)	Authority to Waiver Recovery
10(d)	45 U.S.C. 231i(d)	Certifying Officer Not Liable For Erroneous Payment
Section 11	45 U.S.C. 231j	Waiver of Annuities Makes Provision For Waiver of an Annuity
Section 12	45 U.S.C. 231k	Incompetence
12(a)	45 U.S.C. 231k(a)	RRB Authority When Beneficiary Is Incompetent
12(b)	45 U.S.C 231k(b)	Authority to Deal With Guardian
Section 13	45 U.S.C. 231l	Penalties
13(a)	45 U.S.C. 231l(a)	Penalty Provision and Fines
13(b)	45 U.S.C. 231l(b)	Collection and Crediting of Fines
Section 14	45 U.S.C. 231m	Exemption From Legal Process Except SUP ANN Is Subject to Tax (Annuities May be Attached or Garnished Under Social Services Amendments of 1974)
Section 15	45 U.S.C. 231n	Railroad Retirement Account
15(a)	45 U.S.C. 231n(a)	Continuation of 1937 Act Provision For RR Account
15(b)	45 U.S.C. 231n(b)	Appropriation For M/S

15(c)	45 U.S.C. 231n(c)	Continuation of 1937 Act Provisions For SUP ANN Account
15(d)	45 U.S.C. 231n(d)	Appropriation Because of 1974 RR Act
15(e)	45 U.S.C. 231n(e)	Investment of Funds
15(f)	45 U.S.C. 231n(f)	Actuarial Advisory Committee
15(g)	45 U.S.C. 231n(g)	Annual Report to Include Status of Accounts
Section 16	45 U.S.C. 231o	Private Pensions No Restriction on Payment of Private Pensions
Section 17	45 U.S.C. 231p	Free Transportation Carriers Permitted to Furnish Free Transportation to Annuitants
Section 18	45 U.S.C. 231q	Crediting Service Under the Social Security Act
Section 19	45 U.S.C. 231r	Automatic Benefits Eligibility Requirement Adjustments
19(a)	45 U.S.C. 231r(a)	SS Eligibility Changes Apply Similarly For SS Component of Annuity
19(b)	45 U.S.C. 231r(b)	New SS Beneficiaries Also Acquire RR Annuity Eligibility
19(c)	45 U.S.C. 231r(c)	New Medicare Benefits For SS Act Beneficiaries Apply to RR Act Beneficiaries
19(d)	45 U.S.C. 231r(d)	Limits Life Cases to Those With 10 Years of Service and Survivor Cases to Those Where the Employee Has 10 Years of Service and A C/C
Section 20	45 U.S.C. 231s	Separability

		Invalidity of One Provision Does Not Affect Other Provisions
Section 21	45 U.S.C. 231t	Short Title Railroad Retirement Act of 1974

General guidelines for replies to retirement program and related inquiries are included in this chapter. The list of topics covered does not exhaust all possible subjects of inquiry. Methods of handling inquiries relating to specialized areas covered in other articles of the FOM are incorporated with those subjects where possible.

This chapter is designed to consider procedures that can be generalized in handling most areas of inquiry. Use these guidelines in conjunction with Freedom of Information and Privacy Act directives outlined in FOM-1-130.

Always check on-line systems before routing inquiries to headquarters. See RCM 10.2.8 for a detailed description of these systems. Refer to RCM 10.2.2 for a list of commonly used terms and their definitions.

135.5 Field Office Inquiries to the Bureau Field Service (BFS)

135.5.1 General Description of Inquiries to BFS

Direct general case and procedural inquiries to BFS through the Network office via electronic mail. This alerts the office of the problems and/or trends that may be affecting employees within their jurisdiction. When sending procedural inquiries to BFS group mailbox, include the following items in the inquiry:

- Description of the problem/question/incident
- Claim number of case involved, if any
- Description of actions taken to investigate or solve the problem

135.5.1.1 General case inquiries include:

- Reports of circumstances that affect or involve more than one case.
- Inquiries related to application error notices.

135.5.1.2 Procedural Inquiries include:

- Requests for special guidance or interpretation in unusual circumstances not specifically covered in procedure.
- Questions about use of resources **provided** for assistance and guidance in serving the railroad public.
- Questions concerning principles, practices, or procedure (including questions concerning computations).

- Request for interpretation of procedures

135.10 Field Office Inquiries to Headquarters

135.10.1 General Description of Inquiries

It may be necessary to make inquiries and reports for special handling, information, or assistance. To assure that service is provided with the least possible inconvenience or delay, become familiar with the information contained in this chapter and adhere to its guidelines.

The inquiries will usually fall into the following general categories:

- Status inquiries,
- Reports of critical circumstances,
- Questions concerning assignments,
- Requests for information from a file.

135.10.2 Handling Specific Types of Inquiries

The majority of inquiries are related to individual cases. The method used to transmit the inquiry will depend primarily upon the type of case involved and whether the case is currently active. It is also important to determine if the inquiry is priority or non-priority in order to establish a response time. Priority cases include critical or dire need, delayed initial cases in which no partial is in force, reinstatements, erroneous reports of death, etc. Non-priority cases include recalculation attainments, cost-of-living rejects, status of final with partial rate in force, etc. Always make full use of the on-line data available before making an inquiry. Refer to RCM 10.3 for a list RRB systems and Non-RRB systems.

If the inquiry cannot be answered without contacting headquarters, send an electronic mail or written memoranda to the unit responsible. In a dire need, critical or VIP situation, a phone call is appropriate.

Effective 10-01-2000, Retirement Benefit Division (RBD) stopped creating paper claim folders for initial applications. Effective 10-01-2001, Survivor Benefits Division (SBD) stopped creating paper claim folders for initial applications. For inquiries on applications filed 10-01-2000 or later check Work Desk for a list of Railroad Retirement Act (RRA) imaged documents. Folders are still being created for Disability Benefit Division (DBD) to house medical evidence only.

135.10.3 Using the Different Forms of Communication for Initial Inquiries

135.10.3.1 Electronic Mail

Electronic mail is the preferred form for making inquiries on cases. Most e-mail inquiries will be made on standard inquiry patterns established in Outlook. Inquire about only one case in each e-mail message.

When preparing the inquiry message, include any information available (e.g., AFCS location, status message on REQUEST, etc.), that will expedite the response time. Make sure the RRB claim number is shown.

Inquiries on initial social security payments should include the beneficiary's social security number and/or social security claim number, the date of entitlement to benefits and the RRB claim number.

Railroad Unemployment Insurance Act (RUIA) non-receipt inquiries should include the claim number, claim period beginning date and processing date.

Certain formats require a time frame for a response to the inquiry. It is important that these time frames be indicated, as the adjudication units use these time frames to initially screen through the incoming mail. For inquiries to units in Operations, refer to the Headquarters Communications Reference Chart on Boardwalk under the Office of Programs.

If a format used does not call for a response time, it is not necessary to designate one. If an application is pending at the time of the inquiry, indicate this in the message.

135.10.3.2 Telephone Inquiries

A telephone call is the appropriate form of communication in the following instances:

- VIP inquiries (labor, management, Congressional).
- Dire need inquiries.
- Situations too lengthy or complicated to communicate via electronic mail or in writing.
- Cases in which the field office manager believes a telephone call is warranted (suicide threat, monthly cut-off date approaching).

Do not handle routine matters by telephone.

Retirement and Survivor units have Customer Service Representatives (CSR) to handle incoming telephone calls and written inquiries. Contact a CSR unless returning a specific examiner's call. In the event that a CSR is not available to handle incoming

inquiries, call the appropriate section supervisor. For inquiries to units other than retirement or survivor, call that section or unit supervisor; refer to Headquarters Communications Reference Chart.

Relate identifying information and the problem to staff taking the call. Be sure to advise the person about any outstanding assignment, or prior and current communication concerning the case. All telephone inquiries are to be entered into the Contact Log (refer to FOM1 1592).

135.10.3.3 Written Inquiries

Limit written memoranda to transmitting documents or other correspondence. These would include requests for reconsideration and/or possibility of waiver of overpayments. See 135.10.5 for guidelines and routing details.

135.10.4 Routing Inquiries to RBD, SBD and DBD Via Electronic Mail

Always check AFCS for the folder location and USTAR for pending or completed action. Refer to the Headquarters Communications Reference Chart on RRB intranet for a description of functions and proper mail procedure for each division at RRB.

135.10.5 Routing Inquiries to Units

Direct electronic mail only to the unit that is responsible for handling the inquiry based on the Headquarters Communications Reference Chart. The receiving unit will respond to the inquiry and request the folder if necessary. Indicate the AFCS charge, if available, at the time of your inquiry.

If a written memorandum is necessary, forward it to the unit responsible for handling the inquiry, in a plain envelope, or use a G-26 Route Slip.

In critical, dire need or VIP cases, direct a phone call to the unit that would handle the response, advising of the current file charge if a folder exists.

135.10.5.1 Unemployment and Program Support Division (UPSD) Tax Clerical and Imaging Section (UPSD-TCIS).

Refer to RCM 10.2.8.6

135.10.5.2 Bureau of Fiscal Operations – Debt Recovery Division (BFO/DRD)

Refer to RCM 10.2.8.24

135.10.5.3 RECONSIDERATION (RECON)

Refer to RCM 10.2.8.5

135.10.5.4 Hearing & Appeals (H&A)

Refer to RCM 10.2.8.4

135.10.5.5 Office of General Counsel (OGC)

Refer to RCM 10.2.8.25

135.10.5.6 Survivor Benefits Division (SBD)

Refer to RCM 10.2.8.11

135.10.5.7 Retirement Benefits Division (RBD)

Refer to RCM 10.2.12

135.10.5.8 Unemployment and Programs Support Division (UPSD) – Clerical Services Unit UPSD-CSU

Refer to RCM 10.2.8.8

135.10.5.9 Congressional Inquiry Section (CIS)

Refer to RCM 10.2.8.9

135.10.5.10 Office of Public Affairs (OPA)

Refer to RCM 10.2.8.10

135.10.5.11 A&T – Compensation and Employer Service Center (CESC)

Refer to RCM 10.2.8.3

135.10.5.12 Disability Benefit Division (DBD)

Refer to RCM 10.2.8.13

135.10.5.13 Policy & Systems (P&S)

Refer to RCM 10.2.8.26

135.15 Tracing Inquiries

135.15.1 General

If the inquiry is not responded to within the proper time frame, trace the inquiry for status. Before tracing, check AFCS and the other on-line systems for status. Cases handled folderless will not show any folder activity on AFCS. In this situation check USTAR. Allow the proper response time for the tracer action before tracing to the next level. Allow five workdays for a response to the first tracer and two workdays for a response to the second tracer. This is the standard tracing time period for most units in Operations.

If it is necessary to contact a HQ director or chief, the contact must be made by a BFS Network Manager. Briefly state the facts and actions taken in the case. Include the dates of the previous inquiries and to whom the inquiries were directed.

It is suggested to use the same mode of communication when tracing. For instance, if the original inquiry was by e-mail, continue by that medium. If by telephone, continue by telephone.

It is acceptable to trace an electronic mail or written inquiry by telephone in the following situations:

- The designated time frame has not elapsed and the case becomes critical.
- Delayed cases.
- No reply is received, the appropriate systems have been checked, the folder is returned to Claim Files and the requested action was not completed.
- No activity is shown on USTAR.

135.15.1.1 Electronic Mail Inquiries

Trace initial e-mail inquiries when the proper time frame has elapsed from the date of the inquiry (10 or 30 days). The appropriate time frame should have been indicated on your initial e-mail message according to the guidelines in FOM 135.10.3. Refer to the HQ Communications Reference Chart on RRB intranet for units and their tracing schedule. Indicate on the message that this is a tracer. Direct the tracer message as outlined in the next section.

135.15.1.2 Written of Fax Inquiries

Allow at least 30 calendar days from the date of the inquiry, if necessary trace. It is acceptable to trace via e-mail. Indicate on the message that this is a tracer.

135.15.1.3 Telephone Inquiries

The telephone is used for special circumstances (e.g., critical or dire need). Telephone inquiries will be responded to in five workdays. A telephone inquiry should not have to be traced. However, if a reasonable length of time (allow five workdays) has passed and a reply has not been made, a tracer call should be made. Remember to allow for special situations, such as computer processing being cancelled or delayed.

If there is a need to trace inquiries, follow the lines of communication as outlined in the next section. All telephone inquiries are to be entered into the Contact Log (Refer to FOM 1592).

135.15.2 Tracing Inquiries to Specific Units

Refer to the HQ Communications Reference Chart on the RRB intranet for units and their tracing schedules.

135.15.2.1 Electronic Mail

The first tracer should be directed to the same mailbox used for the initial inquiry. To trace, make a copy of the original message and change status to TRACER. The message will be referred to a supervisor or customer service representative for a response.

If required, the second tracer should go to the HQ chief or director.

Allow a five-workday response for the first tracer and a two-workday response for the second tracer unless otherwise specified. When tracing by electronic mail, do not count the day the message was sent in the response time, as the message may not be read until the following business day.

135.25 Handling of Summons, Subpoena, or Other Judicial Process

A subpoena or summons is generally issued by the court to secure information about computations or eligibility under the RRA. This information can be furnished in writing, and should not require a court appearance by a RRB representative. Consequently, issuance of a subpoena or summons which names a specific individual should be avoided unless a court appearance is necessary. Field offices should not encourage the issuance of a subpoena or summons; however, service of a subpoena should not be refused.

An RRB employee should not appear in court as an RRB representative without a subpoena or summons being issued. The RRB does not wish to appear as a partisan witness for either party in the court proceedings. The issuance of a summons or subpoena prevents such an interpretation. Refer any requests for RRB employee involvement in litigation whether by formal subpoena or otherwise to the Office of General Counsel.

135.25.1 Directed to the RRB

Under the RRB Regulations, no officer, agent or employee of the RRB, except the Office of General Counsel, is authorized to accept or receive a subpoena, summons or other judicial process addressed to the RRB. However, if service of a subpoena, summons or other judicial process addressed to the RRB is attempted, accept it. Advice the serving officer that employees in the field office are not authorized to accept these documents; records are not maintained in the field office, and that the document should be forwarded to the appropriate person for handling.

A general subpoena addressed to the Railroad Retirement Board (Keeper of Records or Custodian of Records) is preferred over one which names a specific individual. Attempt to avoid, whenever possible, the issuance of a subpoena or summons that names a specific individual. A general subpoena is to be transmitted immediately to the General Counsel for handling. A letter directed to the court providing the information requested in the court order is prepared and released by the Office of General Counsel. A court appearance by an RRB employee or representative is generally avoided with a general subpoena.

135.25.2 Subpoena, Summons, or Other Judicial Process Addressed to RRB Employee

When a subpoena, summons or other judicial process is specifically addressed to an RRB employee, follow the procedure set forth below, depending on whether the case involves prosecution for fraud under the RRA.

135.25.2.1 Prosecution for Fraud Under the RR Act Is Involved

In any case where prosecution for fraud under Section 13 of the Act has been recommended, information necessary for the fraud prosecution may be disclosed in accordance with instructions in FOM-I-130.

135.25.2.2 Prosecution for Fraud Under the RR Act Is Not Involved

If a prosecution for fraud under the RRA is not involved, and the matter cannot be handled under the succeeding paragraph (which relates to a subject other than disclosure of information in the RRB's files), follow the procedures detailed in FOM2-316 and FOM2-605.20. Send the copy of the report to Office of Investigative General (OIG).

Field office personnel should try to discourage court appearances for the purpose of explaining some of the RRA provisions. It is permissible for them, in response to a subpoena and in the absence of specific instruction from the Office of General Counsel, to answer general and fairly simple questions on the provisions of the Act. For example: If a field office employee is asked to explain the qualifying conditions for an employee annuity under the RRA, he may furnish the conditions under which a person is eligible for an employee annuity. These requirements are given in FOM-I-305 and on Form G-177 (Explains Eligibility Requirements for a Railroad Employee Annuity). Also, simple

illustrations of annuity computations may be given. Field personnel should indicate that adjudicative actions are performed by Headquarters staff, and that field employees are not qualified to serve as experts on such questions. Submit a report giving the particulars of each such court appearance to the Office of General Counsel.

135.30 Correspondence Requesting Information To Be Used In A Law Suit

Immediately forward the following inquiries to the Office of General Counsel:

- A written inquiry from an attorney representing an employee or a deceased employee's estate requesting information to be used to prepare a law suit or
- A request that includes the signing of an affidavit relative to the status of persons or companies under the Railroad Retirement Act and Railroad Unemployment Insurance Act, immediately forward it to the Office of General Counsel for reply.

Usually these letters request information about annuity requirements, estimated annuity rates, potential beginning dates, etc.

Follow FOM-I-135.35 for handling inquiries regarding property settlements in divorce proceedings.

Exception: Inquiries received requesting copies of medical evidence or other documents in the file should be handled by the appropriate section even when the request indicates information may be used for a possible legal action.

135.35 Community Property Settlements And RR Annuities

The RRB often is contacted to supply information about railroad retirement benefits in dissolution of marriage (divorce) proceedings. Most attorney inquiries in these cases can be handled at the district office level. If the inquiry is of a general nature, the General Counsel has created an “Attorney's Guide to the Partition of Railroad Retirement Annuities”, which is available at the RRB website. You may either print the publication and forward it to the inquirer and/or direct them to the site at https://www.rrb.gov/Resources/LegalInformation/PartitionofRRA/AttorneysGuide. Section 14 of the Railroad Retirement Act exempts railroad retirement annuities from legal process. The United States Supreme Court held In re Marriage of Hisquierdo, reported at 439 United States Reports page 572 and following (439 U.S. 572) (1979), that section 14 prohibited consideration of benefits under the Act as property for purposes of community property distributions in a California divorce. Following the Hisquierdo decision, many non-community property states held that section 14 as interpreted by the Supreme Court was broad enough to prohibit consideration of railroad retirement benefits as property in marital estate divisions as well. This was also the opinion of the RRB's General Counsel.

The Railroad Retirement Solvency Act of 1983 amended section 14 to permit Tier II benefits, vested dual benefits, O/M (the difference between the O/M and RR annuity is subject to partition), and supplemental annuities to be considered as property subject to division by a decree of divorce, annulment or legal separation issued by a court in both community property and non-community property states. Benefits may also be divided by a court-approved property settlement incident to such a decree. The amendment is effective for benefits for months beginning September 1983.

Because the amendment excludes Tier I amount from the benefits subject to division, the Hisquierdo decision still applies to that portion of an employee's benefits. For this reason, the RRB will not honor any portion of a state court decree which attempts to order a division of Tier I benefits. Effective August 17, 2007, the Pension Protection Act of 2006 allows for the continuation of partition payments (based on the employee's Tier II only) after the employee's death unless otherwise noted on the court order/property settlement. Additional details are provided in 135.35.6 below.

This FOM section provides instructions for answering inquiries regarding property settlements when dissolution of marriage proceedings are initiated. It also provides instructions for handling court decrees that order the RRB to make payments to a spouse or former spouse, and information regarding payment of those benefits by Operations.

135.35.1 Answering Inquiries Regarding Dissolution of Marriage Tracer

If you are contacted by attorneys requesting information about our law for use in dissolution of marriage, use form G-25 (09-10), entitled Statement of Railroad Employee's Actual or Estimated Railroad Retirement Benefits, for your response. G-25 (09-10) should be enclosed with the standard cover letter used by the General Counsel. Additional enclosures are Forms G-177c and G-177d, and the Qualified Domestic Relations Orders (QDRO) explanation. Form G-25, the standard cover letter (Form GL-30), and the QDRO explanation are available in the retirement portion of RAILS.

Whenever possible, secure the name and address of the attorney representing the other party in the dissolution of marriage proceedings and release a duplicate of the Form G-25 package to that attorney.

This action may prevent further inquiries and will insure that both attorneys have the same information. Forward to the General Counsel only those inquiries that you are unable to satisfy or that are accompanied by a subpoena, injunction, joinder or other such court-issued document.

The RRB is not required to furnish the present value of future benefits, the amount of benefits payable at a future date, or any other computations based on statistics or procedures not maintained by the RRB in the normal course of administration of the Railroad Retirement Act (RRA). If the employee is not currently entitled to benefits, the RRB will furnish the current amount of any estimated benefit to which the employee

would be entitled if he were eligible at the time of the request. Considerations such as lag or future entitlement are not used in furnishing a current rate estimate.

Requests regarding employer or employee contributions are not pertinent to the amount of RR annuities payable. The General Counsel has ruled that the only information that should be released to third party inquirers, without written authorization from the employee, is an actual or estimated annuity amounts. Consequently, other information that is available in the field office such as employee Tier II contributions, date of birth, sex, and credited railroad compensation and service should not be released routinely to third parties without the employee's written authorization.

Completion of Sections B, C and D of Form G-25 is dependent on the status of the railroad employee.

1. Employee receiving an annuity.

    A. Place an "x" in the first 2 boxes of Section B. - Statement of Current Railroad Retirement Benefit Entitlement.

    B. Complete Section C - Monthly Railroad Retirement Benefit Amounts. The amounts for completion of Section C are found by accessing Screen 1 of the RHRCPAY (3277) available through PREH of the RRAPID Main Menu.

    NOTE: If the employee is receiving benefits under the overall minimum (O/M), include the difference between the O/M rate and the regular RR rate with the sum of Tier II, supplemental annuity and vested dual benefits. C. Complete Section D - Railroad Retirement Divorced Spouse Benefit Estimate. Enter a divorced spouse benefit estimate effective with the month and year of the employee's benefits shown in Section C.

    D. Complete Section E - Certification.

2. Employee not currently entitled.

    A. Place an "x" in the first and third boxes of Section B - Statement of Current Railroad Retirement Benefit Entitlement. Enter the month and year that railroad service has been reported, i.e., December 2015, in the sentence following the third box.

    B. Complete Section C. - Monthly Railroad Retirement Benefit Amounts. The amounts for completion of Section C are found by accessing the MARC of the RRAPID Main Menu.

    C. Complete Section D., Railroad Retirement Divorced Spouse Benefit Estimate. Enter a divorced spouse benefit estimate effective with the current month and year.

D. Complete Section E., Certification.

3. Employee has less than 120 months, or less than 60 months after 1995.

A. Place an "x" in the fourth box of Section B, Statement of Current Railroad Retirement Benefit Entitlement. Enter the month and year that railroad service has been reported, i.e., December 2015 in the sentence following the fourth box.

B. Complete Section E, Certification.

135.35.2 Criteria for Acceptable Court Decree or Property Settlement

The RRB must comply with a final decree of divorce, annulment, or legal separation issued by a court of competent jurisdiction, which obligates the RRB to pay RRA annuities (other than Tier I) directly to a spouse or former spouse. The RRB also must comply with a property settlement approved by a court in connection with a final decree of divorce, annulment, or legal separation. The property settlement must be incorporated in the final decree, or the final decree must refer to a property settlement that was filed previously in connection with the suit. A final decree that modifies the terms of a previously issued final decree of divorce, annulment, or legal separation is also acceptable.

Final decree means a court order from which either:

- No appeal may be taken; or
- No appeal has been taken within the prescribed time limit; or
- A timely appeal has been taken and such appeal has been finally decided.

The RRB will assume a final decree is not being appealed, unless we receive information that an appeal will be or has been filed.

The RRB will honor for payment a court decree or property settlement which meets all the following criteria. Use this information to respond to inquiries before a final order is made. Once a final decree has been entered, it should be forwarded immediately to the General Counsel for a determination of its acceptability.

A. The court decree or property settlement must provide that the spouse or former spouse is awarded payments from railroad retirement annuities payable to the railroad employee.

B. The court decree or property settlement must specify an amount to be paid to the spouse or former spouse. The order does not have to state a dollar amount. However, the amount must be stated in terms the RRB can use to readily determine an amount under the RRB's normal procedures for administration of the RRA.

Acceptable examples are "one-half of Tier II" or "the amount of the railroad benefits based on a ratio of the years of marriage to the years of work." An unacceptable example is "one-half of the employee's contributions."

C. The court decree or property settlement must obligate the RRB, rather than the employee, to make payments directly to the spouse.

D. The court decree or property settlement must clearly identify both the employee and the spouse or former spouse.

E. The court decree or property settlement submitted to the RRB must be a recently certified copy of the document filed with the court.

The date a property settlement is approved or a decree is entered may be before 9-1-83. A modification of that order must, however, be in accord with the law of the jurisdiction in which the original decree was entered or the property settlement was approved.

In the case of a court-approved property settlement, both the settlement and any decree incorporating or approving the settlement must be provided. When the property award is made in an order modifying an earlier court decree, copies of both the original decree and the subsequent order must be furnished.

135.35.3 Field Office Development

A. Address for final court decree - When an inquirer indicates that a final court decree or property settlement for divorce, annulment, or legal separation has been issued, inform the individual that a certified copy of the court document must be submitted to headquarters according to the following instructions. If two court documents are involved, e.g., a court-approved property settlement and a final decree that refers to the settlement, a copy of both documents must be submitted.

Any court decree or property settlement must be sent by certified or registered mail, return receipt requested, or delivered by personal service, to:

General Counsel Railroad Retirement Board

844 Rush Street

Chicago, Illinois 60611

If the documents were delivered to a field office, forward them in your regular mail in an envelope addressed "General Counsel; Do Not Open In Mailroom." The dates the documents were received in the field office and forwarded to the General Counsel (GC) should be shown. The effective date of the payment to the spouse or former spouse will be determined by the date the General Counsel receives the court decree.

In order to expedite handling the Office of General Counsel (OGC) has requested that the address of the divorced spouse be included with the documentation furnished to the OGC.

B. Supporting documentation from spouse or former spouse - If a spouse or former spouse contacts a field office regarding payment under a court decree or property settlement, advise them to complete the 'Spouse or Former spouse agreement' and 'Electronic Funds Transfer Statement'. This form is released to the spouse/former spouse when the court order is approved. **This is the only acceptable form and is only to be released by OGC.** If the spouse/former spouse requires the forms, request GC to forward a copy to the spouse/former spouse. The complete forms must be submitted to GC within three months from the date the GC receives the court decree. Failure to make any response may result in nonpayment. If some of the information is unknown, that should be indicated on the form. The forms must be signed and dated containing the following information:

1. Employee identifying information - Social security number, railroad retirement claim number, and full name of the employee.

2. Spouse/former spouse identifying information - Social security number, full name, and current address.

3. Statement regarding termination

4. EFT information - Routing transit number, account number and account type. If the spouse or former spouse claims "no account," a signed statement certifying to that fact is necessary. This information is only required if the employee is currently entitled or an application has been submitted.

   If the General Counsel (GC) receives the court order before the employee becomes entitled to an annuity, the spouse or former spouse will be notified by headquarters when the employee does become entitled. She must contact the RRB within 3 months of that notice, and submit the supporting documentation as indicated in section B above.

   If the supporting documentation is submitted separately from the court decree, it may be sent regular mail to the address in section A. If it is submitted through a field office, transmit it in an envelope addressed "General Counsel; Do Not Open in Mailroom."

   A regular annuity application (AA-3) is not required unless the spouse or former spouse is eligible for an annuity, and wishes to file an application.

C. Entering an IMPACT Amount - If you are aware that a court decree or property settlement ordering payments to a spouse or former spouse has been delivered

to the GC, omit Tier II and the VDB when entering an IMPACT. You may enter a Tier I only IMPACT. Do not mark the application for manual review, unless it is required for another reason. Please enter "Community property settlement" in the remarks section of Form G-230.

135.35.4 Amount Payable to the Spouse or Former Spouse

As noted in section 135.35, a state court may not in any way consider Tier I in making a property division. The RRB will disregard that part of any court order which attempts to direct the RRB to pay a portion of the employee's Tier I to the spouse or former spouse. The RRB has no authority to intervene in cases where the court order attempts to make the employee responsible for paying a portion of his Tier I to the spouse or former spouse; however, if this comes to your attention, you should inform the parties that this is contrary to section 14 and the Hisquierdo decision.

Only employee annuity components may be paid to the spouse or former spouse. The components that may be paid are the Tier II, VDB, SUP ANN, and the amount of the overall minimum which exceeds the regular RR rate. When the O/M is prorated between employee and spouse annuities, only that part of the O/M paid in the employee's check is subject to division. Inquiries insisting that other than employee annuity components may be divided should be referred to the General Counsel.

The employee's annuity that is subject to court order is the amount after:

- Withholding for an overpayment under the RRA, Railroad Unemployment Insurance Act, or any other act administered by the RRB (e.g., Social Security Act);
- Work deductions; and
- Waiver.

The amount ordered payable by the court will be determined according to the court's intent, with these exceptions:

1. If the decree states a dollar amount greater than the payable annuity components, the lesser amount will be paid. Any increase in the components awarded to the spouse or former spouse will be paid to that individual until the amount ordered by the court is reached.

   If the decree states an amount less than the payable annuity components, the amount ordered by the court will be paid.

2. If the decree states the amount in terms of a ratio of the length of the marriage to the length of railroad service, the periods will be determined in months, not years. If the court overstated the number of railroad service months, the actual number will be used.

If the court understated the number of service months, the figure stated by the court will be used.

The monthly amount paid to the spouse or former spouse may not be less than $1.

We will not increase the amount payable to the spouse or former spouse because of any money the employee owes her (e.g., an arrearage in court-ordered payments).

If more than one spouse or former spouse submits court decrees or property settlements, benefits will be paid on a first-come, first-served basis governed by the date of receipt by the GC. Conflicting decrees received on the same day will be paid according to which decree became final on the earliest date.

The spouse or former spouse does not have appeal rights with regard to the amount paid.

135.35.5 Review and Notification by the Office of General Counsel

The OGC will determine the date the court order was received in the office. If it was delivered to another office of the RRB, it is not considered delivered until the date received by the OGC. If a court order was sent to the RRB before September 1, 1983, it is not considered delivered until a copy is received by the GC after August 30, 1983.

The OGC or a designee will review the court documents to determine if they comply with the law of the state, Federal law, and the RRB's regulations. The amount to be paid the spouse or former spouse will be determined. The OGC will then notify the employee and the spouse or former spouse either that the court order is not acceptable and why, or the dollar amount that will be paid. A copy of the court decree or property settlement will be sent to the employee. The notice will be mailed to the most recent address on record for each party or the attorneys.

If the employee is not currently entitled to an annuity, RPS-B2 will notate the folder accordingly. If and when the employee becomes entitled, RPS-B2 will apply the partition reduction to the employee's annuity and request address verification along with Direct Deposit information from the spouse or former spouse.

135.35.6 Payment of Benefits

The Retirement Post Section B2 (RPS-B2) of Operations handles the initial and subsequent annuity adjustments in these cases. Send any follow-up inquiries regarding the court decree or property settlement to RPS-B2. Do not send them to the General Counsel.

A. Employee annuity - The employee annuity will be suspended at the earliest possible date following receipt of the court decree by the GC. Benefits withheld

from the employee may not be paid to the spouse or former spouse until the spouse or former spouse has furnished all supporting documentation as specified in FOM 135.35.3B.

When the employee's entitlement is in the future, payments will be withheld for the spouse or former spouse, beginning with the annuity beginning date.

If the spouse or former spouse does not submit the supporting documentation in the prescribed time (three months from the date the initial response from the spouse or former spouse was made), withheld benefits will be paid to the employee. When documentation is submitted later, no retroactive benefits will be paid to the spouse or former spouse.

Any taxable annuities paid to the spouse or former spouse are the taxable income of the employee. If the employee elects tax withholding, the amount to be withheld will be after deduction of the payments awarded to the spouse or former spouse.

B. Spouse or former spouse payments No payments will be made to the spouse or former spouse for any month the employee's annuity is not payable with the exception cited below in part C. If an overpayment occurs in the employee's annuity, any amount paid to the spouse or former spouse in excess of the amount that was actually payable, is an erroneous payment to the spouse or former spouse. She will be given all the rights given to an overpaid annuitant, even though she is not an annuitant.

Handle non-receipt or other payment inquiries according to the regular procedure. If a representative payee must be appointed, develop according to regular annuity procedure.

Payments to a spouse or former spouse terminate on the earlier of:

- The date the employee annuity terminates (see exception below, part C); or
- The date required by the court decree or the law of the jurisdiction in which the court decree was entered; or
- The last day of the month before the month in which the spouse or former spouse dies.

An amount due but unpaid at the death of the spouse or former spouse is payable as if it were an employee annuity. Payment will not be made to the heirs, legatees, creditors, or assignees of a spouse or former spouse, except in accordance with the priority of payment of an amount due but unpaid at death.

A change of address request for a spouse/former spouse is to be handled as follows: if the spouse/former spouse is on DATAQ, process the change of

address via FAST; if not on DATAQ, forward a copy of the COA request to RPS-B2 requesting the document to be imaged. You may fax, email or send the COA request through the mail.

C. The Pension Protection Act (PPA) of 2006, P.L. 109-280, amended the Railroad Retirement Act of 1974 by allowing the continuation of partition payments to surviving former spouses. The PPA stipulated that only the tier 2 portion of the partition payment would be continued; and the employee's death would have to be after August 17, 2007.

The Worker, Retiree, and Employer Recovery (WRER) Act of 2008, P. L. 110-458, further liberalized court ordered payments to partition recipients in several ways:

- Allowed partition payments to begin when the employee is eligible for an annuity but not yet receiving one if certain conditions are met;

- Removed final divorce as a precondition for early payment or continuation of the payment of the partition. As long as a valid court order has been received by the RRB and reviewed and approved by the OGC, payment of the partition may be made to a separated or a divorced spouse;

- Allowed the partition amount paid **before** the entitlement of the employee to be based on the tier 2 and the VDB. Appropriate COLAs will be included if the partition amount is calculated as a percentage or ratio of the employee's divisible benefits;

- Allowed the partition amount paid **after** the employee's death to be based on the tier 2, VDB, and SUPP. Appropriate COLAs will be included if the partition amount is calculated as a percentage or ratio of the employee's divisible benefits;

- Allowed all partitions terminated due to the death of the employee to be reviewed and reinstated, regardless of the employee's date of death. However, no reinstatement could be effective prior to September, 2007;

- All partitions continued after the employee's death effective September, 2007 would be reviewed for inclusion of the VDB, SUPP, and COLAs;

- Established the court order as the document to determine whether or not payment will continue after the death of the employee. The court order can limit the total amount paid; the number of payments; the age of the recipient; etc.

When the first partition payment is made before the entitlement of the employee; or after the death of an employee who hasn't been entitled to an annuity, three pieces of information must be on file before payment is made:

- Proof of age for the employee and the spouse or former spouse. The proofs must be on APPLE.

- Both the employee and the spouse or former spouse must be 62 for a full month before the partition can be paid. If the employee has died, the employee would have been 62 for a full month.

- The court documents are on file in IMAGING and have been reviewed and approved by the Office of General Counsel.

Use the following procedure to process these cases.

Initial Partition Payments Made to a Spouse or Former Spouse When the Employee is not Entitled to an Annuity

Field Office

The Worker, Retiree, and Employer Act of 2008 allows a court ordered partition payment to be made to a spouse or former spouse prior to the entitlement of the employee. The field office will usually be the first point of contact between the spouse or former spouse and the RRB. The following instructions should be followed by the field offices.

Step	Action
1.	Check EDMA to make sure the employee has 10 years of service or 5 years after 1995.
2.	Check APPLE for proof of age (POA) for both the spouse or the former spouse, and the employee. If POA is not on APPLE or IMAGING, contact the spouse or former spouse and advise that this information is necessary before the court ordered partition payment can be paid. If it is not possible to secure the employee's proof, follow the instructions in FOM1 905.5.5 in using the NUMIDENT at the Social Security Administration to prove the age of the employee. Both the employee and the spouse or former spouse must be 62 for a full month in order for payment of the partition to be made when the employee is not or has not been entitled to an annuity. If proofs cannot be secured, payment will not be made.
3.	Check IMAGING for the court document, and evidence that the Office of General Counsel (OGC) has approved it for payment. If the documents are not on IMAGING, request a copy from the spouse or former spouse; then forward to the OGC for review.

4.	If the court document and the OGC review are on IMAGING, verify bank information and the street address. Send an email to the RBD Mailbox. In the Attn box, put '**ATTN RB2: Partition**.' Include the name and claim number of the employee and the name of the spouse or former spouse and the message: 'Possible Independent Partition Payment'. Include the contact information if it is different from the information on IMAGING.

Headquarters-RB2

The RBD mailbox is screened daily. The senior specialist in RB2 will assign cases on USTAR. The USTAR code will be RB2 0PI. Examiners should use the following procedure to pay these cases.

Step	Action
1.	Verify the requirements for payment of an independent partition. • The employee must have 10 years of service or 5 years after 1995. • The employee and the spouse or former spouse must be age 62 for a full month. If the employee is deceased, the employee would be age 62 for a full month if still alive. If the employee and the spouse or former spouse will be 62 in the future, set a Tickler for the month both will be 62 for a full month. • The legal documents must have been reviewed and approved by the OGC.
2.	Request a G-90. • Fill in Part 1 as usual, making sure to use the employee's date of birth. • In Part 2 use the spouse's or former spouse's first date of payment as the ABD in number 8. For the DLW-RR, use the day before the first payment date. The Type of Request will always be '01'. The Annuity Code will be '01' or '02' depending on the employee's age. The APP File date will be the day before the first payment date. • Enter lag only if necessary for eligibility.
3.	Calculate the partition amount, once the G-90 has been received.

	• If the rate will be a ratio or percentage of the employee's rate, use the Legal Process Tier Proration Program to calculate the partition. Use only the tier 2 and the VDB if the employee is alive but not entitled to an annuity. Use the tier 2, the VDB, and the SUPP if the employee is deceased. • If the employee would be entitled to a 60/30 annuity, no age reduction will be used in the calculation. For an age and service annuity with less than 30 years of service, calculate the employee age reduction. Use the effective date of the court ordered partition payment to calculate the employee's age reduction months.
4.	The case will be paid in ROC. Before the independent partition can be paid, a dummy award for the employee must be set up. To set up the dummy award: • Fill out the General Information screen with the employee's information, except use the first payment date of the partition as the ABD. • The Type of Annuity will be based on the employee's age and years of service. The Type of Computation will be 0 or 8, and the Type of Cert will be 0. • Fill in the address; complete the exam number and the unit ID. Put in remarks: Dummy Employee Award for an Independent Partition. Hit enter. • Go to PF 22, the Annuitant Data screen. Enter the BA number, and the Current Connection code. The Service Before 08-12-1983 will be pre-filled from EDMA. The Filing Date, the Date Last Worked, and the Date Relinquish Rights will be the day before the first payment date. The marital code will be '1' for a male employee and '4' for a female employee. Hit enter.
5.	The dummy award will not be sent to authorization or vouchering. It is necessary for the independent partition award to send certain employee information to the TAS database when the employee is not entitled.
6.	Prepare an award to pay the legal partition as usual. **Note:** Once the employee becomes entitled to an annuity, the partition payment will be recalculated. The recalculation will include the employee's tier 2, the VDB, and the SUPP amounts payable at the employee's ABD. The court ordered partition payment to the spouse or former spouse will be recertified effective with the employee's ABD.

7.	Prepare the ALTA letter RL-23 notice as usual.
8.	In the comments section of USTAR, include "Third party payment under PL 110-458—Independent Partition." Close the USTAR referral using the appropriate disposition code.
9.	Send all documents to IMAGING.
10.	PREH will code the SP-REC-ONLY-FLG on the 3200 screen, page 6, with a '2', to identify these cases as independent partitions.

Continuation of Partition Payments After the Death of the Employee

Effective August 17, 2007, when an FNOD is entered, APPLE identifies all third party payments and generates a STAR referral for examiner handling.

- If the third party payment is a garnishment, the referral is 0471, terminate 3rd party payment and recover any outstanding overpayment.
- If the third party payment is a partition, the referral is 0472, check 3rd party payment adjustment under PL 109-280.

If partition is involved, any additional examiner action will be taken by examiners in RB2.

Step	Action
1	Locate the court documents on IMAGING or in the folder. If the documents cannot be located, contact the Office of General Counsel before proceeding. Go to step 2. .
2	Review court documents. If: • The court documents specifically state the partition is to terminate upon the EE's death – terminate the third party payment - go to step 7. • The court document does not mention a terminating event – go to step 3. • The court document mentions a terminating event other than EE's death – set a TICKLER for the date to stop the partition

Step	Action
	payment, i.e., when the partition recipient turns age 65; is eligible for an RRB annuity; etc.-go to step 3. NOTE: If there is any question regarding the intent of the court document, contact the OGC for an interpretation.
3	Partitions paid after the death of the employee are calculated on the tier 2, the VDB, and the Supp. Verify the partition amount by reviewing PREH, screen RH3RDPAY (3276). It will be necessary to recalculate the partition amount if LPE work deductions were involved, or if the partition was calculated using the overall minimum. If the partition rate must be recertified, go to step 4. If the partition rate does not need to be recertified, take a PREH update action to correct the ANN-TYP-CD to 7 or 8. See step 4 for an explanation of these codes. Go to step 6.
4	Do a recert award on ROC to recertify the partition amount. On screen ADJUSTMENT DATES AND CODES (PF 18), enter one of two LEGAL PROCESS TYPE codes. • Code 7 indicates that the partition paid after the death of the employee will continue without restriction. • Code 8 indicates that the partition continues after the death of the employee, but should terminate at a future date, as indicated in the court documents. A TICKLER has been set for this termination. Go to step 5.
5	Complete RL-23 with the following paragraph. • We have adjusted your court ordered payment due to the death of the employee. Go to step 7.
6.	If the terminating event is other than EE DOD then complete a tickler so that partition may be removed timely. Go to step 7.

Step	Action
7	Close the STAR referral and provide the comment, “Third party payment (terminated) (continued) (adjusted) under PL 110-458.”

In a special workload, partition payments terminated prior to August 17, 2007 were reviewed and reinstated, where appropriate, effective September, 2007. Also, all partition payments continued after August 17, 2007 were reviewed and the payments recertified where necessary.

135.40 Garnishment of Benefits and Assignment in Lieu of Garnishment

135.40.1 What Can Be Garnished

Annuities and accrued annuities payable under the Railroad Retirement Act, sickness and unemployment benefits payable under the Railroad Unemployment Insurance Act, and benefits payable under any other Act administered by the RRB, can be subject to legal process (i.e., garnishment) to enforce an obligation for child support and/or alimony payments.

Garnishment of retirement benefits for other purposes, such as payments to an estate, is expressly prohibited by section 14 of the Railroad Retirement Act.

135.40.2 Retirement Annuities Exempted from Garnishment

A portion of retirement benefits payable is exempt from garnishment by Federal law. If the state in which the legal process is issued also provides for an exemption, the larger exemption will apply in the case.

In the absence of a state law providing for a higher exemption, Federal law exempts 35% of benefits from garnishment. The amount of the exemption is:

- Increased by 10% if the beneficiary is supporting a spouse or child other than the spouse or child with respect to whose support the legal process is issued.
- Increased by 5% if the support or alimony arrearage which precipitated the garnishment order is less than 12 weeks old.

If both of these conditions exist, the maximum retirement benefit subject to garnishment is 50%, unless an applicable state law provides a higher exemption.

The amount of the retirement benefits considered for possible garnishment is the rate after any necessary reduction, such as for recovery by the RRB of an overpayment, deduction of Medicare premiums, vested dual benefit cutback, tax withholding, payments awarded to a spouse or former spouse as part of a property settlement, or a

reduction for some other reason. Any applicable exemptions are applied to the reduced benefits actually paid.

135.40.3 General Inquiries

If legal references are requested by any of the parties involved in a garnishment proceeding, use the following guide paragraph as a response:

"The current provisions permitting garnishment of benefits may be found at 42 U.S.C. 659(a) et seq; and the Federal exemption provisions may be found at 15 U.S.C. 1672 and 1673(b). The RRB's regulations regarding garnishment may be found at 20 CFR Part 350."

In your dealings with inquirers, be careful not to assume the role of counselor regarding securing a writ of garnishment or challenging such an order. Explain that the RRB can neither represent nor raise arguments on behalf of the concerned parties. Advise such individuals that they may retain someone to represent them by either hiring a private attorney or contacting a legal aid or legal services program in their community.

135.40.4 Actual Action of Garnishment

Because the RRB is obliged by law to respond swiftly to legal process, immediately send any correspondence or legal notices you receive regarding the actual action of garnishment to the General Counsel in a plain white envelope with the notation "DO NOT OPEN IN MAILROOM." Any other inquiries regarding the form or creation of such notices which you are unable to satisfy should also be directed to the General Counsel in this manner.

Advice lawyers representing annuitants or spouses to send writs of garnishment of benefits paid by RRB and related pleadings or correspondence directly to the General Counsel of the Board, 844 Rush Street, Chicago, Illinois, 60611, via certified or registered mail, return receipt requested. Such orders can also be served personally upon the General Counsel.

135.40.5 Assignment of Payment

An annuitant may assign a specific amount of an annuity to be paid directly to the spouse or to someone else for alimony or child support in lieu of going through garnishment proceedings if:

- The beneficiary files an acceptable "Assignment of Payment" with the RRB, and
- The assignment is in accordance with state law provisions concerning garnishment which generally require that the annuitant must be in arrears in making court ordered payments for alimony or child support, and
- The amount meets the Federal exemption rules as stated above.

135.40.6 Processing an Assignment Request

When an annuitant expresses the desire to assign a portion of an annuity in lieu of having the benefit garnisheed or attached, legal assistance in preparing the assignment statement may be suggested or you may assist in preparing the statement to be sent to the General Counsel. The statement of assignment which you assist in preparing must include:

A. That this statement is intended to be in accord with appropriate state law and in lieu of garnishment;

B. That a court order for payment of alimony or child support which is the obligation of the annuitant exists and a copy of the order is attached;

C. That the annuitant is in arrears in making the ordered payments, and the amount of the arrearage;

D. Declaration of the amount to be assigned per month, and the name and address of the party to whom the assigned payment is to be made;

E. The signature, address and telephone number of the annuitant;

F. The notation that the annuitant was "Assisted in preparation by (your name and field office location)".

135.40.7 Status Inquiries

- Court orders and related correspondence are to be sent to the General Counsel. Law will determine if the order applies to an annuitant or an employee of the RRB. Orders that apply to an annuitant are forwarded to BCS.

- BCS will handle all matters and make all decisions relating to the appropriateness and acceptability of the garnishment notice and to the removal of such orders.

- If the order is valid, BCS will be responsible for the initial and post adjudication of retirement, disability and survivor annuities. However, disability ratings are still the responsibility of DPS. Effective May 1, 1997, BCS will also be responsible for orders involving RUIA payments.

- If the order is determined to be invalid, BCS will release a letter explaining why the order is not "acceptable."

- Any inquiries or materials not directly related to the garnishment or assignment of payment, (e.g., change of address) should be routed through the usual channels. DO NOT send them through the General Counsel or BCS.

135.45 Parent Locator Service

Public Law 93-647 provided for a "Parent Locator Service" to be established within the Department of Health and Human Services. This service is intended to assist spouses and children in locating parents who may be subject to support orders.

Inform any person inquiring about the Parent Locator Service that the law requires that all local sources of information be exhausted before Federal Services can be requested.

The Federal Service will accept requests for assistance only from a State Parent Locator Service.

Advise anyone who asks about the Parent Locator Service to contact the pertinent State agency. The name, address, and telephone number of the appropriate state agency may be obtained from either the local welfare or public assistance office, or an SSA district office.

135.55 Payment of Tax Refunds

135.55.1 Excess Taxes Paid Prior to 1975

An employee with 10 or more years of railroad service who is not entitled to a windfall benefit is entitled to a tax refund if his combined taxable earnings from both systems in any year in the period 1951-1974 exceeded the maximum annual amount creditable under the Railroad Retirement Act. The refund is equal to the social security taxes applicable to that portion of an employee's combined creditable earnings from both systems which are in excess of an amount specified in the RR Act (for most years, this amount is the maximum railroad earnings taxable for the year). The refund will be paid by the examiner upon the employee's retirement or death.

135.55.2 Income Tax Credit After 1974

After 1974, an employee must apply for refund of excess tier I taxes by claiming the excess amount on his Federal income tax return. The amount is entered on Form 1040 under Excess FICA Tax Withheld or Excess Railroad Retirement Tier I Tax Withheld. Employees who work for both a social security and a railroad employer or two railroad employers are likely to have combined earnings which exceed the maximum amount creditable under the RRA. Nevertheless, employees cannot avoid the initial overpayment of taxes by authorizing his employers to exchange information; an employer has a mandated obligation to deduct retirement taxes without regard for deductions made by another employer.

Excess tier II tax refunds can be obtained by completing IRS Claim Form 843. RRB is not responsible for making a refund in such cases.

Internal Revenue Service Publication 505, "Tax Withholding and Estimated Tax", provides information on how to figure any excess railroad retirement or social security

tax withheld. Upon request, this publication is provided free of charge by the Internal Revenue Service.

135.55.3 Effect of Tax Refund on Other Benefits

The tax refund has no effect on the payment of retirement benefits, for either an employee or spouse. However, the tax refund is a deductible amount for the residual lump sum in survivor cases, whether it was paid to the employee while alive or to his survivors after his death.

135.55.4 How to Handle an Employee Request for a Refund of All RR Taxes

Explain to the employee that railroad retirement taxes cannot be refunded except as explained above, or if they were collected in error. Advise him that the money will come back to him directly in the form of monthly benefits under either the RR or SS acts when he reaches retirement age, provided he meets the eligibility requirements. Also explain that, in the event of his death, his survivors may receive monthly benefits and/or a lump-sum death payment. Also explain that a residual payment may be made to his survivors; this payment is a guarantee that the benefits paid to him and his survivors will at least equal the taxes he paid into the railroad retirement fund prior to 1-1-75.

135.60 Separation And Dismissal Allowances - General

Railroad employees frequently ask how accepting a separation allowance or a dismissal allowance from an employer affects their future eligibility for benefits under the Railroad Retirement or Railroad Unemployment Insurance Acts. Form IB-6, Separation and Dismissal Allowances under the Railroad Retirement and Railroad Unemployment Act, is available for distribution to employees to provide information on this subject. Form IB-6 also instructs employees to contact their local RRB office if they need assistance distinguishing between a separation and dismissal allowance. Additional questions that cannot be answered in the field should be directed to Policy and Systems through the P&S Inquiry – Policy & Systems Inquiry Group Mailbox.

- Request that the employee submit a copy of the complete agreement before a determination can be made. Inform the employee that in most cases it will take approximately two weeks for a response after receipt of the agreement.

- Send an e-mail inquiry to the P&S mailbox along with a facsimile copy of the agreement to Policy and Systems (P&S) fax number (312)751-4650.

135.60.1 P & S will take the following actions:

- Send a copy of the agreement to the attorney advisor requesting a determination on the type of allowance offered.

- Respond to the field office e-mail inquiry stating that the agreement has been forwarded to the attorney advisor for a determination.

- Send a copy of the attorney advisor's determination to the field office once received.

- Retain copies of the legal decisions made in order to avoid duplicate requests from the same railroad and expedite processing.

- Forward copies of the legal decisions to the Assessment and Training Employer Service and Training Center for their information.

- All pertinent documents should be imaged for future reference and documentation.

135.65 Railroad Earnings and the "Social Security Statement"

135.65.1 General

The Social Security Administration (SSA) regularly sends any worker or former worker aged 25 and older a *Social Security Statement*. The *Statement* is a record of the earnings on which the worker paid Social Security taxes during his or her working years and provides calculations of estimated future benefits.

Railroad earnings may or may not appear on the *Statement*. Because of space limitations, there is no explanation on the *Statement* itself of when railroad earnings are or are not included. A complete explanation of when SSA includes railroad earnings on its statement can be found on SSA's website beginning at www.ssa.gov/mystatement.

If at the time the statement is issued the RR employee has 10 years (120 months) of railroad service or 5 years after 1995,

- railroad earnings are not included on the *Statement,* and

- railroad earnings are not included in the Social Security benefit estimate calculation.

If at the time the statement is issued the RR employee has less than 10 years of railroad service or less than 5 years after 1995,

- railroad earnings from 1973 through the present are included on the *Statement,* and

- all railroad earnings (including prior to 1973) are included in the Social Security benefit estimate calculation.

NOTE: RR earnings before 1973 do not appear on the *Statement* because the RR retirement and SSA tax rates were different prior to that year. The tax rates have been the same since 1973 and are included only from that year forward.

Regulations provide for the right to appeal certain initial Office of Programs (OP) decisions, and prescribe time limits for asserting those rights.

NOTE: Individuals may retain an attorney to represent them in a reconsideration or an appeal if they so wish. However, the attorney's fees are the responsibility of the individual. There is no provision in the Railroad Retirement Act (RRA) for payment of attorney's fees by the RRB, nor will the RRB award a portion of any accrual granted as a result of reconsideration or an appeal directly to an attorney.

In general, the procedure for the administrative appeal of initial OP decisions dated August 24, 1982, and later, provides for a formal three-stage review and appeals process.

The three stages and time limits are capsulated as follows:

1. Reconsideration - An individual has 60 days from the date of the initial notice of a decision to file a request for a reconsideration of the initial decision.

   Failure to request reconsideration within the time allotted, will result in forfeiture of further appeal rights.

2. Appeal to the Bureau of Hearings and Appeals (BHA) - An individual has 60 days from the date of the notice of the reconsideration decision to file an appeal to BHA. Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files the HA-1 within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the HA-1 to the individual.

3. Appeal to Board - An individual has 60 days from the date of the notice of the hearings officer's decision to file an appeal to the Board. Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files the appeal form within the later of the 60-day period following the date of the hearings officer's decision, or the 30-day period following the date of the letter sending the form to the individual.

After all administrative remedies within the RRB are exhausted an individual may file an appeal to a court of competent jurisdiction. Such an appeal must be filed within one year of the RRB's final decision notice.

140.5 Decisions Which Can Be Questioned Or Appealed

An individual has the right to question or appeal OP initial decisions in the following areas:

- Applications for benefits or HI/SMI.
- Initial determinations of HI/SMI effective dates.
- Withdrawal of an application.
- Change in an annuity beginning date or HI/SMI effective dates.
- Termination of an annuity.
- Termination of HI/SMI coverage (except death and voluntary terminations).
- Adjustment in an annuity rate or lump-sum amount.
- Reinstatement of an annuity.
- Existence and recovery of an overpayment.
- Eligibility for and amount of a supplemental annuity.
- Whether a representative payee should be appointed for an annuitant.
- Who shall be appointed or continue to be recognized as representative payee for an annuitant. This decision can be appealed by the annuitant, not by the individual filing an application as representative payee.
- Award of Canadian HI payments.

140.10 Who May/May Not Request Reconsideration Or Appeal

Every annuitant has the right to file a request for reconsideration or an appeal of an initial OP decision, with the following exceptions:

1. An individual under age 18 does not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but does have the right to contest the finding that he or she is, in fact, under age 18.

2. An individual who has been declared legally incompetent does not have the right to reconsideration of a finding that he or she is incapable of managing annuity payments, but does have the right to contest the fact of having been adjudged legally incompetent.

3. An individual does not have the right to reconsideration of a denial of an application to serve as representative payee on behalf of an annuitant.

4. An individual does not have the right to reconsideration when partial withholding or actuarial adjustment is implemented in the same amount the individual previously agreed to.

5. An individual does not have the right to reconsideration when the annuity rate is being adjusted to remove partial withholding unless the rate is also being adjusted for some other reason.

6. An individual does not have the right to reconsideration when the annuity is being reinstated after overpayment recovery by full withholding unless the annuity rate is being adjusted for some other reason.

7. An individual does not have the right to reconsideration on withholding made for a garnishment or legal partition. With respect to legal partitions, a state court's decision to allocate a portion of an employee's divisible benefits under the RRA as a property award is not a matter which can be appealed. However, the **computation** of the award can be appealed.

8. An individual does not have the right to reconsideration of the adjustment to the annuity to collect or adjust the amount of SMI premiums.

140.15 Release Of Initial Decision Notices

Each written notice of initial decision contains information about the annuitant's or applicant's right to a reconsideration and appeal of the decision. Reconsideration and appeal information is usually provided in the body of the initial decision notice. In overpayment situations, reconsideration and appeals rights are usually provided on an enclosure with the initial decision notice.

The reconsideration and appeals wording for initial notices involving decisions other than overpayments is as follows:

"If you believe that this decision is not correct, you may request that the decision be reconsidered. If you wish this reconsideration, you must request it in writing and your request must be received by the RRB within 60 days from the date of this notice. You may send your request to any field office of the Railroad Retirement Board, or you may send it directly to the following address: Railroad Retirement Board, Reconsideration Section, 844 North Rush Street, Chicago, Illinois 60611-2092. If you have any additional evidence to be considered, please include it with your request.

"If you disagree with the reconsideration decision, you may then appeal to the Bureau of Hearings and Appeals within 60 days from the date of the reconsideration decision.

"If you do not request reconsideration within 60 days from the date of this notice, you may not file an appeal at a later date."

The reconsideration and appeals wording which accompanies OP decisions involving overpayments where no current entitlement exists is as follows:

“If you do not believe that you have been overpaid, or if you believe that the amount of the overpayment is wrong, you may ask us to review the facts of your claim. Please

indicate the reason why you would want a review of the facts and submit any evidence you may have to support your belief. Your request for a review of the facts must be received at an office of the RRB within 60 days from the date of the accompanying letter".

"If you believe that you should not have to repay the benefit payments made in error, you may request us to waive recovery of the overpayment. However, we may consider waiving recovery of the overpayment only if:

- You were not at fault in causing the overpayment, and
- Recovery would prevent you from meeting your ordinary and necessary living expenses or recovery would be unfair for some other reason.

If you request us to consider waiving the repayment you will need to furnish us with information detailing your living expenses and your assets. This information must be submitted for a waiver to be considered. Your request for a waiver of recovery must be received within 60 days after the date of the accompanying letter".

The rights afforded beneficiaries in overpayment decisions where current entitlement exists are contained in Form G-66, which is enclosed with such decisions.

140.20 Filing For Rights Consideration

The filing date of a reconsideration request, Form G-66a, or a Form HA-1 is the earlier of:

- The date it is received at an RRB office; or
- The date it is received by an employee of the RRB who is authorized to receive it at a place other than one of the RRB offices.

If using the date the RRB receives the reconsideration request would result in the loss or lessening of rights, the RRB will also accept as the date of filing the date a document or form is mailed to the RRB by the United States mail. Use the date shown by a U.S. postmark as the date of mailing. Always attach the envelope to all reconsideration and appeal requests.

If someone contacts you claiming to have filed a reconsideration request but you have no record of the request, take the following action:

1. If the rights period has expired, follow the instructions in FOM1 140.20.2 for late filing.
2. If the rights period has not expired or you cannot determine the rights period, suggest that another request be filed to insure that the desired rights are protected.

140.20.1 Filing Late for Rights Consideration

Late filing will only be allowed in situations where good cause for the delay is evident. In determining whether good cause for the delay exists, the circumstances which kept the annuitant from filing the request timely, and any action by the RRB which misled the annuitant, are considered.

Some examples of circumstances in which good cause may exist are:

- Serious illness prevented the annuitant from contacting the RRB in person, in writing, or through a friend, relative or other person;
- A death or serious illness in the annuitant's immediate family prevented timely filing;
- Important and relevant records were destroyed;
- Failure to be notified of a decision;
- An unusual or unavoidable circumstance existed which demonstrates that the annuitant could not have known of the need to file timely or which prevented the claimant from filing in a timely manner;-.
- The annuitant thought that his or her representative had requested reconsideration.

140.20.2 Requests Filed Late - Field Office Handling

If you receive a late request for a review of the facts (overpayment cases), waiver, personal conference, or an appeal form, obtain a signed statement from the claimant explaining the cause for the delay. Any documentation the claimant has to substantiate good cause for failing to make a timely request should also be secured.

If you receive a late request for a review of facts, personal conference or waiver, it is the field office's responsibility to determine if good cause for delay is evident (FOM1 140.20.1 lists circumstances in which good cause may exist).

If good cause is evident, forward the request, the reason for delay statement from the annuitant, and a statement which summarizes your reasoning for finding good cause in a plain white envelope addressed to the Reconsideration Section (Operations -RECON) or Debt Recovery Division (BFO-DRD), depending on which rights were chosen.

Submit the signed statement and documentation in a plain white envelope, as follows:

- Requests for review of the facts - send to the Reconsideration Section (Operations - RECON). **NOTE:** Send to the Medicare Section if a review of the facts is for an arrearage.

- Requests for waiver - send to the Debt Recovery Division (BFO-DRD) unless the waiver request is in regards to a Medicare Part B arrearage. Send arrearage waiver requests to the Medicare Section, who will forward the request to BFO-DRD after verifying that the request should go to BFO-DRD and coding ASTRO.

  NOTE: Request for both review of the facts and waiver should be sent to Operations - RECON.

- Request for personal conference in conjunction with review of the facts - send to the Reconsideration Section (Operations -RECON).

- Request for personal conference in conjunction with a waiver – send to the Debt Recovery Section (BFO-DRD).

- Request for personal conference in conjunction with review of the facts and waiver - send to Operations - RECON.

- Requests for appeal - send to Bureau of Hearings and Appeals (BHA).

If good cause is not evident, the field is responsible for releasing a denial letter to the annuitant. The letter must include reconsideration rights.

140.20.3 Requests Filed Late - OP Handling

When a late request is received directly in Headquarters a letter will be released to the claimant. This letter acknowledges that the reconsideration request was received and advises the individual requesting reconsideration what he/she must do if he/she believes there was good cause for late filing and wishes to pursue the reconsideration request. No action by the field office is necessary in this type of case unless the individual contacts the field office for assistance. Headquarters will contact the field office to secure other information if needed.

140.25 Reconsiderations

An individual making an inquiry about filing an appeal of an Office of Programs (OP) decision should be questioned about the type of decision made in his/her case, to prevent an unnecessary letter of protest or appeal.

An explanation of the decision may satisfy the inquirer. For instance, an annuitant who is receiving a partial annuity should be informed that he/she has no right to appeal except with respect to those facts which have been finally determined in his case (e.g., an applicant's age, disability, etc.).

If the explanation does not satisfy the inquirer and the individual had not previously questioned the decision or you have no record of a reconsideration request, secure a signed statement requesting reconsideration of the decision.

NOTE: To determine if there is an active or completed reconsideration on a given case, check Universal STAR (USTAR). Work items in USTAR have a 6-character *Category Code* as described in FOM1 15120.5.5. The Category Codes used for reconsiderations handled by the Reconsideration Section are listed below:

First 3 USTAR *Category Code* characters	Second 3 USTAR *Category Code* characters	
RDI	any 3 characters EXCEPT 00D	Disability reconsideration request (See FOM1 1310.25)
RME	00R	Medicare reconsideration request
RRE	any 3 characters EXCEPT 00D	Retirement reconsideration request
RSE	any 3 characters	Service and compensation reconsideration request
RSI	any 3 characters EXCEPT 00D	Sickness Insurance reconsideration request
RSU	any 3 characters EXCEPT 00D	Survivor reconsideration request
RUN	any 3 characters EXCEPT 00D	Unemployment Insurance reconsideration request

Reconsideration requests undergoing active review do not have a date in the "Complete Dt" column.

140.25.1 Field Office Handling of Reconsideration Requests

Every annuitant, applicant, or payee must request reconsideration of an initial OP decision as the first step in the formal appeals process. Such a request for reconsideration must be filed within 60 days after the date of the initial decision notice unless good cause can be established for failure to file a timely request.

EXCEPTION: In initial decisions involving an overpayment where the overpaid person has current entitlement, Form G-66a must be completed to request a review of the facts, waiver, and/or personal conference. The Form G-66a must be completed and returned within 60 days after the date of the overpayment notice.

If the individual fails to make a timely request for reconsideration and good cause is not evident, he/she forfeits the right to pursue any other step in the appeals process. He/she can, however, request reconsideration of a decision regarding untimely filing.

NOTE: Waiver requests are an exception to this rule. BFO-DRD will consider a waiver request received at any time. However, if the request is received after 60 days and good cause for the delay is not established, recovery of the overpayment will continue while the request is being considered and amounts recovered prior to the request will not be waived. See FOM1 1225.15.3 and 1225.15.4 for additional information.

The statement should indicate that reconsideration is being requested; however, a statement that does not specifically refer to reconsideration by name is acceptable. Do not use an appeal form to request reconsideration. If by mistake a Form HA-1 is filed before a reconsideration decision has been made, the Form HA-1 will serve as a request for reconsideration.

See FOM1 1225 for detailed instructions on handling overpayment reconsiderations.

140.25.1.1 Handling Reconsideration Requests Involving Disability

When reconsideration of a disability denial is being requested, submit any applicant-source medical or non-medical evidence the individual has (if any), along with the statement directly to the Reconsideration Section (RECON) in a plain white envelope. Always attach the envelope to all reconsideration requests. See FOM1 140.20. Do not get an RRB examination. When RECON determines whether an examination should be authorized at RRB expense, an assignment will be sent to schedule an examination.

140.25.1.2 Handling Reconsideration Requests NOT Involving Disability

When a non-disability reconsideration request is received in the field office, the claims representative should have the request and the envelope imaged. Release an E-mail to RECON advising them that the request is on imaging. RECON does not currently have a notification process in place when a document is scanned to imaging.

As an acceptable alternative, you may send the reconsideration request and envelope to RECON in a plain white envelope labeled “DO NOT OPEN IN MAILROOM”. See FOM1 140.20.

140.25.2 Handling of Reconsideration Requests in Headquarters

The reconsideration section prepares reconsideration decisions in all cases. If a reconsideration request is made with an accompanying waiver request, RECON will handle the reconsideration, and when necessary, send the waiver request to the Bureau of Fiscal Operations - Debt Recovery Division (BFO-DRD). All waiver requests are exclusively handled by BFO-DRD. (**EXCEPTION:** Medicare Part B arrearage waiver requests for Social Security beneficiaries are sent by the Medicare Section to SSA.) If RECON affirms the initial decision, a preliminary notice without appeals rights is

released to the individual. The individual is advised that the waiver will be handled elsewhere and a final decision notice with full appeal rights will be forthcoming.

If a reconsideration request is made for a finding that a previous reconsideration request was not filed timely, the reconsideration of this issue is done in headquarters. If the decision regarding untimely filing is reversed, reconsideration of the initial decision will proceed.

If after reconsideration the initial decision is determined to be incorrect, Recon will take corrective action. If the reconsideration decision reaffirms the initial decision, a notice advising of such will be prepared. The notice will include a paragraph advising the individual of his right to appeal the reconsideration decision.

NOTE: RECON will release Form Letter RL-185 a, b, c, d or Form Letter RL-211a to an individual upon receipt of a timely request for reconsideration. The form letter used depends on the type of decision to be reconsidered. This notice acknowledges that the request was received timely and will be handled as soon as possible. No further action is required by the annuitant.

Form Letter RL-185e will be released to the individual if the request for reconsideration was not received timely. The individual will be advised what he/she must do if he/she believes there was good cause for late filing.

Recon will request additional information if necessary. This should eliminate duplicate and status inquiries.

140.30 Appeal Of Reconsideration Decisions

An appeal of an unfavorable Recon reconsideration decision must be received at an RRB office within 60 days after the date of the reconsideration decision.

140.30.1 Field Office Handling of Appeals

If the individual has received a reconsideration notice and wishes to appeal the decision to the Bureau of Hearings and Appeals (BHA), furnish him with Form HA-1, Claimant Appeal Under Railroad Retirement Act or Railroad Unemployment Insurance Act, and Form HA-2, Filing Appeals Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Advise the individual to complete Form HA-1 and return it to the RRB within 60 days after the date of the reconsideration decision.

Form HA-1 may be filed officially at either a field office or at Headquarters. A copy of Form HA-1 and the envelope with postmark should be imaged when the HA-1 is received by headquarters or field office personnel. The original Form HA-1 and envelope should be forwarded to Recon in those cases where the applicant or annuitant is requesting reconsideration, or Hearings and Appeals in those cases where the applicant or annuitant is appealing a reconsideration decision.

If you receive a completed Form HA-1, date stamp it to protect the individual's time limit for filing an appeal. Mail Form HA-1 to the Bureau of Hearings and Appeals in a white envelope. Include any additional evidence the individual may supply, but do not hold Form HA-1 pending receipt of additional evidence. If the individual plans to submit additional evidence, annotate the Form HA-1 with that information.

NOTE: Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files Form HA-1 within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the HA-1 to the individual. Therefore, the written request and accompanying envelope with postmark must be imaged when received by headquarters or field office personnel. In addition, forward the original HA-1 and envelope to OP-Recon or BHA, as appropriate.

When a claimant or someone acting on the claimant's behalf asks a field office for information regarding a BHA case:

- Advise the individual making the request that someone will get back to him/her with a response.
- Send BHA an EMAIL stating the nature of the information requested along with the name, mailing address, and telephone number of the individual making the request.
- The field office will be sent a copy of any written response.
- If the inquiry is from a Congressional office, BHA will either respond directly in writing, with a copy to the field office, or will provide the field office information it can use to respond to the inquiry.

No field service employee should make direct phone contact with any BHA hearings officer to secure specific information on a claim.

This procedure does not relate to instances where evidence is being obtained or submitted. BHA will continue to request field offices to obtain needed evidence, and evidence should be submitted in the same manner as it has in the past.

Send material relating to a pending BHA appeal in an envelope addressed to BHA; send material not relating to the appeal (e.g., changes of address) through regular channels.

140.30.2 BHA's Handling of Appeals of Reconsideration Decisions

When an appeal is filed, it is "docketed" and the Director of BHA assigns a hearings officer to act on the appeal. If the hearings officer determines that a revision, partially or wholly favorable of an initial decision on an appeal can possibly be made because of additional evidence which was submitted at the time of or subsequent to the appeal, the case will be referred back to Recon. The case also will be referred back to Recon if the

hearings officer determines that the decision can possibly be changed upon reconsideration of the facts or if additional evidence is available and should be secured.

Cases in which BHA reverses OP's reconsideration decision are routed to the appropriate adjudication unit for handling.

If Recon's reconsideration decision is upheld by BHA, the hearings officer will notify the applicant in writing. Any correspondence received subsequent to the hearings officer's decision, which deals further with the merits of the claim, will be handled by BHA.

140.35 Appeal To The Board Of BHA Hearings Officer's Decision

If an individual wishes to appeal a decision made by a hearings officer, furnish him with a Form HA-1. Advise the individual to complete Part B of the form. Further advise that the completed form must be received at an RRB office within 60 days after the date of the hearings officer's decision. Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files the appeal form within the later of the 60-day period following the date of the hearings officer's decision, or the 30-day period following the date of the letter sending the form to the individual.

Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the individual.

The Board can, on its own motion, review the hearings officer's decision in any case. In doing so, the Board may designate any RRB employee to secure additional evidence and report the findings.

If the Board reverses the hearings officer's decision, the Board will refer the case to the office of the Director of OP. The case is then referred to the appropriate unit for handling.

If the Board upholds the BHA hearings officer's decision, the Board will notify the appellant. Any subsequent correspondence which deals further with the merits of the claim will be referred with the claim folder to the Board Members' offices for attention.

Send inquiries relating to a pending Board appeal to the Office of the Secretary of the Board; send material not relating to the appeal through regular channels.

140.40 United States Court Of Appeals

An individual contemplating filing a suit against the Board should be advised to first exhaust the administrative appellate procedures within the RRB.

If, after doing so, the individual is dissatisfied with the Board's final decision, he can file civil suit in the U.S. Court of Appeals in the circuit in which (s)he lives, in the U.S. Court of Appeals for the Seventh Circuit (which has jurisdiction over the area of the Board's headquarters), or in the U.S. Court of Appeals for the District of Columbia. The suit must be filed within one year from the date of the Board's decision notice.

Once such a petition is filed, the court has exclusive jurisdiction over the proceeding and of the issue(s) to be resolved. The court can issue a decree affirming, modifying, or reversing the decision of the Board.

Reports of the death of an employee, applicant, or beneficiary received from a reliable source are considered first party reports and benefits must be terminated timely. Reliable sources include a representative payee, spouse, close relative, funeral director, physician, attorney, railroad employer, or labor organization. Action should be taken in accordance with one of the following sections, if appropriate.

145.5 Deceased Receiving Monthly Payments

When the report of death concerns an individual receiving monthly payments, take action to stop the release of monthly checks (see FOM-I-115.40), and advise how any subsequent checks received should be returned.

Note: When a report of death concerns a third party individual, who is receiving monthly legal partition payments, complete a First Notice of Death (FNOD) transaction on Application Express (APPLE). Send an email to the RPS Legal Partition group mailbox notifying them of the recipient's death, and advise that the partition amount should be restored to the employee.

The Legal Partition/Garnishment Unit will create a USTAR referral; i.e. "Third Party Died" (TPD). The examiner handling the referral will take action to restore the employee's annuity to its full amount. The examiner has 60 days from the date that the case is assigned to make the adjustment.

145.10 Initiating Development for Survivors

When you receive an initial report of death, complete a First Notice of Death (FNOD) transaction on Application Express (APPLE). See FOM 1581.25.1 for instructions.

When returning a check to the U. S. Treasury, enter the following information in the lower left-hand corner of the check above the MICR line:

- Died
- Month and Year
- Your field office number

Also, enter the returned check(s) information on the FNOD transaction to record the return of the check.

If the report of death is from eligible survivors, develop an application and supporting evidence from each prospective applicant for entry on the APPLE system. If you are unable to determine what survivor benefits are payable, if any, based on the resources available to you, use Form RL-94-F as a "lead" form for such development. Send the Form RL-94-F to the nearest known surviving relative, or to

"The Family, or Friends of Family" of the deceased at the last known address. (See FOM 1-1745).

145.10.1 Pending/Tracing of Form RL-94-F

Pend your file for 30 days for return of Form RL-94-F. If it is not returned after 30 days, trace with Form RL-57-B-F. If it is still not returned after the 15 days prescribed on the Form RL-57-B-F, abandon development. Retain the material in the field office file. Do not forward any materials involving the abandonment of the development of survivor applications to headquarters.

145.10.2 Assignments from HQ

Upon receipt of a report of death from any source other than a field office, examiners will complete a FNOD transaction on APPLE, entering the appropriate field office's number on the transaction. By doing so, the appropriate field office will be notified through the SURPASS pending list to initiate development. Names and addresses of known survivors, and the appropriate applications to be developed, will be indicated, if possible.

145.10.3 SSA/CMS Death Match Operations

The Railroad Retirement Board (RRB) receives monthly files containing death reports from the Social Security Administration (SSA) and the Centers for Medicare & Medicaid Services (CMS) for computer matching processes. The purpose of the computer matches is to help ensure the accurate payment of benefits through prompt investigation of reports of annuitant death and the termination of erroneous payments. The SSA/RRB Death Match Letters and SSA/RRB Death Match Suspensions are automated processes that matches PREH database records to the SSA death file, sends out verification letters (RL-75), and if no reply is received, the system automatically suspends all matched cases 30 days after the release date of the letters. The CMS Death Match reports are handled manually and are independently verified by the Program Evaluation and Management Services – Program Evaluation Section UI/SI/Dis/Fld (PEMS-PES UI/SI/Dis/Fld) in the Office of Programs.

A. PEMS-PES UI/SI/Dis/Fld Actions –The SSA/RRB Death Match is tracked by PEMS-PES UI/SI/Dis/Fld personnel through RRAPID's "DTHMATCH". This program can remove an annuitant from the automated suspension action by entering a "Y" on the "ERRONEOUS NOTICE OF DEATH" field. PEMS-PES UI/SI/Dis/Fld also investigates referrals created by the automated program to determine if beneficiaries suspended for over 90 days should be terminated.

Once an annuitant's death has been verified, PEMS-PES UI/SI/Dis/Fld will terminate the benefits and create a FNOD) transaction. PEMS-PES

UI/SI/Dis/Fld will also enter the following message in the remarks section of the FNOD record:

"If DOD is erroneous, please notify the PEMS-PES UI/SI/Dis/Fld Supervisor"

B.

Field Office Actions – The RL-75 letters are released after the 20th of every month and can be viewed in the Imaging system the following day. In the event an erroneous report of death is received, contact the supervisor in PEMS-PES UI/SI/Dis/Fld prior to any reinstatement action to reconcile the erroneous report. The telephone number of the PEMS-PES UI/SI/Dis/Fld supervisor is 312-751-4388.

Field office involvement will be requested only as a last resort, when all attempts by PEMS-PES UI/SI/Dis/Fld to verify the information prove to be unsuccessful. If an assignment is received, the field office is to promptly handle as follows:

- Personally visit the address shown on the annuitant's record.
    - If you are able to see the annuitant and verify his or her identity when you visit the known address, you know the report of death is erroneous. Contact the PEMS-PES UI/SI/Dis/Fld supervisor of your findings. The telephone number of the PEMS-PES UI/SI/Dis/Fld supervisor is 312-751-4388.
    - If you are unable to see the annuitant because the annuitant is deceased, terminate benefits immediately and contact the PEMS-PES UI/SI/Dis/Fld supervisor of your actions.
- If personal contact cannot be made with the annuitant, proceed to investigate the report of death through reliable sources; e.g. a representative-payee, spouse, close relative, funeral director, physician, attorney, railroad employer, or labor organization.
- If it appears evident that the annuitant is deceased, suspend benefits immediately and contact the PEMS-PES UI/SI/Dis/Fld supervisor of your actions.
- All assignments must be concluded with a definitive report that the annuitant is alive or deceased.

If annuity payments were made after the confirmed date of death, the case is referred for an overpayment determination and recovery action.

145.15 Action To Be Taken Upon Return Of Form RL-94-F

145.15.1 Form RL-94-F Indicates Development Not Required

When the RRB has jurisdiction and the completed Form RL-94-F indicates there are no eligible survivors, image the Form RL-94-F and retain in the field office file. (Do not forward to Headquarters.)

145.15.2 Possible Payment to Foreign Beneficiaries Indicated

When information indicates that there are survivors eligible for insurance annuities or an LSDP (Lump Sum Death Payment) who reside in a foreign country, enter the information from the Form RL-94-F and the assignment number of the appropriate field office, i.e. the field office assignment number, on APPLE as indicated in FOM 145.10.

145.15.3 RL-94-F Indicates Governmental Unit Eligible

Forward to headquarters the completed Form RL-94-F and related correspondence when it appears that the only possible beneficiary is a state or local governmental unit (including a state or local government welfare agency) which is equitably entitled to an LSDP but which has made no inquiry concerning the benefit.

NOTE: Do not solicit applications from state or local governmental units, including state or local governmental welfare agencies, which are equitably entitled to LSDPs, except where instructions to do so are received from Headquarters.

It is the policy of the RRB not to solicit applications in such cases unless a residual will be payable, and/or there are other beneficiaries involved. However, an application and any assistance required should be furnished any such governmental unit which is equitably entitled and makes inquiry concerning the benefit. Any county unit in Indiana or Montana that has made an allowance toward the burial expenses of a veteran may not file for reimbursement according to Section 59-1009 of Indiana statutes and Section 71-120 of Montana statutes. See FOM-I-605 for elaboration.

145.15.4 RL-94-F Indicates Eligible Survivors

A. Eligible survivors reside in your area - If there are eligible survivors residing within the territory served by your field office, develop an application and supporting evidence from each prospective applicant.

B. Eligible survivors reside in another field office area - If a returned Form RL-94-F indicates there are eligible survivors outside of your area, follow the instructions in FOM I-1581 which explain how to enter the information from the RL-94-F on APPLE. Be sure to include the assignment number

of the field office serving the area where the eligible survivor is located. The originating field office should retain the original Form RL-94-F if there are eligible survivors located in its area; if not, the original Form RL-94-F, together with any related correspondence, should be forwarded to the office serving the area where most of the survivors reside.

145.15.5 Form RL-94-F Indicates Burial Expenses Not Yet Paid

When the Form RL-94-F indicates that there is no survivor eligible for an annuity in the month of death and no widow(er) eligible for the LSDP by virtue of relationship, the B/E has not been paid and shows the person who intends to pay the B/E, contact the person by phone to obtain the information needed to enter an application on APPLE. If you are unable to reach the person by phone, use Form RL-54-F to transmit an application by mail. The letter explains the 2-year filing limitation and how payment can be authorized to the funeral home. Pend the case for 30 days. If no response is received, image and retain both Form RL-94-F and Form RL-54-F in the field office file. Do not forward any materials involving the abandonment of the development of survivor applications to headquarters.

145.15.6 Referral to SSA

When information furnished in reply to the questions on Form RL-94-F indicates that SSA has jurisdiction, refer the inquirer to the servicing SSA district office. In addition, follow the instructions in FOM 1581.20 to enter or change a current connection on APPLE.

If a person who has been referred to SSA again gets in touch with an RRB office for the purpose of filing a claim because SSA told him or her that no benefits are payable under the Social Security Act, accept and develop the application in APPLE even though it appears that there is no insured status under the Railroad Retirement Act. The current connection will be verified by headquarters when the application is submitted. No erroneous payment will result from your action.

145.15.7 Form RL-94-F Returned as Undeliverable

When Form RL-94-F is returned as undeliverable, and you have exhausted all means of locating survivors, abandon the case, image the undelivered RL-94F and envelop, and notate the field office file that all reasonable efforts to locate survivors have been unsuccessful.

145.20 Erroneous Reports Of Death

An erroneous report of death occurs when an individual is reported to be deceased but is actually alive. The erroneous report may be the result of an administrative error or, if the individual is an annuitant, the erroneous report could be the result of the annuitant's annuity payment being returned by the Postal

Service or his or her financial institution (FI), or a PAM termination transaction from SSA.

NOTE: An erroneous report of death does **not** include an "incorrect or discrepant date of death". An incorrect date of death occurs when the individual died but the reported month and/or year of death is earlier or later than the actual month and/or year of death. A discrepant day of death occurs when the reported day of death is earlier or later than the actual day of death. The month and year of death are correct. Also see RCM 6.6.141.

145.20.1 Death Terminations Entered On APPLE

Death terminations entered on the APPLE system are processed nightly. When an error is discovered, promptly determine what corrective actions are necessary. In some cases, the APPLE FNOD and FAST-S/T transactions can be deleted; avoiding the need to reinstate the annuity.

- Error discovered before APPLE and FAST-S/T processing

  If the error is discovered on the same day as the initial entry, but before nightly processing has occurred, the FNOD transaction can be deleted (Refer to the FOM 1581.25.4 for instructions on deleting a pending APPLE FNOD transaction). The deletion of the FNOD on APPLE will also delete the pending transaction on FAST-S/T. This action will prevent the annuity from being terminated and a Death Notification Entry (DNE) from being released to the FI.

- Error discovered after APPLE processing but before FAST-S/T processing

  If the error is discovered after nightly processing has occurred and the termination action is still pending on FAST-S/T, the pending transaction can be deleted from FAST-S/T (see FOM-I-1565.60). This action will prevent the annuity from being terminated.

  Additionally, the annuity status on APPLE must be corrected from FNOD to ERRDTH (erroneous death). Indicate in the remarks section of the FNOD screen that the death report was erroneous, i.e. "Date of death of 01-02-14 is erroneous. Annuitant is alive". Refer to FOM1 1581.25.4 for instructions on correcting an APPLE FNOD record.

  NOTE: If benefits are paid via EFT, a DNE will be released to the FI. The FI's Automated Clearing House (ACH) department must be notified that the DNE was released to them in error, not to return any payments, and to remove any death alert indicators from their records.

- Error discovered after APPLE and FAST-S/T processing

If the error is discovered after nightly processing has occurred and the FAST-S/T transaction has also processed, the annuity will be terminated and must be manually reinstated. Also, the annuity status on APPLE must be corrected from FNOD to ERRDTH (Refer to FOM1 1581.25.4 for instructions on correcting an APPLE FNOD record). The remarks section of FNOD screen must indicate that the death report was erroneous, i.e. “Date of death of 01-02-14 is erroneous. Annuitant is alive”.

NOTE: If benefits are paid by EFT, a DNE will be released to the FI. The FI’s ACH department must be notified that the DNE was released to them in error, not to return any payments, and to remove any death alert indicators from their records.

IMPORTANT: The RRB receives death reports from the SSA and CMS computer matching processes (see section FOM1 145.10.3). These reports are thoroughly investigated by PEMS-PES UI/SI/Dis/Fld. If the following message appears in the remarks sections of the APPLE Notice Of Death screen:

" IF DOD IS ERRONEOUS PLEASE NOTIFY PEMS-PES UI/SI/DIS/FLD SUPERVISOR ",

the erroneous death report must be reconciled **prior** to any reinstatement action. The telephone number of the PEMS-PES UI/SI/Dis/Fld supervisor is 312-751-4388.

145.20.2 Death Terminations Because of Returned Payments or PAM

If the source of the erroneous report of death is a returned payment or PAM transaction activity, there is nothing to prevent the annuity from being terminated, even if the activity is waiting to be processed. The annuity will have to be manually reinstated.

NOTE: The RRB will not release a DNE to the FI when the source of the erroneous report of death is a returned payment or PAM transaction. However, it is possible for the FI to have received a DNE from another government agency. If the annuitant’s benefits were paid via EFT, it is recommended that you notify the FI that the annuitant is not deceased.

145.20.3 Erroneous Report of Death of an Employee

If an erroneous report of death is received for an employee who has not yet filed an annuity application, complete and forward Form GL-7 to Policy & Systems – Compensation & Employer Services Center (P&S-CESC). P&S-CESC will correct the employee's record on the Employment Data Maintenance (EDM) system.

145.20.4 Erroneous Report of Death of an Annuitant

If an erroneous report of death is received for an annuitant and the annuity has been terminated, or a returned payment or PAM transaction termination activity is pending, send a "high priority" e-mail message to the Customer Service Representative in the Retirement Benefits Division (RBD) or the Survivor Benefits Division (SBD), depending on the annuitant type. The e-mail message must clearly identify the erroneously terminated annuitant and verify the address and representative payee, if any, information displayed on DATAQ.

IMPORTANT: The RRB does not have authority to adjudicate social security (SS) benefits certified to the agency for payment without the prior approval of SSA. If the annuitant is receiving an SS benefit paid by the RRB, the terminated SS benefit **cannot** be reinstated unless approval is first received from SSA. **Exception:** If any of the conditions listed below are met and documented **and**, the RRB did not receive a PAM termination transaction from SSA, the SS benefit can be reinstated without prior approval from SSA:

- The erroneous report of death was due to administrative error, i.e. wrong payee terminated. Document the error in the e-mail message to RBD or SBD Customer Service Representative.

- The FI or postal service returned a payment in error and furnished the RRB with a signed statement attesting to the error. Fax the statement to the RBD or SBD Customer Service Representative. The Customer Service Representative will image the statement.

- A second payment was returned for death, based on the first erroneous report of death, after the benefit was reinstated.

- A face-to-face interview was conducted with the annuitant in question by an official representative of the RRB, e.g. contact representative. Documentation must be a written statement by the interviewer, signed by the supervising manager, and faxed to the RBD or SBD, Customer Service Representative. The Customer Service Representative will image the statement.

NOTE: If a PAM termination transaction was received, advise the annuitant to contact SSA immediately. Documentation that will support reinstating the benefit should be faxed to the RBD or SBD Customer Service Representative. The Customer Service Representative will fax Form RR-4, *RRB Priority Action Fax Sheet* with an RR-3, *Report of Events Affecting SSA Payment,* to the appropriate SSA Program Center. This will help expedite reinstatement of the SS benefit.

145.20.5 Actions by the Field Office

In addition to reporting the erroneous death report to the RBD or SBD Customer Service Representative, field offices are also responsible for the actions described in items a through d below.

a. APPLE FNOD Record. Field offices are responsible for correcting the APPLE FNOD record and deleting any pending FAST-S/T transactions. See FOM-I-1565.60 for instructions on how to delete a pending FAST-S/T transaction. Refer to FOM 1581.25.4 for instructions on how to correct/delete an APPLE FNOD record.

b. DNE. If benefits are paid by EFT, a DNE will be released to the FI. Field offices are responsible for telephoning the FI's ACH department and informing them that the reported death was in error, not to return any payments, and to remove any death alert indicators from their records. Use the on-line Financial Organization Master File (FOMF) to obtain the FI's telephone number.

   NOTE: The RRB will not release a DNE to the FI when the source of the erroneous report of death is a returned payment or PAM transaction. However, it is possible for the FI to have received a DNE from another government agency. If the annuitant's benefits were paid by EFT, it is recommended that you alert the FI that the annuitant is not deceased and to remove any death alerts from their records.

c. Medicare State Buy-In. Field offices are responsible for releasing Form RL-380-F, State Verification of Medicare Buy-In, to the appropriate State Medicaid agency, if premiums were being paid through State Buy-In.

d. Securing Documentation. Field offices are responsible for securing the supporting documentation when the erroneous report of death was due to administrative error or a returned payment, and the annuitant is receiving a SS benefit paid by the RRB. The documentation is to be forwarded to RBD or SBD Customer Service Representative.

   NOTE: If the erroneous report of death is received directly at RRB headquarters, it will be referred to the RBD or SBD Customer Service Representative. The Customer Service Representative will take the actions described above, i.e. delete any pending FAST-S/T transaction, take action to have the application status in APPLE corrected, secure documentation for reinstating the SS benefit, and notify the FI of the erroneous DNE report.

   If Medicare is involved and premiums are being paid through State Buy-In, the RBD or SBD Customer Service Representative will advise the Medicare Section that Form RL-380-F must be released.

145.20.6 Actions by the Customer Service Representative

The RBD or SBD Customer Service Representative will set the case up for reinstatement of the annuity by the close-of-business the day following the receipt of the e-mail notice of the erroneous report of death. The customer service representative will also take the actions described below (also see RCM 6.4.46 F).

- Reinstate Direct Deposit information, if applicable.
- Notify the payee that the annuity was suspended in error.
- Notify the Debt Recovery Section (DRS) to delete/cancel any pending reclamation action and correct the accounts receivable record.
- Notify the last railroad employer when the employee is erroneously terminated.
- Notify the Medicare Section when Medicare is involved.
- Correct the CHICO master if an interim widow status has been entered erroneously into the record.
- Notify other Headquarters units, i.e. PEMS-PES-RET/SUR/TAX, P&S-CESC, P&S-RAC when applicable.

150.5 General

A. General – This chapter covers the various suspension or termination actions required when annuitants break the various rules in our criminal justice system. In Sections 1 through 3, below the RRB must withhold the O/M share, if the O/M benefit with the prisoner's share removed is less than the regular railroad rate, or adjust the Tier 1 benefit to a full non-social security equivalent benefit (NSSEB), as necessary, for the individuals listed. In Section 4, Removal/Deportation, the RRB must terminate the Tier 1 benefit.

1. An individual who is confined in a jail, prison, or other penal institution or correctional facility

   - due to a conviction for a criminal offense **and**
   - confined for more than 30 continuous days; and

2. Inmates confined to an institution at public expense for more than 30 continuous days that have been charged with a criminal offense **and** found:

   - Guilty but insane, or
   - Not guilty by reason of insanity, or.
   - Incompetent to stand trial, or
   - Any verdicts similar to bullets 1 through 3, above (such as a mental disease, a mental defect, or mental incompetence), or
   - To be a sexually dangerous person or a sexual predator. This provision applies to a person who immediately upon completion of confinement in a correctional institution (confinement in the correctional institution was based on a crime an element of which was sexual activity), the individual is confined by court order to an institution at public expense because he/she was determined to be a sexually dangerous person or a sexual predator or similar finding.

3. Based on the Social Security Protection Act of 2004, the following two types of individuals will also have their benefits suspended:

- Fugitive felons. These are individuals fleeing to avoid an unsatisfied Federal, state, or international law enforcement warrant.

- Probation and Parole Violators: These are those individuals violating a condition of probation or parole imposed under Federal or State law.

4. Individuals who are removed from the United States (deported.) These individuals' SSA benefits are terminated under Section 202(n) of the Social Security Act. The effect of Deportation on the Tier 1 is different from that mentioned in the 8 categories, above. The full Tier 1 benefit is withheld from people who are deported. See RCM 1.1.4.B.2 for more information on Removal/Deportation.

   Handling auxiliary beneficiaries of removed/deported wage earners: Unlike Section 202x, when a wage earner is ineligible to receive Title II benefits under Section 202n of the SSA, auxiliary benefits are not automatically still payable based on the deported individual's wage record. Payment of auxiliary beneficiaries is conditional as follows: Auxiliary beneficiaries are not payable for any month they are outside the United States if they are not United States citizens. Auxiliary beneficiaries may move outside the United States with the deported wage earner. When that happens, eligibility for Title II benefits depends on citizenship.

   This means some auxiliary beneficiaries may be included in the OM formula computation and some auxiliary beneficiaries may not be included in the OM formula computation. Furthermore, this means tier 1 benefits paid to some auxiliary beneficiaries may be taxed as all NSSEB and tier 1 benefits paid to other auxiliary beneficiaries may be taxed as other than all NSSEB. Residence and citizen information are located in RCM 4.9.

Conviction of an offense as stated above and subsequent confinement for more than 30 continuous days, or being determined a 'fugitive felon' or a probation or parole violator, requires the following actions as applicable:

- If the O/M benefit with the prisoner's share removed is less than the regular railroad rate, switch to the regular RR rate, and

- Adjust the Tier 1 tax status, as necessary, to all NSSEB, and

- In Total and Permanent disability and freeze cases, a felony conviction can also affect whether a Total and Permanent disability or a disability freeze is awarded. See FOM 1 150.20.

B. How to Determine Greater than 30 Days

If the O/M with the prisoner's share removed is less than the regular railroad rate, O/M benefits are converted to the regular RR rate and Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense or convicted with a verdict mentioned in item 2, above, and is confined in an institution at public expense for more than 30 continuous days.

- If the O/M with the prisoner's share removed are less than the regular railroad rate, suspend the O/M share and convert Tier 1 tax status to all NSSEB effective with the first day of the month in which the official date of the inmate's conviction or the date the inmate starts physically residing in a correctional facility because of his or her conviction. Choose whatever date is later if the dates are different, and then go to the first day of the later month.

- Count '**more than 30 continuous days**' as follows: Date of conviction (or date of confinement if later than the date of conviction) plus 30 consecutive days = 31 or more days. Count the day of conviction as the first day of the period and add 30 consecutive days to this day to equal 31 or more days.

Benefits can be reinstated effective with the first of the month following the month of release.

Note: If a family group is involved and if the OM formula still applies with the prisoner excluded from the calculation, the OM is still payable. OM payments are SSEB payments by definition. If the OM remains payable, those payments remain SSEB. This is consistent with SSA's handling of auxiliary beneficiaries on an incarcerated/fugitive prisoner's wage record. SSA continues to pay auxiliary beneficiaries even though the prisoner's benefits are suspended.

Examples:

EXAMPLE 1: James is arrested and placed in County Jail on 3/21/00. He is not granted bail. He was sent to trial on 4/14/00. The court convicts him on 4/15/00 of a criminal offense. He will remain in County Jail to serve his 6 months sentence.

Under prisoner suspension rules, James is considered **convicted and confined** on 4/15/00. James must serve over 30 continuous days in jail or an institution at public expense before we can determine whether the O/M needs to be converted to the regular railroad calculation with the Tier 1 NSSEB, i.e., 4/15/00 + 30 continuous days = 5/15/00. (His period in jail, prior to his conviction, is ignored for these purposes. This period is also ignored for counting 30 continuous days toward suspension.)

On 5/15/00, if the O/M is involved and James's RR rate is greater that the O/M benefit with his share removed, we will convert James from the O/M calculation to the RR rate and convert his Tier 1 to NSSEB effective 04/01/00.

EXAMPLE 2: Jody is convicted and confined on April 1, 2000 for committing a misdemeanor. She is sentenced to 3 months in jail. Suspend Jodi's O/M share, if any, and, if so, determine whether the O/M can continue, if not, recert the regular RR Rate and change Tier 1 to NSSEB for the months of April, and May 2000. She is officially released early for "good behavior" on May 2, 2000. Benefits can be reinstated effective June 01, 2000, if she contacts RRB for reinstatement and provides RRB with "official release" documentation.

EXAMPLE 3: Kate is arrested on 12/12/99. She was denied bail and stayed in jail until she went to trial. Kate was convicted of a crime that carried a sentence of 9 months on 3/28/00. The judge allowed Kate to go home to get her affairs in order. She was released on 3/30/00 to get her affairs in order. Kate reported to the prison on 4/5/00 to start her 9-month prison sentence. Kate remained in prison until 6/01/00 when she was released early because of good behavior.

Kate's 30 days were up on 5/5/00. RRB adjusted Kate's benefits effective 4/1/2000 until 6/1/00. Kate's O/M benefit share, if any, can begin again in 7/1/00 or her Tier 1 can be converted to SSEB at that time, if she brings official proof of her release to her local RRB field office.

EXAMPLE 4: Bill was arrested on 3/15/00. Bill stayed in jail until he went to trial. Bill went to trial and was convicted of a misdemeanor on 3/28/00. Bill left jail on 3/31/00 and was told to return on 4/3/00 to serve his 60-day sentence. Bill returned on 4/3/00 and will remain in jail until 6/3/00.

RRB will remove Bill from the O/M benefit or change his Tier 1 to NSSEB effective 4/00 through 06/00 since he has been in jail for more than 30 continuous days. (The prisoner suspension rules for 4/01/00 apply for this beneficiary, even though his actual conviction occurred in 3/28/00.)

NOTE: The date of confinement is the primary factor to consider when deciding to suspend the O/M benefits or change Tier 1 to NSSEB of an annuitant **who** is convicted and confined due to a criminal offense. When both of these events are found, suspension will apply or Tier 1 will be converted once the beneficiary remains confined more than 30 continuous days effective from the first day of confinement.

C. How to determine whether an individual is a 'Fugitive Felon' or a Probation and Parole Violators:

No monthly SSA benefits, including O/M and SSEB tier 1 benefits will be paid to any individual for any month during which:

- he/she is fleeing to avoid an unsatisfied Federal, state or international law enforcement warrant, or

- he /she is violating a condition of probation or parole imposed under Federal or State law.

SSA has begun to identify these fugitive felons from a computer matching program with the National Crime Information Center (NCIC).

Claims examiners will handle the fugitive felon cases in the same manner as the Laf-S7 incarcerated prisoner suspensions. The railroad tier 1 **should not** be offset for the Social Security benefit for fugitive felons. These cases can be easily identified from the SSA Master Beneficiary Record (MBR) BENEFIT data line. The LAF code will be **S9** with the RFST code of **FUGFEL.** The MBR will have a FUGITIVE data line and the display of detailed fugitive information will also be shown directly below the HISTORY field.

JADE does not currently recognize the **S9/ RFST** code of **"FUGFEL"** therefore; it is returning the benefit for deduction purposes even though the benefit is not paid. Examiners will have to manually remove the SS reduction amount.

150.10 Lump-Sum, Residual and Accrued Annuity Payments

Conviction of a criminal offense punishable by imprisonment or institutionalization at public expense for more than 30 continuous days (regardless of the actual sentence imposed) has no affect on these awards unless the applicant is convicted of homicide of the employee.

150.15 Retirement and Survivor Annuities

Effective for the period from May 1, 1983 through January 31, 1995, the Tier 1 or O/M share of the annuity was not payable if the annuitant was convicted and confined for committing a felony or an offense punishable by imprisonment for more than 1 year and did not have an appeal pending after February 1, 1995.

During the period from May 1, 1983 through January 31, 1995, the Tier 1 or the O/M share was payable if a disability annuitant was actively participating in a rehabilitation program. The program must have been specifically approved for that individual by a court and must be expected to result in the annuitant's ability to do substantial gainful work within a reasonable time after release.

Note: Effective February 1995, section 202x of the Social Security Act was revised to remove the rehabilitation exception to the suspension provisions.

Effective February 1, 1995, the RRB determined that the Tier 1 was no longer suspended if the annuitant was convicted and confined for committing a felony or an offense punishable by imprisonment for more than 1 year. If the annuitant is convicted and confined, the annuitant's overall minimum (O/M) share, if payable, must be withheld and the annuitant's Tier 1 social security equivalent benefit (SSEB) status must be changed to non-social security equivalent benefit (NSSEB). If the annuitant is convicted and confined for part of a month, the annuitant's O/M share must be withheld for the whole month and the annuitant's tier 1 SSEB status must be changed to all NSSEB for the whole month.

Effective February 1, 1995, the tier I was reinstated to all convicted felons on the rolls. If the action on the case was not final due to the timely filing of an appeal, the suspension action was reversed and any accruals due were paid out.

Prisoner cases first identified after February 1, 1995 will not have their Tier 1 suspended even if the period of incarceration retroacts prior to February 1, 1995. The O/M share will continue to be withheld, however, and the Tier 1 will be all NSSEB.

Effective February 20, 2004, based on Social Security Public Law 106-170, the current procedure applies.

150.15.5 Handling Tier 1 or O/M Accruals

The "No Social Security Benefits for Prisoners Act of 2009" was signed into law on 12-15-2009 as Public Law No 111-115. Based on the interpretations provided in Legal Opinion L-2010-07 dated September 7, 2010, 'Payment and Taxation Impact of the "No Social Security for Prisoners Act of 2009,' do not withhold accruals in any of the 4 situations involved. The taxation status of the Tier 1 or Overall Minimum accrual between the Social Security Equivalent Benefit (SSEB) and Non Social Security Equivalent Benefit (NSSEB) is based on the rules of TOM 110.10.

Presume the annuitant/wage earner is a prisoner, a fugitive felon, or a probation or parole violator. We will use the term 'prisoner' to refer to all categories of affected individuals as defined in FOM1 150.5.A 1, 2, and 3.

If a wage earner is not payable under the Prisoner statute Section 202(x)(1), auxiliary beneficiaries are payable without regard to the annuitant's/wage earner's nonpayment status. If an annuitant/ wage earner is not payable under the Removal/Deportation statue Section 202(n), auxiliary beneficiaries may not be payable. See FOM1 150 A.4., above.

Payment Period and Nonpayment Period

The 4 situations cover accruals accruing through periods in which the individual is in or prior to nonpayment status due to criminal activity with results in suspension of O/M payments or SSEB status of the Tier 1. The term 'payment period' applies to the date the accrual began to accrue and the date the annuity or O/M benefit is corrected. For example, a recomputaion is effective January 1, 2010 and you are correcting the rate on June 1, 2011. The payment period is 1/1/2010 through 5/31/11. The nonpayment period is the period the individual is incarcerated or otherwise subject to these rules. For example, John Doe was incarcerated due to criminal activity as defined by statute from 1/1/2009 through 5/31/2009; therefore, in this example, his nonpayment period is 1/1/2009 through 5/31/2009 and is prior to his accrual payment period.

The Four Situations:

Tier 1 Accrual Due For a Payment Period within the Nonpayment Period

Any tier 1 accrual due for a period **within** the nonpayment period is payable as NSSEB.

Overall Minimum Formula Accrual Due For a Payment Period within the Nonpayment Period

Any overall minimum (OM) formula accrual due for a payment period **within** the nonpayment period may be payable if the OM still applies with the individual subject to nonpayment **excluded from the OM calculation**. If the OM still applies, the OM accrual is payable as **SSEB**.

Tier 1 Accrual Due For a Payment Period Prior to the Nonpayment Period

Any tier 1 accrual due for a period prior to the nonpayment period should be paid without regard to the individual's nonpayment status. That means the tier 1 accrual is payable as NSSEB, SSEB, or a SSEB/NSSEB split, whichever is applicable.

Overall Minimum Formula Accrual Due For a Payment Period Prior to the Nonpayment Period

Any overall minimum (OM) formula accrual due for a period prior to the nonpayment period should be paid without regard to the individual's nonpayment status. That means the individual subject to nonpayment should be **included in the OM calculation**. The OM accrual is payable as **SSEB**.

When these actions are complete, the claims examiner should prepare an Outlook message that references any newly imaged criminal activity case materials and/or any

adjudication action taken. Copies of the Outlook message should be sent to the TCIS-TS Group mailbox and the Criminal Activity Case (CAC) Group mailbox. This should be done for all criminal activity case handlings, whether or not a claim folder is involved.

150.20 Disability Cases

150.20.05 Disability Freeze Cases

If an offense punishable by imprisonment for more than 1 year was committed after October 19, 1980, and if a disability freeze was awarded after that date, OLDDS should indicate "offense considered."

An offense punishable by imprisonment for more than 1 year does not affect the disability determination in an occupational disability case.

Following are the guidelines given to Disability Examiners concerning prisoner convictions in Total and permanent disability cases. They are included for your information only. Further information is provided in the Disability Manual at DCM 3.8.2.D.4.

When making a disability freeze determination, consideration must be given as to whether the impairment is offense related or confinement related.

150.20.05.a Felony/Offense Related

For offenses punishable by imprisonment for more than 1 year committed after Oct. 19, 1980, an impairment which arose, or was aggravated (but only to the extent of the aggravation), in connection with the commission of the offense is to be permanently disregarded for purposes of eligibility for a disability freeze, early Medicare or applicability of the O/M formula. There need not be a causative connection, but the impairment must be closely related to the commission of the offense, occurring at a time and location near to the offense.

150.20.05.b Confinement Related

If an impairment arose or was aggravated to a disabling extent during the confinement for conviction of an offense punishable by imprisonment for more than 1 year, the impairment, to the extent of the aggravation, must be temporarily disregarded for the months of confinement.

150.20.10 Disability Cases Before May, 1983

As explained in "Retirement and Survivor Annuities" above, tier I or the O/M may be withheld from any annuity effective May 1, 1983. Before that date, the O/M share could be withheld in disability cases if the offense was committed October 19, 1980, or later.

150.20.15 Effective February 1, 1995

The tier I will no longer be suspended if the disability annuitant is convicted and confined for committing an offense punishable by imprisonment for more than 1 year. If the disabled annuitant is convicted and confined, the annuitant's O/M share must be withheld or the annuitant's tier I SSEB status must be changed to NSSEB. If the disabled annuitant is convicted and confined for part of a month, the annuitant's O/M share must be withheld for the whole month or the annuitant's tier I SSEB status must be changed to NSSEB for the whole month.

150.20.20 Exception to Suspension - Disability Cases Only

Prior to February 1995, the tier I or the O/M share is payable if a disability annuitant is actively participating in a rehabilitation program. The program must have been specifically approved for that individual by a court and must be expected to result in the annuitant's ability to do substantial gainful work within a reasonable time after release.

Note: Effective February 1995, section 202x of the Social Security Act has been revised to delete the rehabilitation exception to the suspension provisions. Therefore, it no longer applies.

150.25 Due Process

Due process is required to suspend the O/M shares unless the annuitant or SSA notify the RRB of the incarceration. Due process is required to recover any overpayment. It is not required to adjust the annuitant's tier I tax status.

150.30 Field Office and Headquarters Development

All annuity applications request information about a criminal offense. For those already on the rolls who are convicted of such an offense, the Field Office should contact the state correctional authorities to verify the applicant’s information. Field offices should obtain the following information from the state correctional authorities in all such prisoner cases:

- If the criminal offense committed was a felony or an offense punishable by imprisonment for more than 30 consecutive days;

- The date of conviction;
- The date and place of confinement;
- If the individual has been paroled; and
- If paroled, a copy of the release papers.

The applicant's statement allows us to act on O/M benefits or Tier 1 tax status without due process. It also furnishes the field office with the information they need to contact the state correctional authorities.

- Note: It may be possible to access this information from the State Department of Corrections web site. For example, the Illinois Department of Corrections web site has an "Inmate Search" function that can be used to secure incarceration data. They suggest having the following information at hand prior to undertaking a search: the full name and date of birth of the inmate, and the year the inmate was received at the Department of Corrections.

  The field will forward the information to the Headquarters unit that handles the particular case. That unit will determine:

  - Whether the incarceration qualifies as a criminal offense (regardless of the actual sentence imposed) and whether the individual has been incarcerated more than 30 days or being determined a 'fugitive felon' or a probation or parole violator,
  - If the O/M applies, whether it needs to be adjusted, or in the case of removed /deported individuals, whether tier 1 must be withheld, and
  - When these actions are complete, the unit will send the case to Tax Clerical and Imaging Section – Tax Section (TCIS-TS) to adjust tier 1, as necessary, to all NSSEB. The claims examiner should prepare an Outlook message that references any newly imaged criminal activity case materials and/or any adjudication action taken. Copies of the Outlook message should be sent to the TCIS-TSGroup mailbox and the CAC Group mailbox. This should be done for all criminal activity case handlings, whether or not a claim folder is involved.

The documentation of the conviction and the annuitant's statement should be retained in an AFCS folder and must be imaged.

Note: Tier 1 tax status must be adjusted for any months the convicted individual is confined, a fugitive felon, or a parole violator. For example, if the convicted/confined

individual is confined for three months then the Tier 1 status must be adjusted to all NSSEB for three months.

150.35 Annuitant Has Been Released

We cannot reinstate the O/M share or change tier I tax status based only on the annuitant's statement. Obtain a copy of the release papers from the state correctional authorities showing that the annuitant has been paroled and send them to head quarters. The release papers should be imaged so other TCIS-TS can review them

1. Once we have the release papers, we can re-include any previously excluded prisoner from the O/M computation from the 1st day of the month following the month of release, and adjust the annuity rate as needed.

2. Whether the annuity rate is adjusted or not, advise TCIS-TS by email that the prisoner has been released from confinement. If the RR formula is being paid, TCIS-TS may need to adjust the SSEB/NSSEB composition of tier 1. Include the date of release in your email.

NOTE: If the annuitant was placed immediately on probation, there will be no suspension as there was no confinement. There are no release papers when the annuitant is placed on probation.

150.40 Annuitant is Entitled to Social Security

If SSA indicates that a beneficiary has been suspended for a conviction, the O/M share may be suspended without due process. However, headquarters will request that SSA send us copies of all information they have on the conviction.

Based on Legal Opinion 94-51, tier I benefits will not be reduced by an SS benefit which is suspended (not payable) because of prisoner incarceration. Therefore, effective February 1995, the tier I benefits of incarcerated prisoners should not be reduced for SS benefits that were suspended for the same incarceration. If the tier I benefit has been reduced, the benefit reduction will be removed and any accrual paid.

Headquarters will investigate LAF code S7 cases. The suspension may be for a conviction.

Copies of conviction information should be sent to SSA if that agency is paying benefits.

150.45 Prisoner Code Paragraphs

RCM 10.5.90 contains the paragraphs used when the O/M must be withheld for a conviction. There is also a paragraph used if the annuitant has Medicare. The code paragraphs will be revised.

150.50 Definitions

150.50.05 Felony

A crime is a felony if it is an offense which constitutes a felony under applicable law. If the law does not classify any crime as a felony (e.g., law of New Jersey, Uniform Code of Military Justice), an offense punishable by death or imprisonment for a term exceeding 1 year is considered a felony for this procedure.

A felony may have been committed even if the resulting sentence is less than 1 year. The length of the sentence is not an indication of a felony, except as stated in the preceding paragraph.

Also note that a person charged with a felony may plead guilty to, and be convicted of, a lesser charge; in that case if the sentence is less than 1 year, benefits are not suspended. If there is a conviction after a felony charge, you may assume the conviction was a felony, unless information is received to the contrary.

If convicted, a juvenile tried as an adult is subject to suspension. However, this is relatively rare.

150.50.10 Conviction

Tier I will not be affected or the O/M will not be suspended until the individual has actually been convicted of a criminal offense (regardless of the actual sentence imposed), and is confined to a penal institution, correctional facility, or an institution at government expense for more than 30 days. A grand jury indictment or otherwise being charged with a crime does not cause suspension. If an individual is confined but not convicted, and is subsequently convicted, suspension is effective with the month of conviction.

When a person has been convicted and incarcerated, but the conviction is under appeal, the tier I is all NSSEB or the O/M is subject to suspension. When a person has been convicted but the conviction is under appeal and the person has been released pending appeal, the tier I will not be changed to all NSSEB or the O/M will not be suspended until we learn the outcome of the appeal. If a conviction is overturned,

benefits are payable as if the person had never been imprisoned for that conviction. If a pardon is granted, the case will be sent to Policy and Systems - RAC.

150.50.15 Confinement

A penal institution or correctional facility includes any facility which is under the control and jurisdiction of the agency in charge of the penal system, or any facility in which convicted criminals may be incarcerated. This includes, for example, a mental hospital for the criminally insane which is used for incarcerating convicted criminals, regardless of whether that institution is operated by the correctional authority.

A person is considered confined even if temporarily hospitalized outside the facility, or temporarily or intermittently outside the facility to work or attend school, or because he escaped or failed to report to begin confinement. Transfer from prison to a half-way house or a work-release facility is considered confinement if the individual remains under a sentence of confinement.

A prisoner released on parole, or because his sentence ended, been suspended or overturned is not under a sentence of confinement.

Effective February 1995, an individual will not be considered confined in a penal institution during any month throughout which such individual is residing outside the penal institution or correctional facility at no expense (other than the cost of monitoring, i.e., using a home monitoring device) to such institution or the penal system or to any agency to which the penal system has transferred jurisdiction over the individual.

150.55 Problem Cases

150.55.05 Annuitant Convicted but not Confined

If the annuitant is paroled or on probation, the prisoner provisions do not apply. If the annuitant crosses state lines to avoid confinement, or otherwise evades confinement, or if the annuitant violated conditions of his/her parole or probation, we apply the prisoner provisions as if the annuitant were in prison. See also the definition for confinement under "Definitions".

150.55.10 Appeal

If we first hear that the annuitant meeting the categories in Section 150.5, above has been convicted of an offense punishable by imprisonment for more than 30 days (regardless of the actual sentence imposed) but is currently free on appeal, advise the annuitant to inform the RRB of the result of the appeal. Pend the case to trace in 6 months.

150.55.15 Credit for Time Served

When a judge gives a prisoner credit for time already spent in jail prior to a conviction for a criminal offense, that time period is not subject to a change in tier I tax status.

150.55.20 Criminal Charge

A criminal charge does not necessarily mean there will be a conviction. If there is a conviction after a criminal charge, you may assume the conviction was a criminal offense, unless information is received to the contrary.

150.55.25 Juvenile

Juveniles are generally not charged with, tried for or convicted of a criminal offense. While an offense may be similar to a felony, a juvenile's case is generally tried in a juvenile court system and if found guilty, they may be committed to a juvenile facility. The criminal activity provisions do not apply in this situation.

However, if a juvenile is tried for and convicted of a criminal offense as an adult, the prisoner provisions will apply.

150.55.30 Reserved

150.55.35 Parole

Because parole does not entail confinement, the suspension provisions do not apply.

Parole is a type of release, an end of a felony sentence, and clearly the intent under the law is that the prisoner is not confined in jail.

Note: Based on the Social Security Protection Act of 2004, parole violators will have their benefits suspended (see Section 150.5.C.)

150.55.40 Probation

Because probation does not entail confinement, the prisoner provisions do not apply. A convicted individual who is sentenced to probation is not confined. The intent of the court is that the individual serve time on probation, not in jail.

Based on the Social Security Protection Act of 2004, probation violators will have their benefits suspended (see Section 150.5.C.)

205.1 Employer Defined

An "employer" under the Railroad Retirement Act (RRA) is:

- Any carrier subject to Part I of Interstate Commerce Act. (This includes United States carriers operating in Canada as explained in FOM 205.4); and
- Any company directly or indirectly owned or controlled by carriers; and
- Any receivers, trustee or other individual body possessing the property of or operating the business of any carrier; and
- Certain railroad associations and railway labor organizations.

See following sections for details.

205.2 Types of Employers

205.2.1 Carriers

A carrier is an express company, sleeping-car company or carrier by railroad subject to Part I of the Interstate Commerce Act. This includes United States carriers operating in Canada as explained in FOM 205.4.

205.2.2 Associations, Bureaus and Agencies

This term includes railroad associations, traffic association, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other organizations that are:

A. Controlled and maintained wholly or principally by two or more employers; and

B. Engaged in the performance of services in connection with or incidental to railroad transportation.

205.2.3 Company Controlled by Carrier

Any company directly or indirectly owned or controlled by one or more carriers, or under common control therewith and which operates equipment, facilities or performs service (except casual or trucking service) in connection with railroad transportation.

A. Control - A company is controlled by one or more carriers when:

1. A carrier is directing its policies and business; or

2. A carrier has the right or power by any means, regardless of stock ownership, to direct (either directly or indirectly) its policies and business.

B. Common Control - A company or person is under common control with a carrier when the control of each is by the same person, persons or company.

C. Casual Service - Service or operation of equipment or facilities by a controlled company or person in connection with railroad transportation is casual when it is:

1. Insubstantial; or

2. So irregular or infrequent that it cannot be inferred that the service will be repeated.

D. Incidental Service - An organization is engaged in the performance of service incidental to railroad transportation when such functions would normally, in the absence of the organization, be performed by the constituent employers.

F. Contract Services - If a railroad employer contracts work with non-railroad employees, this may allow the non-railroad employees to be covered under the Railroad Retirement Act as though they were railroad employees. A coverage determination needs to be made for the non-railroad employer.

205.2.4 Receiver or Trustee

Any receiver, trustee or other individual or body, judicial or otherwise, in possession of the property or operating all or any part of the business of any carrier is an employer ONLY with respect to individuals who would be employees, if the property or operation of the business had continued in possession of the preceding employer.

205.2.5 Railway Labor Organizations

The term "employer" includes railway labor organizations that are national in scope and organized in accordance with the provisions of the Railway Labor Act. "Employer" also includes the following railway labor organization subordinate units established according to constitution and by-laws:

- State and National legislative committees; and
- General committees; and
- Insurance departments; and
- Local Lodges and divisions.

205.3 Determining Employer Status

An initial coverage status determination must be made for every railroad employer and independent contractors performing services for covered employers. Investigators of the RRB's Audit and Compliance Section obtain the information necessary and submit it to the three-member Board for a formal determination.

The "Employment Data Maintenance (EDM) System" shows the status of all employers for which a determination has been made.

Under the law, it is the employer's responsibility to notify the RRB of any changes which may affect employer status. The coverage status is then reconsidered.

205.4 Creditability of Canadian Service

205.4.1 Work for a Canadian Employer

Service in Canada for an employer whose principal operation is in Canada is not creditable under the RRA.

205.4.2 Service in the United States

Service in the United States for an employer by any employee is fully creditable under the RRA.

205.4.3 U.S. Citizen Working in Canada for United States Employer

Service in Canada by a United States Citizen for a U.S. employer is fully creditable as service months and compensation.

205.4.4 Canadian Working in Canada for United States Employer

Service for a United States employer in Canada by a Canadian citizen or permanent resident of Canada is as follows effective 1-1-83 or later:

A. This service preserves an employee/employer relationship for the establishment of current connection as explained in FOM 225.35; and

B. Otherwise, this service is not creditable under the RR Act and is considered to be non-railroad service:

1. The earnings for January 1, 1983, or later are not creditable as compensation or wages; and

2. The service performed January 1, 1983, or later cannot be used to establish service months under the RRA; and

3. The service performed January 1, 1983, or later has no effect on the annuity beginning date (ABD); and

4. The employee will be subject to last non-railroad employment (LPE) work deductions if he retires from the Canadian service within 6 months of his ABD.

   EXAMPLE: The Canadian citizen works solely in Canada for Conrail and its predecessor railroads from 2-7-56 through 4-24-85, the month the employee attains age 63. The earnings and service months from 1-1-83 through 4-24-85 cannot be used in the annuity computation. The employee has a current connection. ABD for the reduced age and service annuity can be as early as 5-1-84, the first full month the employee is age 62. However, last person employment work deductions apply to his tier II benefit.

L-91-18 states the administrative finality is to be applied to the annuity when:

1. The employee annuity is paid including Canadian service 1978-1982 that was posted to Form G-90; and

2. The railroad service is later removed from the earnings record because the railroad or the employee received a refund of the tier taxes.

205.5 Electric Railways

An electric railway is considered to be an "employer" if it meets one of the following conditions:

A. It is more than a street, suburban or interurban electric railway; or

B. It is operating as a part of a general steam-railroad system of transportation; or

C. It is part of the national transportation system.

205.6 Coverage Ruling for Mining of Coal

The term "employer" does NOT include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple and the operation of equipment or facilities or in any of such activities.

A person engaged in any of the following physical operations is NOT an employee:

- Coal mining;
- Preparation of coal;
- Loading coal at the mine tipple;

- Handling coal between the mine and the tipple, unless the handling consists of movement by rail with standard railroad locomotives.

205.7 Coverage Ruling for Missouri Pacific Truck Lines and the Texas Pacific Motor Transport Company

As a result of a 1978 audit by the Internal Revenue Service (IRS), the Missouri Pacific Truck Lines (MPTL) and the Texas and Pacific Motor Transport Company were ruled to be employers under the Railroad Retirement Tax Act (RRTA). The court has reversed the IRS decision and ruled that these employers are not employers under the RRTA. The time limit for an appeal in this case is passed. This means that earnings from the MPTL are wages, not compensation.

The Social Security Administration has advised that all wages for the concerned employees have been posted to their social security earnings record.

205.8 Coverage Ruling for Trans-Mark or Servitron, Inc

205.8.1 Background

Service by certain individuals with Trans-Mark, Inc. or Servitron, Inc. constitutes railroad service under the Railroad Retirement Act (RR Act).

In March 1969, the Kansas City Southern Railway Company (KCSR) and its affiliates created two satellite companies: Trans-Mark, Inc. and Servitron, Inc. Both of these companies were largely staffed by former KCSR employees, who had been transferred from the KCSR payroll to those of the satellite companies. Earnings from employment with the satellite companies were reported to the Social Security Administration as wages.

In July 1976, the General Counsel ruled in L-76-381 that the service of those individuals who were carried on the payrolls of Trans-Mark or Servitron, but who were performing service for the Kansas City Southern and its affiliated railroads, was creditable under the RR Act.

At the time that this decision was made, a number of Trans-Mark and Servitron employees were receiving railroad retirement annuities based on their last day carried on the KCSR's payroll. Other individuals were receiving social security benefits based on the "wages" earned while employed by Trans-Mark or Servitron.

Because the crediting of Trans-Mark or Servitron service can affect current connection, SUPP closing data and REG ANN, SUPP ANN or spouse annuity entitlement, any previous RRB determination made based on the incorrect use of this service must be re-opened.

205.8.2 Field Office Handling

Initial cases involving service with Trans-Mark or Servitron are marked for manual handling.

206.1 Employee Defined

An employee is a person who is:

- In the active service of one or more "employer" for compensation; or
- In an employment relation to one or more "employer;" or
- An officer of an employer; or
- In the service of a local lodge or division; or
- An employee representative; or
- An employee of an employee representative; or
- In the service of a general committee.

206.2 When an Employment Relation Exists

A person has an "employment relation" if he is:

206.2.1 Performing Services

A. Subject to continuing authority of the employer who supervises and directs the manner in which the employee's services are rendered; or

B. Rendering professional or technical services integrated into the staff of the employer; or

C. Rendering other personal services on the property used in the operations of the employer and the services are an integral part of those operations.

206.2.2 Other

Prior to the annuity beginning date or beginning date of a pension from the railroad, an employment relation exists for months the employee:

A. Was on bona fide leave of absence from the employer without reference to any governing rule or practice; or

B. Was not retired or discharged but was by reason of continuous disability unable to return to service; or

C. Was out of service by reason of a discharge later determined to be wrongful; or

D. Was an employee representative or employee of an employee representative, as explained in FOM 1 213.

206.3 When an Employment Relation Does Not Exist

An employment relation does not exist for any month after the month in which:

- The railroad retirement annuity begins; or
- The railroad private pension begins; or
- The employee resigns; or
- The employee is discharged; or
- The employee relinquishes job rights in order to receive a separation allowance or severance payments; or
- The employee dies.

Also, an employment relation does not exist if the employee's last railroad service was outside the U.S. and that service was not creditable under the Railroad Retirement Act (RRA).

206.4 Officer of an Employer

An officer of an employer, performing the duties of his office for compensation, is an employee.

206.5 Employee of Local Lodge o Division

A person rendering services for a local lodge or division of a railway labor organization employer, who was in the service of or in an employment relation to a carrier, on or after 8-29-35, is an employee if:

A. Substantially all of the members of the local lodge or division are employees of an employer conducting the principal part of its business in the U.S.; or

B. The headquarters of the local lodge or division is in the U.S. and

C The employee must have previously performed creditable railroad service to an employer.

206.6 Employee Representative

An officer or official representative of a railway labor organization (other than a labor organization which is an employer) is an employee if he:

A. Rendered service for an employer under the RRA before the period of service claimed as an employee representative; and

B. Is authorized and designated to represent employee in accordance with the Railway Labor Act, as amended.

206.7 Employee of an Employee Representative

A person who is regularly assigned to or regularly employed by an employee representative in connection with the duties of his office is an employee. Service as an employee of an employee representative may be credited whether or not the employee had ever been in the service of a covered employer.

206.8 Employee of a General Committee

A person in the service of a general committee of a railway labor organization employer is an employee when:

A. He represents a local lodge or division whose members are substantially all employees of an employer conducting the principal part of its business in the U.S., or the quarters of the local or division is in the U.S.; or

B. He acts as a general or assistant general chairman of a general committee which represents persons in employer service in the U.S.

EXCEPTION: If his office or headquarters is not located in the U.S., he will NOT be an employee unless 10% of his remuneration for service in that capacity is creditable as compensation.

206.9 Part-Time Employee

A part-time employee is a person who devotes relatively small amounts of time to his railroad duties. The amount of time spent in service is immaterial; the controlling factor is whether his duties are those of an employee within the meaning of the act.

206.10 Joint Employee

A joint employee is a person who renders compensated service for more than one railroad employer in the same calendar month.

206.11 Contract Employee

A person engaged in railroad employment under a contractual agreement is an employee, if it is clearly shown that the covered employer had continuing authority to supervise and direct the manner in which the work was done.

When a person claims that he rendered service under a contract in a professional, technical or other capacity, i.e., doctor, lawyer, consulting engineer, etc., and requests an annuity estimate or files for an annuity, request him to complete Form AA-4, "Self-Employment and Substantial Service Questionnaire." Forward the case to Headquarters for a determination as to whether the person is in railroad service or is working in self-employment as an independent contractor. The Office of General Counsel will determine if the person is in railroad service or self-employment. The final decision will be coordinated with the Policy and Systems – Compensation and Employer Service Center (P&S-CESC) to insure that records of compensation are correct.

206.12 Service as Substitute, Assistant or Helper

Service rendered to an employee of a covered employer for remuneration as a substitute, assistant or helper is creditable as service to the employer if the substitute, helper or assistant was employed with the consent of the employer. Consent may be implied by knowledge on the part of the employer that the nature or volume of work required assistance for its completion.

206.13 Redcap Service

A person who rendered service as a redcap or other station attendant before 9-1941, and whose duties consisted of carrying hand baggage and assisting passengers in train stations, may receive credit for all such verified service even though he received no remuneration from an employer for such service. Redcap service is further explained in Appendix A of this chapter.

207.1 Month Of Service

A month of service is a calendar month during all or any part of which a person:

A. Works as an employee for compensation; or

B. Has an "employment" relation (see FOM 206.2) and:

1. Is "paid for time lost" as an employee; or

2. Is credited under the Railroad Retirement Act with military service; or

3. Is compensated for a lay-over period which was continuous with his last active service and ended in the month following the month of his last active service, if the employee needs an additional service month; or

4. Receives pay for an identifiable period of vacation; or

5. Has compensation for other months in the calendar year that are high enough to provide a deemed service month as explained in FOM 207.5.

Also note that one railroad service month could be credited to the month that an employee filed for and received benefits under Title VII of the Regional Rail Reorganization Act. However if the employee worked in the railroad industry in that month, no service month can be credited based on Title VII filing.

207.2 Prior Service Months

Prior service under the Railroad Retirement Act means service performed before 1-1-1937, as explained in FOM1 Art. 2 Appendix A. Service performed before 1937 may be credited only if, on 8-29-1935, the employee met the conditions for an employment relation described in FOM1 Art. 2 Appendix C.

207.3 Subsequent Service

Subsequent service is all railroad service performed on or after January 1, l937.

There is no maximum limit of years of service when only subsequent service is included in the total years of service.

207.4 Creditability of Military Service

Military service after 1956 may be credited and included in the employee's years of service as explained in FOM1 215.

207.5 Deemed Service Months

207.5.1 Deemed Service Month Requirements

Effective for earnings years 1985 or later, a person who had an employment relation (see FOM1 206.2), or was an employee representative in months in which he did not perform railroad service or did not have creditable "Pay for Time Lost," may be deemed to have extra railroad service months.

The following criteria must be met for an employee to be credited with deemed service months:

- The employee's total compensation for the calendar year exceeds 1/12th of the Tier 2 yearly compensation maximum times the number of actual railroad service months (based on actual railroad service or "Pay for Time Lost"); and

- There are months in the calendar year in which the employee or employee representative had no railroad compensation and has an employment relation.

No deemed service months can be credited after an employment relation ends. An employment relation ends with:

- The employee's retirement annuity ABD;

- The date the employee relinquished job rights in order to receive a separation allowance; or

- The date of the employee's death.

The date of separation (DOS) reported by the employer when an employee receives a separation allowance is used when determining deemed service months. The date rights relinquished (DRR) an employee claims on his or her application is not used. See the following two examples.

EXAMPLE 1: For 2006, the employee had 7 reported service months for January through July and the maximum Tier 2 yearly compensation of $69,900.00. No service months or compensation were reported for 2007 or 2008.

The employee applies for a retirement annuity on 05/28/2008 and his ABD is 06/01/2008. He claims a DRR of 07/31/2006, his last day of railroad service, on his application. There is no reported DOS, because he did not receive a separation allowance. The only DRR information is what the employee claimed on his application. Therefore, it is not considered in the deemed service month determination. August through December of 2006 can be credited as deemed service months.

EXAMPLE 2: Same facts as above, except the employee received a separation allowance payment on 07/14/2006. That is the date the employer reported as both the DOS and DRR. Therefore, no deemed service months can be credited after July 2006.

An employment relation cannot exist for deemed service months if the employee's last railroad service was outside of the U.S. and the service was not creditable under the RRA.

In survivor cases, a deemed service month can be given for the month in which the employee dies, provided all of the above requirements are met. A deemed service month cannot be given for any month after the month of death.

207.5.2 When the Deemed Service Determination Is Made

Deemed service months are credited mechanically when annual service and compensation reports are posted to EDM, and there is enough information available in EDM and other RRB databases for the deeming program to establish employment relation.

When the deeming program cannot establish employment relation mechanically, the Compensation and Employer Services (CES) in Assessment and Training (A&T) releases a Form GL-99, "Employer's Deemed Service Months Questionnaire," to the employer to verify employment relation in the deemable months (see CCOM 605). When the GL-99 is returned, CES posts a deemed service month on EDM for each potential deemed month in which the employer indicates the employee had an employment relation.

207.5.3 How Number of Deemed Service Months are Determined

The following formula is used to calculate the total number of deemed service months that may be credited.

1. Railroad compensation is credited at the rate of 1/12 of the Tier 2 yearly maximum for each month the employee or employee representative actually worked in railroad service:

    a. Yearly T2 max. ÷ 12 = monthly max.

    b. Monthly max. x mos. worked = credited comp.

2. The railroad compensation amount that exceeds the credited compensation in Step 1 (up to the Tier 2 yearly maximum) is divided by 1/12 of the Tier 2 yearly compensation maximum (i.e., the monthly max.). The result is the number of deemed service months that may be credited, with any fraction rounded up to the next full number.

    (Earned comp. – credited comp.) ÷ monthly max. = deemed service months

The number of deemed service months cannot exceed the number of months in which the employee had no compensation and had an employment relation. Deemed service months are always credited to the first deemable months in the calendar year.

EXAMPLE: The employee worked all months in 2007 and is on leave of absence for the months of January through March 2008. His leave of absence maintained his employment relation. He is recalled April 5, 2008 and works each month through December 2008. He earned $68,500.00 for the months he worked. $75,900.00 is the 2008 Tier 2 yearly maximum.

1. 75,900 ÷ 12 = 6,325 (monthly max.)
2. 6,325 x 9 (mos. worked) = 56,925 (credited comp.)
3. 68,500 (total earned) – 56,925 = 11,575 (amt. exceeding credited comp.)
4. 11,575 ÷ 6,325 = 2 (1.83 rounded up)

The employee is entitled to two deemed service months for January and February (the first deemable months of the year).

207.6 Deemed Service Months - Special Handling Situations

207.6.1 Decrease In Deemed Service Months (RESCUE Code 5)

In some cases, deemed service months that were included in the initial annuity calculation may be mechanically removed after the final award was paid. This will cause a RESCUE Code 5 reject, because the decrease in service months will also decrease the employee's Tier 2.

EXAMPLE: For 2004, eight service months for January through August for 2004 and the maximum yearly Tier 2 compensation of $65,100.00 were reported for the employee. No service months or compensation were reported for 2005. The employee has a total of 366 reported service months through August 2004.

He applies for a retirement annuity on 12/28/2005. The annuity is paid final on 03/03/2006 with an ABD of 02/01/2006. The G-90 used to pay the final award, dated 01/06/2006, shows September through December 2004 as deemed service months. This gives the employee a total of 370 service months, which are included in the annuity calculation.

The case rejects as a Code 5 in a subsequent RESCUE run. The RESCUE G-90 shows that the 4 deemed service months that were initially credited in 2004 were removed.

Case Handling

When you receive a case in which deemed service months were previously credited and used in an annuity calculation and are later removed, first verify that the months were not removed due to any reported service month or compensation adjustments. If there are no service month or compensation adjustments, take the following action:

1. Do not adjust the annuity for the decrease in deemed service months.
2. Compare the G-90 used to pay the final annuity with the RESCUE G-90, and determine which deemed service months were removed.
3. Send an email to the QRSC mailbox and include the following information:
    - "Deemed Service Months Removed" in the Subject line.
    - EE's name and claim number.
    - EE's ABD.
    - The year in question.
    - The date of the G-90 used to pay the annuity.
    - The date of the RESCUE G-90 that shows the deemed service months removed.
    - Which deemed service months were removed.

The CESC examiner will determine which of the removed deemed service months should be restored, if any, and post them to EDM. The CESC examiner will respond with a return email to the RBD mailbox advising that CES action has been completed.

After you receive the return email from CESC, request a new G-90 and, if necessary, adjust the annuity.

207.7 Effect of Deemed Service Months on Annuity Beginning Date and Current Connection

Credit for deemed service months occasionally may be a factor in selecting an ABD, if additional months are needed to establish basic eligibility, increase the Tier 2 amount, or create a current connection.

EXAMPLE: The employee works in all months from January through May 2008, the month in which he attains age 60, making him eligible for an ABD of 06/01/2008. His reported compensation for the year is $41,000.00. He wants to receive a 60/30 annuity, but has only 358 service months through May. Based on his compensation of $41,000.00, he can be credited with two deemed service months, if he designates an

ABD of 08/01/2008, instead of the earlier ABD of 06/01/2008. This would give him 360 service months and entitle him to the 60/30 annuity.

207.8 Year of Service

Twelve creditable service months, consecutive or not, constitute a year of service. In determining the employee's total years of service, part of a year is shown as a fraction. For example, 125 months of service is 10 5/12 years.

207.8.1 Prior to 10-1-81

Prior to 10-1-81, final fractions of 6 months or more counted as 1 year of service if the employee annuity:

A. Began to accrue before 7-31-46; or

B. Began to accrue after 7-31-46, was awarded before 10-30-51 and the employee had at least 54 months of service; or

C. Was awarded on or after 10-30-51 and the employee had at least 126 months of service.

207.8.2 Effective 10-1-81 or Later

Beginning 10-1-81, under the l981 Railroad Retirement Act amendments, an employee receives credit for his actual months of service. A fractional year of 6 or more months is no longer counted as a full year. An ultimate fraction is taken at its actual value. However, the amendments provided a transitional period for implementing this change. If the application was filed before 4-1-82, the years of service used on or after 10-1-81 cannot be less than what the employee had in 9-1981, when an ultimate fraction of 6 months counted as a full year.

Example 1: An employee qualified for a 60/30 annuity if he had at least 354 months in September 1981 and filed an application before 4-1-82. But, if he filed 4-1-82 or later, he must have 360 months to qualify for a 60/30 annuity.

Example 2: An employee with 27 7/12 years of service in September 1981 filed an application before 4-1-82. His annuity computation was based on 28 years, even if he had no additional service after September 1981.

207.9 Service Months Based on Pay for Time Not Worked

207.9.1 Period Covered by Dismissal Pay

An employee can receive service months for an identifiable period in which he could have been directed to work, if he receives compensation in lieu of notice of dismissal. In order to credit the service month, it is sufficient that the employer had the right to

exercise the power of direction of the employee's services and could have required the employee to work (see FOM1 211, "Pay For Time Not Worked").

207.9.2 Period Covered by Pay for Time Lost

An employee can receive service months for an identifiable period during which a person maintained an employment relation, but did not actually perform any service, if he was paid compensation for time lost as an employee for that period (see FOM1 211, "Pay For Time Not Worked").

207.10 Limitations on Service

207.10.1 Prior Service or Red Cap Service Before 9-1941

Prior Service (service before 1937) or Red Cap Service before 9-1941 may be included in the years of service as explained in FOM1 Art. 2 Appendix A.

207.10.2 Canadian Service

Refer to FOM1 205.4.

207.10.3 Creditability of Military Service

Military service (M/S) after 1956 may be credited and included in the employee's years of service as explained in FOM1 215. When employee service was rendered and M/S was credited for the same calendar month, only one month of M/S can be counted.

207.10.4 Joint Employer Service

When service was performed for two or more employers in the same calendar month, only one month of service can be counted.

207.10.5 Title VII

One railroad service month could be credited to the month that an employee filed for and received benefits under Title VII of the Regional Rail Reorganization Act. However if the employee worked in the railroad industry in that month, no service month can be credited based on Title VII filing.

207.10.6 Service After Annuity Beginning Date

Active service rendered after an annuity has begun to accrue may be included in the years of service, if the additional amount payable would be more than $1.00. However, deemed service months (FOM1 207.5) cannot be given. See FOM1 207.12 for information about service after the ABD and instructions for handling cases with service after the ABD.

207.10.7 Service as Delegate to National or International Convention of a Railway Labor Organization

Service performed on or after April 1, 1954 as a delegate to a national or international convention of a railway labor organization is not creditable unless the person who rendered this service had also performed other service which could be included in his years of service.

207.11 Protest of Service Month Record

Inquiries about service records should be forwarded to the Office of Programs, Policy & Systems-Center of Employer Services (P&S-CESC), Protest Unit. Inquiries from employees, labor unions or railroad employers about the crediting of service in specific cases should also be referred to the Protest Unit.

Under Section 9 of the Railroad Retirement Act, RRB's records of service and compensation are conclusive, unless an error or omission is reported within 4 years after the day on which the initial service month report was required to be made.

207.12_Railroad Service Months After the Annuity Beginning Date

207.12.1 General

The Employee Data Maintenance system (EDM) contains the record of an employee's service months and compensation reported by his or her employer(s). EDM is programmed to check for service months after the ABD when either the employee's annual service and compensation report is posted to the earnings record, a service or compensation adjustment is made, or an ABD is added or changed.

Because an annuity is not payable for a month in which an employee is in railroad service, service months reported after the ABD can cause an overpayment in an employee's annuity and must be investigated in many cases to determine if the service months were reported correctly. If the months were reported correctly, the annuity may need to be suspended, an overpayment recovered, or other action may be necessary. Service months reported erroneously (e.g., service months reported for payment in lieu of vacation) are removed from the employee's earnings record.

The main reasons service months after the ABD are reported are:

- The employee returns to railroad service;
- The employee has months for vacation taken after the ABD;
- The employer erroneously reports service months (e.g., for payment in lieu of vacation); or

- The ABD is set to a date earlier than the last month of employer service (usually in disability annuity cases).

207.12.2 EDM Service After ABD Indicators

Both the EDM Employee Demographic Information and Employee Service and RUIA Information screens contain a Service After ABD field (see CCOM 104). When there is an ABD on the EDM record, an indicator (or flag) appears in the field. No indicator means there is no ABD. The indicators are mechanically re-evaluated and reset, if necessary, when service months or compensation are added or adjusted, or when an ABD is added or changed. The indicators are also reset manually in some cases.

The indicators and their meanings are:

LESS THAN 4 SM – There are 0 – 3 service months after the ABD after earnings and/or an ABD are posted to EDM. Service months erroneously reported for payment in lieu of vacation are assumed and SEARCH will cut back any service months and not include them in the computation. No action is necessary.

INVESTIGATION PENDING – There are 4 or more service months after the ABD. Also, the indicator will change to INVESTIGATION PENDING when it is currently set to PROPERLY CREDITED SM and any additional service months are posted. Form GL-132 has been or will be released.

RESOLVED – Investigation has been completed. Usually this means Form GL-132 was returned and either all the service months after the ABD have been removed, or the ABD has been moved to a date after the last reported service month, if allowed by reopening rules (see RCM 6.2 for reopening rules).

PROPERLY CREDITED SM – EE returned to service or, if no longer in service, had service after the ABD. All of the service months after the ABD will remain in EDM. RRB has taken or will take action to suspend, recover any overpayment, etc.

UNRESOLVED – Accounts with at least 4 service months after the ABD that will not be resolved (typically old cases that were unresolved prior to the conversion to the current indicators and processing). No action necessary unless initiated at the Director level.

207.12.3 Service After ABD After Annual Earnings Report Posted to EDM

The following occurs when an employer reports service months after the ABD on the employee's annual earnings report.

A. When the employer reports 3 service months or less after the ABD:

1. SEARCH assumes the month(s) were erroneously reported for payment in lieu of vacation, credits the compensation to the last day worked, and does not use the service months in annuity calculations;

2. LESS THAN 4 SM is entered in the SERVICE AFTER ABD field of both the EDM Employee Demographic Information and Employee Service and RUIA Information screens.

B. When the Employer Reports 4 or More Service Months after the ABD:

1. The record is flagged for investigation of the service months after the ABD and INVESTIGATION PENDING is entered in the SERVICE AFTER ABD fields.

2. The reported service months are verified with the employer.

    - If the employer indicates all of the service months were reported erroneously, the months are removed from EDM and RESOLVED is entered in the SERVICE AFTER ABD fields;

    - If the employer indicates the service months were reported correctly, they remain on EDM, PROPERLY CREDITED SM is entered in the SERVICE AFTER ABD fields, and the service after ABD information is forwarded to RBD, normally on Form GL-132, to review and take the necessary action.

207.12.4 Service After ABD After Adjustment Made to Earnings Record

EDM is programmed to check for service months after the ABD whenever a change is made to an employee's EDM record (e.g., additional service months reported, compensation amount(s) increased, ABD added or changed, etc.). This can result in the employee having 4 or more service months after the ABD when (s)he previously had 3 or less. When this occurs, the SERVICE AFTER ABD flag is reset from LESS THAN 4 SM to INVESTIGATION PENDING. All of the reported service months after the ABD are then investigated, including those that were already posted prior to the adjustment (see FOM1 207.12.3, above).

EXAMPLE: Employee's ABD is 02/01/2006 and service months were initially reported for February, March, and April of 2006. LESS THAN 4 SM was entered in the SERVICE AFTER ABD field, and no action was necessary at the time. The employer submits a 2007 service and compensation report showing a service month reported for March. LESS THAN 4 SM is changed to INVESTIGATION PENDING in the SERVICE AFTER ABD field, and all 4 service months are investigated.

207.12.5 Investigating Service Months After ABD

A. CESC Investigates Service After ABD

CESC of P&S has the primary responsibility for investigating service months after the ABD. The cases requiring investigation primarily are identified in its biannual Return to Service Project. However, individual cases may be referred to CESC by RBD.

CESC generally runs the Return to Service Project twice a year; once in summer, after all annual service and compensation reports have been posted; and once at the end of the year to include any subsequent service and compensation adjustments.

When the project is run, Form GL-132, "Notice of Service Reported for Annuitant Who Is Receiving an RRB Annuity", is printed for each employee with 4 or more service months posted after the ABD, "Investigation Pending" in the EDM Service After Annuity Beginning Date (SAABD) field, and service months after the ABD were reported for months within the four year period prior to the current year (if the project is run in 2009, a GL-132 is printed for each employee with reported service months after the ABD in 2005 or later). Form GL-132 is not printed when the employee's annuity is suspended or terminated with one of the following codes at the time the project is run:

- 01 – Death
- 02 – Returned to employer service
- 08 – Recovery from disability
- 09 – Disabled with excess earnings
- 20 – Return to substantial gainful activity
- 61 – Application or award cancelled
- 62 – Deletion of CHICO record.

CESC sends the forms to the respective railroad employers to verify that the service months after the ABD were reported correctly.

The Quality Reporting Service Center (QRSC) in CESC removes the service months from the record if the employer responds that the service months were reported erroneously (e.g., for payment in lieu of vacation).

CESC forwards Form GL-132 to RBD when:

- The employer indicates the employee returned to service;
- The employer indicates the service months were reported correctly for reasons other than returning to railroad service (e.g., was paid for vacation taken); or
- The employer indicates some, but not all, of the service months were reported erroneously and 4 or more service months after the ABD remain after the erroneous months are removed.

If the Form GL-132 is not fully completed, the information on it conflicts with the action taken on EDM, or the appropriate change to the SAABD indicator was not made, make

a copy of the form for the employee file and return the original to CESC, notating on the form why you are returning it to CESC.

The following chart provides a summary of the action CESC takes based on the information the employer provides.

Months After the ABD Are:	**CES Action:**
Return to service	• Leave months on EDM • Set EDM SAABD flag to PROPERLY CREDITED SERVICE MONTHS • Forward GL-132 to RBD
Payment for vacation taken	• Leave months on EDM • Set EDM SAABD flag to PROPERLY CREDITED SERVICE MONTHS • Forward GL-132 to RBD
Separation Allowance	• Remove months from EDM • Set EDM SAABD flag to Resolved CESC does not forward GL-132 to RBD when months are separation allowance.
Pay for time lost	• Leave months on EDM • Set EDM SAABD flag to PROPERLY CREDITED SERVICE MONTHS • Forward GL-132 to RBD
Dismissal Allowance	• Leave months on EDM

	• Set EDM SAABD flag to PROPERLY CREDITED SERVICE MONTHS • Forward GL-132 to RBD
Guarantee Pay	• Leave months on EDM • Set EDM SAABD flag to PROPERLY CREDITED SERVICE MONTHS • Forward GL-132 to RBD
Reported in error	• Remove months from EDM • Set EDM SAABD flag to RESOLVED CESC does not forward GL-132 to RBD when months are reported in error.
Payment in lieu of vacation	• Remove months from EDM • Set EDM SAABD flag to RESOLVED CESC does not forward GL-132 to RBD when months are payment in lieu of vacation.

B. When RBD Should Request CESC to Investigate

1. EDM SAABD Indicator Is "Investigation Pending"

When the EDM Service After ABD indicator is "Investigation Pending", request CESC to investigate when:

- CESC has performed the Return to Service Project (see "NOTE", below); and
- The case is not on Universal STAR with Category Code CES132.

CES132 is the Category Code used for CESC's Return to Service Project and indicates Forms GL-132 have been released to employers.

NOTE: CESC generally does not perform the Return to Service Project until June or July. Unless a priority case, service after ABD cases should be held until after the SAABD program is run and the cases are entered on Universal STAR.

2. EDM SAABD Indicator Is Other Than "Investigation Pending"

Request CESC to investigate when the EDM SAABD Indicator is other than "Investigation Pending" only when RRB receives documentation that conflicts with the service month after the ABD information posted to EDM or a GL-132 returned by the employer.

If there is no GL-132 in file for a given year and no documentation that shows conflicting service month information for that year, assume all service months after the ABD have been properly investigated and the appropriate changes to the EDM record have been made.

C. When RBD Should Not Request CESC to Investigate

1. **EDM SAABD Indicator Is "Investigation Pending**

When the EDM Service After ABD indicator is "Investigation Pending", do not request CES to investigate when:

- CESC has performed the Return to Service Project (see "NOTE", below); and
- The case is on Universal STAR with Category Code CES132.

CES132 is the Category Code used for CESC's Return to Service Project and indicates Forms GL-132 have been released to employers.

Pend these cases for the receipt of a GL-132 from CESC. Do not pend for less than 2 months, the length of CESC's complete tracing schedule (see CCOM 1205.4).

NOTE: CESC generally does not perform the Return to Service Project until June or July. Unless a priority case, service after ABD cases should be held until after the SAABD program is run and the cases are entered on Universal STAR.

2. EDM SAABD Indicator Is Other Than "Investigation Pending"

When the EDM SAABD indicator is other than "Investigation Pending", assume service months have been investigated and necessary changes to EDM made. Do not request CESC to investigate service months after the ABD unless RRB has received documentation that conflicts with the information on EDM or a completed GL-132 returned by the employer.

D. How to Request CESC to Investigate

Request CESC to investigate service after the ABD by sending an email to the QRSC mailbox. The email should include the following:

- "RR Service After ABD" in the email subject line;
- The claim number, employee name, and BA number of the employer;
- A statement requesting CESC to investigate the service after the ABD; and
- Any information relating to the service after the ABD available from the file, imaging, etc.

In most cases, CES will fax Form GL-132 to the employer. If RBD handling is required based on the information on the returned form, CESC will send the GL-132 to the RBD Director's office. If RBD handling is not required, CESC will take its action and send an email to the requestor describing what action they took. Allow 45 days for CESC to respond to the initial request.

207.12.6 RBD Receives Form GL-132 from CESC

RBD is responsible for handling any adjudication required based on the service after ABD information on Form GL-132. This includes:

- Suspending the annuity if the annuitant is still in RR service;
- Determining if the additional months have an impact on entitlement for the employee or his family;
- Calculating any overpayment and taking recovery action;
- Making any necessary adjustments to the annuity to include the additional service;
- Changing the ABD (See FOM1 207.12.7); and
- Coordinating with DBD when the service could impact the annuitant's disability rating.

RBD is also responsible for imaging the GL-132 when its handling is completed.

The following chart provides a summary of RBD action based on the information the employer provides.

Months After the ABD are:	**RBD Action:**

Return to service	• Take all required adjudicative action. • Code EE-SPEC-CALC-CD in PREH to a ‘1’ if ABD is not changed.
Payment for vacation taken	• If additional months do not benefit EE or family, no action is necessary. • If additional months benefit EE or family, take all required adjudicative action. • Code EE-SPEC-CALC-CD in PREH to a ‘1’ if ABD is not changed.
Separation allowance	• Review previous use of SAABD. • Close open RESCUE referral (case will be included in next RESCUE run).
Pay for time lost	• Take all required adjudicative action. • Code EE-SPEC-CALC-CD in PREH to a ‘1’ if ABD is not changed.
Dismissal allowance	• Take all required adjudicative action. • Code EE-SPEC-CALC-CD in PREH to a ‘1’ if ABD is not changed.
Guarantee Pay	• Take all required adjudicative action. • Code EE-SPEC-CALC-CD in PREH to a ‘1’ if ABD is not changed.
Reported in error	• Review previous use of SAABD.

	• Close open RESCUE referral (case will be included in next RESCUE run).
Payment in lieu of vacation	• Review previous use of SAABD. • Close open RESCUE referral (case will be included in next RESCUE run).

NOTE: In rare situations, CESC may be unable to obtain the SAABD information from the employer. If CESC informs you that this is the case, no action is necessary on the SAABD since RRB cannot verify that the service months were reported correctly.

207.12.7 Changing the ABD

Whether an ABD should be changed depends on the type of service months posted, and whether the months must be consecutive from the current ABD. Use the following guidelines to determine if an ABD should be changed.

A. When Months After ABD are Return to Service or Pay for Time Lost:

- If the service months are consecutive to the original DLWRR or ABD (the employee remained in railroad service), the ABD must be changed to the day after the new DLWRR provided on the GL-132. If a new DLWRR is not provided, change the ABD to the 1st day of the month following the last railroad month posted.

- If the service months are not consecutive to the original DLWRR or ABD (i.e., the employee returned to railroad service), the ABD is not changed.

EXAMPLE #1 – ABD Changed: EE receives a reduced age 62 annuity with 250 service months credited through his ABD of 04/01/2007. The employer reported service months for April, May, June, July, and August of 2007. Change the ABD to 09/01/2007. Adjust the annuity from the new ABD of 09/01/2007 and recover the overpayment for the 5 months worked.

EXAMPLE #2 – ABD Not Changed: EE receives a reduced age 62 annuity with 250 service months credited through his ABD of 04/01/2007. The employer reported service months for July, August, September, and October. Because the additional months are not consecutive to the original DLWRR or ABD, do not change the ABD. Adjust the annuity from November 2007 (month after last month worked) and recover the overpayment for the 4 months worked. Code PREH for return to service.

EXAMPLE #3 – ABD Changed (EE becomes entitled to different type of annuity): EE receives a reduced age 62 annuity with 356 service months credited through his ABD of 04/01/2007. The employer reported service months for April, May, June, and July. The employee is now eligible for a full 60/30 annuity, because he now has 360 service months. Pay the full 60/30 annuity with an ABD of 08/01/2007. Assess the overpayment for the 4 additional service months from 04/2007 through 08/2007.

EXAMPLE #4 – ABD Changed (Months not consecutive, but EE becomes entitled to different type of retirement annuity): EE receives a reduced age 62 annuity with 356 service months credited through his ABD of 04/01/2007. The employer reported service months for July, August, September, and October 2007. The employee is now eligible for a full 60/30 annuity, because he now has 360 service months. Because this is a different type of retirement annuity, change the ABD and pay the full 60/30 annuity effective 11/01/2007, even though the service months are not consecutive from the original ABD. Assess the overpayment for the 4 additional service months from 07/2007 through 10/2007. Code PREH for the new annuity type.

EXAMPLE #5 – ABD Not Changed (Large gap between ABD and SAABD): EE (DOB 10/31/1949) receives an occupational disability annuity with 400 service months credited through his ABD of 12/01/2004. The employer reported service months for June, July, August, September, and October 2006; and January, March, and August 2007. Because the additional months are not consecutive to the ABD or DLWRR, do not change the ABD. Adjust the annuity at each break in service and recover the overpayment for the 8 months worked. Code PREH for return to service.

B. When Months After ABD Are for Payment in Lieu of Vacation.

1. Since the months have been removed, review previous action, if any, that was taken based on the original SAABD months. Reverse the previous action.

2. Close the referral on USTAR, if one is pending.

C. When Months after ABD are for Vacation Taken.

Determine if the additional months benefit the employee or family.

1. If the months do not benefit the employee or family, close the referral on USTAR, if one is pending. No further action is necessary.

   IMPORTANT NOTE: Service months for vacation taken that are not credited are not removed from EDM (see FOM1 210.2.1). An overpayment should not be assessed for service months after the ABD when the service months are for vacation taken and have not been credited.

2. If the months benefit the employee or family:

- Calculate the annuity with the additional service months included, as well as the net overpayment.

- E-mail the field requesting them to provide the employer with the information and ask him or her to decide if he wants his annuity adjusted.

- *If the employee wants his annuity adjusted to include the vacation months*, have the field obtain a signed statement from him (see FOM1 207.12.8.B).

- When the field has obtained the employee's signed statement, adjust the annuity and recover the overpayment for those months.

  NOTE: If the vacation months are not consecutive to the DLW-RR and EE would lose more months than will be added if the ABD is changed, the vacation months can be considered a return to service and the ABD can remain unchanged.

- *If the employee does not want his annuity adjusted to include the vacation months,* close the referral on USTAR, if one is pending. No further action is necessary.

207.12.8 Special Situations

A. Service Months after ABD Needed to Qualify for Benefits

An employee may have enough service months on EDM to qualify for additional benefits, but because his annuity was paid based on fewer service months than required for those benefits, they are not payable. However, the employee has the option of using any service months after the ABD to attain the required number of service months needed, including service months reported for return to railroad service.

If the employee wishes to use months after the ABD, the current ABD can be changed or kept, depending on what most benefits the employee or family (an ABD can be changed only if the months are consecutive from the original ABD). However, this generally can be done only within 4 years from the date the annuity was initially awarded (see RCM 6.2 for reopening rules). In either case, the annuity is not payable for the service month(s) used to qualify for the additional benefits, and must be recovered.

When additional months are used for a Supplemental Annuity, if the required service months to qualify are attained after the employee has already attained the required age, the Supplemental Annuity beginning date is the month following the month the required service months are attained (see FOM1 315.3).

B. Spouse Files for Full Age Annuity – EE Disability Annuity Based on Less Than 360 Months

This is an example of a common situation in which additional months are needed to qualify for benefits. Other situations should be handled similarly.

A spouse files an application for a full age spouse annuity. The employee's earnings record indicates he has 360 service months (an employee probably would be aware of this from his BA-6). However, she does not qualify for the spouse annuity, because the employee's disability annuity was paid based on less than 360 service months through his ABD.

1. Field Office Handling

   When a spouse files for a full age spouse annuity and the employee is a disability annuitant, verify the number of service months credited through his ABD by accessing the PREH 3300 screen. Refer to these fields on the left side of the screen:

   - YOS-TOT-CNT (Indicates total full years of service)
   - YOS-TOT-RMDR-MO-CNT (Indicates additional service months following the last full year of service)

   If the YOS-TOT-CNT is 30 or more, no further action is necessary and the application can be submitted for payment.

   If the YOS-TOT-CNT is less than 30, do the following:

   a) Determine the total number of service months through the employee's ABD. Use this formula, if necessary:

      (YOS-TOT-CNT x 12) + YOS-TOT-RMDR-MO-CNT = Total ABD SM

      EXAMPLE: (29 yrs. X 12) + 9 mos. = 357 Total SM on the ABD

   b) Access the EDM Employee Service and Earnings Totals screen (PF16) to verify that the employee has at least 360 total creditable service months (see TOTAL CREDITABLE in the left column under SERVICE MONTHS TOTALS).

   c) If TOTAL CREDITABLE is 360 or more, determine the difference between 360 and the number of service months through the ABD. This is the number of additional months the employee needs for the spouse to qualify for the full age spouse annuity.

   d) Advise the employee of the following:

      - Although his service and compensation record indicates he has at least 360 service months, his annuity is based on (give # of SM), which does not qualify the spouse for the full age spouse annuity;

- (# of SM) additional service months need to be used to attain 360 and qualify the spouse for the annuity;

- RRB may reset the employee's ABD if it is to both the employee's and spouse's advantage and it is less than 4 years from the date his disability annuity was initially awarded;

- Annuity payments for the additional months that are used must be recovered. Provide an estimate of the overpayment amount [(# of additional months needed) x (current monthly annuity payment) = estimated O/P]. Also advise that all accruals will be applied to the overpayment. If an overpayment remains after the accruals are applied, a letter will be sent that will include the final overpayment amount and repayment options. In most cases, the options are:

  - Refunding the overpayment by cash or credit card;

  - Suspending an annuity until the overpayment amount is recovered (full withholding); or

  - Withholding part of the monthly annuity payment for a set period of time (partial withholding), usually 48 months (i.e., O/P ÷ 48 = amount withheld monthly).

e) If the employee agrees to have the additional service months used, secure a signed statement from him in which he states that he:

- Agrees to have (# months) additional service months used in order for his spouse to qualify for a full age spouse annuity; and

- Understands the annuity payments for those months must be recovered, and that the estimated overpayment amount is [(# additional months to be used) x (current monthly annuity payment) = estimated overpayment].

f) When the employee submits the signed statement, refer the case to RBD for handling. Indicate in Remarks that the employee's annuity was based on less than 360 SM on the ABD, he wants to use additional months to give him 360 SM to qualify the spouse for an annuity, and he has submitted his signed statement.

g) If the employee does not submit a signed statement or indicates he does not want additional months used to qualify the spouse, submit the spouse application for denial.

2. RBD Handling

a) When the field office submits an application for RBD handling or notifies RBD they have secured the signed statement (if the application was already submitted):

- Calculate both the employee's and spouse's annuities with the current employee ABD and also with the ABD reset to the month following the last additional service month used (if it has been less than 4 years from the date the annuity was initially awarded, per the reopening rules in RCM 6.2).

- Pay the initial spouse annuity and recertify the employee's annuity using the most advantageous of the two computations. Apply all accruals to the overpayment.

- Recover any remaining overpayment per current procedure.

b) If a case rejects on RASI (Reject Code 083 – SPOUSE TOO YOUNG FOR BENEFIT CLAIMED):

- Do not deny the application. Email the field office advising that the case rejected and request them to secure a signed statement from the employee, per the field office handling instructions, above.

- When the field office notifies RBD they have secured the statement, pay the initial spouse annuity and recertify the employee's annuity. Apply all accruals to the overpayment.

- Recover any remaining overpayment per current procedure.

c) If the employee has less than 4 reported service months after the ABD (EDM SAABD flag is LESS THAN 4 SM):

Send an e-mail to the QRSC mailbox requesting that the service months after the ABD be verified. The e-mail should include the following information:

- "Verify Service Months for Additional Benefits" in the subject line;

- The claim number, employee name, BA number, ABD, and the service months that need to be verified; and

- A general statement that the service months after the ABD need to be verified, because the employee needs additional service months for additional benefits.

- After they have completed their investigation, CESC will send a return e-mail to the RBD mailbox advising whether all reported months are valid

service months, none are valid service months, or if only some are valid service months, which months they are.

If there are no longer enough valid service months for the employee to qualify for additional benefits, request the field office to inform the employee that this is the case. If an application has been submitted, deny the application.

If there are enough properly reported service months for the additional benefits to be paid, handle following the instructions in *2(a)* or *2(b)*, above.

208.1 Compensation Defined

Compensation is the amount an individual is paid for services performed in a month as an employee of a covered railroad employer or as an employee representative. Compensation may be creditable even if there is no credit for railroad service months. For information on determining if railroad service is creditable refer to Section 207 above.

208.1.1 Included as Compensation

Compensation includes:

A. Remuneration paid for time lost as an employee (see FOM 211);

B. Payments in a medium other than cash (non-monetary remuneration);

C. Vacation pay and pay in lieu of vacation (see FOM 210.1);

D. Earnings in the service of a local lodge (see FOM 213);

E. Compensation based on military service (see FOM 215);

F. Cash tips of $20.00 or more in any calendar month after 1965;

G. Voluntary payment by the employer (without deduction from the compensation of the employee) of any tax imposed on the employee's compensation. Compensation may be credited for services rendered after June 30, 1983; and

H. Payments made under Title VII of the Regional Rail Reorganization Act of 1973.

I Back pay

J Separation allowance

K Bonus pay

L Wage continuation plans

M The cost of group term life insurance if it is included in the gross income of an employee and subject to Railroad Retirement tax.

N Employee contributions to Section 401(k) or Section 457 salary reduction plans are considered creditable railroad compensation at the time of contribution.

0 Cash payment under cafeteria plans. Cafeteria plans (flexible benefit plans are plans where participating employee can choose either to receive cash or qualified benefits. If an employee elects cash, the payment is creditable as compensation.

P Payment made after an employee's death but in the same year of death.

Q Compensation paid to officers of a railroad excluding the Director.

R Payments to partners in a Limited Liability Company for physical work performed. The partner pays FICA taxes on their individual tax return. There is no method by which a partner can pay RRTA taxes.

S Compensated personal leave days.

T Holiday pay.

U Productivity fund payments.

V Profit sharing/loss sharing – Employees who receive more or less than their regular earnings due to profit or loss sharing plans are credited and taxed with and taxed on the actual amount received.

W Retention pay

X Sick pay paid under a plan or agreement available on the same basis to employees in a like class and payable for days not worked on account of injury, illness, pregnancy, or childbirth.

Y Payment to an employee for the termination of or 'purchase" of an employee right or benefit, such as seniority rights, profit sharing rights, sick benefits, etc.

Z Non-Qualified Stock Option-A stock option not qualifying under section 422 or 423 of the Internal Revenue Code results in compensation to the employee either at the time the employer grants the option to purchase to the employee, or at the time the employee sells the stock. If questions arise as to the point in time that the compensation was paid, advise the employee to contact either the railroad employer or the Internal Revenue Service.

NOTE: Some sick pay is creditable as "miscellaneous compensation" for the tier I computation only (see FOM 211.3).

208.1.2 Not Included as Compensation

Compensation does not include:

A. Tips totaling less than $20.00 in any calendar month; or

B Other gratuitous payments unless paid for services rendered as an employee.

C Qualified Stock Options—Any remuneration on account of A) a transfer of a share of stock to any individual through an exercise of an incentive stock option (ISO) (as defined in Section 422(b) of the Internal Revenue Code) or under an employee stock purchase plan (ESPP) (as defined in section 423(b) of the Internal Revenue Code), or B) any disposition by the individual of such stock. D Employer matching contributions to the Section 401(k) or Section 457 salary reduction plans.

E Sick pay paid after the sixth month following the month last worked.

F Contributions and payment for pension or profit sharing made under a plan that qualifies for exclusion from income under the Internal Revenue Code.

G Payments which are intended to supplement military pay that are paid to an employee who has been called to active military service.

H Payments made to an employee's survivor to an estate in the year after the employee died.

I Interest paid on compensation earned but not timely paid.

J The value of "qualified" fringe benefits received under a Section 125 cafeteria plan also known as a flexible benefits plan.

K Compensation paid to a non-resident alien with a "F-1" or "J-1" visa.

L Payments made to the director of a railroad and payments made to receivers and trustees. They are designated employers and may not be employees.

M Payments to partners in a Limited Liability Company is not creditable compensation.

N Education assistance that is excluded from compensation under Section 127 of the Internal Revenue Code.

O Allowances made for meals and lodgings that are excluded from compensation under Section 217 of the Internal Revenue Code.

P Reimbursements for moving expenses that are deductible under Section 217 of the Internal Revenue Code.

Q Sick pay paid by the RRB under the Railroad Unemployment Insurance Act for an on the job injury.

R Sick pay paid in the year after the employee died.

208.2 When Maximum Compensation in a Calendar Month is Used

The tier I computation for all annuitants and the lump-sum death benefit computation for an employee who acquires his 120th month after 12-1974 are based on primary insurance amount formulas and are subject to a yearly maximum only.

Both a monthly maximum and a yearly maximum are applicable for the following computations:

Retirement annuity tier II;

Survivor annuity tier II when based on employee's tier II;

Average monthly remuneration for lump-sum death payment basic amount when 120th service month acquired before 1975;

Residual lump-sum;

All 1937 Railroad Retirement Act computations.

208.3 Maximum Compensation in a Calendar Month

208.3.1 General

The maximum compensation that may be credited to a tier II benefit, an average monthly remuneration, a residual lump-sum or to computations under the 1937 Railroad Retirement Act for any calendar month is as follows:

Amount	From	Through	Amount	From	Through
300	--	06-30-1954	650	1-1-1968	12-31-1971
350	07-1-1954	05-31-1959	750	1-1-1972	12-31-1972
400	06-1-1959	10-31-1963	900	1-1-1973	12-31-1973
450	11-1-1963	12-31-1965	1,100	1-1-1974	12-31-1974
550	01-1-1966	12-31-1967			

208.3.2 Earnings Years 1975 Through 1978

The basic amount computation and the residual lump-sum computation do not include earnings after 12-1974. Therefore, beginning with 1975 or later, the monthly maximum only applies to a tier II benefit computation.

Amount	From	Through
1,175	1-1-1975	12-31-1975
1,275	1-1-1976	12-31-1976
1,375	1-1-1977	12-31-1977
1,475	1-1-1978	12-31-1978

208.3.3 Earnings years 1979 Through 1984

Beginning with 1979, the tier II monthly maximum schedule is based on the yearly maximum that would have applied if the 1977 Social Security Act amendments had not been enacted.

Amount	From	Through
1,575	1-1-1979	12-31-1979
1,700	1-1-1980	12-31-1980
1,850	1-1-1981	12-31-1981
2,025	1-1-1982	12-31-1982
2,225	1-1-1983	12-31-1983
2,350	1-1-1984	12-31-1984

208.3.4 Earnings years 1985 or Later

Effective January 1985 or later, the employee's compensation for tier II is deemed paid in equal amounts to all months in which the employee performed railroad service. However, the monthly amount credited cannot exceed the amount listed below. When the employee has compensation in excess of the tier II monthly maximum times the number of actual service months, the employee may be entitled to "deemed service months" as explained in FOM 207.5.

Amount	From	Through	Amount	From	Through
2,475	1-1-1985	12-31-85	2,625	1-1-1986	12-31-1986
2,725	1-1-1987	12-31-87	2,800	1-1-1988	12-31-1988
2,975	1-1-1989	12-31-89	3,175	1-1-1990	12-31-1990
3,300	1-1-1991	12-31-91	3,450	1-1-1992	12-31-1992
3,575	1-1-1993	12-31-93	3,750	1-1-1994	12-31-1994
3,775	1-1-1995	12-31-95	3,875	1-1-1996	12-31-1996
4,050	1-1-1997	12-31-97	4,225	1-1-1998	12-31-1998
4,475	1-1-1999	12-31-99	4,725	1-1-2000	12-31-2000
4,975	1-1-2001	12-31-01	5,250	1-1-2002	12-31-2002
5,375	1-1-2003	12-31-03	5,425	1-1-2004	12-31-2004
5,575	1-1-2005	12-31-2005	5,825	1-1-2006	12-31-2006
6,050	1-1-2007	12-31-2007	6,325	1-1-2008	12-31-2008
6,600	1-1-2009	12-31-2009	6,600	1-1-2010	12-31-2010
6,600	1-1-2011	12-31-2011	6,825	1-1-2012	12-31-2012
7,025	1-1-2013	12-31-2013	7,250	1-1-2014	12-31-2014
7,350	1-1-2015	12-31-2015	7,350	1-1-2016	12-31-2016
7,875	1-1-2017	12-31-2017	7,950	1-1-2018	12-31-2018

208.4 Maximum Compensation in a Calendar Year

The following charts show the maximum compensation that may be credited for any calendar year.

208.4.1 Years In Which Compensation Maximum and Wage Maximum Differ

A Compensation Maximums For Years Before 1966

Maximum Amount	From	Through

3,600	--	12-31-1953
3,900*	1-1-1954	12-31-1954
4,200	1-1-1955	12-31-1958
4,550*	1-1-1959	12-31-1959
4,800	1-1-1960	12-31-1962
4,900*	1-1-1963	12-31-1963
5,400*	1-1-1964	12-31-1965

*These figures apply to compensation only. The yearly wage maximums under the Social Security Act (SS Act) for these years are shown in the chart below.

B Wage Maximums For Years Before 1966 - The SS Act wage maximums are used instead of the Railroad Retirement Act compensation maximums for the computation of the tier I primary insurance amount (PIA 1), the residual lump-sum PIA (PIA 3), and the overall minimum guaranty PIA (PIA 9).

Wage Maximum Amount	**From**	**Through**
3,600	--	12-31-1953
3,600	1-1-1954	12-31-1954
4,200	1-1-1955	12-31-1958
4,800	1-1-1959	12-31-1959
4,800	1-1-1960	12-31-1962
4,800	1-1-1963	12-31-1963
4,800	1-1-1964	12-31-1965

208.4.2 Wages and Compensation Maximums from 1966 through 1978

Comp. & Wage Maximum Amount	**From**	**Through**

6,600	1-1-1966	12-31-1967
7,800	1-1-1968	12-31-1971
9,000	1-1-1972	12-31-1972
10,800	1-1-1973	12-31-1973
13,200	1-1-1974	12-31-1974
14,100	1-1-1975	12-31-1975
15,300	1-1-1976	12-31-1976
16,500	1-1-1977	12-31-1977
17,700	1-1-1978	12-31-1978

208.4.3 Tier I and Tier II Annual Compensation Maximums from 1979

Beginning with 1979, two annual compensation maximums are required: one for the tier I benefits and the other for the tier II benefits. The SS Act amendments of 1977 provided the annual maximum amount for tier I through 1981; after 1981, the maximum is automatically increased with the rise in the cost of living. The schedule of increases in the tier II amount is based on the maximum that would have applied if the 1977 SS Act amendments had not been enacted; the maximum automatically increases with the rise in the cost of living.

Tier I	Tier II	From	Through
22,900	18,900	1-1-1979	12-31-1979
25,900	20,400	1-1-1980	12-31-1980
29,700	22,200	1-1-1981	12-31-1981
32,400	24,300	1-1-1982	12-31-1982
35,700	26,700	1-1-1983	12-31-1983
37,800	28,200	1-1-1984	12-31-1984
39,600	29,700	1-1-1985	12-31-1985
42,000	31,500	1-1-1986	12-31-1986

43,800	32,700	1-1-1987	12-31-1987
45,000	33,600	1-1-1988	12-31-1988
48,000	35,700	1-1-1989	12-31-1989
51,300	38,100	1-1-1990	12-31-1990
53,400	39,600	1-1-1991	12-31-1991
55,500	41,400	1-1-1992	12-31-1992
57,600	42,900	1-1-1993	12-31-1993
60,600	45,000	1-1-1994	12-31-1994
61,200	45,300	1-1-1995	12-31-1995
62,700	46,500	1-1-1996	12-31-1996
65,400	48,600	1-1-1997	12-31-1997
68,400	50,700	1-1-1998	12-31-1998
72,600	53,700	1-1-1999	12-31-1999
76,200	56,700	1-1-2000	12-31-2000
80,400	59,700	1-1-2001	12-31-2001
84,900	63,000	1-1-2002	12-31-2002
87,000	64,500	1-1-2003	12-31-2003
87,900	65,100	1-1-2004	12-31-2004
90,000	66,900	1-1-2005	12-31-2005
94,200	69,900	1-1-2006	12-31-2006
97,500	72,600	1-1-2007	12-31-2007
102,000	75,900	1-1-2008	12-31-2008
106,800	79,200	1-1-2009	12-31-2009
106,800	79,200	1-1-2010	12-31-2010

106,800	79,200	1-1-2011	12-31-2011
110,100	81,900	1-1-2012	12-31-2012
113,700	84,300	1-1-2013	12-31-2013
117,000	87,000	1-1-2014	12-31-2014
118,500	88,200	1-1-2015	12-31-2015
118,500	88,200	1-1-2016	12-31-2016
127,200	94,500	1-1-2017	12-31-2017
128,400	95,400	1-1-2018	12-31-2018

208.5 Crediting Compensation on an Annual Basis

Beginning with 1985, an employee may receive credit for tier I purposes up to the tier I annual maximum regardless of when the compensation was earned and regardless of the number of service months.

Also beginning in 1985, an employee may receive credit for tier II purposes up to the tier II monthly maximum times the number of service months, including deemed service months, regardless of when the compensation was earned.

If an employee receives compensation of less than the tier II monthly maximum times the number of actual service months, including gift months, the employee is deemed to be paid in equal proportions in each service month.

Example 1

The employee was in service throughout all of 1985. However, he was furloughed during the months of March and April.

Actual Earnings		**Actual Earnings**		**Actual Earnings**	
JAN	$ 6,600	MAY	$ 1,650	SEP	$ 2,000
FEB	1,650	JUN	6,600	OCT	2,000
MAR	0	JUL	6,600	NOV	2,000
APR	0	AUG	6,600	DEC	3,000

TOTAL $ 38,700

In determining the tier I compensation, the employee would be given credit for $38,700.00, $900.00 less than the tier I annual maximum. For tier II purposes, the employee would be given credit for $29,700.00 (the tier II maximum) spread evenly over 12 months. He would have 10 actual service months and 2 deemed service months.

Example 2

The employee retired effective July 1, 1985, after earning more than the tier I annual maximum during the first 6 months of 1985.

Actual Earnings		**Actual Earnings**	
JAN	$ 6,600	APR	$ 6,900
FEB	6,700	MAY	7,000
MAR	6,800	JUN	6,100
TOTAL $ 40,100			

In determining the tier I compensation, the employee would be given credit for $39,600.00, the tier I annual maximum.

In computing the tier II, the employee would be given credit for $14,850.00, 6 months at the tier II maximum of $2,475.00.

Example 3

The employee retired effective July 1, 1985, after earning $12,000.00 during the first 6 months of 1985. He was furloughed during the months of February and April.

Actual Earnings		**Actual Earnings**	
JAN	$ 3,000	APR	$ 0
FEB	0	MAY	3,000
MAR	3,000	JUN	3,000

TOTAL $ 12,000

In determining the tier I compensation, the employee would be given credit for $12,000.00. The 1985 compensation cannot be used in the primary insurance amount computation until the employee is eligible for a recomputation.

In computing the tier II, the employee would be given credit for $12,000.00 and 5 service months (12,000.00/2,475.00 = 4.848 (rounded to 5)). The employee would be deemed to have earned $2,400.00 in each month (12,000.00/5 = 2,400.00).

208.6 Service Months Credited when Earned; Compensation Credited when Paid or Earned

Service months are credited only for months in which an employment relation is maintained (see FOM 206.2). Service months are reported for the month in which the employee performed the service regardless of when the employee was paid even if the employee is not paid compensation for that service until a later month.

For example, if an employee worked in December 2000 but was not paid until January 2001, the employee would receive a service month in December 2000.

No service months are reported for miscellaneous compensation. Miscellaneous compensation is any payment which is subject to Tier I taxes and is creditable as Tier I compensation only, but cannot be credited as regular compensation. In order to be creditable as miscellaneous compensation, it must meet several requirements. Please refer to the Part IV, Chapter 2 of the Reporting Instructions to Employers to get a more complete explanation of miscellaneous compensation. The Reporting Instructions to Employers are in rrb.gov under the link, "Rail Employer Information."

When reporting compensation under the Railroad Retirement Act (RRA), employers may choose to report compensation one of two ways: on an earned basis or on a paid basis:

- If employers report on an earned basis, compensation is reported when the employee performed the service even if the employer did not issue a payroll check to the employee until a later time.

- If employers report on a paid basis, compensation is reported based on when the employee received payment for the service regardless of when the service was performed.

Pay For Time Lost

Pay for time lost can only be reported on an earned basis. Pay for time lost is the only type of compensation that cannot be reported based on when the employer made the payment. Pay for time lost is a type of creditable compensation that is for wages lost for an identifiable period of absence from active service. Pay for time lost must be credited to the period for which time was lost. Pay for time lost includes:

- Personal injury settlements that allocate part of the damages as lost wages for a specific period following the injury.
- Dismissal allowances.
- Guaranteed pay.
- Displacement allowances paid for loss of earnings resulting from displacement to a less remunerative position.

Since the reporting of compensation under the RRA and the taxing of that compensation under the Railroad Retirement Tax Act (RRTA) are governed by two separate and distinct laws, the same pay could be treated differently yet properly under both laws.

EXAMPLE 1: An employee earned $1,000.00 in the last pay period of the year that ran from 12/17/2000 to 12/31/2000. He relinquished his rights to railroad employment on December 31, 2000. He received his paycheck on 1/5/2001, the first Friday following the end of the pay period. The employer must post the service month the month service was performed, December 2000, if reporting on an earned basis. The employer can either report the compensation as being regular compensation creditable in December 2000 or as miscellaneous compensation in January 2001 if the other requirements are met. Under the RRTA, the $1,000.00 is taxable in 2001 because that is the date of the payment.

EXAMPLE 2: An employee received $5,000.00 on 2/21/00 as pay for time lost in March and April 1998 as a result of a personal injury. The employer must post the service months for the period time was lost, March and April 1998. Under the RRA, the employer must report the $5,000.00 in 1998 as regular compensation. Under the RRTA, the $5,000.00 is taxable in 2000, the year of payment.

208.7 Railroad Retirement Compensation Tax Rates

Before October 1, 1973, employers and employees paid the same percentage of tax on compensation under the RRTA. Effective October 1, 1973, the tax rate, including the share of the hospital insurance (HI) tax, to be paid by railroad employees was made equal to the rates paid by employees under the Social Security Act (SS Act). The railroad employer tax rate was increased to make up the difference between the employee tax rate and the total tax due.

The changes in the rates did not become applicable to steel company subsidiaries, some railway labor organizations, and dock companies under collective bargaining agreements until a date later than October 1, 1973. The effective date depended on when the labor contracts in effect on October 1, 1973 expired, or earlier if the parties to the labor contracts agreed.

The 1981 Railroad Retirement Act amendments increased the tier II tax for employers and initiated a new tier II tax for employees.

Beginning with 1985, the tax rates are applied to compensation on an annual basis instead of a monthly basis. Tier I taxes are withheld beginning in January until the employee's compensation for the year reaches the annual tier I maximum. Tier II taxes are withheld beginning in January until the employee's compensation for the year reaches the annual tier II maximum.

Please refer to the RRB's web site, http://www.rrb.gov, to obtain the railroad retirement compensation tax rates. Under the heading "News and Publications" select "Statistical Information." On the "Index of Statistical Information" select "Tax Rate and Maximum Earnings Base Information" and double click on "PDF Version." This will bring you to the "Tax Rates and Maximum Taxable Earnings under Social Security, Railroad Retirement and Railroad Unemployment Insurance Programs." Be sure to obtain the tax rate information under the "Railroad Retirement Tax rate (percent)" heading. The URL (Uniform Resource Locator) is http://www.rrb.gov/pdf/taxrate.pdf. The document also has the Social Security Tax rates.

There is no direct relationship between the deduction of taxes and the crediting of compensation. An employee, who retires or is separated during the year, may pay tier II taxes on an amount which exceeds the amount of tier II credits that he receives, because of the tier II monthly maximum. However, the excess tier II tax just escheats to the RRB. There is no refund of this type of excess tier II tax.

EXAMPLE: An employee earns $7,920.00 per month during the first 6 months of 1985 and retires effective 7-1-85. Tier I taxes are deducted from his paychecks for the first 5 months of 1985. No tier I tax is deducted from his paycheck for June as his compensation for the previous 5 months equaled $39,600.00. Tier II taxes are deducted from his paychecks for the first 3 months and for part of April, ending when the employee has earned $29,700.00. No tier II taxes are deducted from his paychecks for May and June.

The employee receives tier I credit for $39,600.00 and tier II credit, subject to the tier II maximum, for $14,850.00 ($2,475.00 x 6 months).

EXAMPLE: An employee who earns $10,000.00 per month retires effective 7-1-96. Tier II taxes are deducted from the first $46,500.00 of compensation. However, he receives tier II credit for $23,250.00 ($3,875.00 x 6 months).

209.1 Definition of Lag Period

The “Lag Period” is the time between the last month for which service and compensation has been reported to the RRB on Form BA-3a *Annual Report of Creditable Compensation* and, if it is later, the employee's date last worked. The period from January of the current year through the date last worked is always a lag period; however, the preceding year may also be included in the lag period. This is because the annual service and compensation report for the preceding year is not posted to the Employment Data Maintenance (EDM) until around May 1 of the current year. Therefore, the lag period for applications filed before May can extend from January of the preceding year to the last date worked in the current year.

Use the following schedule to determine the lag period when lag is required for eligibility:

Date on Which Annuity Application is Transmitted to Headquarters	**Month Lag Period Begins**
Before May 1	January of preceding calendar year
After April 30	January of current calendar year

Lag service and compensation must be reported to the RRB by the last day of February following the year in which the employer paid the compensation. However, the service and compensation may not be posted to the EDM or appear on SEARCH until May of the year following the year in which the employer paid the compensation. Therefore, the “Lag Period” for applications transmitted to Headquarters before May 1 can extend from January of the preceding year to the last date worked in the current year.

209.2 Requesting Lag Service from Employers In Retirement Cases

Most employee and spouse final payments are based upon the service already on EDM. The annuity will then be recertified with the additional service the following year, after receipt of the employer's annual BA-3a report. Prior to 2006, lag service and compensation was included in the annuity in the annual Retirement Adjustment to Include Lag (RAIL) mass adjustment. Beginning in 2006, lag service and compensation are included in retirement annuities by RESCUE.

209.2.1 Form G-88A.1, "Request for Verification of Last Date Carried on Payroll"

A. Purpose of Listing

The monthly form G-88A.1 listings are computer generated listings maintained by Policy and Systems - Records Analysis and Systems (P&S-RAS) and forwarded to last railroad employers on record each month. The monthly form G-88A.1 listings will

include cases in which the employees have lag railroad service, but the lag is not required for eligibility. These are employee applicants who have stopped railroad employment in the current month or an earlier month and have a last date carried on the payroll within the lag period. The listings inform the employers that these employees have retired and request a review of the last date carried on the payroll.

If the employee lists more than one railroad employer or labor union employer with a date last worked within the lag period, he will be on the G-88A.1 listing for each employer. For example, if the employee indicates that he last worked for BA 1621 and BA 8922, he will be listed twice - once on the BA 1621 listing and once on the BA 8922 listing.

B. Items from Annuity Application

The listings are created mechanically for most cases and indicate each employee's social security number and the following items as they were entered into APPLE on the employee's annuity application: payroll name, job title, dept-division, job location, the date last worked for the railroad, the ending date of any injury settlement, and, in age and service cases, the date the employee relinquished rights to railroad employment.

Exception - If the employee qualified for an annuity based on less than 120 months railroad service, but at least 60-119 months railroad service after 1995, the field office must forward the employee information to P&S-RAC, by RRB e-mail to include the employee on the Form G-88A.1 listings.

C. Release to Railroad

When an application is filed in advance of the annuity beginning date (up to 90 days) and a claimed date last worked after the filing date is involved, P&S-RAC will not list that employee on the form G-88A.1 until the first work day of the month in which the employee will cease railroad employment.

P&S-RAC mails the listings to the Railroad Retirement Compensation Contact Official monthly. The addresses are based on the addresses for the Compensation Contact Official “100” in the EDM’s Contact Official's Database.

D. Railroad Completion Items

The railroad contact official is requested to check the dates on this listing against the payroll records. If the later of the date last worked or the ending date of an injury settlement listed for each employee agrees with the railroad's record of the employee's date last carried on the payroll, no action is required.

If the dates shown on the listing do not agree with the railroad's records, the contact official is requested to line out the incorrect information, enter the correct information above it, and sign the form at the bottom of the page. He or she will then fax the

corrected page to the Retirement Initial Section (RIS) to correct the annuity. The fax number for (RIS) is included at the bottom of each page of the listing.

E. Processing Returned G-88A.1 Listings

Form G-88A.1 listings are returned by the railroad to RBD only if the dates provided are not correct. The railroad will enter the corrected DLW-RR or DRR. Since the railroads have been instructed to return pages of this G-88A.1 listing only if there are corrections, RASI, or an examiner processing an application manually, will not hold up the final payment pending the receipt of a G-88A.1 listing.

209.2.2 Form G-88A.2, "Notice of Retirement and Request for Verification of Service Needed" for Eligibility" - This form is available on RRAILS.

RRAILS form G-88A.2 is a paper form sent by the RRB field office to the employee's last railroad employer(s) when lag service is needed to qualify for an annuity. This form is available on RRAILS. Instructions for completion and release of Form G-88A.2 are in FOM-I-1720

A. Background for Form G-88A.2

Form G-88a.2 develops proof of railroad service months when the employee needs lag service to qualify for benefits based on:

- 60-119 months with at least 60 months of railroad service after 1995 for regular age and service annuity or total and permanent disability; or,
- 120 months for regular age and service or total and permanent disability; or,
- 240 months for occupational disability (or 120 months at age 60); or,
- 360 months for employee and spouse 60/30 eligibility; or,
- 360 months to qualify a spouse of a disabled employee under the 60/30 provisions. The employee may have enough service to qualify for a disability annuity, but the lag service may need to be developed to qualify the spouse under the 60/30 provisions.

  Otherwise, if the lag service would qualify the employee or spouse to a different annuity type, develop for the lag service when the annuity application is filed. For example, if the employee has 115 months of railroad service on the EDM and 6 months of lag, process the application as a regular 120-month service annuity and develop for the lag when the application is filed. For most cases, this will not delay the annuity payment.

  If claimed military service could be creditable as railroad service under the RRA, lag service should also be developed, even if there is sufficient military service that could establish eligibility.

The employee may have enough service to qualify for a disability annuity, but the lag service may need to be developed to qualify the spouse under the 60/30 provisions.

NOTE: The field offices do not need to release a form G-88A.2 for service information to establish 25 years for a supplemental annuity. The regular annuity application will process to final payment. RESCUE will pay the supplemental annuity if lag service establishes eligibility for a supplemental annuity. If RESCUE cannot pay the supplemental annuity (eg., PREH does not indicate if the employee is entitled to a pension from the railroad), a referral is sent to USTAR.

B. Headquarters Processing of Returned G-88A.2 Forms

RASI will set a 958 call-up pending receipt of the form G-88A.2.

RIS personnel will submit a 958 to enter the actual railroad service months verified on form G-88A.2 into RASI as soon as possible. If the railroad changes either the date last worked - railroad (DLW-RR) or date relinquished rights (DRR) on a form G-88A.2, RIS will enter the correct date(s) into REQUEST and RASI. The service months will not be added to the EDM until the year end earnings reports are received from the railroad.

Usually a DLW-RR or DRR of the second to last railroad employer does not have to be submitted to RASI, since it will not impact the ABD.

209.3 Requesting Lag Service From Employers In Survivor Cases

Most survivor final payments are based upon the service already on EDM. The annuity will then be recertified with the additional service the following year, after receipt of the employer's annual BA-3a *Railroad Service and Compensation Reports* (year-end reports). RESCUE will adjust the employee's annuity in survivor "A" cases; any accrued annuity is posted to PREH and a referral is sent to STAR so SBD can determine the proper payees. If lag service and compensation need to be included in the survivor annuity, a referral is sent to STAR. RESCUE identifies survivor "D" cases in which the employer reported lag for the year of death (see RCM 5.3.15). A referral is sent to STAR, and SBD will adjust the survivor annuity.

209.3.1 Lag Not Required For Eligibility

If lag is not required for eligibility, the survivor claims examiner will pay these cases without lag. No field development for the lag is needed.

209.3.2 Form AA-12 *"Notice of Death and Request for Verification of Service Needed for Eligibility"*

Form AA-12 is used by the RRB field office in survivor cases only when lag service is needed to qualify for a survivor annuity or lump-sum death benefit. This form is available on RRAILS. Instructions for completion and release of Form AA-12 are in FOM-I-1710.

A. Background for Form AA-12

Form AA-12 develops railroad service months when the employee's lag service is needed to qualify a survivor for a survivor annuity or lump-sum death benefit based on:

- 60-119 months with at least 60 months of railroad service after 1995; or,
- 120 months of railroad service; or,
- A current connection, using a return to railroad service within 30 months of the date of death to establish the 12/30 month period of railroad service.

The RRB field office should develop for the lag service when the annuity application is filed. For example, if the employee has 115 months of railroad service on the EDM and worked through the date of death in June of the lag year, the field office should release the Form AA-12 to develop for the lag.

Instructions for completion and release of Form AA-12 are in FOM-I-1710.

B. Headquarters Processing of Returned AA-12 Forms

Once the AA-12 is received in Headquarters, the SBD examiner will generate a SURGE request, enter the required railroad service months on the SURGE Lag Data/Prior Service screen and process the final award.

The lag railroad service months will not be posted to the EDM until the railroad reports the earnings on their BA-3a year-end reports.

The annual Survivor Adjustment to Include Lag (SAIL) operation will identify all survivor cases in which the employers reported lag service and compensation for the year of death on their Form BA-3a year-end reports (See RCM 5.3.15). This will include cases in which an AA-12 was received from the railroad. Any adjustment for railroad compensation in the lag year will be done as part of the SAIL process.

209.4 Acceptability Of Signature on G-88A.1 Listing, Form G-88A.2 or Form AA-12

RBD/SBD will accept a corrected G88A.1 listing, Form G-88A.2 or Form AA-12 which has been certified in the "Certification" item, if otherwise complete, unless the certification has been made by an individual who obviously was not in possession of the compensation data reported. RBD/SBD will assume that any RRB contact representative or employer division officer or other official at a higher level would be in possession of the compensation data. Each railroad employer and employer organization has designated one or more individuals as RR contact officials for certifying information to the RRB.

210.1 Types of Vacation Pay

210.1.1 Payment in Lieu of Vacation

Payment in lieu of vacation is a lump-sum the employer pays the employee for vacation he has not taken and is still due him.

If the employee is still in railroad service at the time the payment is made, the compensation can be credited to the month the payment was made or at the end of the employer's accounting year.

If the employee is no longer in railroad service when the payment is made, the compensation should be credited to the DLW-RR or last day on the payroll.

The employer should not report a service month for the month in which a lump sum in lieu of vacation is paid.

210.1.2 Payment for Vacation Taken

Payment for vacation taken is compensation the employee receives for vacation he actually takes. The compensation earned for a month in which vacation is taken should be credited to that month.

A month in which vacation is taken is considered a month of compensated service and the employer should report it as a service month.

210.2 Crediting Vacation Months

210.2.1 RRB Can Determine How Vacation Months Should be Credited

RRB has the authority to determine how a month in which vacation is taken (vacation month) should be credited. This means that the RRB has the option to credit or not credit a vacation month based on what most benefits the employee or family, even though the month has been reported as a month of compensated service.

Although the RRB has the authority to determine how vacation months should be credited, it does not have the authority to remove service months from an employee's service and compensation record that have been properly reported by the employer, including vacation months. Therefore, even if reported vacation months are not credited, they will remain on EDM as service months.

NOTE: Programming is being developed to identify not credited vacation months on EDM.

210.2.2 When Not Crediting Vacation Months Benefits the Employee

Because an annuity is not payable for a credited vacation month, it generally most benefits the employee to not credit (not use) vacation months when the additional service months will not make him eligible for any additional benefits and will:

- Delay the beginning of his annuity; or
- Create an overpayment.

Additional service months normally increase the monthly annuity rate. However, when vacation months are used in these cases, the increase usually is not large enough to offset the amount the employee would lose by delaying the start of his annuity or creating an overpayment.

EXAMPLE: The employee applies for a disability annuity 04/24/2008. He last performed service for the employer on 04/16/2007; took vacation in all months from 05/2007 through 09/2007; is rated disabled with an onset date of 12/19/2006; his earliest allowable ABD is 06/01/2007.

If the vacation months are used, he has 306 service months through 09/2007 and his annuity rate is $2,864.10. However, the annuity is not payable until 10/01/2007, 4 months after the earliest allowable ABD.

If the vacation months are not used, he has 302 service months through 05/2007 and his annuity rate is $2,854.05. The annuity is payable from 06/01/2007, the earliest allowable ABD.

Using the 4 additional vacation months increases the annuity rate by $10.05, but the annuity is not payable for those months. However, if the 4 vacation months are not used, the employee is payable $11,416.20 for those months ($2,854.05 x 4). The $10.05 increase is not large enough to offset the amount the employee would lose by using the vacation months. Therefore, the vacation months should not be used. Note: In order for the rate increase to offset the amount the employee would lose, he would have to live at least 94 more years [(11,416.20 ÷10.05) ÷ 12 = 94)].

This same principle applies to using or not using vacation months when they are after the ABD. See FOM1 207.12.7.C for examples.

210.2.3 When Crediting Vacation Months Benefits the Employee

It generally most benefits the employee to use vacation months when the additional service months will make him or his family eligible for additional benefits.

EXAMPLE: Same facts as in the example in 210.2.2, above, except the employee has 356 service months through 05/2007 if the vacation months after the earliest allowable ABD are not used and 360 service months through 09/2007 if they are. Also, the

employee is married and his spouse could qualify for a full age spouse annuity at age 60.

Although the employee's annuity is payable from the earliest allowable ABD if the 4 vacation months are not used, he would have only 356 service months, which is not enough to qualify his spouse for a full age spouse annuity when she attains age 60. Using the vacation months gives him 360 service months, which would qualify his spouse for the annuity. Therefore, it most benefits the employee and family to credit the vacation months, even though his annuity is not payable for 4 months after the earliest allowable ABD.

This same principle applies to crediting or not crediting vacation months when they are after the ABD. See FOM1 207.12.7 .C for examples.

210.2.4 When Vacation Months Previously Not Credited Can Be Credited

It may benefit an employee to have a vacation month credited that was previously not credited (e.g., the service month is needed at later date to make him eligible for a different benefit). In order to credit the vacation month, the annuity that was previously paid for that month must be recovered.

210.3 Initial Applications or Inquiries

An employee may want to take or schedule vacation after he last performed service for the employer in order to:

- Continue receiving health insurance or other benefits from the employer; or
- Have additional service months to qualify for additional benefits.

Employee Takes Vacation to Continue Benefits

Taking vacation does not prevent an annuity from being paid from the earliest allowable ABD. Although vacation is compensated service that can allow the employee to continue receiving benefits from the employer, vacation months do not have to be credited if it affects his ABD. Therefore, the DLW-RR does not have to be the employee's last vacation month, if he takes vacation. It can be as early the date he last performed service for the employer. This means we can pay the annuity with the earliest allowable ABD, regardless of how many vacation months there are after that ABD.

Employee Takes Vacation for Additional Service Months

In order for vacation months after the earliest allowable to be credited, the DLW-RR should be the last month the employee takes or schedules vacation. Because the ABD can be no earlier than the month following the DLW-RR, all the vacation months prior to the ABD will be credited.

Vacation Months Reviewed the Following Year

In both cases, when the employer submits the service and compensation report the following year, if there are service months after the ABD and we verify they are vacation months, we will determine whether or not it benefits the employee to credit them. If it does not benefit the employee to credit the vacation months, they will not be credited and will not affect his annuity. However, if vacation months are not credited, they also cannot be credited for any other benefits the employee or family may be eligible for, unless the annuity that was paid for those months is returned or recovered.

NOTE: RBD should always notify CESC if vacation months are not credited in a case (see FOM1 207.12.7.C).

Regardless of how we determine vacation months should be credited to most benefit the employee, if he does not accept the determination, we will reverse our action.

210.4 Vacation Pay Made In Death Cases

210.4.1 Paid in Month of Employee's Death or Later

Vacation pay paid in the month in which an employee dies is creditable as compensation for the month in which he died if he performed some creditable service during that month. A payment made in lieu of a vacation after an employee dies is creditable as compensation for the month in which death occurred if, during that month, the deceased performed some creditable service and the payment was made the same year as his death.

210.4.2 Paid in Lieu of Vacation Before Employee's Death

A. Retirement Annuity Awarded - Any allocation properly made of a payment in lieu of vacation and used as the basis of an award of a retirement annuity may not be altered after the death of the annuitant.

B. Not Used in Retirement Annuity Award - When a payment in lieu of vacation was made before the employee's death and before relinquishment of rights, but was not used as a basis of an award of a retirement annuity, the vacation pay will be credited as a service month, if:

- Credit for additional service is needed for establishing the jurisdiction or current connection; or
- The allocation of the payment to a month, other than the month in which the employee last performed service would increase the death benefits.

210.5 Crediting Payment in Lieu of Vacation for Retirement Work Deductions

When crediting a payment of accrued vacation pay in lieu of taking the vacation for work deductions, RBD follows the guidelines in the Social Security Administration's RS 02505.035. Accrued vacation pay (or annual leave) paid in a lump-sum at retirement is for service performed prior to the date the employment relationship terminated.

Example:

Case History: Mr. Jones made arrangements to work January through May 1987 for exactly the annual exempt amount and then retired. His objective was to limit the amount of his earnings for the year of retirement to the allowable amount. His annuity beginning date (ABD) is June 1, 1987.

However, the employer then paid him $2,500.00 in lieu of vacation. In the case of an employee having the seniority Mr. Jones had, the union contract provided for a vacation of 4 weeks, such 4 weeks to be credited for his use as of January 1 of the following year if he was then on the company payroll.

The contract also had a provision, however, under which Mr. Jones would get less than 4 weeks if he was absent from work under certain conditions for more than a certain number of days in the year prior to January. In such a situation, the number of paid vacation days would be reduced to compensate for the days of absence.

The contract also provided for crediting additional days of vacation in the year of retirement. The retiring individual was, in addition to a full vacation, entitled to a pro rata part of a full vacation in the proportion that the number of full months worked in that year bore to 12 months.

Thus, for Mr. Jones' year of retirement after he had worked 3 months, he was eligible for 1 additional week's vacation, making a total of 5 weeks to his credit when he retired.

The question is: When were the services rendered for the 5 weeks' payment of $2,500.00 in lieu of vacation?

Rule Applied: Since there was a written plan which shows that services for $2,000.00 of the payment were for the 4 weeks earned for services rendered in 1986, it may be found that the vacation pay was earned in 1986, even though use of the vacation could not start until January 1, of the following year. The services for the week's payment in lieu of vacation ($500.00) was for the services performed in January through March of 1987.

In the absence of a written contract which shows the payment is for prior services, the vacation may still be considered to have been based on services rendered prior to the last month worked if the employee could have received payment for, or could have taken the vacation, before the year of retirement. In such cases, the vacation would be

considered to be based on services in the year in which the accrued vacation was available for the employee's use.

Example: In the example given in Section A, if the written plan had not stipulated a basis on which services were rendered, but $2,000.00 of the $2,500.00 had actually been credited to Mr. Jones and made available for his immediate use in 1986, the services for this part ($2,000.00) would be considered to have been rendered in 1986.

211.1 Compensation Based on "Pay for Time Lost"

The term "compensation" includes amounts paid by an employer to an employee for time lost during which time the employee had an employment relation (see FOM 206.2), but was absent from the active service of the employer. An employee is deemed to have been "paid for time lost" whenever any of the following circumstances occur:

A. He was paid by an employer, under certain conditions, for loss of earnings as a result of his temporary absence from work due to illness; or

B. He was paid by an employer for an identifiable period of absence from active service, including absence due to personal injury; or

C. He was paid by an employer for loss of earnings, during an identifiable period, as a result of displacement to a less remunerative position or occupation; or

D. He was paid by an employer for an identifiable period for which an employment relation existed after his actual date last worked as the result of "dismissal pay" after abolishment of his job or an "early out" agreement. (Under this condition the employee must retain his job rights and receive monthly payments of remuneration over a specified period of time); or

E. He was paid by an employer for loss of earnings as a result of abolition of the job.

211.2 Sick Pay as "Pay for Time Lost"

211.2.1 Definition

Payments to an employee who is temporarily absent from work due to sickness and disability is credited as "Pay for Time Lost" with railroad service months and regular railroad compensation when:

A. The railroad pays tier I, tier II and supplemental annuity taxes for these payments; and

B. He is carried on the payroll and paid all or part of his regular salary for an identifiable period during which he is considered absent from work; or

C. His return to service is contemplated, his name is carried on the seniority roster and he receives payment for an identifiable period when he is absent from work.

The purpose of the payment is to make the employee whole as if he had not lost time from work as a result of injury. This may be accomplished through a wage continuation plan. The employee receives service months while on the regular payroll. The railroad pays tier I and tier II taxes as they would for regular compensation.

If your field office has not been advised whether or not a specific sick pay salary or wage continuation plan qualifies as "Pay for Time Lost," obtain a copy of the plan and forward it to OP-RAS. RAS will request the Bureau of Law to review the plan and determine if it should be considered "Pay for Time Lost."

211.2.2 Effect on Railroad Unemployment Insurance Act

The employee is not entitled to unemployment or sickness benefits under the Railroad Unemployment Insurance Act (RUIA) while receiving payments under this type of plan.

211.2.3 Effect on Employee Annuity

An annuity under the Railroad Retirement Act (RRA) may not begin earlier than the day following the last date for which the "pay for time lost" is received, because the employee is carried on the payroll and receives credit as if he were still performing railroad service. This type of pay should be entered as "Pay for Time Lost" on the APPLE APMU211 Application Information Recurring Annuities screen and the proof should be entered on the APPLE APMU955 Settlement/Dismissal Pay/Sick Pay screen. For example, the Union Pacific pays a "wage continuation benefit" to employees who have an "on the job injury." The employees remain on the payroll and receive their regularly scheduled paychecks. These payments are considered to be "pay for time lost".

211.3 Sick Pay as "Miscellaneous Compensation"

211.3.1 Years prior to 1982

For years prior to 1982, sickness payments made pursuant to a company plan which provides for sickness and for accident disability or by labor agreements (i.e. plans providing for the accruing of sick leave based upon length of service), are not considered to be compensation.

However, if the employee "cashed in" his unused sick days, that payment was considered tier I and tier II compensation.

211.3.2 Legislation That Changed Creditability of This Type of Sick Pay

The Railroad Retirement Solvency Act of 1983 changed the definition of compensation to include any payment subject to tier I employment taxes. Sick pay had become subject to tier I taxes effective 1-1-82, as a result of the 1981 Social Security Act amendments, and the corresponding amendment to the Railroad Retirement Tax Act. Since the RRA was not amended at that time to include sick pay in the definition of compensation, employees receiving sick pay were being taxed without receiving credit. The amendment to the RRA in 1983 extended the retroactivity of the tier I compensation credit to 1-1-82 (limited to the first 6 months after the date last worked (DLW-RR)

211.3.3 Changes Effective January 1, 1982, or later

Effective with payments for January 1, 1982, or later, sick pay which is payable under a plan or agreement" which provides for sickness or accident disability, for up to 6 months after the actual DLW-RR, will be reported as "miscellaneous compensation." The "miscellaneous compensation" credit for sick pay is used solely to increase the earnings used to compute tier I of an employee, spouse or survivor annuity or to increase PIA 9 for the retirement overall minimum computation.

For example, The Atchison, Topeka and Santa Fe Railway Co. (ATSF) (BA 1702) has a short term disability program for officers and exempt employees. These payments are made for the first 6 months after the DLW-RR and are creditable as tier I "miscellaneous compensation." They do not provide RR service months. The annuity beginning date (ABD) may be as early as the day after the DLW-RR.

The ATSF also have a long term disability program for salaried employees that meets the definition of this type of sick pay. However, since payments under this plan do not begin until the 7th month after the employee's actual DLW-RR, they are not creditable as tier I sick pay. These payments have no effect on the railroad retirement annuity.

The entries on the APPLE APMU211 Application Information Recurring Annuities screen and the proof entered on the APPLE APMU955 Settlement/Dismissal Pay/Sick Pay screen are used to resolve any problems concerning the employee's sick pay. Question the employee carefully about sick pay, because it is difficult to determine the nature of the payment. If the payments are actually "pay for time lost," the payments should be reported in the "pay for time lost" items, not in the sick pay items. The RRB field office or the employee may have to contact the employer to determine the true nature of sick pay.

211.3.4 When Sick Pay is Not Creditable as Miscellaneous Compensation

Sick pay is not creditable as tier I compensation if:

A. Sick pay is paid under a worker's compensation statute; or

B. Sickness payments were made after the expiration of 6 calendar months after the employee last worked for the railroad employer.

211.3.5 How Sick Pay is Reported to the RRB

The employee is not carried on the railroad's payroll. The payment is not based on all or part of the employees regular salary. This payment may be made from any source (including an insurance company as a third party payee, sickness insurance (SI) benefits under the RUIA or benefits from a nongovernmental plan).

RUIA sickness insurance payments are reported to the Employment Data Maintenance (EDM) as tier I compensation, under BA 1008. Two third party payers, Benefit Trust

(BA 1005) and Provident (BA 1004), have also been assigned BA numbers and make reports to the RRB.

Railroad employers have been instructed to report miscellaneous compensation on Form BA-3, "Annual Report of Creditable Compensation."

If the employee had contributed to the sickness or accident disability plan, the portion of the payments attributable to his contributions are excluded. Payments under a worker's compensation law are also excluded.

211.3.6 Definition of Plan or Agreement and Nongovernmental Plans

A. Plan or Agreement - The term "plan or agreement" for miscellaneous compensation means the payments are based on a plan or agreement established by an employer which makes provision for his employees generally or for a class or classes of employees, and their dependents, on account of sickness or accident disability. These employees are no longer carried on the regular payroll. However, payments for sickness or injury are paid for a period during which the employee is absent from work on account of a personal injury or sickness.

A "sick pay" plan or agreement has these characteristics:

1. It covers a specified group of employees and may or may not be the result of a collective bargaining agreement;

2. Benefits may be paid by a contract the employer has with an insurance company, or from a special fund set up by the employer or out of the employer's general revenue;

3. Benefits are not based on the employee's salary and may continue for as long as the employee is absent from work on account of sickness or injury, or they may be limited to a certain number of days or weeks;

4. The plan may include benefits for payments when the employee is absent from work for reasons other than personal injury or sickness.

B. Nongovernmental Plan - A nongovernmental plan is defined in the RUIA. It is a formal, written plan under which the employee has an enforceable right to benefits for days on which he is absent from work on account of sickness or injury. A nongovernmental plan has these characteristics:

1. The plan covers a specified group of employees and may or may not be the result of a collective bargaining agreement.

2. Benefits may be paid by a contract the employer has with an insurance company or from a special fund set up by the employer or out of the employer's general revenue.

3. Benefits are not based on the employee's salary and may continue for as long as the employee is absent from work on account of sickness or injury, or they may be limited to a certain number of days or weeks.

4. Benefits under the plan must be reduced by sickness insurance benefits under the RUIA.

211.3.7 Effect on RUIA

The only difference between a "plan or agreement" and a "nongovernmental plan" is that sick pay plans or agreements do not have to be reduced for SI, and the nongovernmental payments do have to be reduced. Accordingly, a nongovernmental plan is by definition a sick pay plan. The reverse, however, is not true unless a sick pay payment is reduced for SI.

A table of employers covered under the Benefit Trust and Provident plans can be found in the RUIA "Adjudication Instruction Manual, Article 9, Appendix F." That appendix also lists other sick pay plans on file at the RRB. However, some of these employers may carry the employee on the payroll for a short time before the miscellaneous compensation begins.

211.3.8 Effect on Employee Annuity

Credit is not given for railroad service months or for tier II compensation. The DLW-RR and the ABD are not affected, since service months are not credited.

211.3.9 Effect of Miscellaneous Compensation on Work Deductions

The miscellaneous tier I compensation, up to the tier I yearly maximum, is based on an identifiable 6-month period for which sickness benefits are payable. However, the miscellaneous compensation is actually credited as a lump-sum to the DLW-RR. The earnings do not count for work deductions in retirement or disability annuities, because they are attributable to the date last worked for work deduction purposes since the employment relationship has terminated when these benefits were paid. The miscellaneous compensation is not added to PIA 17, which is the amount that is not subject to tier I work deductions. Therefore, the miscellaneous compensation is included in the tier I work deduction component (PIA 2) as if it were "wages."

211.4 Personal Injury Payments

211.4.1 When Considered Pay for Time Lost

A payment made to an employee by his employer on account of a personal injury is to be treated, subject to the limitations stated below, as compensation "paid for time lost" if it included pay for time lost and was paid for an identifiable period of absence from the active service of the employer.

EXCEPTION: Payment under a workers compensation law or public disability is not RRA compensation paid for time lost. These benefits are paid under a state or Federal workers compensation law or plan. Therefore, no part of such payment is creditable as compensation. RRA annuity payments are reduced when the employee is also entitled to periodic workers compensation pay or a public disability benefit.

211.4.2 Determining Period of Time Lost

An employee will be deemed to have been paid for the period of time lost specifically identified in the agreement of settlement. If the period of time lost was not specifically identified, the period between the time of the injury and the time the employee returned to work is to be regarded as the period of time lost if:

A. The personal injury payment was made after the employee returned to active employer service; or

B. The employee returned to such service within 6 months after the date on which the payment was made.

If the period of time lost was not specifically identified, and the employee did not return to railroad employment, the total amount of the settlement agreement should be allocated to the date last worked (DLW-RR).

If a settlement agreement is pending, the employee is eligible for an annuity, and the employee does not need additional railroad service months, encourage the employee to finalize the settlement agreement as a lump-sum payment credited to the DLW-RR.

The period for which a payment for time lost on account of personal injury is made need not be considered as finally settled at the time the payment is made. A change in the period made at a later date may be given effect so long as the employee and the employer agree upon the change, nothing unreasonable is found in the new allocation, and an amended settlement agreement is prepared. The employer also must file a corrected earnings report for the employee within 4 years. This change may affect the annuity beginning date.

211.4.3 Amount Creditable

When a payment made by an employer with respect to a personal injury includes pay for time lost, the total amount is to be considered as pay for time lost unless, at the time of payment, a part was specifically apportioned to factors other than time lost.

Whenever such an amount was, at the time of payment, apportioned to factors other than time lost (such as for the purpose of obtaining release from future liability, medical and hospital expenses, damages for physical or other impairment, etc.), only that part of the amount not so apportioned is creditable as pay for time lost.

The portion of a personal injury payment which represents pay for time lost is to be allocated, subject to the maximum creditable for a month, to the month or months falling in the period treated as the period of time lost. Beginning with 1985, an employee may receive tier I credit for "pay for time lost" subject to the annual tier I maximum. Tier II credits are still subject to the tier II monthly maximum in the period of time lost.

When pay for time lost is allocated, the RRB will accept the allocation if it relates to the employee's normal monthly pay. Effective November 28, l984, a reasonable relationship to an employee's normal monthly pay is defined as ten times the employee's daily pay rate. Prior to that date, the minimum amount that could be credited for a month of pay for time lost was $100.00.

211.4.4 Developing Personal Injury Payments

"Pay for time lost" due to personal injury is usually reported to the RRB by the employer in their year-end earnings report. However, when the period of "pay for time lost" due to personal injury is in the lag period, the applicant reports the settlement, or pending settlement on the APPLE APMU211 Application Information Recurring Annuities screen.

If the settlement involves compensation only, the employee will receive credit when the railroad submits its annual report. The annuity will be adjusted in by RESCUE.

Otherwise, the RRB field office should secure a copy of the settlement agreement, including the following information:

A. The amount and date of the payment; and

B. The reason for the payment; and

3. The beginning and ending dates of the identifiable period creditable as railroad service months in the settlement.

When possible, the proof should be entered on the on the APPLE APMU955 Settlement/Dismissal Pay/Sick Pay screen before the application is released to Headquarters.

A photocopy of the settlement papers should be forwarded to RBD-RIS supervisor to be imaged to the claim file.

The settlement will probably affect the annuity beginning date. If the settlement is still pending when the application is released to Headquarters, ask the applicant to designate an ABD that will be after the ending date of the settlement.

211.5 Separation, Displacement and Similar Allowances

211.5.1 General

Separation, displacement, termination and similar payments that result from abolition of an employee's railroad job are creditable as compensation under the Railroad Retirement Act. Under many separation and displacement agreements, an employee whose job is abolished is given a choice between:

A. Retaining his job rights and receiving monthly payments of compensation over a specified period of time; or

B. Giving up his rights as an employee and accepting a separation allowance.

Employers may refer to these allowances by many different names, such as separation, dismissal, termination, severance, displacement, reduction in force or coordination allowances. For purposes of this section, the different allowances or payments will be referred to as either a "separation allowance" or "monthly compensation payment," depending upon whether rights have been relinquished or retained by the employee. Regardless of the name the employer gives the payment or allowance or how it is reported by the employer, the handling to be given the payment under the RRA will depend upon whether the employee has relinquished or retained his job rights.

211.5.2 Description and Effect of "Monthly Compensation Payments"

"Monthly compensation payments" are payments of remuneration to an employee who retains his job rights during the course of the monthly payments. Such payments may be made to an employee whose job was abolished or who was displaced to a less remunerative position or occupation. An example of a dismissal payment is a monthly displacement allowance paid under Title V of the 1973 Regional Rail Reorganization Act. Since an employee who elects to take "monthly compensation payments" is getting credit for each month, his annuity may not begin until after the end of the period for which payments are made. The payments are "pay for time lost" under the RRA and creditable as service and compensation.

211.5.3 Description and Effect of "Separation Allowance"

A "separation allowance" is a payment of remuneration to an employee who has relinquished his job rights. The payments may be spread over a period of time and reported for that period, or the allowance may be paid in a lump-sum and reported for the month the separation is effective. (It is up to the employer to decide whether the separation is effective on the date last worked or on relinquishment of rights.)

Regardless of whether the separation allowance is paid in a lump-sum or paid in a series of installments, it may not be used to credit the employee with railroad service for months following the month in which he was separated from service by relinquishing his rights. For computational purposes, tier I may be credited up to the annual maximum

for the year last worked and tier II may be credited up to the monthly maximums based on the number of actual or deemed service months in the year last worked before the employee relinquished his rights.

EXAMPLE: An employee's date last worked is 5/31/86. He was on leave of absence for the months of January through April 1986. He returned to work in May 1986. He accepts a separation allowance which is also effective 5/31/86. He files for an annuity to begin on 6/1/86. His actual earnings for 1986 are $1,500.00. The separation allowance is $100,000.00 and is credited to May 1986. For 1986, he would be credited with $42,000.00 (the annual maximum) in tier I and $12,125.00 (5 months at the monthly maximum of $2,425.00) in tier II. He receives credit for 1 actual service month and 4 deemed railroad service months for 1986.

The employee may be entitled to a refund of his tier II taxes deducted from the separation allowance after 1984 that did not yield additional railroad service months. This refund is called a SALSA award.

211.5.4 Effect on RUIA

An employee who elects to take "monthly compensation payments" is getting a railroad service month credit for each month he may not receive RUIA benefits for the period for which payments are made.

A "separation allowance" is a payment of remuneration to an employee who has relinquished his job rights. Separation allowances can affect the payment of RUIA benefits, as under the Title VII program, which is explained in FOM 212.

211.5.5 Effect on Employee Annuity

A. Possible Effect on Current Connection - The requirements for a "deemed current connection" are in FOM 225.105. In cases where an employee has no option to remain in railroad service, the termination may be considered involuntary, even if the employee receives a separation allowance or dismissal pay. However, an employee who chooses a separation allowance instead of keeping his or her seniority rights would generally be considered to have voluntarily terminated railroad service. Questionable "deemed current connection" cases are referred to the Bureau of law.

Months creditable as "dismissal pay" will add to the railroad service months used in the "12 in 30" test to extend the period the employee has before the regular current connection test could apply. An employee who chooses a separation allowance will have the "12 in 30" based on the actual railroad service prior to his "relinquishment of rights." In either case, work outside the railroad industry following the 30-month period may break the employee's regular current connection.

B. Effect on Annuity Beginning Date - Regardless of how the employer pays or reports it, a "separation allowance" will ordinarily be credited by the RRB to the DLW-RR. The annuity can then begin on the day after the DLW-RR if the employee is otherwise eligible. However, if the employer considered the separation to be effective in a later month and reported the allowance for that month on the year-end earnings report, it will be credited to the date the separation is effective, provided that the employee did not relinquish his rights prior to that date. If a "separation allowance" is credited in this manner, an annuity cannot begin until the day after the date the separation was effective.

C. Separation Allowance for Work Deduction Purposes - Under the RR Act, separation allowances are considered to be earnings for work deduction purposes. In regard to payment of an annuity, the RRB has determined that a separation allowance will be deemed to have been paid for services in the month last worked (DLW-RR) regardless of when payments are actually made. Employees who have no other employment after their annuity beginning date (ABD) will not lose any portion of their annuity payments, as work deductions would not apply in the ABD month in this situation.

Some separation allowances spread out payments over a period of years. As stated above, the entire allowance would be credited to the DLW-RR. Annuitants who continue to receive payments after the year they last worked will not be subject to work deductions in the years following the ABD year based on those payments.

211.6 Payments upon Reinstatement after Layoff

211.6.1 Payment for Lost Earnings

A payment made to an employee reinstated after suspension or discharge, in settlement of a claim for back pay for the period during which he was not in active service, constitutes compensation for time lost. Payments upon reinstatement after layoff are to be credited proportionately to the months the employee was held out of service.

211.6.2 Nominal Sum

A nominal sum paid to an individual who was held out of the service of a covered employer and subsequently reinstated under an agreement of settlement which provided for the payment of a nominal sum in consideration for the execution of a release, is not creditable as compensation.

212.1 Bonus Pay

Different types of bonus payments, such as safety, incentive, fuel conservation, perfect attendance, superior performance and suggestion awards constitute creditable compensation because they are payments made in consideration of services in addition to that which ordinarily are given. See FOM1 212.2 for information on stock options.

212.2 Stock Options

A stock option is the right to purchase a specific number of shares of a company's stock at a future date at a pre-set price. The type of stock option determines whether remuneration from the option is compensation under the Railroad Retirement Tax Act (RRTA). With respect to QUALIFIED STOCK OPTIONS, the RRTA provides that: "The term "compensation" shall not include any remuneration on account of –(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock purchase (ISO) plan (as defined in section 422(b) of the Internal Revenue Code) or under an employee stock purchase plan (ESPP) (as defined in section 423(b) of the Internal Revenue Code), or (B) any disposition by the individual of such stock." However, a NON-QUALIFIED STOCK OPTION, which does not qualify under the aforementioned sections of the Internal Revenue Code, will result in compensation to the employee either at the time the employer grants the option to purchase to the employee, or at the time the employee sells the stock. If questions arise as to the point in time that the compensation was paid, advise the employee to contact either the railroad employer or the Internal Revenue Service.

212.4 Holiday Pay

Holiday pay or birthday bonuses are creditable compensation. In addition, service may be credited for the month of the holiday or birthday.

212.5 Productivity Fund Payments

212.5.1 General

Some railroad employers have special compensation funds that are designated as "productivity savings funds." Payments are made under cost-containment plans where distribution is made to employees for working in such a way to reduce costs. Payments are usually made once a year in a lump-sum, as a special payment for extra productivity.

Distributions from a productivity sharing savings trust fund are creditable compensation under the Railroad Retirement Act (RRA). The compensation is considered earned in the month they are deemed paid.

Example: A five-man crew agrees to operate as a four-man crew. The pay that would normally be paid to the fifth man is placed in the productivity fund. At the end of the year the money is distributed to the employees.

However, the month to which the payments are credited varies according to the employer. Conrail credits a productivity fund payment to December of the year preceding the year in which payments are made. The compensation is reported to the RRB as an adjustment in the previous year's record. The Burlington Northern Railroad Co. (BN) has separate funds and BA numbers for the Burlington Northern Region Productivity Fund (BA No. 1006) and the Frisco Region Employee Productivity Fund (BA No. 1007). The BN reports productivity fund payments at the end of the year in which payments are made; compensation will be reported for either March or October of that year.

In most situations, the productivity fund payment will be credited to a month for which the employee has already received credit for a month of service. The productivity fund payment may increase the amount of compensation credited for that month, unless the employee had maximum creditable earnings.

212.5.2 Effect on Railroad Unemployment Insurance Act

Although creditable as Railroad Unemployment Insurance Act (RUIA) compensation, based on coordination or proration with the employer, the payments do not usually yield additional RUIA compensation credit.

212.5.3 Effect on Railroad Annuity

The annuity beginning date will not be affected. If payment is made after the employee's actual last day worked, the employer's year-end report should be corrected to credit the payment to the last day worked.

212.6 Back Pay

Back pay is a retroactive wage increase. Like other compensation, back pay may be creditable for the month compensation is paid or for the period earned. Also, like other compensation, if back pay is reported for the month paid, and the employee makes a timely request that it be allocated instead to the month(s) earned, the employer must submit an adjustment report accordingly.

Service should not be reported for the month the back pay was paid unless service is otherwise creditable for that month. In the case of a retroactive wage increase, it is assumed that service has already been credited based on the initial wage payment prior to the increase.

212.7 Purchase of Employee Benefits

The payment to an employee for the termination or "purchase" of an employee right or benefit, such as seniority rights, profit sharing rights, sick benefits, etc., is creditable compensation.

212.8 Reimbursement for Expenses

Reimbursement for expenses incurred in the discharge of the duties of an employee may not be credited as compensation unless the value of the expenses was agreed upon in advance of the services as remuneration, in whole or in part, for services rendered. Compensation that includes reimbursement for expenses incurred by an individual in the course of his employment is to be credited only to the extent of the net compensation earned for personal services rendered.

212.9 Tips

Generally, the RRB has looked to the treatment the Internal Revenue Service (IRS) accords similar payments under the RRTA in determining whether certain payments are compensation under the acts administered by the RRB. Tip earnings of $20.00 or more per month are creditable as tier I and tier II compensation and are to be included in the annual report of service an compensation. Tips are not subject to the RUIA contribution. Tip compensation is subject to employee Medicare and tier I/tier II taxes, but tax liability for tips does not extend to employers. If the employer is reporting tip income to the IRS under the Tip Rate Alternative Commitment (TRACE) program or the Tip Rate Determination Agreement (TRDA), the total amount should be reported to the RRB as creditable compensation.

212.10 Payments under Title VII of Regional Rail Reorganization Act

A separation or subsistence allowance paid under Title VII of the Regional Rail Reorganization Act of 1973 was creditable as service and compensation and was reported under the Title VII BA number (1002). An employee who received benefits under Title VII may have been entitled to an extra month of compensation and/or railroad service. This compensation and/or service could only have been allocated in certain ways.

A month of service was credited to the month the employee filed for Title VII benefits when (s)he did not work in the railroad industry that month. If the employee worked in the railroad industry that month no service month was credited based on Title VII filing.

Compensation was allocated to the month the employee filed for Title VII benefits up to the tier I and tier II maximum amounts. Compensation was allocated to the month of Title VII filing even if the additional month of service could not be credited for that month. However, if the employee already had maximum compensation, no additional compensation was added.

212.10.1 Effect on RUIA

RUIA payments did not begin to accrue until the Title VII monthly subsistence payments ended or the amount of RUIA payments is equal to the Title VII separation allowance was withheld.

212.10.2 Effect on Railroad Annuity

Title VII payments did not affect the payment of a railroad retirement annuity. The only consideration is that an employee filing for a Title VII subsistence allowance should not file a retirement or disability annuity application before he files for the Title VII payment.

212.11 Pension Payments by an Employer

Pension payments made by an employer without expectation that the employee would render services therefore, but merely to supplement an annuity or pension for which the employee might qualify, do not constitute compensation.

212.12 Military Service

Military service (MS) may be creditable as either wages or railroad compensation, as explained in FOM 215. If the MS is creditable as compensation, the amount of compensation is as follows:

212.12.1 Before 1968

The amount of compensation credited is $160.00 a month for each month in which the employee was in creditable MS before 1968; or

212.12.2 Before 1975

The amount of compensation credited is $260.00 a month for each month in which the employee was in creditable MS after 1967 through 1974; or

212.12.3 1975 or Later

The amount of compensation credited is the actual amount for the MS basic pay that would be creditable as wages if the MS were used as wages.

Where the employee is credited with MS as compensation for a month in which he has other creditable compensation, the MS compensation is added to the other compensation up to the tier I and tier II maximum.

213.1 Local Lodge Compensation

213.1.1 Before 1937

Compensation earned before 1937 in the service of a local lodge or division of railway-labor organization employer is creditable if the service for which it was performed is creditable.

213.1.2 After 1936 and Before 1975

Compensation earned after 1936 in the service of a local lodge or division of a railway-labor organization employer is disregarded for any calendar month in which it is less than $3.00, except that such compensation is creditable if:

A. It was earned between 12-31-36 and 4-1-40; and

B. Taxes were paid on the compensation before 7-1-40, under the Railroad Retirement Act (RRTA) and

C. It was preceded by creditable railroad service.

213.1.3 After 1974

Compensation earned after 1974 in the service of a local lodge or division of a railway-labor organization employer is disregarded for any calendar month in which it is less than $25.00.

Any compensation earned after 1974 in the service of a local lodge or division of a railway-labor organization that is $25.00 or more must be preceded by creditable railroad service to a rail employer.

213.2 Compensation for Insurance Commissions

Commissions paid to the secretary-treasurer of a local lodge or division of a railway labor organization employer for collection of insurance premiums are creditable as compensation, even if the commission is less than $25.00 for a calendar month.

213.3 Payment, Waiver or Refund of Organization Dues

A payment, waiver, or refund of organization dues by the organization is creditable as compensation only if there is evidence showing it was intended and accepted as the discharge of an obligation of the organization to compensate the employee for his services.

An amount paid, waived, or refunded solely in consideration of membership is not creditable as compensation even though the payment, waiver, or refund is made by reason of performance of valuable services to the organization.

A payment, waiver, or refund made solely as a courtesy or honor cannot be credited as compensation.

If the dues waived include additional elements such as insurance premiums which the employee would normally have to pay, the amount waived may constitute compensation if the value has been agreed upon as remuneration for service rendered.

Designation of a payment, waiver, or refund as a gratuity or by any other term which would normally indicate that the payment, waiver, or refund could not be considered as compensation, is not controlling. The facts in each case are to be considered on their merits.

213.4 Services Rendered to a General Committee of a Railway-Labor Organization Employer

When a person acts in the capacity of a general or assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer and:

A. His office or headquarters is located outside the United States; and

B. The individuals represented by the general committee are employees of an employer not conducting the principal part of its business in the United States; only that proportion of his remuneration may be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of the general committee bears to the total mileage under its jurisdiction. If the mileage formula is inapplicable, RRB may adopt a different formula.

If application of the prescribed mileage formula or any other formula prescribed by RRB would result in compensation of less than 10% of the remuneration for this service, no part of the compensation is creditable.

Regardless of the place of performance, all remuneration for general committee service is as creditable compensation if the employee of the general committee represents a local lodge or division whose headquarters is in the U.S., or substantially all the employees represented by the general committee are employees of an employer conducting the principal part of its business in the U.S.

213.5 Delegate Service to a Convention of a Railway Organization

Prior to 1954, remuneration paid to delegates for attending union conventions was considered “compensation” under the Railroad Retirement Act (RRA). In 1954, the RRA was amended to exclude from the definition of “compensation” remuneration paid

to delegates to a national or international convention who had previously rendered no rail service, with the exception of service as a delegate. The Railroad Retirement Board (RRB) continued to consider remuneration paid to delegates who had previously rendered rail service as "compensation" under the RRA until 1994. Effective with compensation reports submitted in October 1994 and later, the RRB adopted the policy outlined below.

To be considered creditable under the RRA, payment received by an individual must be for services rendered as an employee or employee representative. Delegates to a convention or similar meeting are not considered to be employees of the union if the delegates are not subject to the direction and control of the union while attending the convention, other than being subject to the convention's rules of conduct or procedure. If the delegates are not considered to be employees of the union, payment received in connection with attendance at a convention is not creditable or reportable compensation under the RRA or the Railroad Unemployment Insurance Act (RUIA).

To determine whether payment received by a delegate is creditable compensation, consideration should be given to the following:

- Whether the employee was paid for any services at the meeting, other than acting as a delegate; and

- Whether the payment the employee received was reimbursement for more than accountable expenses.

If either of the above conditions is met, the earnings may be creditable compensation. Document the services the employee provided and the breakdown of the payment received, and refer the case to the Compensation and Employer Services Center (CESC). CESC will determine if the earnings constitute creditable compensation.

If the earnings are determined to be creditable compensation, the case should be treated as a return to railroad service for the month of attendance. If the payment received by the delegate is not creditable compensation, the earnings are not subject to railroad retirement taxes. However, the payments do constitute income for income tax purposes and could possibly affect railroad retirement annuities as follows:

A. Employee Disability Annuities: If the payment for delegate service exceeds the monthly earnings amount, after expenses for attending the meeting, neither the employee nor spouse is entitled to an annuity for the month in which the payment is earned. (Withheld payments will be restored if earnings for the year are less than the yearly earnings amount.) If the payment for delegate service, after deduction for the accountable expenses is equal to or less than the monthly earnings amount, the earnings should be included in any report of earnings for work deduction purposes under the RRA or the Social Security Act. See FOM1 1125.5.2

B. Employee Age and Service Annuities: The earnings should be included in any report of earnings for work deduction purposes under the RRA or the Social Security Act.

213.6 Employee Representative Compensation

When a person occupied the position or office of employee representative and was paid remuneration in that office, all remuneration (subject to the Tier I and Tier II maximum) is credited as compensation, even though such person performed, either in connection with or outside that office or position, some services which were not directly related to the representation of employees. When a person did not occupy the position or office of employee representative and earned remuneration in another position or office not related to the representation of employees, the remuneration is not credited as compensation for employee representative service, even though he performed some services, either in connection with or outside his office or position, which were related to the representation of employees.

When a person occupied, concurrently, the position or office of employee representative and another position in some non-employee representative capacity, only the remuneration earned in the capacity of employee representative as employee representative is credited as compensation.

214.1 General

The 1981 amendments to the Railroad Retirement Act provide that the compensation used to compute an employee's average monthly compensation (AMC) used to compute the tier II of an annuity payable under those amendments should be indexed if:

A. The employee did not work in the railroad industry in the 60-month period immediately preceding the annuity beginning date (ABD); and

B. The employee's major employment during that 60-month period was with one of the government agencies listed in FOM 225.35.2. L-95-10 defines "major employment to include employment with such agencies when that employment was for a greater period of time during the 60 months preceding the ABD than was employment not for such agencies." If the employee did not work for any other employer in the 60-month period, the government agency would be his "major employer," even if he only worked for that agency for a short time.

If an employee did not work in the railroad industry in the 60-month period preceding the ABD and (s)he claims employment during that period with one of the government agencies listed above, verification of that employment must be obtained before the AMC can be indexed. Until verification is received, the annuity computation must be based on the unindexed AMC shown on Form G-90. Once verification of the government service employment is received, the annuity can be recertified using the indexed AMC.

214.2 Requesting Verification of Government Service Employment

The field office should secure from the employee a verification statement from his/her qualifying government service employer, or enter information from a DEQY on the APPLE proof screen, when the employee files his/her application. If neither is possible, RBD will request verification of government service employment for the 60-month period preceding the railroad annuity beginning date by obtaining a DEQY or by completing RL-610 on RRAILS. The address of the employer may be obtained from RCM 10.6.8.

214.3 Action upon Verifying Employment

If the DEQY indicates employment for one of the government agencies listed above as the employee claims, and it was the employee's major employment during the 60-month period immediately preceding the annuity beginning date (ABD), RBD requests an indexed AMC computation via Form G-563. Effective with annuities initially awarded on or after October 1, 1983, RBD also requests an indexed FAMC computation on the Form G-563. RBD adjusts the annuity accordingly.

If the DEQY indicates that the employee did not work for one of the government agencies listed above during any of the 60 months in the period immediately preceding the ABD, the employee's compensation cannot be indexed when computing the Average Monthly Compensation (AMC) or Final Average Monthly Compensation

(FAMC). RBD will notify the employee and the field office if the employee claimed this service (i.e., shown in remarks section of APPLE, etc.) to advise that the annuitant is not entitled to the increase in tier II.

NOTE: If the employee did not have any other employment during the 60-month period preceding his ABD, the government employment was his major employment, even if he worked in only 1 month during that period. If the employee had another employer during any month in that 60-month period and you are unable to determine whether the government employment was his major employment, refer the case to RAC.

214.4 Indexed AMC

The indexed AMC is calculated as follows:

Step 1) Index all tier 2 compensation as follows:

$$\text{(Unindexed Monthly Compensation)} \times \frac{\text{(Average annual wage for indexing year)}}{\text{(Average annual wage for year N)}} = \text{(Indexed Monthly Compensation)}$$

The Average Annual Wage for 1951 is used for compensation being indexed prior to 1951. The ABD year is used as the eligibility year.

Step 2) Determine the 60 highest months of indexed compensation.

Step 3) Add the indexed compensation for the 60 highest months.

Step 4) Determine whether the High 60 month indexed compensation total exceeds the tier 2 annual raw compensation maximum total for the five calendar years preceding the ABD year. (This provision ensures that an employee entitled to an indexed tier 2 will not receive a higher tier 2 amount than what an individual with the same ABD year, maximum tier 2 earnings, and entitlement to a regular (unindexed) tier 2 would receive.)

- If so, cut back the high 60 indexed earnings total to the five year tier 2 annual raw compensation maximum total (see example below).

- If not, use the indexed earnings for the actual compensation posted.

Example: The employee's ABD is 10/1/2005. The maximum indexed earnings that can be used is limited to $309,000 (2004 = $65,100, 2003 = $64,500, 2002 = $63,000, 2001 = $59,700, 2000 = $56,700). The employee's indexed earnings from actual

compensation (using 1990-1994 earnings) totals $313,840.63. The employee's high 60 month total must be cutback to $309,000.

Step 5) Divide the total of (4) by 60.

214.5 Indexed FAMC

The Railroad Retirement Solvency Act of 1983 provides a unique final FAMC for employees whose AMC is determined under the indexed AMC computation above and whose annuities are first awarded on or after October 1, 1983. The FAMC is calculated as follows:

Step 1: Determine the 24 months of highest indexed compensation used in calculating the AMC. (This will not necessarily be months in the 10 years before the annuity beginning date);

Step 2: Divide by 24.

215.5 General

Under the 1974 Railroad Retirement Act, military service (MS) may be used as wages or compensation in computing an annuity rate. The employee does not have to indicate whether he wants his M/S used as Social Security Act (SSA) wages for a windfall or as compensation under the Railroad Retirement Act (RRA). He must, however, indicate the MS on the application and submit proof of all creditable M/S for it to be considered. The annuity rate will be calculated using MS as wages or compensation, depending on how the MS may be credited and depending on which method produces the higher benefit.

215.10 Active M/S under the RRA Defined

Under the RRA, a person is considered to have performed active MS if he was:

A. Commissioned or enrolled in the active service of the land or naval forces of the U.S. (including personnel of the U.S. Coast Guard); or

B. Commissioned or enrolled in any reserve component of such forces which was ordered to active duty.

Annual training duty performed for a period of at least 2 weeks (usually 15 days or more) as a member of a reserve component of a uniformed service is considered active duty and may be creditable, provided the employee service requirement is met. The period of active reserve duty for training also includes authorized travel to and from any such training duty. Weekend alone or evening reserve duty is not creditable.

Reserve components of a uniformed service are:

1. The Army Reserve;
2. The Navy Reserve;
3. The Marine Corps Reserve;
4. The Air Force Reserve;
5. The Coast Guard Reserve;
6. The Reserve Corps of the Public Health Service;
7. The National Guard of the United States; and
8. Under limited circumstances, the National Guard or Air National Guard of the several states and territories and the District of Columbia. Such reserve active duty may be creditable only if the reserve unit was activated

by the Federal government. Emergency call-up of the national guard by the governor for riot or flood control would not be creditable; or

C. Commissioned or enrolled in the active service of any of the following auxiliary branches:

1. Women's Army Auxiliary Corps (WAACS);

2. Women's Air Force (WAFS);

3. Women's Army Corps (WACS);

4. Women's Reserve of the Naval Reserve (WAVES);

5. Marine Corps Women's Reserve (MARINES); and

6. Women's Reserve of the Coast Guard Reserve (SPARS).

NOTE: A person's service in the Army Specialist Corps, the Merchant Marine, Maritime Service or a Civilian Public Service Camp is not creditable as M/S under the RRA.

Active M/S as defined under the SSA (see FOM-1-215.40) may also be creditable under the RRA, if the RRA requirements are met.

215.15 Requirements for Using MS under the RRA

Credit for MS under the RRA may be allowed if, before enlistment or induction, and in the same calendar year as the enlistment or induction or in the next preceding calendar year, the employee:

A. Performed service as an employee for compensation; or

B. Lost time as an employee for which he received remuneration; or

C. Was serving as an employee representative.

Although the date of enlistment or induction is to be used to meet the "same year" or "next preceding year" requirement, the first month to be counted as a month of service is the month of entry on active duty. If, however, counting the service beginning with the month of enlistment or induction would cause the applicant to gain eligibility for a benefit (e.g., 20 years of service for an occupational disability annuity), develop an application if necessary. Mark the Form G-230 (Check List for Employee, Spouse, and Divorced Spouse Annuity/HIB Applications) for MANUAL REVIEW, and show in the remarks section of the Form G-230: "Eligibility based on the month the applicant enlisted or was inducted."

215.20 MS Periods Which may be Credited

Credit for MS under the RRA may be granted for eligible employees who entered MS during any of the periods outlined in the following sections.

215.20.1 Voluntary or Involuntary Service

If an employee voluntarily entered MS before a war service period, no part of the MS performed in the enlistment period may be allowed. Any MS performed after the first enlistment period would have to be preceded by the required employee service.

Voluntary or involuntary service entered during the following periods may be credited under the RRA:

A. April 21, 1898 through August 13, 1898 (Spanish American War);

B. February 4, 1899 through April 27, 1902 (Philippine Insurrection);

C. April 6, 1917 through November 11, 1918 (World War I);

NOTE: When the employee entered MS in one of the periods described in (A) through (C) above and he was required to continue in MS after the end of the period during which he entered, he may receive credit for all MS performed before his discharge or reenlistment.

D. September 8, 1939 through June 14, 1948 (State of national emergency). This period includes the war period of World War II which began December 7, 1941, and ended December 31, 1946. The national emergency was declared ended by Congress as of 6-14-48, the date when the President approved the declaration.

E. June 15, 1948 through December 15, 1950 (The President approved the Selective Service Act of 1948 on 6-24-48.)

1. Months Prior to December 1, 1988 (MS entered into voluntarily from 6-15-48 through 6-23-48 is not creditable under the RR Act);

NOTE: If an employee entered MS as an enlisted man on or before 12-31-46 or if he was required to enter MS on or after 1-1-47, that MS is creditable through the end of the enlistment period even if it extends past June 14, 1948. Credit is allowed for all MS performed before the employee was no longer required to serve, usually the end of the immediate enlistment period. It is assumed that enlisted personnel were required to complete their current term of enlistment or induction.

An employee who voluntarily entered MS as an enlisted man during the period beginning 1-1-47 through 6-14-48 can only receive credit for such MS through 6-14-48.

If an officer voluntarily elected to remain in MS during the period 1-1-47 through 6-14-48, he may not receive credit after 6-14-48 even though he is bound by the election to remain after that date.

If an officer was in MS on 12-31-46 and continued in such service after 6-14-48, it is assumed that he was not required to continue in MS but that he voluntarily continued in MS after 6-14-48, and credit will be allowed only for M/S through 6-14-48. Tell such a person that if he could not have obtained a release from active MS until after 6-14-48, he should submit documentary proof which shows that he could not obtain a release from active duty until after 6-14-48, and the earliest date he could have been relieved from active duty after 6-14-48.

When the person submits evidence which establishes that he was required to remain in service after 6-14-48, MS will be allowed to the earliest date he could have been released from active duty. However, no MS will be allowed after the date the Military Personnel Records Center certifies on Form G-431 (Request for Record of Military Service) that the employee signed a statement electing to voluntarily remain in active MS. Examiners will develop the Form G-431 information when creditability of MS after 6-14-48 is questionable.

2. Effective December 1, 1988, voluntary MS in the June 15, 1948 through December 15, 1950, period is creditable under the RRA if the following conditions are met:

   - Employee rendered creditable railroad retirement (RR) service in the year of entrance into military service or in the preceding year;
   - Employee rendered creditable RR service in the year released from active military service or in the succeeding year;
   - Employee did not engage in employment not covered by the RRA in the period after leaving MS and before resuming RR employment.

   If these conditions are not met, the same creditability rules that are in effect for months prior to December 1, 1988, apply. See the NOTE under "1. Months Prior to December 1, 1988."

F. December 16, 1950 through September 14, 1978 (National emergency which ended 9-14-78).

NOTE: When the employee voluntarily entered MS before 9-15-78, that MS is creditable only through 9-14-78.

When the employee involuntarily entered MS during the period 12-16-50 through 9-14-78, he can receive credit for M/S after 9-14-78 only if he was required to continue in such service after 9-14-78. It is assumed that enlisted personnel

were required to complete their current term of enlistment or induction. See NOTE under D in this section if an officer claims he was required to continue military service.

G. August 2, 1990, to date not yet determined (Operation Desert Shield/Desert Storm).

215.20.2 Involuntary Service

Involuntary service entered during the following periods may be creditable under the RRA:

A. May 9, 1916, through February 5, 1917, pursuant to the President's calls of May 9, 1916, and June 18, 1916 (Mexican Border Disturbances);

B. June 24, 1948, through December 15, 1950, under the Universal Military Training and Service Act (formerly the Selective Service Act of 1948).

M/S entered involuntarily from 6-15-48 through 6-23-48, before the Selective Service Act was approved, is also creditable.

A person who voluntarily enlisted in the reserve military forces and who was ordered to active duty from the reserve forces between 6-24-48 and 12-15-50 is considered to have entered MS involuntarily during that period; and

C. After September 14, 1978 - A person who entered MS involuntarily after 9-14-78 may receive credit for all service performed before his discharge.

Involuntary MS may also be creditable for any other period not shown above if the employee was required to enter and continue in such service by call of the President or by any Act of Congress or regulation, order, or proclamation. He is entitled to credit for all service performed before his discharge or re-enlistment, provided the employee service requirement was met.

If the employee entered MS to avoid being drafted, the MS may be considered involuntary service if the employee can show that he would have been inducted if he had not enlisted. The employee must prove that he was scheduled for induction. Acceptable proof would be a copy of his notice of induction or any other correspondence from the Selective Service Commission establishing the fact that the employee would have been inducted soon after his date of enlistment if he had not enlisted. Correspondence showing only that he was a candidate for induction when he enlisted will not establish that he involuntarily entered MS. Mark the Form G-230 for MANUAL REVIEW and show in the remarks section: "Employee entered MS to avoid being drafted."

215.25 Determining MS Enlistment Periods

All creditable MS in a single enlistment period that was performed within a war service period may be allowed. If the MS was performed in separate enlistment periods, each period must be preceded by the required employee service.

The field office should submit proof of each enlistment period.

The MS enlistment periods are determined to be single enlistment periods or separate enlistment periods according to the following instructions.

215.25.1 Single Enlistment Period

A single enlistment period begins on the date of entry into active service and ends on the date of discharge. All service of a single enlistment period within a war service period may be allowed if otherwise creditable.

215.25.2 Two or More Enlistment Periods Treated as Single Enlistment

Period under certain conditions, two or more enlistment periods will be treated as a single enlistment period. In these cases only the first enlistment period must be preceded by the necessary employee service. The period is treated as a single period in crediting MS as compensation or wages.

Two or more enlistment periods are treated as a single enlistment period if:

A. The indicated discharge was not an actual and full discharge from active service and the serviceman was required to continue in active service (e.g., the serviceman was discharged from one branch of service only because he had agreed to enlist in another branch); or

B. The discharge was an actual and full discharge from active service (he was not required to continue in active service), but within the same war service period in which he was discharged the serviceman re-enlisted into active MS without a break in his service; or

C. A person re-enlisted without a break in service but would have been required to continue serving in active MS regardless of the re-enlistment. The re-enlistment period and the preceding MS period are treated as a single enlistment period.

215.25.3 Two or More Enlistment Periods Treated as Separate Enlistment Periods

Separate enlistment periods are two or more periods of MS which are separated by an actual discharge and release of the person from MS. To be creditable, each separate enlistment period must be preceded by the required employee service.

215.30 Service and Compensation Credit for MS

215.30.1 Service

An employee may be credited with a month of railroad service for each full or partial month of military service that is creditable under the RRA. If other RR service was credited in any month for which MS is creditable, the employee may not receive an MS service credit for that same month.

MS after 1956 may be included only if the service is creditable under the RRA and the employee's MS plus his RR service totals 10 or more years.

215.30.2 Compensation

An employee is credited with $160 a month for each month he was in creditable MS after 1936 through 1967, and $260 for each month of MS performed from 1968 through 1974. For months after 1974, an employee is credited with the actual amount of MS basic pay that is creditable as SSA wages.

When the employee performed creditable MS for a month in which he has other creditable RR compensation, the MS compensation is added to the other creditable compensation, up to the monthly compensation maximum.

215.35 Restriction on Use of Creditable MS under the RRA

MS may not be used to increase or provide eligibility for any annuity under the RRA if the employee on whose wage record the earnings are based:

A. Has been convicted of certain federal offenses involving national security. Although the following list is not all inclusive, these offenses preclude the use of MS: espionage, sabotage, treason, sedition, subversive activities, interfering with armed forces, improper use of defense information and disclosure of classified information;

B. Refuses to appear, testify or produce any paper about his service as an officer or employee of the government before a federal grand jury, federal court, court-martial, or congressional committee in proceedings regarding his relationship with a foreign government or matters of national security;

C. Commits perjury in falsely denying commission of certain offenses listed above or in falsely testifying before these governmental bodies in matters involving national security;

D. Willfully makes a false statement or conceals material facts in connection with federal employment, or on an application for federal employment about connections with the communist party or a similar group, about conviction of an offense listed above, or by refusing to testify; or

E. Willfully remains outside the United States for more than 1 year to avoid prosecution for one of the described offenses.

Conviction is not required for any of the offenses listed under items B through E.

Do not question applicants about any of the offenses described above. If there is reason to believe that a case involves one of the situations described above, do not initiate any further development of the matter, but inform HQ.

215.40 Active MS under the SSA Defined

Military service may be creditable as wages under the SSA if a member of the uniformed services performs full-time duty in the military or naval service. A member of a uniformed service is:

A. Anyone appointed, enlisted or inducted into (or a retired member of):

1. One of the armed services without a specified component; or

2. A component of the Army, Navy, Air Force, Marine Corps or Coast Guard (including a reserve component of a uniformed service);

B. Anyone appointed, enlisted or inducted as a commissioned officer of the National Oceanic and Atmospheric Administration (formerly the Environmental Science Service Administration), or the Regular or Reserve Corps of the Public Health Service;

C. Anyone serving in the Army or Air Force under call or conscription;

D. A member of the Fleet Reserve or Fleet Marine Corps Reserve;

E. A midshipman at the U.S. Naval Academy, or a cadet at the U.S. Military, Coast Guard or Air Force Academy;

F. A member of the Reserve Officers' Training Corps or the Naval or Air Force Reserve Officers' Training Corps, when on annual training duty for l4 days or more and while performing authorized travel to and from that duty; or

G. Any person at, en route to or from a place for final acceptance in or for entry to active military or naval service who had been ordered or directed to proceed to such place, provided that:

1. He has been provisionally accepted for duty; or

2. He has been selected for active military or naval service under the Universal Military Training and Service Act.

The term does not include a member of the Coast Guard Auxiliary, the temporary Coast Guard Reserve (unless service was full-time duty with pay and allowances), the Civilian Auxiliary to the Military Police or the Civil Air Patrol.

215.45 Crediting MS under The SSA

215.45.1 Military Service Before 1957

Before 1957, military service with the Armed Forces of the U.S. was not reported as social security earnings. However, for social security purposes, wage credits of $160 for each month of active military or naval service with the Armed Forces of the U.S. during the World War II period (9-16-40 to 7-24-47) or the post-World War II period (7-25-47 to 12-31-56) may be granted to a veteran if:

A. He was discharged or released from active service under conditions other than dishonorable, either:

   1. After active service of 90 days or more; or

   2. After active service of less than 90 days, either:

      a. Because of a disability or injury incurred or aggravated in service or in the line of duty; or

      b. In the period 9-16-40 through 12-31-56, but after having served at least 90 consecutive days in a period beginning before 9-16-40, or before 7-25-47, or before 1-1-57, and ending on or after that date, respectively; or

B. He is still in active service; or

C. He died while in the active military or naval service, unless his death was inflicted as lawful punishment for a military or naval offense by other than an enemy of the U.S.

Wage credits of $160 a month may also be granted, or insured status established, on the basis of active service performed during WWII by U.S. citizens in the Armed Forces of allied countries. Mark the Form G-230 for MANUAL REVIEW in such a case, and explain in the remarks section of the Form G-230.

215.45.2 Military Service After 1956

Work as a member of the uniformed services of the U.S. is reported as social security earnings beginning 1-1-57, if performed while on active duty or active duty for training. This work is not covered by social security during any period when the individual is on leave without pay or if the work is creditable under the RRA. MS performed after 1956 is creditable in the same manner as other wages. The type of discharge is immaterial.

A. Credit for 1951-1956 period - A retired serviceman who has covered MS after 1956 may receive credit for each month of active service in the years 1951 through 1956. Wage credits of $160 monthly may be credited even if the veteran is receiving retirement pay from the Army, Air Force, Navy, Marine Corps, etc.

B. Deemed M/S wage credits - A veteran may also receive non-contributory or deemed wage credits for MS after 1956, in addition to the basic pay that was reported as wages. Deemed wage credits are allowed if SS entitlement is after 1967. A serviceman who enlists in a regular component of the Armed Forces after 9-7-80 must complete at least 24 months of the original enlistment period to receive deemed wage credits.

An additional $300 per quarter is creditable for each quarter after 1956 in which wages were paid for service as a member of a uniformed service. Beginning 1-1-78 and extending through 12-31-2001, deemed M/S wages are credited in $100 increments (up to $1200) for each full $300 of annually reported MS wages. The total wages may not exceed the annual maximum. Public Law 107-117 eliminated deemed MS wage credits for all years after calendar year 2001.

This provision is not used to increase compensation credit for MS. Deemed wages may be used in the annuity computation only when MS is credited as wages.

215.50 Restriction on Use of MS under the SS Act

215.50.1 Military Service Before 1957

MS before 1957 may not be used as wages under the SSA if any of the following apply:

A. World War II credits (9-16-40 through 7-24-47) may not be used for the payment of benefits for months before September 1950 or for lump-sum death payments when death occurred before September 1950. Post-WWII credits (7-25-47 through 12-31-56) may not be used for the payment of benefits for months before September 1952 or for lump-sum death payments when death occurred before September 1952;

B. The veteran was discharged under dishonorable conditions;

C. The veteran has been convicted of certain offenses against the federal government such as treason, sedition, etc.;

D. The veteran refuses upon the grounds of self-incrimination to appear, testify, produce books, etc., before a Federal grand jury, U. S. court or U.S. congressional committee concerning his work as an employee of the U.S. government or his relationship with a foreign government;

E. A larger benefit or lump-sum death payment would be payable without the inclusion of the MS;

F. A monthly benefit payable by another Federal agency (other than the Veterans Administration) is based on the same period of service. If MS is used in a civil service benefit, the same period of MS cannot be used as wages under the SSA or by RRB. However, if a veteran is on active duty or active duty for training after 1956, he may be granted social security wage credits for active service during the 6-year period, 1951 through 1956, even though he is receiving retirement pay from the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey or Public Health Service, based wholly or partially on the same period of MS; or

G. MS from that same period is being used as compensation under the RRA.

215.50.2 Military Service After 1956

Military service after 1956 is not covered by social security during any period when the individual is on leave without pay, or if the service is credited as compensation under the RRA.

215.55 MS Creditable under RR and SS Acts

The Social Security Administration may not use MS to establish eligibility for or increase the amount of a benefit under the SSA if the same MS was used as compensation to establish eligibility for or increase the amount of an annuity (regular or supplemental) under the RRA. If the Social Security Administration has awarded a benefit under the SSA based on such MS, they will either terminate the benefit if the MS was necessary for eligibility or reduce the benefit by excluding the MS credits, when notified that the MS was used in an RRA annuity.

If, however, MS is used as wages in computing the RRA annuity, the Social Security Administration may use that same M/ in their benefit computation.

215.55.1 Military Service Before 1957

The Social Security Administration releases an inquiry to the RRB when MS before 1957 is claimed by an applicant who appears to have 120 months of railroad service, or to be receiving an annuity under the RRA. BRC informs the Social Security Administration if we are using MS as compensation. If an application has not been filed when the Social Security Administration's inquiry is received, we will notify them if we use MS as compensation when an annuity is later awarded.

When the Social Security Administration has not inquired about the use of MS by RRB, it is possible that the Social Security Administration may certify a payment using MS before 1957 as wage credits, even though RRB is already paying an annuity based on

M/ as compensation. No further action is required in these cases until the Social Security Administration makes an inquiry to RRB.

215.55.2 Military Service After 1956

All MS after 1956 is reported as social security wages. When such service is used by RRB as compensation in awarding an annuity, RRB must notify the Social Security Administration that MS after 1957 is used as compensation. No SS benefit will be certified using MS after 1956 if RRB is using MS as compensation. If MS was erroneously used by the Social Security Administration, that agency will adjust the benefit to remove the MS from the computation of the SS benefit.

215.60 Crediting MS When Time Lost Indicated

Time lost from military service resulting from AWOL (absence without leave) or desertion may affect the creditability of MS under the RRA and/or the SSA in the following situations:

A. Time lost results in a separation from active service under dishonorable conditions; or

B. Time lost results in an unauthorized absence that extends over an entire period of active service and that absence terminates the actual military service; or

C. An individual has been officially declared a deserter and died while in that status.

In these situations, the period of unauthorized absence and confinement under military control while awaiting disposition of the charge is not considered MS.

Time lost for other reasons does not affect the creditability of MS.

215.65 Effect of Type of Discharge

A dishonorable discharge affects the creditability of MS as compensation or wages when time was lost because of AWOL or desertion. The type of discharge also affects the creditability of MS before 1957 as wages. MS before 1957 cannot be credited as wages if the discharge from service is dishonorable.

The type of discharge does not affect crediting MS before 1957 as compensation, or crediting MS after 1956 as either compensation or wages, unless time was lost.

A photocopy of the proof must be submitted when the discharge is other than honorable.

215.70 MS Before 1937

In retirement cases, creditable MS before 1937 can be used under the RRA only if the employee has less than 30 years of service. Do not develop proof for MS before 1937 if the employee has 30 years of RR service.

In survivor cases, submit proof of MS before 1937 only if it is needed to give the employee 120 months.

215.75 Request for MS Determination

The field office requests a determination on the credibility of MS as compensation before an annuity application has been filed by following the procedure indicated in Section 910.5.2 of Article 9.

215.80 Claiming MS in Life Cases

MS must be indicated on the application to be considered in the annuity computation as either compensation or wages. The MS will be used as either railroad compensation or social security wages, depending on how the MS may be credited and depending on which method produces the higher annuity rate. However, if the applicant specifically requests that the MS be used only one way, as either wages or compensation, MS will be credited as requested. The applicant may also request that the MS not be used.

Proof should be submitted for all MS claimed after 1936. Submit proof for service before 1937 only if the employee has less than 30 years of service.

215.85 Retroactivity of MS Claim

If a MS term is not shown on an initial application, or the applicant is unable to provide proof of the TOS before the initial final award appeals period expires, that MS may be claimed later. The applicant must provide acceptable proof along with a signed statement requesting that the credited MS be included in the annuity calculation.

A. An annuity increase due to added MS accrues from the ABD if the MS proof is received during the appeals period after an initial award, but benefit retroactivity is restricted if the proof is submitted after the initial appeals period.

   1. Effective 09-30-97, any annuity increase based on MS proof accrues only from the month after the month the proof is received. (No retroactivity.)

   2. 10-05-63 through 09-29-97 inclusion of the added MS credit could retroact 12 months.

   3. MS was first allowed as railroad service in an annuity 10-08-40. Until 10-05-63, retroactivity of added MS credits was 6 months, but not earlier than October 1940.

B. If creditable MS was shown on the employee's initial application, and an "initial final" annuity was awarded without MS for any documented "action pending" reason, the award paid without MS is not a final decision, because a claim remains open until a final decision is made on all parts of the application.

215.90 Crediting MS in Life Cases

If MS is creditable as railroad compensation, it may increase the service (and compensation in some cases) used in computing tier II. MS may also be needed as railroad service to provide the number of service months required for eligibility for an annuity. If MS is used as social security wages, it may provide eligibility for or increase the amount of a windfall benefit.

A period of MS that is used under either the SSA or the RRA may not be used under the other act. A second separate period of MS, however, may be used as wages under the SSA or as compensation under the RRA, regardless of how the first period was used. A single period of MS may not be split when it is credited; all the months in the period must be credited as either compensation or as wages.

The use of MS in the annuity computation must be consistent, as either wages or compensation. For example, if a period of MS is used as compensation in computing tier II, the same MS may not be used as wages to vest the employee for a windfall. However, if a decision to use MS as either wages or compensation was based on erroneous or incomplete information, the annuity may be recertified to change the use of MS from the annuity beginning date, as if it had never been used.

In some disability annuity cases involving MS, the disability freeze (DF) rating may affect the way MS is used in the annuity. An employee may need a DF in order to meet the quarters of coverage (QC) requirement for an insured status to be vested for a windfall benefit. However, since most disability annuities are already in pay status when the DF determination is made, the preliminary MS determination made for those cases may not be correct if the DF rating changes the way MS should be used. Since the use of MS is determined on a "conditional" basis when the disability annuity is initially awarded, the way the MS is used may be reversed when the DF rating is made.

EXAMPLE: An employee (date of birth 6-15-20) has 26 years of RR service and 21 QCs as of 12-31-74. He has 2 years of MS that may be credited as either compensation or wages, depending on which method produces the higher annuity. He will attain age 62 in 1982. Since 31 years elapse after 1950 up to but not including 1982, he would need 31 QCs to be fully insured under the SSA.

Under these conditions the employee, even though he meets the RR requirements to be vested, would not be vested as of 12-31-74. If his MS is used as wages, he will have eight additional QCs or a total of 29 QCs. Since he needs 31 QCs to be vested, the annuity may be paid using MS as compensation.

The employee is later granted a disability freeze with an onset date of 6-1-79. The three disability freeze years, 1979-1981, are dropped as elapsed years, leaving a total of 28 elapsed years. Now the employee, still assuming he meets all the other requirements, is vested since only 28 QCs are required for the permanently insured status and he has 29 QCs if MS is used as wages. Because the use of MS was determined on a conditional basis when the disability annuity was initially awarded, the way the MS is used may be reversed. The claim may then be recertified from the annuity beginning date to remove MS as compensation, and pay the windfall using MS as wages beginning 11-1-79.

215.95 Use of MS to Establish Eligibility for Spouse and Supplemental Annuity

When MS has been determined to be creditable as compensation under the RRA, that MS is included in the employee's total years of railroad service even if the MS was not used in the computation of the employee's annuity. MS may not have been used in the annuity computation if the reduction for another federal benefit caused the annuity rate to be lower than the rate that would be payable if MS had not been used in the computation. Including MS in the total years of railroad service, even though it was not used in the annuity computation, may establish eligibility for a spouse's annuity or a supplemental annuity.

EXAMPLE: The employee has 24 years of RR service and 2 years of MS. He is receiving a reduced age annuity, but attained age 65 in July l980. The employee is not vested with or without M/S. His annuity rate without M/S is $630.00; he was paid this amount because his annuity rate with M/S included as compensation, but after reduction for a VA benefit, was $600.00. Since his total years of service including MS is 26, he is eligible for a supplemental annuity. The MS is included in his total years of railroad service, even though it was not used in the computation of his annuity rate.

215.100 Crediting MS in Death Cases

Secure proof of MS whenever the employee had MS after 1936, unless proof was previously submitted. MS may be included in survivor benefits as either compensation or wages. MS that is creditable as compensation will be used as though it were employee service in determining a current connection and in computing insurance annuities, lump-sum death payments and residual lump-sums. If MS is not creditable as compensation, it may be included as wages in computing insurance annuities, if the SSA requirements are met.

Under the 1974 RRA, survivor annuities are not subject to a reduction because of other benefits paid under an act of Congress based in whole or in part on MS that is creditable under the RRA.

NOTE: A reduction for MS was required in some 1937 RRA survivor annuities when another federal benefit was paid based in whole or in part on MS which was used under

the RRA. That reduction remained for annuities converted under the 1974 RRA. However, no additional reduction is applicable for adjustments effective 1-1-75 or later.

215.105 Military Service Reduction for Other Benefits Prior to 9-1-83

Prior to 9-1-83, when MS was used as compensation in computing a retirement annuity, a reduction was made in the annuity if the same period of MS was used as the basis for awarding periodic benefits under another act of congress. The Railroad Retirement Solvency Act of 1983 eliminated the reduction for other MS benefits, effective 9-1-83. There is currently no restriction on the use of MS as compensation, because of the receipt of other benefits. For example, MS may be used to give an employee eligibility to both a Civil Service annuity and a railroad retirement annuity. However, the restriction on the use of MS as wages still applies: MS cannot be used as wages if a monthly federal benefit (other than Veterans Administration benefits) is based on the same period of service. See FOM-I-215.50.1.

The annuity MS reduction was removed with the 12-1-83 cost of living operation. However, this did not include cases in which the MS was not used as compensation because the reduction caused the rate without MS to be higher. Those cases cannot be identified for adjustment; if you receive an inquiry in such a case, forward it to HQ.

Prior to 9-1-83, an MS reduction could be caused by a Veterans Administration benefit (including a service connected or nonservice connected disability benefit), a benefit from the Air Force, Army, Navy, Coast Guard, Marine Corps, the Coast and Geodetic Survey, or the U.S. Public Health Service, or a Civil Service (Office of Personnel Management) annuity. If the other benefit was a Civil Service annuity, the reduction in the railroad retirement annuity was based only on the amount of the increase in the Civil Service annuity due to the MS. The reduction for other benefits was not made for any month in which the other benefit was not paid. If the employee waived his rights to receive the other benefit, the reduction was no longer made.

When a reduction was made for other federal benefits, the employee always received at least the amount that would be payable if the military service was not used in the computation, unless the MS was required for eligibility. If an employee's annuity with MS used as compensation was reduced for other benefits, the spouse's annuity and divorced spouse's annuity were also reduced proportionately. The amount of the combined reduction in the employee, spouse and divorced spouse's annuities was not limited to the amount of the other federal benefits.

If two or more MS periods were involved and the other benefits were based on a service connected disability, the reduction was limited to the period of MS on which the other benefits were based. The annuity was not reduced for periods of MS which did not serve as the basis for other benefits. If two or more M/S periods were involved and the other benefits were based on a nonservice connected disability, the reduction was based on all periods of MS that were used as compensation in the annuity computation.

215.110 Processing Cases with Military Service

When MS may be credited under either the RRA or the SSA, an examiner determines which use of MS is to the employee's advantage. MS may be used as wages to give the employee a vested status, or to increase the amount of a windfall benefit. MS that is creditable as compensation may be used to establish eligibility for an annuity or to increase tier II; however, the annuity is subject to reduction if the employee is receiving another federal benefit based on his MS. The rates with MS as compensation and MS as wages are compared to the rate without MS, and the higher rate is paid. If the higher rate will not be payable for more than 6 months (e.g., MS vests employee and the windfall is not payable for more than 6 months), the employee is contacted for a decision on how MS should be used.

215.110.1 Cases Handled by RASI

RASI (Retirement Adjudication System Initial) will make the final payment in the following cases:

A. The MS is not needed as wages to vest the employee and is not creditable as compensation. In this case, MS will be used as wages;

B. The MS is not needed as wages to vest the employee but is creditable as compensation, and the employee has indicated that he does not expect to receive another federal benefit based on his MS. RASI will pay the case with MS as compensation, because that usually produces the higher annuity rate. After RASI has made the final award, the examiner will also compute the rate with MS as wages to see if that rate is higher;

C. The MS is needed as wages to vest the employee and is needed as compensation for regular annuity eligibility (e.g., MS gives the employee 10, 20, or 30 years of service). RASI will pay the case using MS as compensation, and will deny the employee the windfall based on the same MS; and

D. If an employee has MS before 1937, RASI will pay the annuity without the prior military service. The examiner will review the award after final payment to see if use of the MS will increase the annuity rate. MS before 1937 may not be used if the employee already has 30 years of RR service.

215.110.2 Cases Requiring Manual Payment

These cases will be removed from computer processing when the final rate is to be paid. The examiner must manually award the final annuity based on the computation that produces a higher rate when:

A. The MS is not needed as wages to vest the employee but is creditable as compensation, and the employee has indicated that he does expect to receive another federal benefit based on his MS. The examiner will compare the rate

with MS as wages to the rate with MS as compensation reduced for the other federal benefit and the rate without the MS, and pay the higher rate. MS cannot be credited as wages if it was used in a civil service benefit (see FOM-I-215.50.1F). A preliminary determination may be made before verification of the amount of the other federal benefit is received in response to the examiner's request for information; and

B. The MS is needed as wages to vest the employee and is creditable as compensation. The examiner will test to see if the benefits that would be payable using MS as wages are higher than the annuities that would be payable using MS as compensation. When determining the annuities that will be payable if MS is used as compensation, the examiner will consider whether the MS will make the employee eligible for a supplemental annuity or make the 60/30 provision applicable to give the employee a full age annuity and/or qualify the spouse at an earlier age.

In some cases, using MS as wages may determine if the employee has a work deduction insured status.

1. If the windfall date of entitlement is 6 months or less from the month the case is being handled, the examiner will determine which use of MS will ultimately pay the annuitant the higher benefit and pay the case accordingly.

   However, if using MS as wages will give the employee a work deduction insured status and the information in the folder indicates excess earnings, the employee will be given the opportunity to decide how the MS should be used. These cases will be handled according to the following section.

2. If the windfall date of entitlement is more than 6 months from the month the case is being handled, the annuitant will be given the opportunity to decide how his MS should be used.

   The examiner will award final payment without using MS, and will release a Form G-430 (Request to Secure Decision Regarding Use of Military Service) to the field office. This form furnishes the annuity rates including MS. The rate with MS as compensation will be payable from the ABD if the employee elects to use MS as compensation. The rate with MS as wages will be payable when the employee becomes entitled to the windfall, if he elects to use MS as wages.

   The examiner also attaches a letter to the Form G-430 that explains the effects of using MS as compensation or as wages. Enter the field office address in the heading, add the field office phone number to the last paragraph, and complete the signature. Release the original copy of the explanatory letter to the employee; keep the Form G-430 and the carbon copy of the letter in your file.

The employee may ask you to explain the alternatives to him, so he can decide how he wants his MS used. Provide whatever assistance may be necessary. An employee should make his decision on how to use MS under current payment provisions. He should not, for example, hesitate to use MS as wages based on an unfounded anticipation of future WF cutback. If using MS as wages is advantageous under current provisions, the employee should make that election. He can later change it, if it proves to be a disadvantage; see FOM-I-215.115.

Record the annuitant's decision to use MS as wages or as compensation in item 5 of the Form G-430, and return the original copy of the Form G-430 to the unit that sent it.

215.115 Changing Election of Use of MS

215.115.1 Change from Wages to Compensation Permitted

An election to use MS as wages may be changed if the employee later determines that it is more advantageous to use MS as compensation. He should consider the possibility of an overpayment in a social security benefit if SSA used the MS to increase his SS benefit.

MS can be used only one way, as either wages or compensation, from the annuity beginning date. If the annuity had already been paid with MS as wages, the annuity will be recertified from the ABD to exclude MS as wages. The effective date of MS as compensation depends on when the MS election change is filed.

The retroactivity of the change of election to MS as compensation is limited to l2 months before the date the employee claims the MS as compensation. A statement from the employee is sufficient to claim the MS as compensation.

An employee who is concerned that there may be no future WF payments, and wants to use MS as compensation, even though the increase is lower, should elect to use MS as wages. He can later switch the use of MS to compensation if that is advantageous. Even though the retroactivity of MS as compensation may be limited, the employee would receive at least that increase in the unlikely event that no WF is payable.

215.115.2 Change from Compensation to Wages Not Permitted

M/S cannot be used as wages once the annuity has been paid with MS as compensation. Since SSA cannot use MS if RRB used it as compensation, the use of MS cannot be switched to wages, and a windfall cannot be paid.

FOM-I-215.90 explains the "conditional" M/S determination before a DF rating is made. In that situation, MS may be used as wages if the DF vests the employee, even if MS had been included in the annuity as compensation. The annuity is recomputed from the annuity beginning date to exclude MS as compensation and include it as wages.

An employee may also switch the use of MS from compensation to wages, if the original decision was based on erroneous or incomplete information.

An employee who hesitates to use MS as wages, in the unfounded anticipation of future WF cutback, will be at a disadvantage if he claims the MS as compensation. Once the annuity is paid with MS as compensation, MS cannot be used as wages. He may be better off claiming MS as wages, then switching it to compensation when he attains age 62, if no WF is payable at that time.

220.1 Evidence of Compensation Paid After 1936

Evidence of compensation paid after 1936 consists of records of compensation reported periodically to the Protest Unit of Compensation and Employer Services (CESC) by covered employers, including railway-labor organization employers and employee representatives, plus supplementary statements of lag earnings furnished by employers and employee representatives as explained in FOM 209.

220.2 Conclusiveness of Compensation Reports

The RRB's record of the compensation and service reported paid to an employee for a given period after 1936 is conclusive as to the amount. If no compensation was reported for any given period, it is assumed that the employee received no compensation for that period.

However, when an error in the amount of compensation reported or a failure to make a report of compensation is called to the attention of the RRB within 4 years after the last date on which a compensation report was required to be made, the RRB's records are subject to correction. A request for correction should be reported to the Protest Unit of CESC.

Beginning in 1969, all employers report compensation annually. The term "last date on which a compensation report was required to be made" means March l of the year following the "calendar year" during which compensation was paid by the employer.

"Last date" means the last day of the month immediately following the "calendar quarter" during which the final and conclusive determination as to the creditability of the compensation is made by the RRB when the employer failed to make a report (in whole or in part) of compensation paid an employee because the employer or employee believed, based on reasonable grounds appearing in the record, that the compensation involved was not covered by the Railroad Retirement Act (RRA).

In all other cases, when the record shows a reasonable explanation for the delay in reporting or correcting the amount of compensation, the Chief of the CESC may set a last date for the filing of such return.

220.3 Employment Data Maintenance

The Employment Data Maintenance (EDM) system contains the service and compensation for all individuals who have worked in railroad service. The Service and Compensation Analysis and Systems Section maintains the EDM program. The data on the EDM is based on the year-end earnings reports from the railroad employers. This data can be corrected only by corrected earnings reports from the railroad employers, as explained in FOM 220.2.

The EDM will also include wages for employees with 108 railroad service months or more.

220.5 Earnings When Employer Status Disputed

220.5.1 Coverage Ruling for Missouri Pacific Truck Lines and Texas Pacific Motor Transport Company

As a result of a 1978 audit by the Internal Revenue Service (IRS), the Missouri Pacific Truck Lines (MPTL) and the Texas and Pacific Motor Transport Company (TPMT) were ruled to be employers under the Railroad Retirement Tax Act (RRTA). The court has reversed the IRS decision and ruled that these employers are not employers under the RRTA. The time limit for an appeal in this case is passed. This means that earnings from the MPTL are wages, not compensation.

The Social Security Administration (SSA) has advised that all wages for the concerned employees have been posted to their social security earnings record.

220.5.2 Compensation for Trans-Mark Services, Inc., and Servitron, Inc.

A. Background - Service by certain individuals with Trans-Mark, Inc. or Servitron, Inc. constitutes railroad service under the Railroad Retirement Act.

In March 1969, the Kansas City Southern Railway (KCSR) Company and its affiliates created two satellite companies: Trans-Mark, Inc. and Servitron, Inc. Both companies were largely staffed by former KCSR employees, who had been transferred from the KCSR payroll to those of the satellite companies. Earnings from employment with the satellite companies were reported to SSA as wages.

In July 1976, the General Counsel ruled in L-76-381 that the service of those individuals who were carried on the payrolls of Trans-Mark or Servitron, but who were performing service for the Kansas City Southern and its affiliated railroads, was creditable under the RR Act.

At the time that this decision was made, a number of Trans-Mark and Servitron employees were receiving railroad annuities based on their last day carried on the KCSR's payroll. Other individuals were receiving social security benefits based on the "wages" earned while employed by Trans-Mark or Servitron.

Because the crediting of Trans-Mark or Servitron service can affect current connection, supplemental annuity (SUPP ANN) closing data and Reg, SUP ANN or spouse annuity entitlement, any previous RRB determination made based on the incorrect use of this service was re-opened.

B. Field Office Handling - Initial cases involving service with Trans-Mark or Servitron were marked for manual handling. Headquarters checked the folder for evidence that SSA has removed the service in question from their records and terminated

or reduced the associated social security benefit. These cases have been corrected.

220.6 Compensation Erroneously Credited as Wages (Duplicate Earnings)

A. Background

Duplicate earnings occur when an employee's earnings are posted as both RRA compensation and SSA wages. This can happen as a result of any of the following:

- The earnings report submitted to SSA by the railroad employer incorrectly identifies compensation as wages;
- SSA incorrectly posts compensation as wages to their record;
- A retroactive coverage determination is made (retroactive coverage occurs when earnings that were previously reported as wages are determined to be compensation).

This first became an issue in 1979, when SSA and the IRS changed the schedule for reporting earnings from quarterly to annually.

The inclusion of duplicate earnings in calculations can result in overstated PIAs, causing incorrect annuity amounts, overpayments, at SSA as well as RRB, and delays in payments. To prevent this, edits have been added to all our mechanical payment systems safeguarding them against such occurrences. This allows most duplicate earnings cases to be paid timely and correctly.

Occasionally, a manual computation of the PIA to exclude the duplicate earnings is still needed, causing some delay in the payment process.

B. Handling duplicate earnings inquiries

An employee or retiree may come into an RRB field office questioning his earnings record. He may have received his earnings statement from SSA and noticed that for a particular year in which he had only RR employment, SSA has credited him with wages. Usually, the amount SSA posted as wages is the same as the RR compensation posted by RRB. In this case, SSA has erroneously posted RR earnings as FICA wages to their earnings record. These wages should be removed from the SSA record. RRB has neither the capacity nor the authority to do so. Only SSA can correct SSA's records.

Generally, refer the inquirer to the local SSA district office. SSA has specific procedures in place for correcting individual earnings. Work with the local SSA office as appropriate to ensure that the inquirer's SSA record correctly reflects

railroad earnings. In special circumstances, you may request HQ (CESC) to contact SSA directly to help resolve the erroneous earnings record.

C. Requesting earnings record corrections at SSA

The specific guidelines for individual requests for earnings record corrections at SSA can be obtained from the local SSA district office. A general summary follows.

1. A written request should be filed with an SSA employee at an SSA office, or with an SSA employee authorized to receive the request somewhere other than an SSA office. The request should include the following:

   (a) A statement that the record is incorrect;

   (b) The period in question;

   (c) Attached, any available evidence showing that the record is incorrect, or a description of that evidence;

   (d) The signature of the wage earner, survivor, or authorized representative making the request.

2. SSA will initiate an investigation into the earnings discrepancy upon receipt of the request. The inquirer may be asked to complete SSA Form OAR-7008, "Statement of Employment for Wages and Self-Employment". This form is used by SSA to help them obtain more information from the inquirer that might help their investigation.

3. When necessary, the SSA district or regional office will contact employers. Provide any assistance you can to help SSA contact RR employers.

4. Upon completion of their investigation, SSA will notify the inquirer, in writing, of the results. If the inquirer disagrees with these results, appropriate reconsideration rights are included in the written notification.

NOTE: In general, there is a time limit of 3 years, 3 months, and 15 days after any year in which earnings were received for requesting a record correction at SSA. However, there are exceptions. RR earnings incorrectly posted as wages is one of the exceptions.

220.7 Coordination of Railroad Compensation Reported for Months After the Retirement Annuity Beginning Date

The records of service months on the EDM are based on the year-end earnings reports from the railroad employers.

Each year the EDM mechanically checks its database for railroad service and compensation reported by the railroad for months after the employee's retirement annuity beginning date (ABD).

When less than 3 months are posted after the retirement ABD, the EDM assumes that the discrepancy is due to vacation pay paid in lieu of vacation (see FOM 210).

A referral is produced when more than 3 months of railroad service and compensation are reported for a period after the ABD. The Wage Accounting Unit will investigate these cases and request the railroad to correct the year-end earnings report, when necessary.

For these cases, the SEARCH program will post the compensation to the date last worked, not to the months in which it is reported.

Example: The employee received a separation allowance that was paid in installments after the actual date last worked (DLW). The railroad erroneously reported service and compensation months for each installment. However, SEARCH post the total compensation to the actual DLW (before the ABD).

225.1 C/C Definition

The concept of current connection (C/C) is the maintenance of a close relationship in time and service to the railroad industry before the employee begins to receive an annuity under the RRA. A C/C indicates that an employee has a railroad career before retirement or death, if that occurs first, without pursuing a subsequent career for which earnings are not covered under the RRA. The C/C requirement is intended to reserve certain RRA benefits for these employees and their survivors.

225.5 C/C Scope of Chapter

This chapter explains the use of a C/C for awarding regular, supplemental and survivor benefits under the RR Act. It includes making a C/C test in a life or death case and the effect of MS and certain other government work on a C/C.

The rules in this chapter apply for C/C determinations made on or after 05-31-79. Prior to that date, C/C determinations were made based on SSA's quarterly earnings reporting data. Effective from 1979, SSA maintains only annual earnings records.

A C/C is obvious when the employee's ABD month or death immediately follows continuous years of railroad employment. However, when there is an interval between an employee's last railroad service and ABD month or death, the C/C may be "broken" or "lost" if the employee works outside the railroad industry during that interval.

An important factor in making a C/C determination is whether or not the employee's non-railroad work is considered "regular employment". Sections FOM1 225.30-40 define "regular employment" and explain when an earnings investigation may be needed to make the C/C determination.

Under special rules, an employee with at least 25 years of railroad service, whose separation from railroad service was involuntary, may be deemed to have a C/C (see FOMI 225.45).

225.10 Field Office C/C Determination

C/C information may be available from on line systems when a claim is filed. For example, APPLE will display any previous C/C determination shown in PREH.

Use EDM recorded earnings, and information from the applicant, to make a preliminary C/C test when no earlier determination has been made. Give specific attention to any wages shown on the EDM Yearly Totals screen for years after the RRDLW.

Form G-243, CC Determination Worksheet, is available in RRAILS to assist field employees in making a C/C determination (see FOM1 1720 for form instructions).

225.10.1 Retirement Cases

The F/O makes a preliminary C/C test to determine supplemental annuity eligibility. If Headquarters must first make a self-employment or LPE determination, the F/O may be unable to make a C/C decision. When alleged S/E is a factor in the C/C, but the employment may be LPE, refer the facts to headquarters for examiner action.

Code the APPLE Summary screen for MANUAL REVIEW in such cases, and complete the employee annuity application as if the employee does have a C/C. Examiners will make the final LPE and C/C determinations.

Do not informally disallow a SUPP ANN, based on no C/C, if the employee alleges to have a C/C.

225.10.2 Survivor Cases

When an employee's death notice is received, make a preliminary C/C test to determine if the employee is completely insured under the RRA for the payment of survivor benefits (see insured status FOM1 230.160.4 and APPLE entries FOM1 1581.12).

Headquarters examiners make the final C/C decision. If EDM screens and the applicant's narrative do not provide sufficient information, HQ will secure an SSA DEQY record of employment and, in survivor cases, may request the release of Form RL-94F for details about the employee's work after his RRDLW.

225.15 Use of C/C

A C/C is an eligibility requirement for the following benefits:

225.15.1 Retirement Annuities

An employee must have a C/C to qualify for:

- An occupational disability annuity *****
- A supplemental annuity
- For some claims, a vested dual benefit (see FOM1 305.50.2).

*** NOTE:** The deemed C/C provision (FOM1 225.45) cannot be used for eligibility for an occupational disability annuity.

225.15.2 Survivor Benefits

An employee must have a C/C to be insured under the RRA for the payment of all survivor benefits other than the residual lump sum. If the employee does not have a C/C, the SSA has jurisdiction for the payment of survivor benefits.

Special deeming rules apply if the deceased employee was not fully insured under the SS Act (see FOMI 230.160).

225.20 C/C Requirements

A. In life or at death, an employee permanently has a C/C with the railroad industry if:

1. He was in railroad service in at least 12 of the 30 consecutive calendar months immediately preceding the earlier of the month in which his annuity begins or month of his death; or

2. He was in railroad service in at least 12 months in any period of 30 consecutive calendar months preceding the earlier of the month in which his annuity begins or month of his death, and he did not work in regular non-railroad employment in the interval between the end of the 30-month period and the ABD month or death month.

B. Deemed C/C - An employee with at least 25 years of RR service, who left RR service involuntarily and without fault, may be deemed to have a C/C even though he had non-railroad employment in the interval after the 30-month period (see FOMI 225.45).

225.25 Making the C/C Test

When a retirement application is filed, RASI compares the work history on the APPLE APMU 080 Employee Work screen with earnings on EDM and makes the C/C determination. If too many C/C variables are present, RASI refers the claim for examiner decision. F/O's make preliminary C/C determinations using the same rules as examiners.

The following steps are used to test if a C/C is maintained or broken.

NOTE: If the regular C/C is broken, but the employee had at least 25 years of creditable RR service, see the deemed C/C provisions in FOMI 225.45.

STEP 1: Decide if employee meets the "12 in 30" test.

In making the C/C test, first see whether the employee has railroad service in 12 of the 30 consecutive calendar months immediately before the earlier of his ABD month or death month. If at least 12 service months are credited, the employee has a C/C and no further action is needed. If fewer than 12 months are credited in the last 30 months prior to the ABD month or death month, **go to Step 2**.

EXAMPLE: An employee's ABD is 3/1/2009; his RRDLW was in December 2007; and he worked all 12 months in 2007. The 30 months just prior to his ABD month are September 2006 through February 2009. Since his last 12 service months were within the 30 months immediately before his annuity began, he has a C/C, whether or not he had non-railroad work after his RRDLW.

STEP 2: Identify the 30-Month Period and Following Interval

If 12 months of railroad service were not performed in the 30-month period just prior to the annuity beginning date or month of death, if earlier, find the latest 12 months of RR service that are within a period of 30 consecutive calendar months. Count 12 RR service months back from the RRDLW, then count the 30-month period beginning with the first of those 12 months of RR service.

If the final 12 service months do not fall within 30 consecutive calendar months because there is a gap in service, it may be necessary to begin counting from an earlier service month (see Example 2).

The employee may perform any type of work without breaking his C/C during that 30 month period.

If the employee has non-railroad employment in the interval of months after the end of the 30-month period, and before his ABD or month of death, if earlier, that non-railroad employment can break a C/C. If no work is performed, the C/C is maintained.

If work after the RRDLW continues into the interval, or if new work begins during the interval, the earnings can break the C/C. **Go to Step 3**.

EXAMPLE 1: The employee's ABD is in June 2010. His RR DLW was in January 2009. He had RR service only in April 2008 through August 2008, plus December 2008. In the 30 months just prior to his ABD month (December 2007 through May 2010) he had only 8 months of RR work. His last 12 months of RR service were August 2007 through January 2009. His 30-month period is August 2007 through January 2010. Any type of employment before February 2010 may not be used to break his C/C. If he has non-RR regular employment during February 2010 through May 2010, it may break his C/C.

EXAMPLE 2: The employee's ABD is 1/1/2013. His RRDLW was 12/31/2011. He had RR work all months through June 2009; had no RR work July 2009 through July 2011; and returned to RR work August 2011 through December 2011. His last 12 credited RR months include December 2008 through December 2011. However, these 12 RR months are in a 37-month, not a 30-month period.

The months of July 2008 through June 2009 provide the most recent 12 RR months in a 30-month period, which ends with December 2010. Non-RR work performed in the interval from January 2011 through December 2012 may break his C/C, even though the interval includes 5 credited RR months,.

STEP 3: Decide if EE performed "regular employment."

When the AA-1 shows non-railroad work after the 30-month period, or earnings appear on EDM in the interval, decide if the work meets the "regular employment" definition explained in FOMI 225.30, or if the work is excepted from the rule according to FOMI 225.35.

If all of the employee's work qualifies for exception, his C/C is maintained. If any part of the work is considered regular employment, **go to Step 4**.

EXAMPLE: The employee's ABD is October 2009. His RR DLW was August 2004. His 30-month period was September 2003 through February 2006. He worked for the Federal Highway Administration from September 2004 through September 2009. Although the employee began a new career after his RR service, work for that federal government agency did not break his C/C (see FOM1 225.35).

STEP 4: Decide if earnings break the C/C.

Compare the end of the 30-month period to the ABD month to see if the interval involves less than two calendar years (short interval) or if the interval occurs in more than two calendar years (long interval). Examine all regular employment earnings in the interval, and apply the rules in FOMI 225.40 to determine the earnings requirements.

EXAMPLE 1: An employee died in July 2009. His last 12 months of RR service in a 30-month period were April 2006 through December 2007. His 30-month period ended with September 2008. The interval is October 2008 through June 2009. The short interval earnings test applies in this case. He worked as a school crossing guard from January 2008 through January 2009, earning $400.00 monthly. His C/C is broken because he earned over $200.00 in at least 3 of the months in the interval.

EXAMPLE 2: An employee's ABD is 03-01-11; he had 31 years of continuous RR service; and his RRDLW was 07-14-2005. His 30-month period is August 2004 through January 2007. Non-RR regular employment February 2007 through February 2011 could break his C/C. He has been self-employed, repairing lawn equipment, in all of the months since his RRDLW. He also worked at a garden center from May through August of 2007. The long interval rules apply. Because SEI income is not used in C/C testing, and he did not perform regular employment in two consecutive calendar years of the interval, his C/C is maintained.

225.30 C/C Regular Employment Definition

A. Regular employment for C/C purposes means the employee's full or part-time work for pay for a person on a continuing or recurring basis. An employee performing work for pay, whether or not it is under a contract, is deemed to be in the employ of a person unless such work is performed as his independently established trade, business or occupation (SEI).

"Person" means an individual, company, trust, estate, partnership, association, joint stock company, corporation or institution.

B. If the employee is serving for pay in an appointed or an elected public office, those earnings are considered regular employment that can break a C/C.

C. Foreign employment is also considered regular employment in retirement cases. But when foreign employment is involved in survivor cases, a C/C may be deemed if the conditions in FOMI 225.45.1 are met.

225.35 Regular Employment Exceptions

When making a C/C determination, certain types of work are not considered to be regular employment and will not break a C/C.

If the employee works in one or more of the excepted employment types during the interval, and in other regular employment, the other non-railroad work and earnings can break his C/C.

225.35.1 General Types of Employment That Are Allowed

1. Self-Employment (S/E) will not break a C/C. Use the rules in FOM1 330.30 to determine if the work is considered S/E or LPE for annuity purposes, and then make the C/C test.

   NOTE: Self-employment taxes paid to SSA will not guarantee the employment is S/E under the RRA.

   For survivor cases without a previous C/C decision in file, an investigation to verify S/E in the interval is only required when the claim of S/E conflicts with the earnings record on EDM, Form G-90, or other documentation. When necessary, the examiner will ask the F/O to obtain a statement from the applicant to resolve the discrepancy.

2. Work that is temporary or "tide-over" that a Federal, State, or local government program provides as a means of economic relief.

3. Public service employment funded under subchapter VI of the Comprehensive Employment and Training Act (CETA) is not considered regular employment, but employment obtained through other programs funded by CETA or its successor, the Job Training Partnership Act (JTPA) is regular employment, which could break a C/C.

   See FOMI 225.70 for a list of questions that contact representatives ask regarding CETA or JTPA employment. Refer difficult cases to P&S-RAC, if necessary.

4. Service outside the U.S. for a covered employer that is not conducting the principal part of its business in the U.S.

5. Railroad service performed in Canada for a U.S. employer by a Canadian citizen or permanent resident of Canada - even though the service is not creditable under the RRA.

6. Involuntary MS that is required by regulation, order, proclamation or call of the President or Congress that is not creditable as RR service under the RRA.

7. Service for the Alaska Railroad. This former employer was part of the Federal Railroad Administration until ownership transferred to the State of Alaska on January 5, 1985.

225.35.2 Government Employment that Is Allowed

Work for specific federal government employers, related to the railroad industry, that does not break a C/C.

Work for the following employers will not break a C/C:

1. Interstate Commerce Commission or its successor for railroad issues, the Surface Transportation Board. (See Department of Transportation # 5 below)

2. National Mediation Board.

3. Railroad Retirement Board.

4. National Transportation Safety Board

   HISTORICAL NOTE: The NTSB was a part of the Dept. of Transportation from 4-1-67 until 4-1-75 when it became an independent agency. After 04-01-75, employment with that agency would break a C/C, until the 1981 RR Act Amendments were enacted. For C/C decisions made 10-01-81 or later, retroactive to 1-1-75, employment with the National Transportation Safety Board will not break a C/C.

5. The Department of Transportation, including the Office of the Secretary, and the following agencies. Dates show when each agency became part of the Department of Transportation:

   - U.S. Coast Guard (4-1-67 thru 2-28-03)

     NOTE: Effective 03-01-03, the U. S. Coast Guard was transferred to the Department of Homeland Security. Legal Opinion L-2006-24, dated12-60-06, provides that employment with a former component of the Department of Transportation that is transferred to the Department of Homeland Security will not break a C/C. Therefore, any employment with the U.S. coast Guard will not break a C/C, regardless of when it began.

   - Federal Aviation Administration (4-1-67)

   - Federal Highway Administration (4-1-67)

   - Federal Railroad Administration (4-1-67)

- St Lawrence Seaway Development Corporation (4-1-67)
- Federal Transportation Administration (7-1-68)
- Urban Mass Transportation Administration (7-1-68)
- National Highway Traffic Safety Administration (1-1-70)
- Materials Transportation Bureau (7-1-75)
- Research and Special Programs Administration (9-23-77)
- Office of Inspector General (10-1-78)
- Maritime Administration (6-6-81)
- Surface Transportation Board (1-1-96)
- Bureau of Transportation Statistics (1-1-92)
- Federal Motor Carrier Safety Administration (1-1-2000)
- Transportation Security Administration (11-19-01 thru 2-28-03)

  NOTE: Effective 3-1-03 the Transportation Security Administration (TSA) was transferred to the Department of Homeland Security. Legal Opinion L-2006-24, dated 12-06-06, provides that employment with a former component of the Department of Transportation that is transferred to the Department of Homeland security will not break a C/C. Therefore, any employment with the Transportation Security Administration will not break a C/C, regardless of when it occurred.

IMPORTANT NOTE: The presence or absence of SSA credits on a G-90 or EDM record is not an indication that government work is involved. All federal service initiated 1-1-84 or later is covered under SSA, and most temporary federal employment before 1-1-84 is also credited as wages that may be displayed on a G-90. A DEQY will be used to verify the name of the employer when government work after a RRDLW is a C/C factor.

Effective January 10, 2003 the Office of Management and Budget (OMB) consolidated the payroll processing for the civilian Federal workforce. As a result the entire Federal civilian payroll is processed by the following four agencies:

- Department of Defense Finance and Accounting Service
- General Services Administration
- Department of Agriculture National Finance Center

- Department of Interior National Business Center

Due to the consolidation of payroll processing for the Federal civilian workforce, the Employer Identification Number (EIN) appearing for a civilian Federal employee may not show the agency the employee worked for, but will show the agency that processes the payroll.

Legal opinion L-2007-07 advises that when there is a decision on whether federal civilian employment breaks a current connection, the agency or agencies the employee worked for should be considered, not the agency or agency that processed the payroll. Therefore, federal civilian employment must be verified for a current connection determination. This can be done by securing a letter from the last employer verifying the dates of employment and the name of the agency the employee worked for.

225.40 C/C Earnings Tests

There are two separate tests to determine if the employee's non-railroad work is regular employment that will break his C/C. Determining which test applies depends on the length of the interval after the 30-month period.

Exclude work and earnings from any of the employment exceptions listed in FOM1 225.35 before applying either of the two following tests.

NOTE: If an employee's C/C is broken by one of the regular employment tests described below, determine if a C/C may be deemed to exist according to the rules in FOM1 225.45.

225.40.1 Long Interval Test (also called General Test)

1. This test applies when the 30-month period ends more than one year before the ABD year (or the employee's death year if earlier).

   EXAMPLE: An employee's 30-month period ends September 2010 and his ABD is May 10, 2012. The long interval test applies because his ABD month was not in 2010 or 2011, the same or the next calendar year after the last month of the 30-month period.

2. For the long interval test, the employee is in regular employment which will break his regular C/C if he:

   - Performed any non-railroad work in any two consecutive calendar years wholly or partially within the prescribed interval

     AND

   - Earned at least $1000 in wages in any one year wholly or partially within the interval. The year in which $1,000 is earned does not have to be one of the 2 consecutive years of work.

3. The chart below illustrates identifying the interval. The end of the 30-month period is April 2006. The employee's ABD month is June 2009. The interval (underlined months) is May 2006 thru May 2009. 2006 and 2009 are partially within the interval. 2007 and 2008 are wholly within the interval.

2006	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2007	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2008	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2009	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

4. Isolating Earnings That Are in the Interval

   a. Include only the years in which the interval begins and ends (partial years) and the whole years in between.

   b. Do not include:

- Non-railroad earnings acquired before the end of the 30-month period; or
- Earnings in or after the ABD month; or
- Earnings in the month the employee died.

   c. If the only year with earnings of $1,000 or more is a year partially within the interval, headquarters examiners will request that a F/O supply a monthly earnings breakdown.

5. Examples of Long Interval Determinations

   a. The employee's ABD is May 28 2008, and the 30-month period ended June 2005. He worked in regular non-railroad employment in December 2005, earning $370; January 2006, earning $260; and March and April 1998, earning $600 each month. His C/C is broken because he worked in two consecutive calendar years within the interval (December 2005 and January 2006) and he earned over $1000 in one calendar year (2008).

   b. The employee's ABD is October 1, 2004, and the 30-month period ends February 2000. He worked in regular non-railroad employment from March 2000 through October 2001, earning $600 each year, and in September 2004, earning $1300. The employee does not have a C/C because he worked in 2 consecutive years wholly or partially within the interval (2000

and 2001), and he earned at least $1,000 in 1 calendar year wholly or partially within the interval ($1300 in 2004).

c. The employee's ABD is January 15, 2012, and the 30-month period ends July 2009. He worked in non-railroad employment in 2009, 2011 and 2012, earning $10,000 each year. The employee does have a C/C, because he did not work in 2 consecutive years wholly or partially within the interval. Since his ABD is January 15, 2012, the interval ends December 2011, and 2012 earnings are not considered.

d. The employee's DOD is December 19, 2010, and the 30-month period ends January 2009. The long interval test does not apply, because the end of the 30-month period, 2009, is not more than 1 year before the year in which the employee died. The short interval test must be used.

e. The employee's ABD is July 12 2009, and the 30-month period ended August 2006. He worked in regular non-railroad employment in November and December 2007, earning $350 a month; November and December 2008, earning $400 a month; and November and December 1999, earning $700 a month. His C/C is not broken, because earnings in or after the ABD month are not counted. Therefore, he did not earn at least $1000 in any one calendar year wholly or partially within the interval.

f. The employee's ABD is April 2009, and the 30-month period ended September 2006. He worked in non-railroad employment in November and December 1998, earning $800 a month; and in November and December 1999, earning $900 a month. The employee did not work in two consecutive calendar years wholly or partly within the interval, so his C/C is not broken. Earnings in November and December 2009 are excluded because those months are after the ABD and.

225.40.2 Short Interval Test (Also Called Special Test)

1. When the ABD is in the same calendar year as the end of the 30-month period or is in the following calendar year, the interval may be too short for all earnings to be posted on EDM and G-90s. In this type of claim, apply the following rules. The C/C is broken if the employee:

   - Performed any non-railroad work in every month in the interval (the amount of earnings and the number of months does not matter)

     OR

   - Earned at least $200 a month, for non-railroad work, in any 3 separate months within the interval. The 3 months do not have to be consecutive.

2. Field Office Action - Application Development

When the C/C interval is short, a monthly breakdown of work and earnings must be secured. Some months for which wage information is needed will be in SSA's lag period when an earnings report is not yet posted on EDM.

It is important that LPE earnings information on the application be detailed and complete for short interval C/C cases. Add details in Remarks when appropriate.

3. Headquarters Requests Action

If additional information is required, RBD will request that the F/O contact one or more employers to determine the earnings amounts for months the employee worked in a given period.

A written statement from the employer is not required. You may obtain the information by telephone or by facsimile of payroll records.

4. Examples of Short Interval Determination

a. The employee's ABD is July 9, 2009. His 30-month period ended February 2009. Since that period ends in the same calendar year as the ABD month, work in all months from March 2009 through June 2009 **or** earnings exceeding $200.00 in at least 3 of those 4 months, can break the C/C.

b. The employee's ABD is May 28, 2008, and the end of the 30-month period is November 2007. He worked in non-railroad employment January, February, and March 2008, earning $420 a month. The employee's C/C is broken because he earned over $200 in each of three months in the interval.

c. The employee's ABD is September 1, 2011, and the 30-month period ends in March 2011. The employee earned $175 in wages in each month from January 2011 through December 2011. Because the employee performed non-railroad work in every month in the interval (April through August) he does not have a C/C. The amount of his monthly earnings is not a factor.

d. The employee's ABD is April 7, 2012, and the 30-month period ends March 2011. The employee earned $150 in wages each month in May 2011 through September 2011. He earned $200 in wages each month in April 2011, February 2012, and March 2012. He does not have a C/C, because he earned at least $200 a month in 3 separate months in the interval. His C/C is broken even though he did not work in every month in the interval.

e. The employee's DOD is November 1, 2011, and the 30-month period ends February 2011. The employee earned $150 in wages each month from March 2011 through July 2011, and $300 each month in September 2011

and October 1991. He has a C/C because he did not work in every month in the interval, and did not earn at least $200 a month in each of 3 separate months in the interval.

f. The employee died in August 2011, and the 30-month period ends June 2011. He worked in July 2011, earning $50. He does not have a C/C because he worked in every month in the interval, even though the interval was only 1 month.

225.40.3 Allocation of Agricultural Wages (AG)

1. Retirement Claims

Care must be taken in considering AG due to the sometime seasonal nature of the employment. If the C/C determination depends on a period of AG, which is not fully explained by information on the AA-1 application, assist the employee in completing an earnings breakdown for the interval year(s) in question.

2. Survivor Claims

a. If a C/C decision was not made prior to the employee's death, and the C/C depends on a period of AG wages, assume the employee had equal amounts of AG wages in each month of the agricultural employment. This assumed allocation of AG wages applies only to survivor cases.

If a survivor beneficiary questions a C/C denial based on an assumed allocation, develop a monthly breakdown of AG wages from each employer and retest the C/C.

b. If the employee had both regular wages and AG wages in a month or year, add the deemed monthly AG wages to the regular wages for the C/C determination.

225.40.4 Employment Reporting

The employee's own statements on applications and other claims material are the first consideration of a C/C determination.

1. Employee report breaks C/C

If an employee states on his application, or otherwise reports, that he has had non-railroad employment that would break his C/C, determine that the C/C has been broken. No further development is needed.

2. Employee's Report Indicates He May Have a C/C

When the employee's reported work indicates that he may have a C/C, confirm his report with online or folder earnings data to determine whether the employee worked in regular employment in the interval.

3. No Work Reported After RRDLW

Use online RRB and SSA wage records to verify no contradicting earnings are posted if an applicant does not report employment and the interval is 1 year or more, with no indication of physical or mental inability to work, and no excepted work (see FOM1 225.35).

In such cases, the C/R will use the application Remarks section to explain the employee's activities since he left the railroad industry (e. g. received sick benefits; lived on income from property rents or investments; or was supported by a family member). The examiners will ask the F/O to secure additional information if needed.

225.40.5 Investigation of Employment in Survivor Cases

1. If available employment data indicates a C/C would not exist, make no investigation of employment.

2. If online RRB and SSA records, or folder data, do not clearly show if the deceased employee's C/C was broken, secure a statement from the survivor applicant to explain the employee's work history for the period in question. See FOM1 225.40.3 if agricultural (AG) wages are involved.

3. If employment occurred during the interval, but it is not covered by the SS Act, do not investigate the employment when:

   - The employee has no wage QC's, or yearly earnings, or
   - The SS Act insured status is less than the RR Act insured status.

   Under these two conditions, an employee is deemed to have a C/C for survivor benefits. (See FOMI 225.45.1.)

225.45 Deemed Current

Although work before an employee's ABD may break his C/C under regular rules, effective October 1981 an employee who does not have a regular C/C will be deemed to have a C/C for supplemental annuity and survivor annuity purposes, but not for an occupational disability annuity, if he meets all the requirements listed in this section.

225.45.1 Deeming Requirements

A C/C is deemed to exist, when the employee works in regular employment after the 30-month period, if the employee:

- Was alive on October 1, 1981; and
- Has at least 25 years of service; and
- Stopped work in the RR industry "involuntarily and without fault" on or after October 1, 1975; and
- Did not decline an offer to return to work in the same class or craft as his most recent railroad service.

225.45.2 Definitions for Deeming

1. "Involuntarily and Without Fault":

   A RR worker is separated without fault if he is displaced from his job for reasons other than medical conditions, poor job performance, misconduct, or other actions on his part.

   Separation from railroad service is involuntary if the employee loses his railroad job and cannot use his seniority rights to remain in the same class or craft as his most recent regular railroad occupation.

   EXAMPLE 1: An employer operating a car repair shop buys another railroad with a larger similar facility in another city and closes the small repair location. All mechanics are offered their same job at the new location. An employee who quits, rather than move with the job, has not left service involuntarily and without fault.

   EXAMPLE 2: An employer buys an additional railroad and consolidates the accounting functions. The new organization eliminates 50 accounting clerks, and their positions are all abolished. The terminated clerks are separated involuntarily and without fault.

2. "Did Not Decline an Offer"

   When a railroad worker's job is terminated, an employer may offer a like position for the same company or elsewhere in the railroad industry. The job offer must be in the same class or craft as the worker's previous regular work. If the employee does not accept the offered job, regardless of the number of miles he would have to move to accept that job, a deemed C/C cannot be considered.

   EXAMPLE 1: A newly expanded facility 75 miles away will assume the function of a train yard that is closing, and half the employees will be terminated. The most senior workers are offered their same jobs at the new location. Those who could transfer to the new job site, but decline the offer, are not eligible for deemed C/C consideration.

Employees of the closed facility without enough seniority to obtain a position at the new location will be terminated and thereby will be eligible for a deemed C/C. Additionally, if more employees accept transfer than there are positions at the new facility, some less senior workers there will be "bumped out". With no same class or craft offer available, they too will be eligible for a deemed C/C.

EXAMPLE 2: Some terminated employees described in Example 1 are recalled to work at their same jobs when the train yard is expanded again three years later. Workers who break their C/C by non-railroad employment, and decline the offer to return to those railroad jobs, are not eligible for a deemed C/C.

3. "Same Class or Craft"

When employees whose positions are protected by labor agreements are displaced, they are required to accept only specifically classified jobs involving similar skills to those of the jobs that they lost. Any replacement position offered to them may be for a different employer, have a cut in salary, or have less desirable working conditions, but it must be essentially the same work. In addition, the job **must** be for a covered railroad employer. If the job offered is covered under the Social Security Act, it is not considered to be in the "same class or craft".

For management employees who are not covered by labor contracts, the "same class or craft" concept includes the additional requirement that the offered position be "suitable employment" after considering the duties and pay of both positions.

EXAMPLE 1: An employer terminates service on a local freight line and all employees from that service will be reassigned to a nearby line or terminated. A 4-year engineer was also a conductor for 18 years, but does not have enough seniority as an engineer to be reassigned in that job class. Although he has rights to a conductor job, he does not have to accept an offer in that class of work to be eligible for a deemed C/C.

EXAMPLE 2: A railroad abolishes one of three Safety Dept. Manager positions. The least senior manager has rights to his former position of safety inspector, so he could "bump" someone else from that job. The inspector job involves extensive travel, and the pay rate is 20% lower than the employee's current salary. The safety inspector job would not, therefore, be "suitable employment," and the employee could not be required to accept such an offer.

225.45.3 Deemed C/C Evidence

When the employee has regular non-railroad employment that breaks a C/C (see FOMI 225.40), determine eligibility for a deemed C/C by evidence on RRB records and material provided by the applicant. Do not solicit supporting documentation from employers or other third party sources when information supporting a deemed C/C is already available from EDM or other on line RRB sources.

1. Application Information

   Applications filed before 5-1-84 require the employee to submit proof that (s)he stopped working in the railroad involuntarily an without fault and proof that (s)he did not decline an offer to return to work in the same class or craft. If this information is not obtained while the employee is alive, the survivor must submit proof.

   Note: Railway Express Agency employees or their survivors do not have to submit proof that the railroad employees stopped working in the RR industry involuntarily and without fault or proof that the employee did not decline an offer to return to work in the same class or craft as his most recent railroad service.

   Applications filed May 1, 1984 or later include entries regarding a deemed C/C for employees with 25 years of railroad service and subsequent non-railroad work. Accept the employee's AA-1 statement that he did not decline a same class or craft railroad job offer after his involuntary separation from railroad employment. Unless conflicting evidence is presented, no further documentation regarding job offers is needed.

2. RRB Records

   - PREH will carry the C/C determination if there is a prior claim for the same railroad worker.
   - Use EDM to verify railroad service and non-railroad work history.
   - Former RR employers' coverage status is available on the intranet BFO document "Employer Historical File". (**Note**: The termination date on the EHF may be after the employer actually ceased operations. For example, REA ceased operations 11/07/75 but the termination date on the EHF is 4/25/88.)
   - Headquarters examiners may obtain detailed identification of non-railroad employers by requesting a DEQY record from SSA.

3. Applicant's Documents

   The applicant must provide proof that the employee left the railroad industry involuntarily and without fault when RRB records do not establish the reason for the termination of his railroad service.

   Preferred documentation is the employee's notice of separation from the employer. The separation notice describes the reason the job ended and any alternative employment options the employee was offered.

   Other detailed personnel, payroll, insurance or labor organization documents may also be acceptable evidence.

Such documentation may be submitted to the RRB as advance proof, at any time, to be imaged or otherwise recorded and stored at headquarters until an employee or survivor annuity application is filed.

EXAMPLE 1: Evidence is an employer letter that shows RRDLW of 01-01-95 due to worksite closed down. The letter gives no option that a transfer to another location or "bumping" to another job is possible, and the applicant states no offer was made after his separation, so he had to take an outside job. The information is consistent with the F/O experience with other displaced railroad workers from the same employer in 1995. The F/O submits a copy of the letter to HQ for imaging, and marks the G-230 that deemed C/C will apply.

EXAMPLE 2: Same information as above, but EDM has 6 months service in 1995. This may indicate the jobsite did not close in January, or that employee was not involuntarily terminated at that time. The applicant explains that the extra months were his earned vacation days, parceled out to get him an extra service anniversary date. Low earnings shown on EDM for those 1995 months support the worker's explanation, and a deemed C/C applies.

Note: Refer to FOM1 225.45.4 if RR no longer exists.

4. Affidavits:

When no acceptable documents or RRB records are available to support a deemed C/C claim, request that the applicant secure signed statements, from at least two of the employee's former co-workers, who have knowledge of the employment termination circumstances, and who can be identified by the RRB as railroad employees, to verify the claimant's involuntary separation from railroad employment.

NOTE: If the claims representative cannot make a deemed C/C determination once evidence has been received, the application should referred to headquarters.

225.45.4 RR Employer No Longer Covered under the RRA

An employee with at least 25 years of RR service is eligible for a deemed c/c if his separation occurred because his employer is no longer in business or has changed the business to SS Act coverage.

Identify changes of employer status on the listing available on the Intranet as the "Employer Historical File" (EHF).

For employers who switch from coverage under the RRA to coverage under the SSA, the EDM record will show railroad compensation through the last date the employer was a covered railroad under the RRA and wages from the date the employer is covered under Social Security.

Employers who have ceased operations entirely and later declared bankruptcy may have a coverage termination date that differs from the date that they actually ceased operations. For example, the Railway Express Agency ceased operations on November 7, 1975. However, their coverage termination date is April 25, 1988, which coincides with the date that liquidation activities were completed.

225.45.5 Separation Allowance

1. If a displaced employee, who meets the deemed C/C requirements explained in FOMI 225.45, has no option but separation, his acceptance of a separation allowance does not impact his deemed C/C determination.

2. If an employee has a choice of another same class or craft position or termination with a separation allowance, accepting the separation allowance is a part of his voluntary termination, and he is not eligible for a deemed C/C determination.

3. An employee who did not accept a separation allowance does not automatically have a deemed C/C. If an employee does not qualify for a deemed C/C, and he has broken his regular C/C by earnings after his 30-month period, his C/C is still broken, regardless of whether or not he accepted a separation allowance.

225.45.6 Employee Accepts Another Railroad Job

For the deemed C/C provision to apply, an employee must be terminated involuntarily from all railroad service. If the employee acquires another railroad job for the same, or for a different railroad employer, he must meet the regular C/C test at retirement or death, or he must be involuntarily terminated from his latest RR employer to be considered for a deemed C/C.

225.46 Special Survivor Benefits Deemed C/C Provisions

A. The RRB has jurisdiction of survivor benefits payment if an RR employee has a C/C or a deemed C/C at death. When an employee has no C/C at death, the RRB loses jurisdiction of survivor benefits to the SSA.

   If the transferred railroad credits provide an SSA insured status, SSA has jurisdiction of the survivor benefit.

   When the employee's total earnings record fails to provide an insured status at SSA, for an otherwise eligible survivor applicant, the employee may be deemed to have an RRB C/C for survivor benefit purposes only.

   NOTE: Investigate for possible the employee's use of multiple social security numbers before applying this special type of deeming.

B. To qualify under this provision, one of the following two conditions must occur:

1. The employee was insured in all respects under the RR Act but would not be fully insured under the SS Act if his railroad service were treated as SS wages.

   This condition can occur because a quarter of coverage under the SS Act is based on annually specified minimum earnings requirements, but $1.00 of compensation in a month allows a railroad service credit. Thus, an employee may have performed railroad work in 12 months of a year, but his earnings may have been too low to yield four (or any) wage quarter credits that year under SSA rules.

   OR

2. The employee has no wage credits under the SS Act.

   This circumstance may be the result of several possible employment experiences in addition to recorded railroad work.

- Civil service employment may or may not be covered under the SS Act
- Foreign employment does not usually provide SS wage quarters
- Very low wages do not provide coverage quarters.
- The employer and employee failed to pay FICA taxes for casual employment.

It is therefore possible for a C/C to be broken, under normal rules, by the employee's known non-railroad employment that gave him no SSA wage quarters. Granting a deemed C/C in such a case is necessary to provide a survivor benefit.

NOTE: Even one credited wage quarter at SSA, before or after the employee's RRB ABD disallows this special C/C deeming provision, and is cause for transfer to SSA.

225.50 Redetermination of C/C

Procedures prior to 1979 allowed C/C determinations to change for various benefit entitlements. The following standard provisions, in force since May 1979, basically eliminate re-determinations.

A. Retirement Cases

If an employee has a C/C at his ABD, he has a C/C with the RR industry for life and at death. This means that his C/C is maintained for any new regular annuity for which he may later qualify and for survivor benefits at death.

EXAMPLE: An employee had a C/C when his disability annuity began. He recovered from that disability and the annuity ceased, but he could not return to railroad work. His C/C is maintained when he later applies for another annuity.

B. Survivor Cases

If an employee did not have a C/C or deemed C/C when his annuity began, he cannot later be determined to have a C/C at death even though, while the annuity was in effect, he returned to railroad service.

EXCEPTION: If we determined that an employee had no C/C, in life, for his annuity that began before May 31, 1979, and an initial survivor eligibility decision is made after May 1979, use current C/C rules to test the C/C for the survivor benefit.

Do not make another new determination if a survivor annuity application was previously denied for no C/C under the old rules.

NOTE: The special survivor benefit C/C deeming described in FOMI 225.46, when a survivor application cannot be transferred to SSA, is not considered to be a re-determination of a prior C/C decision.

C. Supplemental Annuity

If an employee had a disability annuity that terminated; and he returned to railroad service prior to July 1955, regardless of the duration of such service; and he was awarded a new annuity after June 1966, he has a C/C for a regular annuity at his later ABD.

In such cases, the employee's C/C for a SUPP ANN only, must be re-determined at the time his later annuity begins. Make the C/C decision for the SUPP ANN as though there was no previous annuity awarded, and no previous C/C determination. Non-railroad employment performed after the latest 30-month period may break the C/C for the SUPP ANN eligibility, but cannot be used to break a C/C once established for regular annuity eligibility.

D. Erroneous C/C Determination

If a C/C determination made while the EE is/was still alive is found to be in error, or a determination for a survivor benefit is found to be in error, changing that decision is not a re-determination. Correcting a previous decision can only be made if the annuity is formally reopened.

225.55 Reopening a C/C Decision

Always use current C/C rules when reopening a claim.

A. Retirement Cases

Reopening is appropriate if an erroneous decision caused denial of an employee claim in whole or in part because the employee did not have a C/C for an occupational disability annuity, supplemental annuity, or vested dual benefit.

The date of reopening for a claim previously denied for no C/C is the date the specific request from an individual is received by an RRB office, or the date the claims examiner finds that a C/C exists.

Benefits resulting from a favorable C/C reopening decision may retroact one year from the reopening date.

B. Survivor Cases

Reopening is appropriate when an erroneous C/C decision caused the denial of a survivor application and/or the erroneous transfer of RR credits to the SSA.

The date of reopening, in a survivor claim previously denied for "no C/C" is the date that the original decision is determined to be incorrect. There is no retroactivity restriction for a survivor claim reopened based on a corrected C/C determination.

225.60 Effect of Canadian Service on a C/C

A. Work For a Canadian Employer

Service in Canada for a covered RR employer whose principal operation is in Canada will not break a C/C even though the service performed there is not creditable under the RR Act. But, only service performed in the U.S. will provide RR service months for the 12-in-30 test. Regular non-railroad employment concurrent with or subsequent to Canadian service after the 30-month period and before the employee's ABD month or date of death, if earlier, may break the C/C under the earnings rules in FOM1 225.40.

B. Service in the United States

Service in the United States for a Canadian railroad employer by any U.S. or Canadian employee is fully creditable under the Railroad Retirement Act and will not break a C/C.

C. U.S. Citizen Working in Canada For U.S. Employer

Service in Canada by a United States citizen for a covered employer whose principal operation is in the United States is fully creditable under the RRA and will not break a C/C.

D. Canadian Working in Canada For U.S. Employer:

Service in Canada for a covered employer whose principal operation is in the United States will not break a C/C even though that service is not creditable under the RR Act effective 1-1-1983 or later. BUT, only service performed in the U.S. will provide RR service months used in the 12-in-30 test. Regular non-railroad employment, concurrent with or subsequent to Canadian railroad service, after the 30-month exempt period and before the employee's ABD month or date of death, if earlier, may break the C/C under the provisions in FOM1 225.30.

225.65 Effect of MS on a C/C

A. MS That May Create a C/C

MS months which are creditable under the RR Act will serve to establish or preserve a C/C in the same manner as if it were creditable employer service.

B. MS, Which Will Neither Create, Nor Break a C/C

Some types of MS have no effect on a C/C. When making the test for a C/C or deemed C/C, disregard:

1. Creditable MS after 1956, which is used as wages instead of compensation in annuity calculation.

2. Non-creditable involuntary MS.

3. Non-creditable voluntary MS before 1-1957 performed wholly within a war service period.

C. MS That May Break a C/C

Although MS is not last person service, it may be regular employment for C/C decisions. Non-creditable voluntary MS in the interval may break a C/C if the MS was performed:

1. After 1956.

2. Before 1957 but entered outside a war service period.

3. After a war service period when continued MS was no longer required.

225.70 CETA & JTPA Employment Questions

When CETA or JTPA work is material to the C/C determination and the work was not under a CETA Title VI program, or the program title is not known, obtain as much of the following information from the employee as possible:

A. Under what subchapter, title, or program was the person employed?

B. What type of work did the employee perform?

C. Was this work similar to that performed with the railroad?

D. Did the employee receive special training for this job?

E. How long was the employee employed under CETA or JTPA?

F. Did the employee pay FICA taxes?

G. Was the employee determined to be "place able" when his job under the program expired?

For retirement applications, code the APPLE Summary Screen for MANUAL REVIEW when CETA or JTPA earnings are involved.

230.5 When An Insured Status Is Required Under The RRA

This section gives the different kinds of insured status that are required for eligibility for various benefits under the 1974 Railroad Retirement (RRA). Definitions of the different kinds of insured status are given in subsequent sections of this article.

230.5.1 Life Cases

A. Overall minimum guaranty - The employee must be fully insured under the Social Security Act (SSA) rules (see FOM-I-230.25), based on combined railroad and social security earnings, to qualify for the age and service overall minimum (O/M) guaranty.

The employee must be totally disabled and have a disability (DIB) insured status under SSA rules (see FOM-I-230.30), based on combined railroad and social security earnings, to qualify for the DIB O/M.

B. Vested dual benefit - The employee must be permanently insured under the RRA to qualify for payment of a vested dual benefit (VDB) based on his own wage record. Before the 1981 RRA amendments, a spouse who was permanently insured based on her own earnings record could qualify for a VDB. See FOM-I-230.50 and 230.55.

C. Work deductions - The employee or spouse must have a work deduction insured status under the RRA before work deductions may be applied. See FOM-I-230.65.

D. Hospital insurance - The employee, spouse, or disabled child must have a health insurance insured status to qualify for hospital insurance (HI) coverage, among the other requirements given in FOM-I-8.

E. No insured status required - An insured status is not required for payment of the employee or spouse tier I or tier II or the supplemental annuity.

230.5.2 Death Cases

A. RRB survivor jurisdiction - The employee must have 120 months of railroad service or at least 60 months of railroad service after 1995, and a current connection with the railroad industry at the time of death to be completely insured under the RRA for the payment of survivor benefits. See FOM-I-230.15.

B. Vested dual benefit - Before enactment of the 1981 RRA amendments, if a widow or dependent widower was permanently insured under the RRA, she or he could qualify for payment of a vested dual benefit. See FOM-I-230.60.

C. Work deductions - A work deduction insured status is not required in survivor cases. Work deductions are applied to the annuity of a survivor annuitant (except

for a disabled widow(er) under age 60 or a disabled child) who earns over the annual exempt amount.

D. Hospital insurance - The aged or disabled widow(er) or disabled child must have a health insurance insured status to qualify for HI coverage, among the other requirements given in FOM-I-8.

230.10 When An Insured Status Is Required Under The SS Act

230.10.1 Life Cases

The wage earner must be fully insured under the SSA (see FOM-I-230.25) to qualify for a retirement insurance benefit (RIB). The wage earner must be totally disabled and have a disability insured status under the SSA to qualify for a disability insurance benefit (DIB). In life cases, the Social Security Administration generally bases the insured status determination on wages only. Railroad compensation is used only if the wage earner has less than 120 months of railroad service.

If the wage earner is fully insured for an RIB or DIB, the spouse and/or children are insured for auxiliary SS benefits.

230.10.2 Death Cases

The wage earner must be fully insured under the SSA for payment of a widow(er)'s, parents' or child's SS benefit. The widow of a transitionally insured wage earner (see FOM-I-230.40) may qualify for survivor SS benefits beginning September 1965. A currently insured status (see FOM-I-230.35) is used as an alternative to a fully insured status for payment of a child's, mother's, or father's SS benefit, or the lump-sum death benefit.

When the Social Security Administration has jurisdiction for the payment of survivor benefits (the employee is not completely insured under the RRA), the insured status determination is based on combined SS wage and RR compensation quarters of coverage (QC).

230.15 Completely Insured Status Under The 1974 RRA

The employee is completely insured for the payment of survivor benefits under the 1974 RRA, if at death he meets the following requirements.

230.15.1 Years of Railroad Service

The employee must have completed either

- at least 10 years (120 months) of creditable RR service performed at any time; or
- 60-119 months of railroad service of which at least 60 were performed after 1995.

NOTE: Under this provision, the tier 1 portion of a survivor annuity is payable only if the employee had a Social Security insured status based on combined RR and SS earnings. SS insured status is covered in FOM 230.25 and FOM 230.35.

Military service (M/S), creditable as compensation under the RRA, may be added to meet the service requirement.

Under the 1937 RRA, an employee was deemed to have 120 months of railroad service if:

A. He was receiving a pension (had an 'H' prefix in the claim number); or

B. He had at least 114 months and was awarded an annuity which began to accrue before 1948; or

C. A survivor insurance annuity was awarded before 11-1-51 based on 10 years of service.

These deeming provisions did not apply for entitlement under the 1974 RRA. However, the 1981 RRA amendments added the provision that the 10-year requirement may be met in survivor cases if the employee received a pension under the 1937 RRA, or if he had at least 114 months of railroad service and was awarded an annuity which began to accrue before 1948. This provision is effective October 1, 1981.

230.15.2 Current Connection

A current connection (C/C) with the railroad industry is a requirement for a completely insured status. See FOM-I-225.

NOTE: An insured status based on quarters of coverage, which was required for a completely insured status under the 1937 RRA, is not needed under the 1974 RRA.

230.20 Partially Insured Status Under The 1937 RRA

The survivors of an employee who was partially insured under the 1937 RRA could qualify for the lump-sum death payment, a widow's current insurance annuity and a child's insurance annuity only. An employee was partially insured under the 1937 RRA at the time of attaining retirement age or at death if he had 120 months of creditable RR service, a current connection and either of the following:

A. A minimum of six QCs counting from the beginning of the third calendar year before the year in which the employee retired or died and ending with the quarter of his retirement or death; or

B. Sufficient QCs to be currently insured under the SSA (see FOM-I- 230.55) if his RR service after 1936 had been employment covered by the SSA. (This applies under the same conditions as for a completely insured status.)

NOTE: If an employee had a partially insured status at the time a retirement annuity began to accrue, he does not lose this status in the interval between retirement and death, regardless of his employment status during that period.

The benefit amounts payable based on the partially insured status are the same as the benefits payable based on a completely insured status.

230.25 Fully Insured Status Under The SSA

230.25.1 One-For-Four-Rule

The wage earner is fully insured under the SSA if he has a minimum of six QCs and has at least one QC for each year elapsing after 1950 or after the year he attained age 21 (whichever is later), up to the earlier of:

A. The year of attainment of retirement age; or

B. The year of disability onset; or

C. The year of death.

Retirement age under the SSA is age 62. Before 1-1-73, retirement age for men was age 65; this applies for men born before 1-2-11, who attained age 62 in 1972 or earlier. Men who attained age 62 in 1973 and 1974 (born 1-2-11 through 1-1-13) are deemed to have attained retirement age (age 65) in 1975. Therefore, those men require the same number of QCs for an insured status as men born 1-2-10 through 1-1-11, and 1-2-13 through 1-1-14 (actually attained age 62 in 1975).

The necessary QCs may be acquired at any time. When a wage earner has acquired 40 QCs, he is fully insured for life.

A World War II veteran may be deemed to be fully insured if the regular requirements are not met. The veteran must have been discharged or released from active service under conditions other than dishonorable no later than 7-26-51, and he must have died within 3 years after his separation from active service. Refer such a case to BRB (the Bureau of Retirement Benefits) for an insured status determination.

Special requirements apply for a disability insured status (see FOM-I-230.30).

230.25.2 Determining Number of QCs

The following steps may be used to determine the required number of QCs for a full insured status.

A. Determine the earlier of:

1. The year the person attained age 62 (if born 1-2-13 or later); or

2. The year of disability onset; or

3. The year of death; and

B. Subtract the later of:

1. The year 1951; or

2. The year the person attained age 22.

The result is the number of QCs needed for fully insured status.

Alternate insured status requirements apply for a person who is disabled before age 31 and for a statutorily blind individual (see FOM-1-230.30.2 and 230.30.3).

230.25.3 Quarters of Coverage Table

The following table may also be used to determine the number of QCs needed for a fully insured status, instead of using the rules in FOM-1-230.25.2.

A. If the person was born before 1930 and is retiring based on age, find the year of birth in the first section to determine the number of QCs required (in the third section).

B. If the person was born before 1930 and became disabled or died before age 62 (or age 65 if born before 1-2-13), find the year of disability onset or death in the second section to determine the number of QC's required (in the third section).

C. If the person was born after 1-1-30, find the person's age in the year of death or disability onset in the last column. The number of required QC's is shown in the preceding column.

Year of birth		**Year of retirement Age, disability QCS Onset, or death required**		**Age in year of Disability or Death (if born After 1-1-30)**
Men	**Women**			
1892	1895	1957	6	28 or younger
1893	1896	1958	7	29
1894	1897	1959	8	30
1895	1898	1960	9	31
1896	1899	1961	10	32
1897	1900	1962	11	33
1898	1901	1963	12	34
1899	1902	1964	13	35
1900	1903	1965	14	36
1901	1904	1966	15	37
1902	1905	1967	16	38

1903	1906	1968	17	39
1904	1907	1969	18	40
1905	1908	1970	19	41
1906	1909	1971	20	42
1907	1910	1972	21	43
1908	1911	1973	22	44
1909	1912	1974	23	45
1910	----	1975	24	46
1911	----	(1975)	24	--
1912	----	(1975)	24	--
1913	1913	1975	24	--
1914	1914	1976	25	47
1915	1915	1977	26	48
1916	1916	1978	27	49
1917	1917	1979	28	50
1918	1918	1980	29	51
1919	1919	1981	30	52
1920	1920	1982	31	53
1921	1921	1983	32	54
1922	1922	1984	33	55
1923	1923	1985	34	56
1924	1924	1986	35	57
1925	1925	1987	36	58
1926	1926	1988	37	59
1927	1927	1989	38	60
1928	1928	1990	39	61
1929	1929	1991	40	62

230.25.4 Effect of Disability Freeze

The general effect of establishing a disability freeze (DF) is to reduce the number of QCs which would otherwise be required for a fully insured status. Any year that is partly or wholly within a DF period is not counted as an elapsed year; only the first and last quarters of a DF can be counted as QCs.

However, if excluding the disability freeze period results in a decrease or denial of benefits because the QCs in the DF period are not counted, the DF must be disregarded for both insured status determinations and benefit computations.

230.30 Disability Insured Status Under The RR And SS Acts

A disability insured status based on wages only is required under the SAA for payment of a disability insurance benefit and for entitlement to disability hospital insurance coverage. A DIB insured status based on social security wages alone is needed to pay a disability vested dual benefit under the RRA. (The employee must be eligible for an

SS DIB, even though he does not have to file for the SS benefit, to be entitled to a vested dual benefit based on disability.)

A DIB insured status is needed under the RRA to qualify an employee for payment of the DIB O/M and disability hospital insurance coverage. This DIB insured status is determined as if railroad service after 1936 were social security wages. This determination is separate from the determination of a DIB insured status based on wages only that can entitle a beneficiary to a social security DIB payment or an RRA VDB based on disability.

An occupational disability annuitant may be deemed to have a DIB insured status for Medicare only if:

A. He met the 20/40 earnings requirement (see FOM-I-230.30.1) on the annuity beginning date, but was not totally and permanently disabled on that date; and

B. He later becomes totally and permanently disabled, but does not meet the earnings requirement on the date of disability onset. He is deemed to meet the 20/40 requirement as of the disability onset date.

The DF granted for Medicare only will not allow payment of the O/M or affect the computation of any PIA (Primary Insurance Amount).

230.30.1 Requirements For Regular DIB Insured Status

An employee must meet the following requirements to have a DIB insured status. Special provisions apply for an employee who is disabled before age 31 or who is statutorily blind (see FOM-I-230.30.2 and 230.30.3).

A. 20/40 earnings requirement - An employee who becomes disabled after he attains age 31 must meet the 20/40 earnings requirement to have a disability insured status. The 20/40 requirement is met if, in the quarter of disability onset or in a following quarter while the employee is continuously disabled, the employee has at least 20 QCs in a period of 40 consecutive calendar quarters ending with that quarter.

   In determining if the 20/40 requirement is met under the RRA, railroad compensation QCs are combined with wage QCs, except when vested dual benefit eligibility is being determined. Only wage QCs are used to determine a disability insured status for SSA DIB benefits and for an RRA vested dual benefit based on disability.

B. Fully insured status - The employee must also meet the QC requirement for a fully insured status. The fully insured status is determined as if the employee attained SSA retirement age in the quarter of disability onset or in a following quarter while the employee is continuously disabled. Railroad compensation is counted as wages in determining if the fully insured requirement is met under the RRA, except when vested dual benefit eligibility is being determined.

C. Disability freeze - Every employee disability annuitant is also rated under the SSA for a disability freeze. Non-disability annuitants may also file for a freeze. A disability freeze protects against the loss of or reduction in benefits because of disability. The DF insures that the period during which the employee is disabled and unlikely to have substantial earnings will not count against him in determining insured status or the amount of a PIA. The RRB uses the DF in retirement cases to increase PIAs, establish eligibility for the DIB O/M and vested dual benefit entitlement based on disability and for early Medicare coverage. In survivor cases, the freeze may increase the death PIA.

1. Requirements for a DF - To qualify for a DF, an employee must be totally and permanently disabled for all regular employment. He must also meet the 20/40 earnings requirement and the fully insured status requirement to qualify for a DF. A DF may be established by the RRB or Social Security Administration, separately or jointly. In DF determinations for RR employees, both RR and SS earnings are considered in determining if the 20/40 requirement is met.

2. When a DF begins - A disability freeze may begin retroactively with the first day the employee meets the 20/40 earnings requirement and has been rated totally and permanently disabled. There is no 12-month limit on retroactivity, except as stated in B3. following.

   Payment of benefits is limited to the usual 12 months prior to the month the application is filed.

3. Filing for a DF - An application for a disability annuity is also an application for a DF. A non-disability applicant may also file for a DF. BRB may request a Form AA-1d (Application for Determination of Employee Disability) for a DF decision if the DF was denied when the application for a disability annuity was filed initially, because the employee was not totally and permanently disabled, but he later becomes qualified. An AA-1d may also be needed if an application for a DF was never filed with the RRB.

   If an eligible employee died before filing, a survivor may file an application after the death of a disabled employee to establish a DF. The application must be filed within 3 months after the month of death, and should only be filed when the employee was under age 62 on his disability onset date (or under age 63 if the employee was disabled for more than 24 months prior to his death), and he was unable to work because of disability for a period of 5 full months, beginning before the year of death.

   If disability has ceased before an application for a DF is filed, the application must be filed no later than:

   a. Twelve months following the month the employee attains age 65; or

b. Fourteen months following the month disability ceased.

In this case, however, the time limit for filing may be extended to 36 months after the month disability ceased, if the applicant failed to file a timely application because he was physically or mentally incapable of filing an application.

4. DF previously terminated - If an employee had a DF that was previously terminated because disability ceased, that prior DF must be considered when an employee acquires a subsequent DF on the basis that he is again disabled. In determining whether the employee meets the 20/40 requirement for a subsequent disability insured status, no quarter that is wholly within a previous DF period is counted. The first and last quarter of a previous DF period may be counted, if either is a QC.

5. When a DF may be disregarded - A DF may be disregarded if use of the DF would result in a denial or loss of benefits, as long as entitlement exists without it. If there are high earnings within a DF period, the PIA may be higher if the DF is disregarded. However, if the DF is disregarded for one purpose (e.g. determining insured status), it must be disregarded for all purposes (e.g., PIA computations).

6. DF ending date - The ending date of a DF is the earliest of:

a. The last day of the month in which the employee dies; or

b. The last day of the month preceding the month in which the employee attains age 65; or

c. The last day of the second month after the month in which the disability ceases. See FOM-I-210.95 if a trial work period extension applies.

D. Waiting period - Under Social Security Administration rules, the employee must serve a waiting period of 5 months before the DF is effective. The employee must be disabled throughout those 5 months. If the employee is not continuously disabled throughout the waiting period, a disability freeze may not be established. (Before 1-1-73, the waiting period was 6 months.)

1. Duration of the waiting period - The waiting period cannot begin earlier than 17 months before the month the application is filed (counting backward from the filing date). The waiting period begins in the first month in which:

a. The employee is totally and permanently disabled and has been under this disability for the entire month (i.e., the date of onset is on or before the first day of the month); and

b. The employee meets the 20/40 earnings requirement and the fully insured status requirement. An individual who has a disability insured status on the disability onset date, and remains continuously disabled through the first month of the waiting period, retains this disability insured status (even if the waiting period begins in a quarter after onset).

In determining the duration of the waiting period, a full month is counted for the month the DF begins if it begins on the first day of the month. The month disability ceases is counted as a full month if the DF ceases on the last day of the month. If the employee dies on the last day of the month, that month is counted as a full month.

Once the waiting period is met, the DF is established from the disability onset date. It continues up to the attainment of age 65, termination of disability, or death.

Under the RRA, a VDB based on disability or the DIB O/M cannot begin until the first of the month following the month in which the waiting period ends.

2. When a waiting period is not required - If the employee previously had a DF or DIB which ended within 5 years (60 months) before the month his current disability began, no waiting period is required. The 60-month period begins with the month in which the prior DF ceased or DIB terminated, and ends with the month before the first month throughout all of which the employee is under a disability.

230.30.2 Alternate Disability Insured Status Before Age 31

If an employee becomes disabled before age 31, he has a disability insured status if he:

A. Is under a disability which began before the quarter in which he attained age 31; and

B. Is fully insured (see FOM-I-230.25); and

C. Has earned QCs in at least one-half of the calendar quarters during the period beginning with the quarter after the quarter in which he attained age 21, and ending with the quarter in which the period of disability began; or

D. If that period contains less than 12 calendar quarters, he has earned at least six QCs in the 12-quarter period ending with the quarter in which the period of disability began. The six QC rule will always apply if the disability begins in the quarter of age 24 attainment or before.

The required quarters must be earned within the period after age 21, or in the 12-quarter period described in D., if applicable. When the number of elapsed

quarters in the period after age 21 is odd, the odd one is dropped in computing the number of required quarters.

If the employee attained age 21 before 1937, he must be fully insured and have earned QCs in half of the quarters in the period beginning after 12-31-36 and ending with the quarter in which the period of disability began. The six QC minimum requirement also applies in this case when the period contains less than 12 calendar quarters.

Each period ends with the quarter in which the period of disability began. When the period of disability cannot begin in the quarter of onset because the worker is not fully insured at that time, it begins with the first quarter in which the qualifying QC is earned.

EXAMPLE: The employee (date of birth 5-13-50) became disabled 1-15-80 at age 29. In determining the number of QCs necessary for insured status, count the quarters in the period which begins with the quarter after the worker attains 21 and ends with the quarter in which he became disabled. Since he attained 21 in 5-71 and became disabled on 1-15-80, the period contains 35 calendar quarters. Since this is an odd number, one quarter is dropped. In this case, the period then has 34 quarters for computing the QC requirement. The employee must have earned 17 QC (1/2 of 34) during the period. The QCs must actually have been earned during this period, i.e., QCs which he had earned before 7-1-71 cannot be counted toward the DIB insured status.

Before the 1983 SSA amendments, an employee who was disabled and insured under the age 31 provision, who recovered and again became disabled after attaining age 31, had to meet the regular 20/40 and fully insured status requirements. The requirements were relaxed under the 1983 amendments for employees who do not meet the regular requirements, and file applications after 4-20-83. The disabled employee is insured if he has QCs in one-half of the quarters elapsing after the quarter in which he attained age 21, up to and including the quarter in which disability began. If the number of elapsed quarters is less than 12, the employee must have at least six QCs in the 12-quarter period ending with the quarter in which disability began.

230.30.3 Disability Insured Status for Statutory Blindness

For benefits payable January 1973 or later, a statutorily blind worker no longer needs to meet a "20/40" or "disability before age 31" insured status test. There is a minimum requirement of six QCs. In determining the number of QCs required for a fully insured status, the individual must have at least one quarter of coverage for each year elapsing after 1950 (or, if later, the year in which he attained age 21) up to the year in which the sixth QC is earned. There is a minimum requirement of six QCs. When the period of disability does not begin with the quarter of onset because insured status is not met at that point, it will begin with the first quarter after that in which a fully insured status exists, provided the employee is disabled in that quarter. The fully insured status is

determined as if the employee attained SSA retirement age in that quarter. This provision applies regardless of the age at which the individual is disabled.

Statutorily blind applicants under age 55 must not be able to perform any substantial gainful activity (SGA) to become entitled to DIB benefits. A statutorily blind applicant age 55-64 may not become entitled to a DIB benefit if he is performing SGA comparable to the activity he engaged in during the 10 years before his blindness or age 55, whichever is later. However, the ability to perform SGA does not affect eligibility for a DF. A statutorily blind employee who has a disability freeze but cannot become entitled to a monthly disability benefit (i.e., he is under age 55 and able to engage in SGA or he is age 55 or over and able to engage in comparable SGA) and who later becomes unable to engage in such SGA, and is therefore entitled to a DIB under SSA rules, must serve a waiting period before DIB (or the RR Act DIB O/M or DIB vested dual benefit) payments can begin. However, months after age 55 in which he was engaging in non-comparable SGA can be counted as months in the waiting period, if they are after the disability onset.

EXAMPLE: The employee (date of birth 7-12-47) is statutorily blind from birth. He first secures employment through vocational rehabilitation in the third quarter of 1967, and has sporadic work attempts after that. His employment record is as follows:

1967 NNCC	1973 CNNN
1968 NNNN	1974 NNNN
1969 NNNN	1975 NCNN
1970 NNNN	1976 CNNC
1971 NNNN	1977 CCCC
1972 NNCN	

Although the employee's disability onset is at birth and he acquires his sixth QC in the first quarter of 1976, the period of disability cannot begin at that point since he would require seven QCs to be fully insured as of that quarter (i.e., there are 7 years elapsing between 1968, the year he attained age 21, and 1976, the year in which he has his qualifying QC for a fully insured status). His period of disability would begin with the last quarter in 1976, since this is the first point at which he is both fully insured and under a disability.

230.30.4 Use of Federal Service QC's for Disability Insured Status for Medicare

Employees who lack a disability insured status based on wage and compensation QCs can use Federal employment QCs after 1982 to fulfill requirements for Medicare purposes only. In addition, federal employment before 1983 can qualify as "deemed" QCs if the individual was an employee of the Federal government (i.e., an employer/employee relationship existed between the individual and the Federal agency or instrumentality) at any time after 12/31/82 and before 2/1/83. Use of Federal QCs is limited to Medicare eligibility and cannot be used to qualify an employee for the DIB O/M or for increasing any other benefit.

230.35 Currently Insured Status Under The SSA

A currently insured status under the SSA is used as an alternative to a fully insured status for payment of a child's, mother's, or father's benefit, or the lump-sum death benefit.

230.35.1 Test Period

The wage earner is currently insured under the SSA if he has a minimum of six QCs during any one of the following periods:

A. The 13-quarter period ending with the quarter in which he died; or

B. The 13-quarter period ending with the quarter in which he became entitled to an RIB; or

C. The 13-quarter period ending with the quarter in which he most recently became entitled to a DIB.

230.35.2 Effect of Disability Freeze

In determining the 13-quarter period, only the first and last quarters of a DF period can be QCs. However, if excluding a DF period would result in a decrease or denial of benefits because there are potential QCs in the period which could not be counted, the period of disability is disregarded for both insured status determinations and benefit computations. If the wage earner has acquired six QCs during the 13-quarter period preceding the onset of the disability, and the disability freeze continued uninterrupted until either entitlement to a life benefit or death, the disability period preserves a currently insured status.

230.40 Transitionally Insured Status Under The RR And SS Acts

230.40.1 Requirements

The 1965 amendments to the SSA introduced a special transitional insured status requirement for certain workers, age 72, who are uninsured solely because they do not have a minimum of six QCs. The provision that the wage earner must have at least one QC for each elapsed year was retained, but the minimum requirement for these wage earners was lowered from six QCs to three QCs. This reduction in the minimum QC requirement affected primarily those wage earners who attained age 72 in 1963 or earlier, if a male, or in 1966 or earlier, if a female. If, however, a period of disability beginning before 1957 was established based primarily on earnings creditable for freeze purposes only (RR or M/S credits), the provisions could have applied if the wage earner attained age 72 before 1969.

The provision did not apply to an employee under the RRA. However, this provision was applied under the 1937 RRA to widows of employees insured under this transitional

insured status provision. Beginning 1-1-75, widow(er)s were not affected because the quarter of coverage requirement no longer applied.

230.40.2 Spouse of Wage Earner

The wife of a transitionally insured wage earner could have qualified for a wife's SS benefit at age 72 if she attained age 72 before 1969.

Benefit payments under the transitional insured status provision were restricted to wage earners and the wives and widows of male wage earners. No provisions were made for the payment of a lump sum, mother's, child's, husband's, widower's, parents', or a surviving divorced wife's benefit. However, husbands and widowers did become eligible for benefits effective 5-1-83, under the 1983 SSA amendments.

230.40.3 Widow(er)s of Transitionally Insured Persons

Effective 9-1-65, a widow of a transitionally insured wage earner who attained age 72 before 1969 could qualify for a widow's SS benefit under certain conditions. A surviving divorced wife could not qualify under this provision. Widowers became eligible for benefits effective 5-1-83, under the 1983 SSA amendments.

A. Wage earner died in or after 9-1965 - The widow(er) of a wage earner who became entitled to a benefit under the transitional insured status provision, or who could have become entitled had he filed an application, is eligible for a widow(er)'s benefit at age 72 if she attained age 72 before 1969.

B. Wage earner died before 9-1965 - If the wage earner attained age 65 or died before 1957 and was not insured because he did not have six QCs, his widow(er) may become eligible for benefits at age 72, if she attained age 72 before 1969.

C. Effect on RRB beneficiaries - Under the 1937 RRA, widows who attained age 72 before 1969 were eligible for insurance annuities at age 72 if the employee had at least 120 months of RR service, a C/C with the RR industry, and sufficient QCs to be transitionally insured under the SSA. RRB beneficiaries were no longer affected beginning 1-1-75, because the QC requirement was eliminated.

   NOTE: Compensation QCs earned after attainment of age 65 and before 1939 may be used to produce a transitionally insured status for payment of survivor benefits under the RRA, or for purposes of applying the O/M, even though earnings in that period would not produce QCs creditable under the SSA.

230.40.4 Amount of Benefit Payable

Persons who have qualified for benefits based on transitional insured status are eligible for benefit payments as follows:

Beneficiary	Amount	Effective Date

(Wage Earner or Widow(er) of Wage Earner)	$ 64.40 69.60 74.10 78.50 83.70 92.00 105.20 117.00 125.60	6-1-74 6-1-75 6-1-76 6-1-77 6-1-78 6-1-79 6-1-80 6-1-81 6-1-82
(Spouse of Wage Earner)	$ 31.10 32.20 34.80 37.10 39.30 41.90 46.10 52.70 58.70 63.00	3-1-74 6-1-74 6-1-75 6-1-76 6-1-77 6-1-78 6-1-79 6-1-80 6-1-81 6-1-82

230.45 Prouty Benefits Under The SSA

The Prouty benefit provision of the SSA provides monthly payments for persons age 72 or over who cannot qualify for an insured status under either the regular or the transitional provisions.

230.45.1 Requirements

The beneficiary is entitled to payments under the Prouty provision if:

A. He has filed an application; and

B. He is either a U.S. citizen who resides in the U.S., or is an alien lawfully admitted to the U.S. for permanent residence, who has resided in the U.S. for the five-year period preceding the month he files an application; and

C. He attained age 72 before 1968; or

D. He attained age 72 after 1967 and has at least three QCs (whenever acquired) for each calendar year elapsing after 1966 and before the year in which he attained age 72. This requirement is the same for both men and women. The breakdown of the QC requirement is:

Year Attains Age 72	**QC Requirement**

1968	3
1969	6
1970 (applies only to men)	9
1971 (applies only to men)	12

NOTE: In 1970 or later, the QC requirement applies only to men because a woman age 72 in 1970 would need only nine QCs to be fully insured. Similarly, 1971 is the last year the special provision applies since men would require only 14 QCs in 1972 to be fully insured and would require 15 QCs under the special provision.

The amount of Prouty benefits payable is the same as the amount payable based on a transitionally insured status (see FOM-I-230.40.4). Before the 1983 SSA amendments, the husband received the larger benefit payable to the wage earner, and the wife received the smaller benefit. Beginning 5-1-83, both the husband and the wife receive the higher amount ($125.60).

No benefits are payable under the RRA based on the Prouty provision.

230.45.2 Offset Under the RRA

Under the 1937 RRA, if an annuitant was entitled to a Prouty benefit and the railroad annuity was greater than the Prouty benefit, the annuity was not reduced for Prouty entitlement (the Prouty benefit is completely offset by another government pension). If the railroad annuity was less than the Prouty benefit, the annuity was reduced, subject to a reduction limitation, by the difference between the Prouty benefit and the RRA annuity.

Under the 1974 act, the same principle applies. However, since an employee or widow's original tier I rate will always equal or exceed the Prouty benefit rate, no reduction for Prouty entitlement is made in tier I of an employee's or widow's annuity.

A spouse's gross tier I rate, however, will not always equal or exceed the Prouty benefit rate. However, in most cases, the Prouty benefit is completely offset by another government pension. In such cases, the spouse annuity is not reduced for Prouty entitlement.

Entitlement to a Prouty benefit is not based on a permanent insured status under the SSA. Therefore, annuitants entitled to a Prouty benefit are not eligible for a vested dual benefit computation.

230.50 Employee Permanently Insured Status Under The RRA For Vested Dual Benefit

The employee is permanently insured for a vested dual benefit on December 31, 1974, on his own wage record, if he would be insured under the SSA for an RIB (fully insured

status) or a DIB (DIB insured status) on the basis of wages, military service used as wages, or self-employment income (SEI) quarters of coverage credited through the earlier of December 31, 1974 or December 31 of the vesting year. The RR service requirements for an employee on the rolls after 12-31-74 (see FOM-I-305.50) must be met. Prior to the 1981 RRA amendments, an employee who was entitled to a wife's SS benefit or a dependent male spouse or widower's SS benefit could be permanently insured for a VDB, if the vesting requirements are met.

An annuitant on the rolls as of 12-31-74 who is transitionally insured under the SA is also permanently insured for the vested dual benefit. A female employee who was on the rolls as of 12-31-74 and is entitled to a wife's transitional benefit under the SSA, could be permanently insured for a VDB prior to the 1981 RRA amendments. Also, an employee on the rolls receiving an SSA parent's benefit on 12-31-74 could be permanently insured for a vested dual benefit prior to the 1981 RRA amendments.

230.55 Spouse Permanently Insured Status Under The RR ACT For Vested Dual Benefit

Before the 1981 RRA amendments were enacted, the female or male spouse was permanently insured for a vested dual benefit on his or her own record on December 31, 1974, if (s)he would be insured under the SSA for an RIB or DIB on the basis of SSA wages, military service used as wages, or SEI quarters of coverage on his or her own wage record credited through the earlier of December 31, 1974 or December 31 of the vesting year. When determining the spouse vested status, the employee annuitant's RR service record must fulfill the requirements indicated in FOM-I-320.60.

A female spouse or dependent male spouse on the rolls as of 12-31-74 who is transitionally insured under the SSA, or, if female, is entitled to a transitional wife's benefit under the SSA, was also permanently insured for the vested dual benefit prior to the amendments.

Before the 1981 amendments, if the employee is permanently insured for a vested dual benefit and meets the requirements in FOM-I-305.50, a female or male spouse could be entitled to at least one-half of the employee's vested dual benefit amount.

230.60 Widow(er) Permanently Insured Status Under The RRA For Vested Dual Benefit

Before the 1981 RRA amendments were enacted, the widow or dependent widower was permanently insured for a vested dual benefit on his or her own wage record on December 31, 1974, if he or she would be fully insured under the SSA for an RIB or DIB on the basis of wages on his or her own wage record credited to years before l975, and the employee had at least 10 years of RR service before 1-1-75. Non-dependent widowers are not entitled to a vested dual benefit.

230.65 Retirement Work Deduction Insured Status Under The RRA

An employee has a work deduction insured status as of the quarter in which he becomes fully insured under the SSA, based on social security earnings after 1936 and railroad compensation quarters of coverage after 1974. The total of those wage and compensation QCs are considered in determining if an employee has a work deduction insured status.

A spouse of a railroad employee has a work deduction insured status if:

A. The employee has or acquires a work deduction insured status; or

B. If the spouse is entitled to a vested dual benefit based on the spouse's own or the employee's earnings record.

230.70 Compensation Quarter Of COGE Defined

In general, a compensation quarter of coverage is a unit of service and earnings after 1936 in employment covered by the RRA and in creditable military service (when M/S earnings are used as compensation). Each quarter is a period of 3 calendar months beginning January 1, April 1, July 1 or October 1 and ending on March 31, June 30, September 30 or December 31 respectively. Since compensation is reported to the RRB on an annual basis, it is presumed to be paid in equal amounts in each of the months of service in the calendar year in which it is credited, when a quarters of coverage determination is made.

230.75 Use Of Compensation QCs Under The 1974 RRA

Compensation QCs are used along with wage QCs to determine the employee's fully insured status for the retirement age and service O/M computation, to establish a disability insured status, for the retirement DIB O/M computation, or to determine the employee's HI insured status.

Compensation QCs are never used to determine the employee's permanently insured status for vested dual benefit entitlement. However, if a spouse or widow(er) has less than 120 months of railroad service and this service is before 1975, the Social Security Administration will use the compensation QCs as wages for a fully insured status or HI insured status. RRB would treat the compensation as wages in determining the spouse's or widow(er)'s permanently insured status for a vested dual benefit, if a VDB was paid prior to the 1981 RRA amendments.

Only the employee's compensation QCs earned 1-1-75 or later combined with wage QCs earned after 1936 are used to determine the employee's work deduction insured status. However, if the spouse has less than 120 months of RR service, this service was before 1975, and this compensation was used as wages to determine her vested dual benefit entitlement, the compensation is used as wages to determine her work deduction insured status.

230.80 Determining Compensation QCs Before 1-1-78

Before 1-1-78, compensation QCs are based on the employee's total months of creditable service in a calendar year after 1936, and the total compensation paid for that service in the calendar year. If the employee returns to employer service after the annuity beginning date (ABD), additional compensation QCs can be credited for this service (up to a maximum of 4 QCs per year), regardless of the effect that such employment has on the annuity.

230.80.1 Regular Method Before 1-1-78

Usually, the compensation QCs in a calendar year are determined according to the following table (for exceptions see section 230.80.2):

Months of Service in a Calendar Year	Total Compensation Paid in the Calendar Year				
	$00.00 to $49.99	**$50.00 to $99.99**	**$100.00 to $149.99**	**$150.00 to $199.99**	**$200.00 or More**
1 - 3	0	1	1	11	
4 - 6	0	1	2	22	
7 - 9	0	1	2	33	
10 - 12	0	1	2	34	

Earnings after the quarter in which the employee attained age 65 and before 1939 may be used as compensation QCs only to produce a transitional insured status for survivor benefits.

Earnings due to military service creditable as RR service can be used as compensation to establish compensation quarters of coverage.

230.80.2 Alternative Method Before 1-1-78

The alternative method of determining QCs may be used for retirement O/M cases when the use of the table in the preceding section for determining compensation QCs does not produce sufficient QCs to establish either:

A. A fully insured status under the SSA; or

B. The qualifying QCs which would enable the employee to meet certain eligibility requirements under the SSA, including the establishment of a disability freeze.

The compensation credited in each calendar year is prorated equally to each month in that year for which the employee is credited with railroad service, even though some

months in the beginning or ending calendar years are before or after the period being tested. The monthly amounts thus obtained are allocated to calendar quarters. Each calendar quarter in which the compensation totals $50 or more is a QC.

If fewer than four QCs are established in a calendar year and the employee has been credited with wages under the SSA for a calendar quarter to which less than $50 in compensation was allocated, the compensation allocated is combined with the wages reported for that calendar quarter. A QC will be allowed for each such calendar quarter in which compensation and wages total $50 or more.

The alternative method of determining QCs in life cases is applied to calendar years in reverse chronological order until the QCs established are sufficient to meet eligibility requirements under the SSA. In determining whether an employee meets the 20/40 test for establishing a disability freeze, the alternative method is applied to the calendar year in which the disability began and to each preceding year back to and including the year in which the 40-quarter period begins.

230.85 Determining Compensation QCs 1-1-78 Or Later

A compensation quarter of coverage after 1-1978 for an O/M fully insured status, disability insured status, work deduction insured status, or HI insured status is determined using a method similar to the SSA wage quarter of coverage determination (see FOM-I-230.140). A QC is based on yearly earnings and is not assigned to a specific calendar quarter in the year unless it is necessary to meet the requirement for an insured status.

In such a case, the QC is assigned in the manner most advantageous to the employee.

There is a maximum of four QCs for each calendar year. If fewer than four QCs are established based on compensation and the employee has been credited with wages, military service used as wages or self-employment income for the year, the combined compensation and SS earnings are used to credit a QC (up to a maximum of 4 per calendar year).

For calendar years 1978 or later, the amount of earnings required for an employee to be credited with a QC is written into the Social Security Act and is adjusted each year with the rise in average wage levels as shown in the following chart:

Year	Amount Needed For a QC	Year	Amount Needed For a QC
1978	$250	1979	$260
1980	290	1981	310
1982	340	1983	370
1984	390	1985	410
1986	440	1987	460
1988	470	1989	500

1990	520	1991	540
1992	570	1993	590
1994	620	1995	630
1996	640	1997	670
1998	700	1999	740
2000	780	2001	830
2002	870	2003	890
2004	900	2005	920
2006	970	2007	1,000
2008	1,050	2009	1,090
2010	1,120	2011	1,120
2012	1,130	2013	1,160
2014	1,200	2015	1,220
2016	1,260	2017	1,300
2018	1,320		

230.90 Wage Quarter Of Coverage Defined

In general, a wage quarter of coverage is a period which the employee earns a specified amount of non-railroad income creditable under the Social Security Act. Each quarter is a period of 3 calendar months beginning January 1, April 1, July 1 or October 1, and ending on March 31, June 30, September 30 or December 31, respectively.

Wage QCs are based on the employee's wages after 1936, military service credits used as wages, and self-employment income for taxable years after 1950 through the quarter of death, regardless of the individual's age.

EXCEPTION: Individuals who attained age 65 before 1939 are not credited with wages after attainment of age 65 and before 1939. If the wage earner attained age 65 in the period in which the amounts were reported, SSA assumes such amounts were paid before age 65.

RR compensation after 1936 is used as wages by SSA to provide QCs for an SSA insured status only when the living RR employee does not have enough RR service for RRA retirement benefits (120 months) or when the deceased RR employee either does not have 120 months of RR service or does not have a current connection for RRA survivor benefits.

230.95 Use Of Wage QCs

Wage quarters of coverage are used to determine the individual's entitlement to the following benefits.

230.95.1 Determination at RRB Based on Combined Wages and Compensation

Combined SS earnings and compensation are used at RRB to determine the employee's fully insured status for the retirement age and service O/M, to determine the

employee's disability insured status, for the retirement DIB O/M, or to determine the employee's HI insured status.

230.95.2 Determination at RRB Based on Wages Only

The employee, spouse, or widow(er)'s wage QCs only are used at RRB to determine the individual's permanently insured status or DIB insured status used for vested dual benefit eligibility.

If the spouse or widow(er) has less than 120 months of railroad service and this service is before 1975, RRB would use the compensation QCs as wages in determining the spouse or widow(er)'s permanently insured status for vested dual benefit entitlement, if a VDB was paid prior to the 1981 RRA amendments.

230.95.3 Wage QCs to Qualify for SSA Benefits

Wage QCs are used at SSA to determine the wage-earner's fully insured status or currently insured status for an RIB at the Social Security Administration or to determine the wage earners DIB insured status for a DIB at the Social Security Administration.

Wage QCs on the individual's own wage record are used at the Social Security Administration to determine the spouse's or widow(er)'s fully insured status or currently insured status for an RIB, or to determine the spouse's or widow(er)'s DIB insured status for a DIB. If the spouse or widow(er) has less than 120 months of railroad service, the Social Security Administration will use compensation QCs as wages.

230.100 Annual Wage Reporting

Public Law 94-202, enacted on January 2, 1976, changed the method of reporting wages from a quarterly basis to an annual basis. This change became effective with wage reports for the year 1978.

Under prior law, employers submitted quarterly reports of the wages subject to social security taxes to the Internal Revenue Service (IRS). Beginning January 1979, for the tax year 1978, employers began to file earnings reports with the Social Security Administration. The Social Security Administration then passes the income and tax data to IRS.

Annual reporting delays the posting of wages to the earnings record. Wages for the current year will not be posted to the earnings record until approximately 14 months after the close of the year. Wages for 1979 were not posted to records available to the RRB until early 1981. The Social Security Administration will include lag wages in the earnings record when the wage earner presents a Form W-2 (the annual wage reporting form); the Social Security Administration benefit may be recomputed to include those lag wages.

The change to annual reporting beginning 1-1-78 affects the crediting of quarters of coverage. The differences in crediting QCs are reflected in the following sections.

230.105 Determining Wage QCs Before 1-1-78

Before 1978, wages (other than agricultural or SE earnings) were reported to the Social Security Administration on a quarterly basis (except for the year 1937 in which semi-annual reports were made). Under the normal method, the employee must have earned at least $50 in non-agricultural wages in the quarter to qualify it as a quarter of coverage. If the individual had more than one employer, it is immaterial that wages for each employer were less than $50, provided that the total wages for the quarter were at least $50. The QC is acquired as of the first day of that quarter, regardless of when in the quarter the $50 was first earned or paid.

The simplified method of determining wage only QCs for the 1937-1950 period is explained in FOM-I-230.110.

If the wage earner has SE earnings, refer to FOM-I-230.120.

If the wage earner has agricultural wages before 1-1-78, refer to FOM-I-230.125.

If the employee has maximum creditable earnings for the year, refer to FOM-I-230.130 for an explanation of possible gift QCs.

230.110 Simplified Method Of Determining Wage QCs

The "simplified method" was developed to facilitate electronic data processing computation of QCs. Under this method, a wage earner is deemed to have one QC for each $400 in total wages earned before 1951. The simplified method applies only to the period 1937-1950.

230.110.1 When Simplified Method Applies

The simplified method is applicable for determining a fully-insured status under the SSA, or a work deduction insured status or permanently insured status under the RRA, and can be used only if:

A. There are at least 7 elapsed years after 1950 or after the year age 21 is attained, if later, up to the earlier of the year of attainment of retirement age under the SSA (see FOM-I-230.25.1), the year in which a disability freeze begins, or the year of death (but excluding any year wholly or partly within a period of disability); and

B. The wage earner is fully insured based on the number of QCs derived under this method plus the number of QCs credited under the normal method after 1950; and

C. In life cases, when the retirement application was filed after 1-2-68; and

D. In death cases, when the retirement application was filed before death and after 1-2-68, or no retirement application was filed by an employee who died after 1-2-68.

NOTE: The simplified method was also used for a completely insured status under the 1937 RRA.

If the wage earner is not insured under the simplified method, a wage breakdown from SSA will be used to determine QCs for the 1937-1950 period under the normal method.

230.110.2 Determining Number of QCs

The total reported wages before 1951, regardless of yearly maximum, is divided by $400 to obtain the number of QCs for the period 1937-1950.

230.110.3 When Simplified Method Cannot Be Used

The simplified method cannot be used to determine QCs for:

A. The 20/40 test in DIB or disability freeze cases;

B. A currently insured status;

C. A transitionally insured status;

D. An insured status for special age 72 Prouty benefits;

E. Entitlement to HI under the SSA deemed insured provision; or

F. Entitlement to the vested dual benefit if the vesting year was before 1951.

230.115 When A Calendar Quarter Cannot Be A QC

No calendar quarter can be counted as more than one quarter of coverage. Do not count as a QC:

A. Any calendar quarter after the quarter in which the wage earner died. (After 8-1960, wages paid to survivors or the wage earner's estate in the quarter of death are considered to have been paid to the deceased wage earner, and may therefore be a QC. Before 9-1960, the quarter of death could not be counted unless the wage earner actually earned wages of least $50 in that quarter.); or

B. A calendar quarter, any of which was included in a period of disability freeze, other than the first and last quarter of such period. (Before 9-1960, only the first quarter of a period of disability freeze ending before 1951 can be a QC.); or

C. A quarter which has not yet begun.

230.120 Determining Wage QCs Based On Self-Employment Income Before 1978

In general, before 1-1-78 the wage earner must have had net earnings of at least $400 in a taxable year to earn quarters of coverage based on self-employment income (SEI). If an individual has $400 or more of SEI for a taxable year after 1950 and before 1978, he is credited with four quarters of coverage for the year.

A quarter of coverage is acquired as of the first day of each quarter in which $100 is earned in SEI (up to a maximum of 4 QCs in a year).

If the wage earner has SEI beginning 1-1978 or later, refer to FOM-I-230.140.

230.125 Determining Wage QC'S Based On Agricultural Wages Before 1-1-78

Only cash remuneration may be used in determining if the amount paid for agricultural (AG) service in a calendar year is wages. Cash remuneration does not include payment in kind. However, cash in lieu of such items as board and lodgings, clothing, transportation costs, etc., constitutes wages.

See FOM-I-225.70 when a C/C determination in a survivor case involves agricultural wages.

230.125.1 Assignment of QCs for Years After 1954 and Before 1-1-78

If a person was paid wages for agricultural labor in a calendar year after 1954, the QCs are based on annual amounts of wages. The QCs are ordinarily assigned to specific calendar quarters which are not otherwise QCs, in the following manner:

A. If $400 or more is paid in a calendar year, all 4 quarters are QCs;

B. If $300-399.99 is paid in a calendar year, the last 3 quarters of the year are QCs;

C. If $200-299.99 is paid in a calendar year, the last 2 quarters of the year are QCs; or

D. If $100-199.99 is paid in a calendar year, the last quarter of the year is a QC.

QCs for agricultural labor are acquired as of the first day of the quarter to which they are assigned.

230.125.2 Flexible Assignment of QCs

When a pattern of assigning QCs other than working from the last quarter of the year to the first (as described in the preceding section) would either:

A. Give the wage earner an insured status, or an insured status at an earlier date; or

B. Enable the wage earner to meet the QC requirement for a disability insured status, the QCs may be assigned to any other quarters of the year which will give the required insured status. In this respect, agricultural wages before 1-1-1978 are unique.

Similarly, the QCs can be assigned to different quarters of the year in other instances in which QCs are a qualifying factor, for example, to enable the employee to meet the eligibility requirements for certain kinds of computations.

230.125.3 Assignment of QCs Before 1955

When it is determined that wages were paid for agricultural labor in 1951 through 1954, the QCs are creditable as regular wage QCs.

230.130 Crediting Gift QCs

230.130.1 Before 1-1-78

Before 1-1-78, wages were reported to SSA on a quarterly basis (except for the year l937 in which semi-annual reports were made). An individual who earned the maximum creditable earnings in a year could be given 4 quarters of coverage in that year, regardless of when the wages were earned or paid in the year. The quarters that would not otherwise be counted are gift QCs.

The yearly earnings maximums used in determining whether gift QCs are applicable before 1-1978 are:

Years	Maximum	Years	Maximum
1937-1950	$ 3,000	1972	$ 9,000
1951-1954	3,600	1973	10,800
1955-1958	4,200	1974	13,200
1959-1965	4,800	1975	14,100
1966-1967	6,600	1976	15,300
1968-1971	7,800	1977	16,500

230.130.2 Beginning 1-1-78

Beginning 1-1-78, the earnings for 1978 and later years are reported annually and are proportioned according to the total months of service. Gift QCs are no longer necessary.

230.135 Determining Wage QCs Based On RR Compensation Before 1-1-78

When the RR compensation after 1936 cannot be used under the RRA (e.g. no current connection in a survivor case) the RR compensation record is transferred to the Social Security Administration. The Social Security Administration credits quarters of coverage based on these earnings according to the chart in FOM-I-230.80.1. The total compensation QCs for the year are added to the total SS QCs for each year. If the total for any year exceeds four QCs, the total is reduced to four.

EXCEPTIONS: Only the first and last quarters of a disability freeze period may be QCs.

In survivor cases, the total QCs for the year of death cannot exceed the number of calendar quarters through the quarter of death.

If the wage earner is not insured under this procedure, SSA credits the earnings in a method similar to the RRB alternative method.

Compensation may also be used in determining the number of QCs in joint freeze cases.

230.140 Determining Wage QCs Based On Wages And Self-Employment Income 1-1-78 Or Later

The 1977 Social Security Act amendments revised the method of crediting wage quarters of coverage 1-1-78 or later. After 1977, all wages (including agricultural wages and M/S creditable as wages) and SEI are generally reported to SSA annually. The wages and SEI are assumed to be paid in equal proportions for months in a calendar year in which they are credited. At least $400 of net earnings from self-employment is still required before SEI can be credited.

The amount of earnings required to establish a quarter of coverage based on wages or self-employment income is be adjusted each year with the rise in average wage levels as shown in the following chart:

Year	Amount Needed For a QC	Year	Amount Needed For a QC
1978	$250	1979	$260
1980	290	1981	310
1982	340	1983	370
1984	390	1985	410
1986	440	1987	460
1988	470	1989	500
1990	520	1991	540
1992	570	1993	590
1994	620	1995	630

1996	640	1997	670
1998	700	1999	740
2000	780	2001	830
2002	870	2003	890
2004	900	2005	920
2006	970	2007	1,000
2008	1,050	2009	1,090
2010	1,120	2011	1,120
2012	1,130	2013	1,160
2014	1,200	2015	1,220
2016	1,260	2017	1,300
2018	1,320		

230.145 Using Military Service To Establish QCs

Creditable military service earnings may be used as either compensation or wages to establish additional QCs. Under the RRA, an employee is credited with $160 a month in compensation for each month he was in creditable M/S after 1936 through 1967, and $260 for each month of M/S performed from 1968 through 1974. For months after 1974, an employee is credited with the actual amount of M/S basic pay that is creditable as SSA wages.

Under the SSA, wages of $160 are credited for each month of M/S that may count as wages. M/S performed after 1956 is creditable in the same manner as other wages. Military service cannot be used as wages under the SSA if the same period of service is being used as compensation by the RRB.

Military service used as wages may give the employee a fully insured status at the Social Security Administration based on wages only, a disability freeze or a DIB insured status at the Social Security Administration based on wages only, a permanently insured status for the vested dual benefit at RRB, or a work deduction insured status at the RRB.

Military service used as either wages or compensation may give the employee a fully insured status for the retirement age and service O/M, a disability freeze or a DIB insured status at the RRB for the retirement DIB O/M or an HI insured status at the RRB.

M/S after 1-1-75 used as compensation may give the employee a work deduction insured status at the RRB.

230.150 Gift Wage Credits For Japanese Internees

The 1972 SSA amendments provide the awarding of gift wage quarters for individuals of Japanese ancestry who were interned in the U.S. during the period 12-7-41 through 12-31-46. These gift quarters will be provided for any period after the individual attained age l8 and for which he was interned at a place within the U.S. operated by the U.S.

government for internment of individuals of Japanese ancestry. It is not necessary for the individual to have been a U.S. citizen before or during the period 12-7-41 through 12-31-46.

The RRA has no provisions for crediting service and compensation for these internees. However, if an inquiry is received, refer the individual to the nearest Social Security Administration district office so the gift QCs can be credited to his wage record.

230.151 Evidence Of Wages For PIA Recomputation

An employee's tier I PIA may be recomputed after the annuity beginning date, if the wages in the ABD year or later years are high enough to result in a PIA increase. An employee must be age 62 or a disability annuitant to receive a PIA recomputation.

Payment of the recomputation is usually delayed a year or more, because of the delay in posting lag wages under the annual reporting method. For example, wages earned in 2006 will generally be posted to the earnings record in early 2007. The tier I would then be recomputed by RESCUE. However, a PIA may be recomputed earlier, if the employee requests payment. The employee must submit evidence of the lag wages or self-employment income.

230.151.1 When Immediate Recomputation May Be Paid

The tier I PIA may be recomputed immediately following a year of earnings, if the wages are high enough to cause a PIA increase and the employee requests an immediate recomputation based on lag wages in the previous year. A written request must be submitted. Do not solicit a request for recomputation.

Occasionally, when computing permanent work deductions, BRB may request earnings information for the purpose of manual recomputation. This type of request should be rare, as BRB will only request a manual recomputation based on unposted earnings if the recomputation affects the permanent work deductions. In order to create a recomputation that affects the permanent work deductions, the unposted earnings would have to be at least one year earlier than the year for which permanent work deductions are being done. For example, if it is 1993 and BRB is doing permanent work deductions for 1992, a manual recomputation would only be necessary if 1991 earnings were still not posted to SSA's records. BRB would not pay a recomputation based on 1992 earnings at this time, unless the employee requested it as explained above.

230.151.2 Evidence of Wages

An employee must submit Form W-2 (Wage and Tax Statement) as evidence of wages for a recomputation. Form W-2 is the only acceptable evidence; it must also meet the following requirements:

A. Either Copy C (employee's copy) or Copy D (employer's copy) of Form W-2 must be submitted. Photocopies of either Copy C or Copy D are also acceptable.

Do not accept Copy A (Social Security Administration's copy), Copy B (for Federal income tax return), or Copy 2 (for state or local income tax return). Since the employee should not have possession of these forms, the authenticity of the forms would be questionable; and

B. Form W-2 must not have a checkmark in the "correction" block, and it must not be a corrected Form W-2C; and

C. The following information must be shown on Form W-2:

1. The employee's name and social security number;

2. The employer's name;

3. The FICA (Federal Insurance Contributions Act) taxes withheld;

4. The total FICA wages;

5. The total wages, tips, and other compensation (for income tax purposes);

6. Two Employer Identification Numbers (EIN):

a. The first must be a nine-digit number, which is assigned to the employer by IRS; and

b. The second must begin with the digits "69," which is assigned to the employer by SSA.

If the employee's only evidence is an unacceptable or incomplete Form W-2, he should submit a statement explaining the discrepancy. The evidence may be acceptable if there is a good reason for the discrepancy.

If the FICA wages on Form W-2 are different than the total wages, attempt to resolve the discrepancy according to FOM-I-1115.40.

230.151.3 Evidence of Self-Employment Income

The employee must submit photocopies of his income tax return, since SE income is not reported on Form W-2. The employee must submit:

A. Form 1040 - U.S. Individual Income Tax Return; and

B. Schedule SE - All self-employed individuals compute their self- employment income tax on Schedule SE (Computation of Social Security Self-Employment Tax); and

C. Employee's Statement - The employee must submit a signed statement that the tax return is a true and exact copy of the tax return filed with the IRS; and either

D. Schedule C - A self-employed individual, other than a farmer, reports his business income and expenses on Schedule C (Profit or Loss from Business or Profession); or

E. Schedule F - A self-employed farmer reports his business income and expenses on Schedule F (Schedule of Farm Income and Expenses); or

F. Form 1065 - Partners who are considered self-employed are credited with their distributive share or ordinary income whether or not actually distributed. These amounts are reported on Form 1065 (the partnership's informational return).

230.151.4 Development

When an employee requests an immediate recomputation of his tier I PIA, advise him to submit a written request. Also inform him that he must submit Form W-2 or the necessary SE forms. The recomputation may not be paid without evidence of wages or SE income.

BRB may ask you to contact the employee for evidence of lag wages or SE, when computing permanent work deductions for an employee whose earnings are high enough to cause a recomputation. Evidence may be required for more than 1 year, if the lag period includes the two previous years. If BRB requests evidence of lag wages for 2 or more years, the employee must always submit evidence for the earliest year(s) requested. A PIA cannot be recomputed for a later year if wages in the previous year(s) have not been established, since the PIA computation may be affected.

If the employee cannot submit the required evidence, advise BRB. The PIA recomputation will be handled mechanically at a later date, when the wages have been included on the earnings record.

230.152 Erroneous 1978 And 1979 Wage Postings

As a result of a program error, the Social Security Administration may have doubled or halved 1978 and/or 1979 wage postings for an unknown number of railroad employees and annuitants. This error occurred during the transition from quarterly to annual reporting. The Social Security Administration is in the process of correcting the records involved and will provide the RRB with a listing of affected annuitants after all the corrections are made.

This error may affect the following PIAs on the MARC file: Tier I PIA 1, SS DF PIA and SS Age PIA. Do not attempt to adjust IMPACT or SPAR amounts or annuity estimates because of this error. The amounts shown should be only a few dollars from the actual amount. In addition, there is no way to identify which cases are involved and the direction and amount of the discrepancy.

BRB will handle any overpayments and underpayments due to this problem on a case by case basis until the situation is corrected. Any accruals due will be paid and any

overpayments attributable to this error will be recovered as explained in FOM-I-1210.5 and 1210.10.

230.155 Retirement Case With Less Than 120 Service Months

If employees do not have the number of railroad service months required to pay an annuity under the Railroad Retirement Act when they retire, SSA has jurisdiction of the payment of their retirement benefits, and includes the railroad service in determining eligibility for and computing those benefits.

230.155.1 Developing An Application

When employees claim less than 120 months of railroad service and claim less than 60 months of railroad service after 1995, (including military service creditable as railroad service months, lag service or creditable railroad service based on pay for time lost), do not develop an application unless the employees insist on filing. If they insists on filing, submit the application and proofs for formal denial, but do not initiate any additional development, and do not release any G-88 series forms.

If individuals claim 120 months of service, or 60-119 months of railroad service with at least 60 months of railroad service after 1995, but it is doubtful that enough months can be established for them to be eligible, take the applications and available proofs as usual. However, do not initiate any additional development (e.g., do not schedule medical exams at RRB expense), and do not release form G-88A.2 unless lag railroad service may provide eligibility.

230.155.2 SSA Jurisdiction

When employees claim less than 120 months of railroad service and claim less than 60 months of railroad service after 1995 and you do not take an application from them, advise them to contact the servicing Social Security Administration district office if they have not done so already.

Do not request that Operations formally "transfer" credits in these cases. RRB mechanically transmits railroad employees' earnings information to SSA weekly, updating their records with the current RR earnings information. Since they already have the RR earnings, SSA will automatically use them in the computation of the SS benefits when employees have less than the required number of railroad service months.

If an application is filed with the RRB and it is determined that the employee does not have the required number of railroad service months, the Retirement Benefits Division sends copies of the application and proofs to SSA. Currently, Form RR-90, the printed record of railroad earnings, is also included with the material sent to SSA.

If the employee has Medicare coverage or will be age 65 within 3 months, SSA is advised that they have jurisdiction of the employee's Medicare.

SSA is not allowed to use railroad service if 120 months of service are established or if 60-119 months of railroad service with at least 60 months after 1995 are established. If an employee subsequently acquires the railroad service needed to qualify for an annuity under the RRA, the SS benefit must be recomputed to exclude the RR service. If railroad service was required for SS benefit eligibility, the SS benefit is terminated effective with the RRB's ABD.

If M/S creditable as compensation gives employees the required number of railroad service months, they may request either that:

1.	their M/S be used only as wages under the SSA, if they do not want an RRA annuity; or,
2.	their M/S credit used as compensation to give them 120 months or 60-119 months with at least 60 months after 1995.

If payment of the retirement annuity reverts to RRB because 120 service months or 60-119 service months with at least 60 months of service after 1995, have been established, RR credits are not "transferred" back to RRB, just as they are not "transferred" to SSA. The information remains in SSA's records, but cannot be used for SS benefits.

230.160 Jurisdiction Of Survivor Claims

Only one agency, RRB or SSA, can have jurisdiction of payment of survivor benefits on a deceased employee's account, even if both paid benefits while (s)he was still alive. It is RRB's responsibility to determine which agency has jurisdiction.

An exception is the payment of the residual lump sum (RLS). In specific circumstances, the RLS may still be payable by RRB even though SSA has jurisdiction of survivor benefits.

The deceased employee's insured status will determine the jurisdiction of payment of survivor benefits.

Whether paid by RRB or SSA, benefits are based on combined railroad and social security earnings.

Jurisdiction of the payment of survivor benefits should not be confused with certification of payment of the benefits to RRB by SSA. If SSA has jurisdiction of survivor benefits, that agency is responsible for paying those benefits and should not certify them to RRB for payment (see FOM I 705.10).

230.160.1 RRB Jurisdiction

RRB has jurisdiction of the payment of survivor benefits if the employee is completely insured under the Railroad Retirement Act (see FOM I 230.15). To be completely insured, an employee must have:

A. At least 120 months of creditable railroad service or at least 60 months of creditable railroad service after 1995; and

B. A current connection (C/C) with the railroad industry (including a deemed C/C (see FOM I 225.45)).

If these two requirements are met, RRB has survivor jurisdiction.

230.160.2 Social Security Administration Jurisdiction

If the employee does not have 120 months of railroad service or at least 60 months after 1995 or a C/C, SSA has jurisdiction of payment of survivor benefits.

SSA also assumes survivor jurisdiction if RRB had survivor jurisdiction, but the widow(er) elects payment of a residual lump-sum in lieu of future RRB benefits. In that case, RRB may not pay any further benefits. SSA may then pay survivor benefits **based on wages only** to any beneficiary entitled on the employee's account.

230.160.3 Mechanical Transmittal of Jurisdiction Determinations to SSA

A. Information transmitted to SSA - In April 2000, RRB transmitted a file to SSA containing all the jurisdiction determinations that were in our records at that time. Since then, a file has been transmitted weekly that updates SSA's records with current RR earnings information (see FOM I 230.155.3) and current jurisdiction determinations.

RRB transmits three jurisdiction codes to SSA, which are based on the jurisdiction indicators in PREH.

- "R" (RRB Jurisdiction)
- "S" (SSA Jurisdiction)
- "U" (Jurisdiction unknown or not determined)

B. SSA handling - SSA stores the mechanically transmitted jurisdiction information in their Disability, Railroad, Alien, Military System (DRAMS). If RR involvement is indicated when SSA processes an initial claim, their system searches DRAMS for the RR information. Based on the RR information in DRAMS, SSA takes the following action.

- RRB Jurisdiction - SSA sends RRB certified SSA earnings and any claims material, and notifies the claimant of RRB jurisdiction.

- SSA Jurisdiction - SSA verifies insured status using both SSA and RR earnings, then processes the claim.

- Jurisdiction Unknown - A request is transmitted to SSA's Office of Earnings Operations (OEO) to obtain jurisdiction information. The Division of Earnings Operations (DERO) of OEO sends an Administrative Message to RRB requesting an RR-90. The Claims Certification Unit (CCU) produces the RR-90 and sends it to DERO. Once SSA receives the RR-90, depending on the jurisdiction determination, SSA takes further action, as described above

C. Verification of Transfer of Information

To verify that a Transfer has been completed, access STAR. Generally, the Transfer categories on STAR will be SIS AT or SIS 73. View the closed work activity. If either these STAR categories shows that the action has been completed, there will be a DATE HANDLED. This will be confirmation that the Transfer has been processed. Assume all appropriate action has been taken.

In addition, Transfer materials are imaged. The imaged documents should be accessible in approximately 10 working days from the completion date on STAR.

230.160.4 Field Office Development

A preliminary jurisdiction determination must be made when notice of an employee's death is received. The APPLE Notice of Death screen displays the current connection code currently on PREH. If it does not appear correct, EDM, FSIS, Form Letter RL-94-F, and information personally provided by a survivor of the employee may be used to make a preliminary C/C determination (see FOM I 225.95) and determine if the employee had 120 months or at least 60 months after 1995. Refer to the APPLE instructions for SCREEN COMPLETION FOR EMPLOYEE DEATHS (FOM I 1581.21) for making and transmitting a C/C determination.

If any SSA benefits were being paid on the employee's account and a definite determination (Y or N) is entered into APPLE, APPLE will also mechanically initiate a teletype transmittal to SSA indicating which agency has jurisdiction.

A. Inquiry made at RRB - If a survivor inquiries about benefits at an RRB field office, handle according to the following directions.

1. If it appears that RRB has jurisdiction of survivor benefits, develop an appropriate application.

2. If RRB jurisdiction is uncertain, develop an appropriate application and advise the applicant that, if SSA has jurisdiction, HQ will transfer copies of the application and supporting documents to the Social Security

Administration. Forward the application as usual. HQ will advise the applicant if the application and proofs are forwarded to SSA. **Do not, under any circumstances, transfer an application to an SSA office.**

3. If it appears that SSA has jurisdiction of survivor benefits, refer the prospective applicant to the servicing SSA district office. If the applicant indicates that a survivor application has already been filed with SSA, send any claims material that may be needed to the SSA district office where the application was filed.

Form Letter RL-94a-F may be used to advise a survivor of the deceased employee that the employee apparently was not insured under the RRA at death. The letter suggests that the survivor contact the Social Security Administration district office if an application for survivor benefits has not been filed with that agency.

If SSA does not take an application and tells the prospective applicant that no benefits are payable under the Social Security Act, develop an application if (s)he inquires again at RRB, even if it appears there is no insured status under the RRA. If SSA does, in fact, have jurisdiction, HQ will advise SSA accordingly and forward the necessary transfer information to that agency.

B. Inquiry made at SSA - If an inquiry is made at an SSA office, that office will take action based on the information in DRAMS, as described in 230.160.3.B, above.

C. Request from SSA D/O to verify jurisdiction or transfer RR credits - Because RRB now regularly transmits jurisdiction and earnings information to SSA, under normal circumstances, an SSA district office should not need to contact an RRB field office to provide verification of jurisdiction or request a transfer of RRB credits to SSA.

If the SSA district office does contact your field office for this information and you need assistance from HQ to verify jurisdiction, contact a customer service representative in SBD. Use OUTLOOK, unless circumstances warrant calling directly.

230.160.5 Handling by HQ

A. RRB jurisdiction - If SSA has developed an application and RRB has jurisdiction, they will transfer the application and proofs to RRB. If there is an indication that an RRB field office is also developing an application, the HQ examiner will notify the field office that an SSA application will be used to pay benefits.

B. Social Security Administration jurisdiction – The transfer information is faxed to a SSA processing center. In general, if there is any SSA benefit being paid on the employee's account or to an auxiliary beneficiary (e.g. spouse) on his or her own account, the material is faxed to a SSA processing center. Refer to RCM 11 RR-3T for faxing instructions.

If the applicant has Medicare coverage or will be eligible within 4 months, Medicare jurisdiction is also transferred to SSA.

The applicant is notified when the application and Medicare coverage is transferred.

HQ forwards any claims material received after the initial transfer to SSA.

310.5 Entitlement Requirements

The Railroad Retirement Board (RRB) pays 2 types of disability annuities (D/A), based on either an occupational or total and permanent disability. Each type has different eligibility criteria.

DSUBD will release an RL-121f (Disability Allowance Notice) in all initial disability allowances. Please see DCM 11 RL-121f Disability Allowance Notice for additional information about this letter.

310.5.1 Occupational Disability

An employee must:

A. Be under full retirement age (FRA); and

B. File an application for a disability annuity; and

C. Cease compensated service to an employer under the Railroad Retirement Act (RRA); and

D. Have a current connection with the railroad industry; (The "deemed" current connection provision does not apply to occupational disability annuities.) and

E. Be permanently disabled for work in his regular railroad occupation; and either

F. Have completed at least 20 years of creditable railroad service; or

G. Have attained age 60 and have completed at least 120 months of creditable railroad service.

310.5.2 Total and Permanent Disability

An employee must:

A. Be under FRA; and

B. File an application for a disability annuity; and

C. Cease compensated service to an employer under the RRA: and

D. Be permanently disabled for all regular employment; and

E. Have completed at least 120 months of creditable railroad service; or

F. Acquired 60-119 service months, and at least 60 months are after 1995, and ABD is 1-2-2002 or later; however:

- Tier 1 is not payable unless the applicant has enough quarters of coverage (based on RR and SS earnings) to have an insured status under the Social Security Act. If under age 62, the applicant must have 20 QC's in the 10 years immediately preceding the onset of the disability.

- Tier 2 is not payable until age 62.

- If the applicant is under age 62 and does not have enough QC's to be insured under the SS Act, nothing is payable and the application must be denied.

NOTE: A disability annuitant is not required to relinquish his rights to return to railroad employment until FRA.

310.10 Evidence Requirements

Application (AA-1 and AA-1d)	Always.
Self-Employment Questionnaire (AA-4)	When the employee was self-employed • in the l2 months preceding the application filing date, or • at any time after leaving railroad work in cases where self-employment vs. LPE decision is needed for a C/C determination or for work deduction purposes, or • any time in the last 15 years immediately prior to the alleged onset date.
Notice of Protection of Filing Date for Social Security Benefits (RR-8)	Used with the Form AA-1 only if the employee is eligible for social security benefits or will be eligible within 3 months, and he wishes to use the filing date of the Form AA-l as the filing date of an application for social security benefits.
Verification of Worker's Compensation and Public Disability Benefit Information (G-204)	When an employee files a disability application, and he has received or expects to receive worker's compensation or public disability benefits and he does not have an award letter that provides the necessary information (see FOM-I-1720).

Proof of Age	Always; however, a D/A may be awarded before establishment of the date of birth when age is not a factor of eligibility.
Disability Background Report	When an applicant is present during the application process and the contact representative observes something pertinent or DBD requests a personal interview.
Vocational Report (G-251)	Always; however, it is not necessary to furnish Form G-251 for employees filing for a period of disability (DF) and/or early Medicare if they have previously filed a G-251 and have not worked since they last filed for disability.
Proof of Disability (medical evidence)	Always.
Proof of Military Service	If the employee performed military service which could be creditable under either the Railroad Retirement (RRA) or the Social Security Act (SSA).
Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-railroad Employment (LPE)(G-19L)	If the employee had LPE earnings after the ABD, and the ABD is in a prior year.
Notice of Retirement and Request for Service Needed for Eligibility (G-88A.2)	When a report of railroad service for the lag period is required.
Employee's Certification of Termination of service and Relinquishment of Rights (G-88)	If a disability annuitant under FRA becomes eligible for a supplemental annuity or if his spouse becomes eligible for an annuity, and his application Form AA-1d had a revision date before 5-76. Forward Form G-88 to RBD. This is an internal use form and is not to be released to the employer. A disability annuitant automatically relinquishes his rights at FRA.
Application for Substitution of Payee (AA-5)	If a substitute payee is required.

Check List for Employee, Spouse/ Divorced Spouse Annuity, and HIB Applications (G-230)	Always required for transmittal of an application.

310.15 Annuity Beginning Date

The "annuity beginning date" (ABD) of disability applications are explained in FOM-I-111.10.2 Retroactivity of applications is explained in FOM-I-112.6.

Instructions for changes in the ABD after the application is released to Headquarters are in RCM 6.2.41.

310.15.1 Waiting Period Requirement

The 1983 RRA amendments added this requirement for applications filed 9-l-83 or later. The annuity may not begin until the railroad retirement waiting period has expired. The waiting period begins the first day of the month after the month in which disability began, and continues for 5 calendar months. The waiting period cannot begin before the first day of the 17th month before the month in which the application is filed. This allows for the 5-month waiting period and the 12-month application retroactivity.

If the disability began the first day of the month, the waiting period still begins the first day of the following month. (This differs from the Social Security Administration's rule of counting that first month in the waiting period if disability began on the first day of the month.)

EXAMPLE: An employee's disability began l0-l-82. He filed an application on l0-l-83. His annuity cannot begin until 4-l-83, after the railroad retirement waiting period.

The railroad retirement waiting period is not the equivalent of a disability freeze (DF) for a disabled employee. A DF affects the employee's eligibility year for PIA computations, early Medicare eligibility and entitlement to a vested dual benefit. The railroad retirement waiting period only affects the ABD. A disabled employee must still have a DF for early Medicare and a vested dual benefit based on disability.

310.15.2 When a Waiting Period Is Not Required

A waiting period is not required if the employee becomes disabled again within 60 months of the month a previous railroad retirement disability annuity terminated. This rule applies even when the disabled employee was previously entitled before 9-l-83, when no waiting period was required.

310.15.3 Effect Of Railroad Work On The ABD For A Disability Annuity

In some disability cases an employee will attempt a return to railroad work. This return to railroad work can affect the ABD depending on when the disability application was filed and when the return to railroad work was attempted.

- If the return to railroad work occurs after the disability application is filed, the railroad work can be considered an unsuccessful work attempt (UWA). If the railroad work is considered an UWA, it would not have an effect on the annuity beginning date. However no annuity is payable for any month the annuitant was in compensated service.

- If the return to railroad work occurs before the disability application is filed, that railroad work is considered the employee's date last worked. This would mean the ABD could be no earlier than the day after the DLW.

310.20 Protected Filing Date

When a D/A application is denied, and the employee was eligible for an age and service annuity (A&SA) at the time the initial application was filed, the filing date of the original Form AA-1 (Application for Employee Annuity) may be used to protect the ABD of the age and service annuity. If the disability applicant indicated on Form AA-l that he will accept a reduced age annuity if he is not eligible for a disability annuity, a new application is not required to pay the reduced age annuity. RASI (Retirement Adjudication System Initial) will not drop the application from the system. Instead, the application will be recycled as a reduced age application, and the examiner will enter a reduced age IMPACT (Initial Monthly Partial Annuity Certification in Tiers). The employee's rights were relinquished on the Form AA-ld (Application for Determination of Employee Disability).

In addition, a denied A&SA application may be used to protect the beginning date of a D/A if the employee was eligible for a D/A when the initial application was filed. Full disability development is required.

310.25 Switch in Type Of Annuity After Award

When an annuity has been awarded, the type of annuity cannot be changed unless the original application is cancelled and a new application is filed. The new ABD is determined by the filing date of the new application.

However, an application for an A&SA may be reopened to pay a D/A, if the employee was disabled when the original application was filed. This usually occurs when an employee files for an A&SA, but also files for a disability insurance benefit at the Social Security Administration.

When the Social Security Administration notifies us that a period of disability (disability freeze) has been established, the disability programs section will ask you to develop a

Form AA-1d for payment of the D/A. The filing date of the age annuity application will be used to pay the D/A, even if the notice of disability was received more than 1 year after the original filing date.

If an employee who is receiving an A&SA does not file for a disability insurance benefit at the Social Security Administration, but he later informs the RRB that he was disabled when the A&SA application was filed, he must establish that he was deterred from filing for a D/A. Submit the employee's statement of why he did not originally file for a disability annuity, and develop a Form AA-Id and medical evidence. DPS will determine if the age annuity application may be used to pay a D/A.

310.30 Changing ABD to Qualify Under 60/30 Provision

A disability annuitant who has 30 years of service but an ABD before 7-1-74 may wish to cause termination of his disability annuity in order to qualify for a full annuity at age 60 under the 60/30 provision with an ABD of 7-l-74 or later. A disability annuity terminates when the annuitant dies or medically recovers from his disability.

Returning to railroad service does not necessarily cause termination of the D/A. Although the D/A is suspended for any month in which creditable RR service is performed, termination occurs only when the RRB determines that the individual has recovered based on medical evidence that shows he can resume the full range of duties of his regular railroad occupation for a reasonable period of time. Generally, the annuitant must return to his regular occupation for at least 12 months to demonstrate medical recovery. The decision on medical recovery is based on the facts in each individual case.

310.35 Relinquishment Of Rights For A D/A

A disability annuitant is not required to relinquish his rights before he attains full retirement age (FRA); at FRA, his rights are automatically relinquished by the RRB. If, before a disability annuitant attains FRA, he becomes eligible for a supplemental annuity or his spouse becomes eligible for an annuity, he must relinquish his rights before either of those benefits may be paid. A SUPP ANN may not begin before the first day of the 12th month prior to the month the employee relinquishes his rights.

A disability annuitant, who files a Form AA-Id with a revision date of 5-76 or later, authorizes the RRB to relinquish his rights when he becomes eligible for a SUPP ANN, or his spouse becomes eligible for an annuity. On the Form AA-Id, revised 5-84, a disability applicant also relinquishes his rights if he elects to receive a reduced age annuity if his disability is denied. In addition Form G-346, Employee Certification, with a revision date of 10-92 or later, includes a statement authorizing the RRB to relinquish his rights when the annuitant's spouse becomes eligible for an annuity.

However, certain employees may not wish to relinquish their rights before attaining FRA because of possible adverse effects on their benefits from the railroad. If an employee

does not wish to relinquish his rights before he attains FRA, secure a signed statement when he files the Form AA-ld.

Instruct the employee that he must notify the RRB if he does later wish to relinquish his rights before FRA. In order to prevent automatic payment of the SUPP ANN, mark the "To Be Prepared" box in item 13 of Form G-230. Also note in the remarks section on the Form G-230, "Rights not relinquished; see attached statement."

If a disability annuitant protests the RRB's automatic relinquishment of rights before it becomes effective, or if an individual cancels a previously submitted relinquishment of rights before it becomes effective, no annuities that require the individual's relinquishment of rights are payable. A disability annuitant cannot revoke the automatic relinquishment of rights in disability cases, once relinquishment of rights has become effective, even if the annuitant offers to refund the amount of the Railroad Retirement Act annuities that were paid based on the relinquishment of rights.

310.36 Child Care Dropout Years Provision

Under the 1980 Social Security Act (SSA) disability amendments, additional years may be dropped from the PIA (primary insurance amount) computation of a disability annuitant. Beginning 7-l-8l, a year may be dropped if the disabled employee was under age 37, not employed, and living with a child under age 3. See FOM l305.50.

DPS initiates development when this provision may apply.

310.37 Reduction for Worker's Compensation Or Public Disability Benefits

Tier I of a disability annuity is reduced when the employee is entitled to worker's compensation (WC) or a public disability benefit. The tier I of a spouse or divorced spouse annuity is reduced first, when the WC offset applies to the employee. The reduction applies to all disability annuities under the l974 Railroad retirement Act (RRA); it was implemented beginning with payments made 9-l-82 or later.

FOM-I-l20 has more information on WC/public disability benefits.

310.37.1 Worker's Compensation/Public Disability Benefit Defined

Worker's compensation (WC) payments are made to a worker because of a work-related injury or disease, under a Federal or state worker's compensation law or plan. Black lung benefits are included as WC payments if the application for black lung benefits was filed 7-l-73 or later.

Public disability benefits (called MEGACAP by the Social Security Administration) are periodic disability benefits paid under a law or plan of the United States, a state or state instrumentality, or a political subdivision of a state. Generally, these benefits are

government pensions based on disability, for employment that is not covered under social security.

Veterans Administration (VA) and welfare benefits are not included. FOM-I-120 lists other benefits that do not cause reduction.

The applicant may have the option of receiving his WC in a lump-sum payment in lieu of periodic payments. Electing such a lump-sum payment will not exempt his WC from offset; it will simply be prorated for offset purposes, based on the periodic rate to which he would have been entitled if he had selected installment payments. Generally, most lump-sum settlements are in lieu of periodic payments.

310.37.2 Applying the Reduction

The initial WC or public disability benefit reduction is equal to the difference between:

A. The family tier I total plus the amount of the WC/public disability benefit; and

B. The higher of the family tier I total or 80% of the employee's average current earnings (ACE) before his disablement. The ACE is defined in FOM-I-l20.

The reduction equals zero if the family tier I total plus the WC/public disability benefit is lower than 80% of the ACE. The reduction is never greater than the amount of the WC/public disability benefit. When a spouse or divorced spouse annuity is paid, the reduction is first applied to that annuity, then to the employee's annuity. The reduction no longer applies when the employee attains age 65, if his annuity began 9-l-8l or later, or his disability freeze began 3-2-8l or later.

310.37.3 Developing Worker's Compensation/Public Disability Benefit Information

Forms AA-l and AA-ld ask if the employee has received or expects to receive WC or a public disability benefit.

If the employee has an award notice or other verification of the WC/public disability benefit that includes the information necessary to make an offset determination (see FOM-I-1720), submit a copy and do not release a Form G-204. If the award letter or other verification provides some, but not all information, submit a copy but also release a Form G-204. Until the payment is verified, RBD will use the maximum WC rate payable by the state of the employee's residence for the offset amount, or the claimed public disability benefit amount, if it is higher. RBD will adjust the amount of the reduction, if necessary, after verification is received.

If the amount of the employee's monthly WC payment or public disability benefit increases or decreases, notify RBD. The tier I will be adjusted effective with the date of the change.

310.38 Offset For Non-Covered Service Pension and Public Disability Benefit

By definition a public disability benefit can, under certain situations, also be considered a NCSP. This occurs when a pension meeting the requirements as a NCSP is based on disability. When this happens, a manual calculation of PIAs 1, 9, 17 and SSEB is required for a NCSP-reduced PIA #1, in addition to testing for PDB offset that is applied to the tier 1 benefit. The NCSP-reduced PIA #1 is used in the PDB offset computation. A NCSP not based on disability is not considered a public disability benefit.

If a disability applicant receives a PDB, which also meets the requirements as a NCSP, the Tier 1 calculation must be adjusted for both NCSP and PDB reduction.

While it may appear that the disability tier 1 is being reduced twice (NCSP & PBD) for the same benefit, normally the total reduction is the same when compared to a PDB only reduction.

EXAMPLE:

NCSP REDUCED PIA vs. FULL PIA		
	PDB Offset Formula	**Same Case with NCSP Only**
PDB	$1000.00	$1000.00
PIA (Full)	+1000.00	+ 700.00 (NCSP Red. PIA)*
	$2000.00	$1700.00
-80% ACE	-1500.00	-1500.00
PDB Deduction	$ 500.00	$ 200.00
Net Tier I	$ 500.00	$ 500.00

In each instance above, the net tier 1 amount is the same.

*Because the PIA 1 is NCSP reduced, the PDB offset becomes $1 for $1 reduction.

RRB follows the same rules as SSA for purposes of computing PIA 1 for NCSP and PDB. Age and service annuities apply only the NCSP reduction. Disability annuities must consider both.

Any PDB offset ends at age 65, while the NCSP reduction continues until death.

310.40 Suspension of D/A

310.40.1 Nonpayment Months

A D/A is not payable for any month in which an annuitant:

A. Works in RR service; or

B. Earns more than the monthly earnings amount (See FOM1 1125.5.2) after deduction of disability related work expenses in employment or self-employment of any type.

Exception: Payments to volunteers under The Domestic and Volunteer Service Act of l973 do not eliminate eligibility for any government program. That act consolidated the domestic volunteer programs throughout the Federal government under the ACTION agency. The services are meant to be provided by volunteers, and stipends or allowances are paid to enable volunteers to effectively carry out their assignments. Earnings under the following programs do not affect payment of a disability annuity:

1. Title l - National Volunteer Antipoverty Programs.

    a. Part A - Volunteers in Service to America (VISTA).

    b. Part B - Service-Learning Programs.

    c. Part C - Special Volunteer Programs.

2. Title II - National Older American Volunteer Programs.

    a. Part A - Retired Senior Volunteer Program.

    b. Part B - Foster Grandparent Program and Older American Community Service Programs.

3. Title III - National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.

310.40.2 Administrative Suspensions

A D/A may be suspended if the annuitant under FRA fails to submit proof of the continuance of disability, as requested by the RRB.

310.45 Termination Of D/A

A D/A terminates as of the last day of:

A. The month before the month in which the annuitant dies; or

B. The second month after the month in which the annuitant's disability ceased.

A disability annuitant whose annuity was terminated because his disability ceased must file a new application to receive any annuity for which he may later qualify. He will be given credit for any additional years of service he acquires.

A disability annuity technically terminates at FRA, when the annuity is payable based on age. This does not change the record of the type of annuity paid (occupational or total and permanent disability) or cause any adjustment in the annuity rate. The disability annuitant is simply no longer subject to the disability work restrictions when he attains FRA, but is instead subject to the work restrictions of an age and service annuitant.

310.50 Deductions When Annuitant Earns More Than $920 In A Month After Deduction Of Disability Related Work Expenses

A D/A is not payable for any month in which the annuitant is under FRA and earns more than $920 in employment or self-employment of any kind after deduction of disability related work expenses except volunteer work under The Domestic and Volunteer Service Act of 1973 (see FOM-I-3l0.40.l).

For years in which a disability annuitant's earnings in non-RR employment do not exceed $11374.99, any annuities and penalties withheld during the year because of monthly earnings in excess of $920 will be payable after the end of the year. If an annuitant's earnings exceed $11499.99 in a year, annuities and penalties withheld in excess of 1 month's annuity (and 1 penalty) for each $920 of earnings over $11499.99 will be payable after the end of the year. For this purpose, fractions of ($460.00 or more are counted as $920).

For instance, an annuitant who earned $11499.99 earned $459.99 over the $11,040.00 limit. Since this excess is less than $460.00, no work deductions will be imposed. FOM-I-11 has more information on work deductions.

310.55 Adjusting Earnings For Special Expenses

The 1980 Social Security Act Disability amendments (PL96-265) provide that the cost of certain impairment-related items and services that a person needs in order to work can be deducted from the earnings used to determine whether a disability annuitant has performed substantial gainful employment. The cost of these items and services, called impairment-related work expenses (IRWE), can be deducted even if the services and items are also needed for non-work activities.

Effective January 1, 1989, the cost of these same items and services can also be deducted from a disability annuitant's earnings which are used to determine whether work deductions must be imposed. Prior to the 1988 amendments, these expenses

were not deductible for this purpose. When these expenses are deducted for work deduction purposes, they are called disability related work expenses (DRWE).

310.55.1 Deductible Expenses

Deductions from earnings may be made for DRWE and IRWE for the costs of attendant care services, medical devices, equipment, prostheses and routine drugs and medical services necessary to control the impairment. These types of expenses apply to employee, widow, and child disability annuitants who require assistance to work, whether or not such assistance is also needed to carry out normal daily functions. The amount of expenses that may be deducted is subject to reasonable limits, and will apply only if the beneficiary or his family paid for them. A chart of deductible expenses is presented as Appendix J (paper appendix in the Supplemental Procedure Manual). This information is also contained in DCM 10.4.6.

310.55.2 Development of IRWE

The disability post section (DPS) or the beneficiary compliance (BC) will request the field office to obtain certain information about extraordinary IRWE and information from employers about the value of services, when all other information about the continuance of disability is developed. Determine if there was any impairment-related work expenses that the annuitant or the annuitant's family paid that were necessary for the annuitant to work. If there are any IRWE, also develop information about the nature and the monthly amount of the expenses. DPS will determine if the IRWE are extraordinary, and the amount, if any, to be deducted from the earnings for the work test.

310.55.3 Verification

To determine whether expenses may be excluded, the RRB may contact the appropriate source for general information about special expenses that an annuitant may have. Contact may also be made to verify an annuitant's allegations regarding:

- Need for service or item which is:
    - required to control a disabling condition thereby enabling work,
    - essential to performance of physical and/or mental demands of job,
    - necessary in preparing for trip to work, in traveling to and from work, or assistance needed immediately upon returning from work.
- Payment for service or item, or where annuitant cannot provide proof of the amount.

310.55.4 Development of DRWE

Annuitants with disabilities and monthly earnings over $920 in 2018 are being instructed to contact field offices in order to establish DRWE. Develop as described in 310.55.1 and forward to DBD.

EXAMPLE 1: A disabled annuitant who uses a wheelchair reports that he/she will have monthly earnings of $2,000 per month and $24,000 per year as an office worker in the year 2017. He has the following disability related work expenses:

- $3,000.00 Vehicle modification to add electric lift
- $1500.00 Home modification to add ramp
- $6,539.20 Operating costs (monthly mileage)

Any nonrecurring expenses such as the lift and ramp can be attributed to the month they were incurred or prorated on a monthly basis for the whole year as the annuitant chooses. If the non-recurring expenses are allocated on a monthly basis for the whole year, the monthly expenses that can be deducted are $919.93 ($11,039.20 divided by 12). The monthly countable earnings are reduced to $1080.07 and the yearly total is $12,960.84. The annuitant's excess earnings equal the difference between $12,960.84 and $11,040.00, or $1,920.84. Using the $920 earnings withholding amount effective in 2018, this annuity is subject to withholding for two months in that year.

If the non-recurring expenses ($4,500) are used during the month they occurred (in this case January), the monthly countable earnings for January are -0-. The monthly countable earnings for February through December are $1405.53 ($2,000 less $594.47, the monthly mileage costs). The yearly total in this example would then be $15460.83. Using the $920 earnings withholding amounts effective in 2018, this annuity is subject to withholding for four months.

In this example, it is to the annuitant's advantage to allocate the non-recurring expenses over the whole year.

EXAMPLE 2: A disabled annuitant who is blind and therefore, needs a seeing eye dog to get to work, earns $2,000 per month starting in March 2009. She has the following disability related work expenses:

- $240-per month taxicab expenses (because seeing eye dogs are not allowed on public transportation in the community)
- $500 - vision aid for the blind

The aid which is a nonrecurring expense can be attributed to the month it was incurred or prorated on a monthly basis. By allocating the nonrecurring expenses on a monthly basis, the monthly countable earnings are reduced to $1,718.33. The yearly amount

earned is therefore $17,183.30. Using the new $790 earnings withholding amounts effective in 2012, this annuity is subject to withholding for the whole year.

310.60 Effect of Work And Earnings On D/A

A D/A is not payable for any month in which an annuitant is under FRA and works in RR employment, or earns more than the monthly earnings amount (See FOM1 1125.5.2) after deduction of disability related work expenses in employment or self-employment of any type, except volunteer work under The Domestic and Volunteer Service Act of l973 (see FOM-I-310.40.1).

310.60.1 Annuitant Returns to RR Service

If an annuitant returns to RR employment, RBD will suspend payments immediately; Form G-88 (Employee's Certificate of Termination of Service and Relinquishment of Rights) will be sent to the annuitant with a letter explaining the suspension. If the annuitant returned to RR service, information about the supplemental annuity closing date will be included.

DPS will review the case after 6 months to determine if the employee's disability has ceased. Additional information may be requested by DPS, such as an earnings breakdown, information about impairment-related work expenses, Form G-254 (Continuing Disability Report), memorandum from the contact representative to the DPS giving observations of the annuitant's appearance, stance, walk, behavior, etc., and Form G-250 (Report of Physical Examination). Unless medical recovery occurs first, a determination will be made at the end of the appropriate work period (usually 9 months) as to whether the work may be reconciled with the disability rating. If the employee's work is not reconciled with the disability rating, disability may cease based on the employee's work and earnings, even though he may not have medically recovered from his disability.

310.60.2 Annuitant Begins Other Work

A disability annuitant must report all work and earnings. Payments will be suspended immediately if the annuitant earns more than the monthly earnings amount (See FOM1 1125.5.2 in any month after deduction of disability related work expenses. A letter explaining the suspension will be sent to the annuitant.

NOTE: Under the 1988 Amendments, work for the annuitant's last non-railroad employer is subject to the same restriction as of other types of annuities i.e., the tier II and supplemental annuity if any are subject to deduction. This deduction is $1 for $2 in earnings not to exceed 50% of these components.

DPS will review the case after 6 months to determine if the employee's disability has ceased. Additional information may be requested by DPS, such as an earnings breakdown, information about impairment-related work expenses, Form G-254, memorandum from the contact representative to the DPS giving observations of the

annuitant's appearance, stance, walk, behavior, etc., and Form G-250. Unless medical recovery occurs first, a determination will be made at the end of the appropriate work period (usually 9 months) as to whether the work may be reconciled with the disability rating. If the employee's work is not reconciled with the disability rating, disability may cease based on the employee's work and earnings, even though he may not have medically recovered from his disability.

310.65 Annuitant Works and Has A Disability Freeze

If the annuitant has a disability freeze (DF), a determination of continuance of disability under the Social Security Administration's rules is required. Disability under the Social Security Act (SSA) ceases when the individual's physical or mental impairment is no longer of such severity as to prevent him from performing substantial gainful activity (SGA) or, subject to the trial work period provisions, he demonstrates the ability to engage in SGA by working (except in certain cases based on statutory blindness).

Even though the determination of continuance of disability is required under the SSA, the work restrictions of the Railroad Retirement Act (RRA) still apply. A disability annuity will be suspended for each month an annuitant earns more than the monthly earnings amount (See FOM1 1125.5.2) after deduction of disability related work expenses in employment or self-employment of any type, except volunteer work under the Domestic and Volunteer Service Act of l973 (see FOM-I-3l0.40.l).

310.65.1 Substantial Gainful Activity

Substantial gainful activity means the performance of significant duties over a reasonable period of time in work for remuneration or profit or in a kind of work generally performed for remuneration or profit. The duties must be useful in the accomplishment of a job or the operation of a business and they must have a degree of economic value. Work performed in self-care or one's own household tasks, and non-remunerative work in hobbies, institutional therapy, or training school attendance, etc., does not by itself constitute SGA. Volunteer work for VISTA or other programs under the Domestic and Volunteer Service Act of l973 (see FOM-I-3l0.40.l) does not demonstrate an ability to engage in SGA.

NOTE: Although annuitants with a period of disability or disability based on total and permanent disability can earn up to the monthly earnings amount (See FOM1 1125 5 2) in each month without incurring work deductions, the application of SGA rules could cause the termination of their annuity or period of disability.

The following are general statements regarding earnings as a reflection of SGA:

A. Earnings averaging over $1,180.00 a month will ordinarily demonstrate an individual's ability to engage in SGA; (See DCM 10.4.4b for a history of SGA amounts)

B. Individuals who are statutorily blind are deemed not to be engaging in substantial gainful activity if their monthly earnings from work activities do not exceed $1,970.00. (See DCM 10.4.4b(ii)(c) for a history of SGA for statutorily blind individuals prior to 2018.)

310.65.2 Application of the Trial Work Period Under SSA Rules

Under the SSA, a 9-month trial work period is allowed. The individual who has not medically recovered may work in as many as 9 calendar months (which do not have to be consecutive) during which his work will not be used as the basis for determining that disability has ceased. Effective 1-92, the TWP is complete only when the disabled annuitant completes 9 service months on or after 1-92 and within 60 consecutive months. Any month in which a person performs services is considered a trial work month; work is considered services if it is performed as an employee for more than the yearly level See DCM 10.5.4). When work is performed as a self-employed person, it is considered services if the net earnings are more than the yearly level See DCM 10.5.4) or if the time spent in work is more than 80 hours a month.

After the 9 months of services, the individual's work will be considered in determining whether he has demonstrated the ability to engage in SGA. Any such services (including the services performed during any of the 9 months) may be considered in determining whether he is able to engage in SGA for any month after that.

A. A trial work period applies if a disabled employee annuitant:

1. Returned to work; and

2. Has a disability freeze; and

3. Is entitled to the disability overall minimum (DIB O/M) increase, even if the increase does not apply.

B. A trial work period extension may apply if the employee is receiving the DIB O/M, or if a disabled child is included in the O/M (see FOM- I-325.95).

C. A trial work period does not apply if:

1. No waiting period for DIB O/M benefits was required; or

2. The employee already had a trial work period within the same disability freeze period; or

3. The employee is under age 55 and statutorily blind but he is not entitled to the DIB O/M because he is engaging in SGA; or

4. The employee is age 55-month prior to FRA and is statutorily blind UNLESS:

a. He returns to work which is comparable to the activity he engaged in during the 10 years prior to his blindness or age 55, whichever is later; or

b. His last previous work activity was terminated because of impairment or other reasons related to his capacity to engage in SGA and his return to work involves a significant vocational adjustment.

NOTE: This section pertains to a trial work period under the Social Security Act. Under the Railroad Retirement Act a trial work period may apply to an occupational disability annuitant whether or not that annuitant has a disability freeze.

310.70 Work Reconciled With Disability

If an annuitant's work is reconciled with his disability, payments will continue unless the annuitant returned to RR service or is earning more than the monthly earnings amount (See FOM1 1125.5.2) after deduction of disability related work expenses in any month. The annuitant should continue to report any changes in his work or earnings.

310.75 Applicant Has Medically Recovered From Disability

Benefits will be terminated if the annuitant has medically recovered from disability under the RRA. The D/A will be paid through the end of the second month after the month in which the disability ceased.

310.80 Reinstatement and Re-computation Of Annuity

When annuity payments were suspended because the annuitant returned to RR service, payments are reinstated effective with the first day of the month following the date last worked. A disability annuitant under full retirement age must still be disabled to have payments reinstated.

310.80.1 RR Service Ceased

A. Field office action -- The annuitant must complete Form G-88 to have payments reinstated. A new application is not required. The field office should also send an E-mail message to P&S Inquiry - Policy and Systems e-mail box, attention RAC to add the employee to the monthly G-88A.1 listing to verify the DLW-RR and DRR (when applicable). The E-mail should include the employee's payroll name, SSN, Job Title, Dept-Div, Location, DLW-RR, Date Last Carried on Payroll (if later), DRR (when applicable) and the BA number of the employee's last railroad employer.

A disability annuitant under full retirement age must still be disabled; you should obtain an earnings statement with a monthly breakdown for the current and

previous calendar years, information about impairment-related work expenses, a completed Form G-254, and Form G-250 if the field office file indicates these forms have not been submitted within the last l2 months. If the contact representative has personal contact with the annuitant and observes something pertinent, submit a report of personal observations.

B. Headquarters action -- RBD will reinstate the annuity when the Form G-88 is received. If the Form G-88A.1 listing is returned to correct the date last worked or date rights relinquished, RBD will review the file and make any necessary adjustment.

When the railroad submits its annual report after the end of the year, RBD will determine whether or not an increase is payable. If applicable, the annuity will be recertified and an adjustment letter will be sent to the employee with a copy to the district office.

If, after the annual report is received, it is determined that inclusion of the additional service would not yield a payable increase, a Form Letter RL-23b will be sent to the employee with a copy to the field office, advising that an increase is not payable.

310.80.2 Annuitant Earned More Than $880 After Deduction of Disability Related Work Expenses

Disability Related Work Expenses

When a D/A was suspended because the annuitant had earnings from employment or self-employment of more than the monthly earnings amount (see FOM1.1125.5.2) after deduction of disability related work expenses, payments are reinstated effective with the earlier of:

A. The first day of the month in which the annuitant does not have earnings of more than the monthly earnings amount after deduction of disability related work expenses, and is still disabled; or

B. The first day of the month in which the annuitant attains Full Retirement Age. The disability annuitant is no longer subject to RR disability work restrictions at Full Retirement Age.

A new application is not required if the D/A was suspended because of excess earnings; you should, however, obtain an earnings statement with a monthly breakdown for the current and previous calendar years and information about impairment-related work expenses and disability related work expenses. Also obtain completed Forms G-254 and G-250, and a memorandum from the contact representative to DBD giving observations of annuitant's appearance, stance, walk, behavior, etc., if the field office file indicates these forms have not been submitted within the last 12 months.

310.80.3 Annuity Payments Previously Terminated

When a D/A was previously terminated due to medical recovery, secure a new application. If an annuitant reports his D/A was previously suspended, but the record of a suspended annuity does not appear on PREH, medical recovery may be assumed in the absence of evidence to the contrary if the annuitant returned to his previous job and actually performed all the regular duties of that job for at least 12 months.

310.85 Vested Dual Benefit Entitlement Requirements

Under the 1974 RRA, an annuitant who is entitled to social security benefits in addition to a railroad retirement annuity does not receive the full advantage of receiving both benefits. That is because a railroad annuity must be adjusted for the amount of social security benefits payable. However, an annuitant will benefit from social security coverage if he is vested. The vested annuitant receives an additional annuity amount called a vested dual benefit (VDB), which is added to the annuity computation. It is designed to simulate the additional amount that the employee would receive because of entitlement to both RR and SS benefits. Although it is not necessary for the employee to be on the rolls on 12-31-74 to be vested, more stringent vesting requirements must be met by employees who come on the rolls after that date.

Because of separate funding, VDBs may be subject to a percentage cutback if the total amount appropriated is insufficient to pay total VDBs for that fiscal year.

The VDB benefit may not be paid without first determining the vested status of the annuitant. In the case of the disability annuitant, this determination may at times depend on whether he qualifies for a disability freeze. Unlike a non-disability case, the disability annuitant may not be vested because of insufficient quarters of coverage (QC) as of 12-31-74, but by qualifying for a disability freeze and excluding the DF years from the elapsed years, he may then meet the QC requirement and be vested for a VDB benefit.

EXAMPLE 1: An employee (date of birth 6-15-20) has 26 years of RR service and 28 QCs as of 12-31-74. He will attain age 62 in 1982. Since 31 years elapse after 1950 up to but not including l982, he would need 31 QCs to be fully insured under the SSA.

Under these conditions the employee would not be vested as of 12-31-74, even though he has over 25 years of RR service and a C/C.

The employee becomes disabled and is granted a disability freeze with an onset date of 6-1-76. The 6 disability freeze years 1976-1981 are dropped as elapsed years leaving a total of 25 elapsed years. Now the employee, still assuming he meets all other requirements, is vested since only 25 QCs are required for the permanently insured status, and he has 28 QCs.

EXAMPLE 2: An employee (date of birth 4-9-20) has 28 years of RR service and 27 QCs as of 12-31-74. He becomes disabled and is granted a disability freeze on 6-1-79. At the time he has a total of 33 QCs.

Based on his disability freeze, he needs 28 QCs for a permanently insured status, because 28 years elapse after 1950 up to but not including 1979. Since he has only 27 QCs on 12-31-74, he would not be vested and would not be eligible for a VDB at age 62 or earlier. This applies even though he could qualify for a DIB at SSA beginning in November 1979 (after the 5-month waiting period beginning 6-1-79), assuming he also meets the 20/40 test at SSA.

The entitlement requirements for a disability annuitant to be entitled to a VDB are the same as those for an A&S annuitant (see FOM-I-305.50).

310.90 When the Vested Dual Benefit Is Payable

The vested dual benefit (VDB) amount becomes payable to the annuitant at the earliest point at which he would qualify for an SS benefit or on his ABD, whichever is later. If the annuitant is entitled to a VDB benefit because he is the spouse of a person who is fully insured under the Social Security Act (SSA) as of 12-31-74 (or earlier in some cases), that person must be entitled to a retirement insurance benefit (RIB) or a disability insurance benefit (DIB) for the annuitant to be eligible for an SS benefit. Therefore, the VDB may not be paid prior to the beginning date of the wage earner's SS benefit.

The earliest point at which the annuitant would be eligible for an SS benefit (depending on whether eligibility is based on his own wage record or someone else's wage record) is:

310.90.1 Eligibility Based on Own Wage Record

A. Age 62 if he is eligible for a reduced RIB.

   If the employee attains age 62 on 9-l-8l or later (date of birth 9-2-l9 or later), the VDB may not be paid until the first full month the employee is age 62. The VDB is payable in the month the employee attains age 62 only if his 62nd birthday is on the first or second day of the month. If the employee's 62nd birthday is on or after the third day of the month, the VDB may not begin until the first day of the next month; or

B. Any age if he is eligible for a DIB at the Social Security Administration. Since the Social Security Administration would not pay the DIB until after the expiration of the 5-month waiting period, the VDB would also not be payable until after the 5-month waiting period. The annuitant does not have to receive a social security DIB to be eligible for a VDB, but he does have to be eligible for a DIB at the Social Security Administration.

In order to be eligible for a DIB at the Social Security Administration and a VDB based on disability, an annuitant must have a DF and he must normally meet the 20/40 current work test. He must have had at least 20 wage QCs during the 40 QC period ending with the quarter in which the disability waiting period begins or, if no waiting period is necessary, in which he is under a disability and for which his application is effective. However, a blind disabled person is eligible for a DIB and VDB based on disability without meeting the 20/40 requirement. A blind person only has to meet the regular insured status requirements.

For VDB purposes, the qualifying 20 SS wage QCs need not have been acquired prior to 1975. When the annuitant acquires these 20 QCs is immaterial as long as he has sufficient SS wage QCs prior to 1975 to be permanently insured under the SSA on 12-31-74.

A person who meets the SS disability requirement but does not meet the 20/40 test may not receive a VDB until he is eligible for a reduced RIB at age 62.

EXAMPLE: An employee (date of birth 5-17-21) has 15 years of RR service, RR service in 1974 and 28 QCs as of 12-31-74. Since 32 years elapse after 1950 up to but not including 1983, he would need 32 QCs to be fully insured under the SSA.

However, he becomes disabled and is granted a disability freeze with an onset date of 5-7-78. The 5 DF years 1978-1982 are dropped as elapsed years, leaving a total of 27 elapsed years. The annuitant is vested since only 27 QCs are required for permanently insured status and he has 28 QCs.

This annuitant meets the 20/40 test based on SS QCs alone; therefore, he is eligible for a DIB. Since the Social Security Administration would not pay the DIB until after the 5-month waiting period, the VDB would not be payable until 11-1-78. The annuitant does not have to actually receive a DIB to be eligible for a VDB.

310.90.2 Eligibility Based on Someone Else's Wage Record

All the requirements in FOM-I-305.51 must be met for payment of the VDB 8-13-81 or later. The earliest point at which an employee would be eligible for an SS benefit on someone else's wage record is:

A. Age 62 if the employee is eligible for a wife's or husband's SS benefit; or

B. Age 60 if the employee is eligible for a widow(er)'s or remarried widow(er)'s SS benefit; or

C. Age 50 if the employee is eligible for a disabled widow(er)'s SS benefit; or

D. Any age if the employee is eligible for a mother's SS benefit based on having in her care a child entitled to a child's SS benefit on her husband's or deceased husband's wage record.

310.95 Preservation Of Vested Dual Benefit For D/A Who Recover

If an employee in a 1937 Railroad Retirement Act (RRA) case meets the vested dual benefit (VDB) requirements when his 1937 act disability annuity is converted under the 1974 RRA, and he is entitled to his annuity in both December 1974 and January 1975, his VDB entitlement is preserved if his annuity is terminated because he recovers from his disability. The VDB amount payable when a later age and service or disability annuity is awarded equals the 1974 RRA conversion amount paid previously. This amount may not be adjusted for COL increases or recomputed under 1974 RRA rules.

In a 1974 RRA case, if the employee is vested for a VDB solely because his disability freeze reduced the QC requirement and he later recovers from his disability, his VDB entitlement must be re-determined when he later becomes entitled to an age annuity at age 62. If he does not have enough quarters of coverage to be fully insured under the Social Security Act (SSA) at age 62, he will not be entitled to a VDB at age 62.

310.100 Disability Freeze Conflict Cases

There are cases in which the RRB grants a DF to a beneficiary but the Social Security Administration either denies the period of disability (e.g., no DIB insured status based on wages only) or establishes a different disability onset date. In these cases, although the DF established by RRB (based on combined wages and RR compensation) may be used in awarding the disability annuity, the annuitant's vested dual benefit (VDB) eligibility and date of entitlement are based on the wages only disability onset date established by the Social Security Administration. If that agency denies the period of disability, no VDB benefit based on disability may be paid.

310.101 Waiver of Vested Dual Benefit Entitlement

When entitlement to a vested dual benefit (VDB) causes a decrease in the annuity rate, the annuitant may wish to waive entitlement to the VDB. An annuitant may request VDB waiver at any time. However, RBD will initiate the development of VDB waiver only in the following situations:

A. The VDB entitlement causes the annuity rate to decrease. This may happen if the tier II reduction for the RIB/DIB VDB exceeds the amount of the RIB/DIB VDB. The cases affected are generally 1974 Railroad Retirement Act (RRA) conversion cases, or cases in which an auxiliary VDB had been paid; or

B. The VDB cutback percentage is greater than 75%. The tier II reduction for VDB entitlement is 25% of the VDB. If the VDB is cut back more than 75%, the tier II

reduction will exceed the amount of the WF payable. VDB entitlement, therefore, will cause the annuity rate to decrease.

Whenever entitlement to an RIB/DIB VDB is waived, the annuitant's tier II is not reduced for the VDB. The employee's VDB waiver does not affect any other annuity; the spouse tier II and the RRA maximum computation will be based on the employee's tier II after reduction for VDB entitlement. The spouse may still receive the spouse VDB, if the conditions for payment before the 1981 amendments are met.

The effective date of the waiver and other general information is in FOM-I-110. If the VDB has not been awarded, the waiver may be effective with the WF date of entitlement. If the VDB has been paid, the rules in FOM-I-110 apply.

When RBD initiates development in the situations listed in this section, you will receive a memorandum which explains the advantages of waiving the VDB. The memo will include the annuity rates with and without the VDB, and the effect on annuity payments if the VDB is not waived (e.g., an overpayment). You should contact the annuitant to explain the advantages of waiving the VDB. Your response to RBD should be:

1. If the annuitant agrees, a clear and unambiguous statement waiving VDB entitlement; or

2. If the annuitant does not wish to waive the VDB, notify RBD; or

3. If the annuitant does not respond immediately, notify RBD of the date you contacted the annuitant. If RBD has not received a response within 60 days of the date of your contact, the VDB will be paid and any overpayment will be recovered. An extension of the time for response will be granted if requested.

310.105 When Vested Dual Benefit Entitlement Ends

Vested Dual Benefit (VDB) payments end with the earliest of the following dates:

A. The last day of the month before the month in which the annuitant dies; or

B. The last day of the month before the month of termination of entitlement to a DIB or wife's, husband's, mother's, or widow(er)'s benefit under the Social Security Act (see note after C.); or

C. The last day of the second month after the month in which the annuitant is medically recovered from his disability. In a DF conflict case the date the VDB terminates is based on the date the Social Security Administration terminates the disability (see following note).

NOTE: The VDB is not terminated when one SS benefit is terminated because the annuitant becomes entitled to a new type of SS benefit (e.g., from a reduced RIB to a DIB, from a widow's to a remarried widow's benefit, DIB converted to RIB at FRA, etc.) since the annuitant is still eligible for an SS benefit. However, if

there is a change in the type and rate of the SS benefit, the VDB benefit will be recomputed. If VDB entitlement was established before 8-13-81, the VDB may be recomputed even if the change in computation is 8-13-81 or later.

315.1 Supplemental Annuity Background

315.1.1 General

In 1966 the Railroad Retirement Board (RRB) began paying supplemental annuities, in addition to regular age and service annuities, to railroad employees who met certain criteria. At that time, eligibility for the supplemental annuity was limited to those employees who were age 65 or older with 25 or more years of railroad service and who were first awarded regular retirement annuities after June 30, 1966.

The Railroad Retirement Act of 1974 (RRA) extended supplemental annuity eligibility to those employees who were age 60 or older with 30 or more years of service and who were first awarded regular age and service annuities after June 30, 1974.

The 1981 Amendments to the RRA began phasing out the supplemental annuity by adding the requirement that the employee must have at least one month of creditable railroad service before October 1, 1981 to be eligible for the supplemental annuity. Therefore, a supplemental annuity is not payable to an employee who does not have at least one month of service before October 1, 1981, even if they meet all other age and service requirements.

315.1.2 Earliest Supplemental Annuity Eligibility Dates Under 1937 and 1974 Acts

A. Earliest Eligibility Dates

The date an age and service annuity or disability annuity is awarded is the voucher date of the award, i.e., the date the award is processed for payment.

Beginning in 1966, the employee's age and service annuity had to be vouchered after June 1966 for them to be eligible for a supplemental annuity at age 65 with at least 25 years of service.

Beginning in 1974, the employee's age and service annuity had to be vouchered after June 1974 for them to be eligible for a supplemental annuity at age 60 with 30 years of service. In addition, the supplemental annuity could not begin to accrue before January 1, 1975.

B. Partial Award Before Earliest Eligibility Date

An annuity is considered first awarded as of the date of the partial award. If the employee annuity was partially awarded before July 1, 1966, the annuitant did not qualify for a supplemental annuity.

If the employee annuity of an individual age 60-64 was partially awarded before July 1, 1974, the annuitant did not qualify for a supplemental annuity until he attained age 65.

C. Application Withdrawn Before Earliest Eligibility Date

An individual who withdrew an employee annuity application for an annuity awarded before July 1, 1966, then re-applied for the age and service annuity after June 1966, did not qualify for a supplemental annuity.

An annuitant age 60-64 who withdrew an employee annuity application for an annuity awarded after July 1, 1966, but before July 1, 1974, then re-applied for the employee annuity after June 1974, did not qualify for a supplemental annuity until he attained age 65.

D. Exceptions

Individuals were deemed to meet "date annuity awarded" requirement for supplemental annuities if they were awarded disability annuities before July 1966, or before July 1974, and they met all of the following conditions:

1. They recovered from disability before July 1, 1966 or before July 1, 1974;

2. They returned to the service of an employer before July 1, 1966, or before July 1, 1974, regardless of the duration of such service;

3. They were awarded a new annuity after June 1966, or after July 1974; and

4. They had a current connection with the railroad industry at the time their later annuity began to accrue, disregarding, for this purpose, earlier entitlement to an annuity. This means that when their later annuity began, their current connection must have been determined as though there was no previous annuity awarded and no previous determination made.

315.2 Current Supplemental Annuity Eligibility Requirements

Under section 2(b) of the RRA, an employee is eligible for a supplemental annuity if they have:

1. At least one month of creditable railroad service before October 1, 1981; and

2. Relinquished all rights to return to the service of employers under the Railroad Retirement Act (as explained in FOM1 330.52); and

3. A current connection (or deemed current connection with the railroad industry, as explained in FOM1 225) on the annuity beginning date; and

4. Is either:

   (a) Age 65 or older with 25 or more years of creditable railroad service; or

(b) Age 60 and older and under age 65 with 30 or more years of creditable RRA service.

315.3 Supplemental Annuity Rate

315.3.1 Gross Supplemental Annuity Rate

APPENDIX_D

The gross supplemental annuity rate is based on the employee's years of creditable railroad service. A summary of supplemental annuity rates is in Appendix D.

A. Current 1974 Railroad Retirement Act Rate

Under the 1974 RR Act, the minimum gross rate is $23 for 25 years of railroad service. An additional $4 is added for each full year of railroad service over 25 and up to 30. The maximum is $43 for 30 or more years of railroad service.

B. Previous 1937 Railroad Retirement Act Rate

Under the 1937 RR Act, the minimum gross rate was $45 at 25 years of service. An additional $5 was added for each full year of railroad service over 25 and up to 30. A fraction of $5 was added for each fractional year of railroad service. The maximum full rate was $70 for 30 or more years of railroad service.

315.3.2 Use of Military Service in Calculating Supplemental Annuity Rate

A. Military Service Used as Railroad Service Months in Tier 2

Military service that is creditable as railroad service months in the employee's Tier 2 can be used to provide eligibility for, or increase the amount of, the supplemental annuity.

B. Military Service Not Used as Railroad Service Months in Tier 2

Military service that is not creditable as railroad service months in the employee's Tier 2 cannot be used to provide eligibility for, or increase the amount of, the supplemental annuity. Using military service both as wages for a Vested Dual Benefit (VDB) and compensation for eligibility, or to increase the supplemental annuity is prohibited.

Exception: For months before 9-1983, the military service creditable as railroad service months could be used in the computation of the supplemental annuity, even if the Tier 2 computed without military service as railroad service months was used because it was higher after the reduction for a military service pension. The military service pension reduction no longer applies 9-1983 or later. Any reduction for a military service pension was removed by a mass adjustment. Cases that were missed in the mass adjustment can be adjusted back to 9-1983 if the proof of military service was previously submitted.

315.4 Reductions to Supplemental Annuity

315.4.1 Reduction for Private Pension from Railroad Employer

The supplemental annuity is reduced by the amount of any private pension the employee is receiving from their railroad employer which is attributable to the employer's contributions. The definition of a private pension that will cause a reduction to the supplemental annuity is in FOM1 315.12.

315.4.2 Last Pre-Retirement Non-railroad Work Deductions

Effective 12/1/88, an employee's supplemental annuity is payable if the employee has Last Pre-retirement Non-railroad Employment (LPE) after the ABD. However, the supplemental annuity must be reduced for monthly LPE earnings. The maximum reduction is 50% of the supplemental annuity before any legal process partition. Instructions for handling LPE work deductions are in FOM1 1121.

315.4.3 Legal Process Reductions

If the employee is subject to a garnishment or child support order, the supplemental annuity is reduced by the amount indicated on the legal document.

315.5 Effect of Supplemental Annuity on Other Benefits

A. Regular Annuity Under the 1974 Act or RRSIA of 2002 - The 1974 RR Act rate is not reduced because of an annuitant's entitlement to a supplemental annuity.

B. Regular Annuity That Was Paid Under the 1937 Act

- Monthly Before February 1968 - A regular annuity was generally paid at the pre-1966 formula rate for any month the annuitant was also entitled to payment of a SUP ANN. In a few cases when the SUP ANN rate was less than the 7 percent regular annuity increase under the 1966 amendments, the regular annuity rate was increased to an amount which added to the SUP ANN equaled the 1966 amendment rate.

- Beginning February 1968 - The table and minimum increases provided by the 1968 amendments were reduced because of an annuitant's entitlement to payment of a SUP ANN.

- Beginning January 1970 - The 15 percent increase provided by the 1970 amendments was not reduced because of an annuitant's entitlement to payment of a SUP ANN. However, in a few cases the regular annuity rate was increased under the L-70-207 Guaranty to an amount which added to the SUP ANN equaled the regular annuity rate that would have been payable if there was no SUP ANN entitlement. The L-70-207 Guaranty applied in cases where there was no SS entitlement when the table increase in the 1968 COMP was reduced by:

- The SUP ANN rate; or

- 6.55 percent of the basic annuity rate and the difference between that amount and the SUP ANN was less than 15 percent of the 6.55 reduction amount. (This usually occurred when the SUP ANN was less than $30.)

C. Spouse Annuity - The RR Act does not provide a supplemental annuity for the spouse nor is the employee's supplemental annuity amount used to determine the amount of the spouse annuity.

D. Retirement O/M - The supplemental annuity does not affect the computation of the Retirement O/M.

E. RUIA Benefits - The supplemental annuity does not cause a reduction in unemployment or sickness benefits. A supplemental annuity is not "an annuity payment" or "other social insurance payment" within the meaning of the RUIA Act.

F. Survivor Benefits - The employee's supplemental annuity does not carry over to the survivor benefit. There is no supplemental annuity for the survivor.

G. Residual Lump Sum - The amount paid to an employee as a supplemental annuity is not deducted from the gross RLS.

315.6 Supplemental Annuity Beginning Date

315.6.1 Age 65 Annuitants

A retired employee's supplemental annuity based on 300-359 months of railroad service begins to accrue on the latest of the following dates:

1. The first day of the month in which the employee attains age 65;

2. The day after completing 25 years of service (the day after acquiring 300th month of service);

3. The employee's annuity beginning date;

4. The first day of the twelfth month prior to the month in which the disabled employee's rights were relinquished;

5. The employee’s designated supplemental annuity beginning date;

6. October 1, 1981, if the supplemental annuity is based on a deemed current connection; or

7. November 1, 1966.

315.6.2 60/30 Annuitants

For 60/30 annuitants and disability annuitants whose regular annuity beginning date is July 1, 1974 or later, and who are at least age 60 and have 360 months of service, the supplemental annuity begins to accrue on the latest of the following dates:

1. The first day of the month in which the employee attains age 60;

2. The day after completing 30 years of service (the day after acquiring 360th month of service);

3. The employee's annuity beginning date;

4. The first day of the twelfth month prior to the month in which the disabled employee's rights were relinquished;

5. The employee's designated supplemental annuity beginning date;

6. October 1, 1981, if the supplemental annuity is based on a deemed current connection; or

7. January 1, 1975.

315.7 Months Supplemental Annuity Not Payable

The supplemental annuity is subject to the same nonpayment restrictions as the employee annuity, i.e., it is not payable for months in which the annuitant works for a railroad employer.

Before 12/1/88, the supplemental annuity was not payable for months the employee returned to Last Person Pre-retirement Employment (LPE). Effective December 1988 or later, LPE earnings deductions apply to the supplemental annuity (see FOM1 1121).

315.8 When Entitlement to Supplemental Annuity Ends

Supplemental annuity payments terminate when the employee annuity terminates. This is usually the last day of the month before the month in which the annuitant dies.

NOTE: If the employee attained age 65 before 9-1-81, the supplemental annuity ended the last day of the month before the month in which the employee returned to employer service after his closing date (see FOM1 Art. 3 App. B for closing dates).

315.9 Accrued Supplemental Annuity Due at Death

The Survivor Benefits Division (SBD) handles cases in which a supplemental annuity accrual is due and payable at the time of the employee's death (see FOM1 615).

315.10 Supplemental Annuity Denials

There are two types of supplemental annuity denials: "informal" and "formal."

315.10.1 Informal Denial

The field office makes an informal denial when it informs the employee that they are not entitled to a supplemental annuity because they apparently do not have railroad service before October 1981, have less than 25 years of service, or do not have either a regular or deemed C/C.

315.10.2 Formal Denial For Insufficient Railroad Service

The Retirement Benefits Division (RBD) makes a formal denial if the supplemental annuity item on the employee annuity application is answered "yes", but the employee does not meet the railroad service requirement or the current connection requirement listed in FOM1 315.2.

In RASI denials, Code Paragraph 406A is automatically printed on the RL-20e (and the special legend "SUP ANN DENIED - NO CURRENT CONNECTION" or "SUP ANN DENIED - LESS THAN 25 YRS SVC" is printed on the listing provided to railroad employers (formerly Form RL-5a). If the employee does not meet both conditions, the "CURRENT CONNECTION" legend is printed on the listing. If the case did not process on RASI, release a letter, based on Code Paragraph 406A, to notify the employee of his ineligibility. Send a copy each to the field office and to the last railroad employer.

315.10.3 Employee With Required Service Has Not Attained Required Age

When an employee has a current connection or deemed current connection on the ABD, make no denial if the employee has less than 30, but at least 25 years of service, and has not yet attained age 65; or the employee has at least 30 years of service and has not yet attained age 60. These are “attainment” cases.

If such an employee inquires about the status of their supplemental annuity, this is not a formal denial. Prepare a letter stating the reason the employee is not eligible. Include the month and year they will be eligible for the supplemental annuity.

See FOM1 315.23 for RBD handling of “attainment” cases.

315.10.4 Employee Does Not Meet Service Requirement For Employee Annuity

Do not make a formal denial if the claim will be transferred to the Social Security Administration because the employee does not meet the railroad service requirement for an employee annuity. The employee will be informed on the transfer notice that they are not eligible for a supplemental annuity.

315.11 Evidence Requirements for Supplemental Annuity

Evidence	**When Required**
Employee Filed an Application AA-1	Always. Proof that the employee filed an Application AA-1 is in the APPLE database. The annuity paid based on that application may be verified by checking PREH. The Application AA-1 is imaged to the claim file. [NOTE: In some attainment cases, the AA-1 may have been filed prior to the conversion of AA-1 applications to APPLE or the inception of imaging. The actual paper folder may be needed in these cases to determine if an AA-1 was filed.]
Age	Always. Proof of employee's age is in the APPLE proofs database or in the claim file. Age may be verified by checking PREH. EDM cannot be used to verify the employee's age.
Years of Service (30 years of railroad service at age 60, or 25 years of railroad service at age 65)	Always. Total railroad service months (including military service creditable as railroad service) are on EDM. The EDM screen with the details of the railroad service months can be used to determine if the employee has at least one month of railroad service before 10-1-1981. However, PREH should be used to determine if the employee has enough credited service months to be eligible for a supplemental annuity.
Current Connection or Deemed C/C	Always. The EDM screen with the details of the railroad service months can be used to determine the employee's 12/30 for the current connection determination. It may be necessary to obtain a breakdown of SSA wages for the period starting with the day after the last day of the 12/30 period through the day before the ABD. The employee may claim a deemed current connection on the employee annuity application. This

	should be supported by proofs submitted with the application or already in the claim file.
Military Service Creditable as Railroad Service	When military service increases the years of service for SUP ANN purposes. Periods of military service creditable as railroad service are viewable on the EDM database.
Railroad Pension Information	Always. The information provided on the employee annuity application is sufficient when there is no conflict with the information on the *Railroad Employer Pension Table*.
Form G-88p	Whenever there is a conflict in the employee's statement on the annuity application and the information on the *Railroad Employer Pension Table*; or additional pension information is needed to determine if the supplemental annuity should be reduced for a private railroad pension (see FOM1 315.15 for G-88p instructions).

315.12 Private Employer Pensions

315.12.1 Definition of a Private Employer Pension

Under section 2(h)(2) of the Railroad Retirement Act (RRA), the supplemental annuity is reduced by the amount of a private pension the employee receives from a railroad employer which is attributable to the employer's contributions.

A plan must meet these criteria to qualify as a private pension plan:

1. It is a written plan or arrangement which is communicated to the employees to which it applies.

2. It is established and maintained by the railroad employer for a defined group of employees.

3. It provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement or disability.

4. The employer is obligated to make fixed contributions to the plan regardless of profits.

The complete definition of a private railroad pension plan is in Section 216.42 of the RRB's regulations (20 CFR §216.42).

315.12.2 Types of Private Employer Pension Plans

Two specific types of plans meet the definition of a private railroad pension under the RRB's regulations: *defined benefit plan* and *money purchase plan*.

A. Defined Benefit Plan

A *defined benefit plan* is a traditional pension plan, funded by the employer, under which the employee receives a recurring, normally monthly, pension benefit, usually for life. The pension benefit is calculated using a set formula that is stated in the plan, which typically includes factors such as age, earnings and years of service. Because the formula is stated in the plan, the employee can know the amount of their monthly pension benefit before retirement.

B. Money Purchase Plan

A *money purchase plan* is a type of defined contribution plan. Unlike in a *defined benefit plan*, a set formula is not used to determine the amount of the employee's pension benefit. Instead, the employer establishes an account for the employee to which the employer (and sometimes also the employee) is obligated to contribute a fixed amount, usually a percentage of the employee's wages. The contributions are then invested on the employee's behalf. The employee usually can choose the investments from investment options provided by the employer. At retirement, the employee receives the balance of their account, which is the total of all contributions, plus or minus investment earnings or losses.

A *money purchase plan* provides for the payment of a monthly pension, although it is very common for a plan participant to elect to receive their account balance in a lump sum payment. The payment of a monthly pension is accomplished by the employer using the balance of the employee's account to purchase an annuity on the employee's behalf. Because the value of the account continually fluctuates due to changes in the value of investments, the employee cannot know the amount of their monthly benefit until they retire and the annuity is purchased.

NOTE: An employer may refer to its *money purchase plan* as a 401(a) plan or 401(a) money purchase plan. A "401(a)" plan, as used in reference to a *money purchase plan*, is <u>not</u> the same as a 401(k) plan.

315.12.3 General Counsel Determines If a Plan Is a Private Employer Pension

APPENDIX_A

The RRB's General Counsel determines if a plan qualifies as a private employer pension plan. When RRB receives information that an employer has a pension plan which they have not submitted, the RRB requests the employer to submit a copy of the

plan. When the RRB receives the plan, it is forwarded to the General Counsel. If the General Counsel rules that the plan qualifies as a private pension plan, the plan and the General Counsel's ruling date are added to the Pension Table (FOM1 Art 3 App. A). The ruling date also is added when a new plan is approved because the supplemental annuity cannot be reduced until the month following the month the General Counsel approves the plan.

315.12.4 Plans That Do Not Cause a Reduction in the Supplemental Annuity

The following types of plans do not cause a reduction to the supplemental annuity:

A. Plans Not Approved by the General Counsel

The supplemental annuity cannot be reduced by a private employer pension until the plan is approved by the RRB's General Counsel, even if it meets all of the requirements listed in FOM1 315.12.1.

B. Pensions Paid by Railway Labor Organizations

A pension paid by a labor organization (union) to its office employees or employee representatives is excluded by the legislation that established the reduction to the supplemental annuity and is not considered to be a "private pension plan." These pensions do not cause a reduction in the RRB supplemental annuity.

C. 401(k) Plans

Prior to January 1, 2014, a 401(k) plan to which the employer was obligated to contribute a fixed amount regardless of profits, e.g., match a percentage of the employee's contributions, qualified as a private railroad pension plan. A distribution from the plan caused a reduction to the supplemental annuity. On January 13, 2014, the RRB's General Counsel issued Legal Opinion L-2014-2 which states that, effective January 1, 2014, 401(k) plans should not be considered private pension plans and distributions from 401(k) plans should not cause a reduction to the supplemental annuity.

D. Monthly Pensions Reduced for Supplemental Annuity

Under some pension plans, the monthly pension benefit is reduced for the supplemental annuity. The RRB's regulations guarantee that the sum of the reduced pension plus the supplemental annuity cannot be less than the full pension amount (20 CFR 227.4(b)). If the monthly pension benefit is reduced for the supplemental annuity, it will not cause a reduction to the supplemental annuity.

In very rare cases, the monthly pension is reduced by a percentage of the supplemental annuity rather than the full supplemental annuity. In these cases, the supplemental annuity is reduced by the difference between the amount the monthly pension is reduced and the full supplemental annuity.

If the employee is entitled to two private pensions and one is reduced for the supplemental annuity, the supplemental annuity is not reduced for either pension. This is because if the supplemental annuity is reduced to zero by one private pension, the second pension would then be reduced for a supplemental annuity the employee is not, in fact, receiving (see FOM1 315.22.2 for an example).

E. Monthly Pensions Based 100% on Employee Contributions

Contributions an employee makes to a pension plan are considered to be the employee's own funds. Since the supplemental annuity is reduced only by the amount of a pension attributable to employer contributions by law, pensions based 100% on employee contributions will not reduce the employee's supplemental annuity. For example, if the amount an employer contributes to a pension fund is withheld from the employee's salary, the pension is based entirely on the employee's contributions and will not cause a reduction to the supplemental annuity.

F. Pensions Based Entirely on Non-Creditable Service

Pensions that are based entirely on non-creditable service do not affect the supplemental annuity. For example, if the employee receives a pension that is 100% based on his service for a trucking subsidiary of the railroad employer, that pension will not affect the supplemental annuity.

G. When Part of Pension Is Based on Non-Railroad Service

If the pension is based on both "creditable" and "non-creditable" service, only that part of the pension based on "creditable" railroad service can be used to reduce the supplemental annuity.

315.13 Job Categories

Some employers have a single pension plan covering all of its employees. However, most employer pension plans cover only a specific group of employees. The group of employees covered under a particular plan is identified by a job category. The RRB uses three job categories to identify employees covered under an employer pension plan: salaried, non-agreement and agreement.

- **SALARIED (also referred to as exempt, non-contract or non-scheduled)**

  The employee is paid a fixed salary, typically stated as an annual amount, but also may be a fixed monthly or bi-weekly amount. This employee usually works in a management, professional or administrative position.

- **NON-AGREEMENT**

  The employee is paid an hourly wage and not covered under a collective bargaining agreement, i.e., union contract.

Note: An employer may use the term "non-agreement" to identify all of its employees who are not covered by a union contract, including "salaried" employees. The RRB makes a clear distinction between the two job categories. "Non-agreement" is not interchangeable with "salaried" under the RRB's definitions of these terms.

- **AGREEMENT (also referred to as contract or scheduled)**

  The employee is covered by a collective bargaining agreement (union contract). Their job normally is directly related to the daily operation and movement of trains, track and equipment maintenance, etc. Examples are: locomotive engineer, conductor, switchman, track inspector, yardmaster, clerk, electrician, signalman, etc.

315.14 Railroad Employer Pension Table

315.14.1 Purpose of the Railroad Employer Pension Table

The *Railroad Employer Pension Table* (Pension Table) lists employers with pension plans approved by the General Counsel and the job categories covered by those plans. It is used to cross-reference the pension information the employee provides on their application with the pension information the RRB has in file. If the information conflicts, further investigation and development may be necessary, normally by releasing Form G-88p to the employer.

The Pension Table also is used to provide special handling instructions or additional information about a particular plan that might be helpful to the user.

The Pension Table is in FOM1 Art. 3 App. A.

315.14.2 Description of the Railroad Employer Pension Table

The Pension Table has five columns:

- **BA NO** – The RRB identification number assigned to the employer.
- **Railroad Name** – The name of the railroad employer.
- **Employees Covered by Pension** – Identifies the job category of the employees covered by the employer's pension plan(s). See FOM1 315.14.3 for a further explanation of the entries in this column.
- **Send G-88p to the "300" Contact Official for:** – Indicates the contact official to whom Form G-88p should be sent. The name and address of the contact official are in the employer's Contact Official Directory in EDM.

  If "PBGC" is entered in this column, the pension is administered by the Pension Benefit Guarantee Corporation (PBGC). Release Form G-88p, with a Form RL-88p cover letter, to the PBGC plan administrator listed in the employer's Contact Official Directory in EDM (see FOM1 1720 G-88p Instructions).

- **Comments** – Special handling instructions or additional information about the plan are entered here.

315.14.3 "Employees Covered by Pension" Column of Pension Table

The entry in the Employees Covered by Pension column identifies the job category, or categories, of the employees covered under the employer's pension plan(s). It also identifies pension plans which do not reduce the supplemental annuity because the pension is either reduced for the supplemental annuity or paid by a labor organization to its employees.

These are the possible entries in this column:

- **ALL** – All employees are covered by a pension plan.
- **SALARIED** – Only "salaried" employees are covered by a pension plan.
- **NON-AGREEMENT** – Only "non-agreement" employees are covered by a pension plan.
- **AGREEMENT** – Only "agreement" employees are covered by a pension plan.
- **RED FOR SUP ANN: NO G-88P –** The employer has a private pension plan, but the monthly pension benefit is reduced for the full supplemental annuity. Do not reduce the supplemental annuity or release a G-88p.
- **UNION: NO G-88p –** The pension is paid by a labor organization to its office employees or employee representatives. Do not reduce the supplemental annuity or release a G-88p.

315.15 Form G-88p, Employer's Supplemental Pension Report

315.15.1 General

Form G-88p, *Employer's Supplemental Pension Report*, is released to the employer when there is a conflict in the information the employee provides on their application and the information on the Pension Table, or other additional pension information is needed to determine if the employee's supplemental annuity should be reduced. The form is released by either the field office or RBD, depending on whether the case is a "current" or an "attainment" case (see FOM1 315.16.1 for the definitions of "current" and "attainment" cases).

- The *field office* releases Form G-88p in "current" cases. If a duplicate G-88p is needed to trace on a G-88p the field office originally released, the field office also releases the duplicate.
- *RBD* releases the G-88p in "attainment" and all other cases.

- The G-88p is released electronically if the employer is part of the ERSNet system. An "E" will be entered in the G-88p field of the APPLE Summary screen if a G-88p has been released electronically (see FOM1 1720 G-88p Instructions).

REMINDER: For paper forms, the office releasing the G-88p should image the form before releasing it.

315.15.2 When Form G-88p Should Be Released

A. Employee Claims No Pension – Employer and Job Category on Pension Table

There is a conflict when the employee states on their application that they were not covered and have no entitlement to pension benefits under a pension plan with their last or any previous employer, and the last or previous employer and the employee's job category are on the Pension Table.

B. Employee Claims Pension – Employer Not on Pension Table

There is a conflict when the employee states on their application that they were covered and entitled to pension benefits under a pension plan with their last or any previous employer, and the employer and employee's job category are not on the Pension Table.

In addition to releasing a G-88p in these cases, send an email to Policy and Systems (Janis Sedlins) advising that the employee indicates they are entitled to pension benefits, but the employer is not on the Pension Table. Include the employee's name, claim number and employer's BA number in the email.

C. Other Pension Information Needed

Form G-88p also may be released when any other type of additional pension information is needed to determine the reduction to the supplemental annuity, e.g., to verify a pension beginning date.

315.15.3 When Form G-88p Should Not Be Released

A. No Conflict

Do not release Form G-88p when there is no conflict in the pension information the employee provides on their application and the information on the Pension Table. There is no conflict when:

- The employee claims entitlement to a railroad pension benefit, and the employer and employee's job category are on the Pension Table.

- The employee claims no entitlement to a railroad pension benefit, and the employer and employee's job category are not on the Pension Table.

B. Do Not Release Paper Form G-88p If Released Electronically

Do not release a paper Form G-88p if a G-88p was already released electronically. APPLE determines if Form G-88p should be released based on the supplemental annuity and pension information entered on the APPLE application. If APPLE determines that a G-88p should be released and the employer is part of the ERSNet system, the form is released electronically to that employer. If G-88p was released electronically, "E" automatically will be entered in the G-88p field of the APPLE Summary screen. Releasing a paper G-88p in these cases would be a duplicate request.

315.15.4 Completing Form G-88p

Refer to FOM1 1720 G-88p Instructions.

315.15.5 G-88p Tracing Schedule

If Form G-88p was released electronically to an employer through the ERSNet system, the system traces the form automatically. Neither the field office nor RBD need to trace the G-88p if it was released electronically.

RBD should use the following tracing schedule if it has not received the completed paper Form G-88p from the railroad employer within the stated number of days after the date it was released:

- First tracer – After 30 days, email the RRB field office nearest the railroad to trace for the form.
- Second tracer – After 45 days, email the district manager of the RRB field office to trace for the form.
- Third tracer – After 90 days, refer the case to Janis Sedlins in P&S. P&S will attempt to obtain the information from the employer.

315.15.6 Acceptable Documents That May Be Used In Lieu of G-88p

If an acceptable document is submitted that contains all of the pension information required to determine the reduction to the supplemental annuity, such as a statement of benefits, a G-88p does not need to be released (also see FOM1 1720 G-88p Instructions). A document is acceptable for this purpose when:

- It is clearly from the employer or plan administrator (if the employer contracted with an outside firm to administer the plan).
- It is addressed to the employee.
- It contains all of the information necessary to make the reduction determination. This includes:

- The pension beginning date.
- The amount of the monthly pension or, if the employee also contributed, the amount of the monthly pension attributable to the employer's contributions.
- If the employee elected a lump sum, the date the pension would have begun and the monthly pension amount, or amount attributable to the employer's contributions, the employee would have received if they had not elected the lump sum.
- If the employee had to take a lump sum because his pension account balance was under the minimum required for a monthly benefit, the date the lump sum was paid and the amount of the lump sum attributable to the employer's contributions.

315.16 Field Office Handling When Employee Files Application

315.16.1 Determine If "Current" or "Attainment" Case

There are two types of cases when the employee is eligible for a supplemental annuity: "current" and "attainment."

Current Case – The applicant is currently eligible for the supplemental annuity, or will attain the age requirement for the supplemental annuity, within three months after the annuity beginning date.

Attainment Case – The applicant will attain the age requirement for the supplemental annuity more than three months after the annuity beginning date (see FOM1 315.23 for RBD handling of "attainment" cases).

315.16.2 When Supplemental Annuity Will Pay Without Examiner Handling

Both "current" and "attainment" supplemental annuity cases usually will pay without examiner handling on the earliest date the supplemental annuity is payable when:

- the APPLE Supplemental Annuity screen does not indicate entitlement to an employer pension; and
- the field office does not enter any code in the Form G-88p status code on the APPLE Summary Screen.

NOTE: Always complete the Form G-88p field on the APPLE Summary screen when the employee indicates an employer pension, even if the supplemental annuity can be adjusted without a G-88p.

RBD examiner handling is required in all other supplemental annuity cases.

315.16.3 Always Request Pension Information From Employee

Always request the employee to provide information about their entitlement to a pension benefit from any railroad employer. Request the information in both "current" and "attainment" cases. This information is used for the APPLE Supplemental Annuity screen entries (see FOM1 315.17.1).

Following is a general guide that may be used when requesting pension information from the employee.

1. Was the employee covered by a pension plan with their last or any previous railroad employer from which they either:

   - are receiving, or will receive, a monthly pension benefit; or
   - received, or will receive, a lump sum pension payment?

2. Employee claims no monthly pension or lump sum pension payment from any railroad pension plan.

   a) If the employee's last or any previous employer is not on the Pension Table, there is no conflict. No G-88p is needed.

   b) If the employee's last or any previous employer and job category are on the Pension Table, there is a conflict. A G-88p should be released to the last or previous employer.

3. Employee claims a monthly pension or lump sum pension payment from a pension plan with their last or a previous employer.

   a) If the employer and employee's job category are on the Pension Table, there is no conflict. No G-88p is needed.

   b) If the last or previous employer is not on the Pension Table, there is a conflict. A G-88p should be released to the last or previous employer.

315.17 Entering Supplemental Annuity Information On APPLE

315.17.1 APPLE Supplemental Annuity Screen

Complete the APPLE Supplemental Annuity screen (APMU245) using the pension information the employee provides.

IMPORTANT: If the employee worked for more than one railroad employer and the pension benefit is from a previous employer, enter the previous employer's information. Similarly, if the pension is from the last employer, but based on previous service in a different job category, enter the job category on which the pension is based.

Example 1: The employee worked for two railroad employers in his career: the first 25 years for Railroad X and the last 10 years for Railroad Y. He was covered under a private pension plan with Railroad X, but not with Railroad Y. On the APPLE Supplemental Annuity screen, enter the information for Railroad X, the employer with which he was covered under the pension plan. Do not enter the information for Railroad Y.

Example 2: The employee worked for the same railroad for 33 years. He was a salaried employee for the first 30 years and an agreement employee for the last 3 years. The employer has a pension plan that covers salaried employees, but does not have a pension plan for agreement employees. Because the employee was covered under the salaried pension plan while he was a salaried employee and not covered while he was an agreement employee, enter "salaried", not "agreement" as the employee's job category on the APPLE Supplemental Annuity screen.

Complete the APPLE Supplemental Annuity screen fields as follows:

- **SUP ANN ELIGIBILITY**

  Enter “Y” if the employee is, or in the future will be, eligible for a supplemental annuity; or “N” if the employee is not, or will not be, eligible for a supplemental annuity. If you enter “Y”, complete the remaining fields on this screen. If you enter “N”, continue to the next APPLE screen.

- **RR PENSION**

  Enter “1” if the employee states they are receiving, or will receive, a monthly pension benefit.

  Enter “2” if the employee states they received, or will receive, a lump sum in lieu of a monthly pension benefit.

  Enter "3" if the employee states they received, or will receive, a "small benefit" lump sum.

  Enter “4” if the employee states they are not entitled to any type of pension benefit from any railroad employer.

- **ER NUMBER**

  Enter the ER (BA) number of the railroad employer from which the employee is entitled to a pension benefit. [Reminder: If the pension is from a previous employer, enter the previous employer’s BA number.]

- **RR EMPLOYER NAME**

  Enter the name of the railroad employer that corresponds to the BA number entered in the ER NUMBER field.

- **JOB CATEGORY** (see FOM1 315.13 for job category definitions)

  Enter “1” if the employee was a "salaried" employee.

  Enter “2” if the employee was a "non-agreement" employee.

  Enter “3” if the employee was an "agreement" employee.

  Enter “4” if the employee’s job description does not fit into any of the above categories.

- **PENSION BEGINNING DATE**

  If **RR PENSION** entered is:

  “1” – Enter the date the monthly pension began, or will begin.

  “2” – Enter the date the monthly pension would have begun if the lump sum had not been elected.

  “3” – Enter the date the employee received, or will receive, the "small benefit" lump sum.

  "4" – Leave blank.

  The date entered can be a future date. If the employee does not know when they will receive the monthly pension or lump sum payment, enter an estimated date.

- **PENSION LESS THAN $43**

  Enter “N”.

315.17.2 APPLE Summary Screen

Refer to FOM1 315.15 for determining when Form G-88p should be released. Following are the entries for the Form G-88p field on the APPLE Summary Screen (APMU0005):

H = Headquarters Releases G-88p ("Attainment" cases)

Enter “H” in "attainment" cases when the employee was covered under a railroad pension plan and the Retirement Benefits Division (RBD) must determine if Form G-88p must be released at the time the employee attains the age requirement for the supplemental annuity. If Form G-88p is needed, RBD releases the form.

R = Required – Field Office Releases G-88p

Enter "R" when Form G-88p is required for the RASI SUP ANN award. The field office should release the G-88p when there is a conflict in the pension information the

employee provided and the information on the Pension Table, as explained in FOM1 315.15.2.

N = Not Required

Enter "N" when Form G-88p is not required. Either the employee is not covered under a railroad pension plan or the pension information the employee provides is sufficient for the RASI SUP ANN award.

E = Form G-88p Was Released Electronically

Form G-88p was released electronically. APPLE determined that Form G-88p was required and the employer is part of the ERSNet system (see FOM1 1720 G-88p Instructions).

315.18 RBD Tickler Call-ups

A. Pension Beginning Date More Than Three Months In Future

RBD should set tickler call-ups in these situations when the pension beginning date will be more than three months in the future:

- If the pension beginning date is known and will be *more than three months* in the future, set a call-up for two months prior to the month the monthly pension will begin.
- If the pension beginning date is not known, but *will be more than three months* in the future, set a call-up to release Form G-88p as follows:
  - If the employee is age 60 – 62, set a call-up for the month they attain age 62.
  - If the employee is age 62 – 65, set a call-up for the month they attain age 65.

B. No Call-up If Pension Beginning Date Within Three Months

Do not set a call-up if the pension beginning date is *within three months.* Pend the case until the reduction to the supplemental annuity can be made.

C. Call-up to Remove Reduction for "Small Benefit" Lump Sum

If the supplemental annuity is reduced for a "small benefit" lump sum, enter a call-up for two months before the month the reduction should be removed.

315.19 Reducing SUP ANN for Employer Pension

315.19.1 Reducing for a Monthly Pension

A. Reduction Is Permanent

The reduction to the supplemental annuity for a monthly pension is permanent and remains in effect until entitlement to the supplemental annuity ends, usually with the death of the employee.

B. Assume Monthly Pension Benefit Greater Than $43

When initially reducing the supplemental annuity for a monthly pension, assume the monthly pension amount, or the amount attributable to employer contributions, is greater than $43. This assumption is made because monthly pension benefits have increased significantly enough through the years that they rarely are less than $43.

Use 77.77 for the employer pension reduction amount to reduce the supplemental annuity to zero. However, if the employee claims, and the RRB verifies, that their monthly pension is less than $43, reduce the supplemental annuity by the actual amount of the monthly pension.

C. Effective Dates and Retroactivity of Reduction

1. First Report of Monthly Pension

   When the monthly pension is first reported, either by the employee when they file or by the employer when it returns or submits a G-88p, reduce the supplemental annuity effective the later of the supplemental annuity beginning date or the pension beginning date. This is regardless of when the report is received.

2. Adjustment Report – Change In Pension Beginning Date

   When an adjustment report is received showing a change in the monthly pension beginning date, change the reduction effective date to the later of the date shown on the report or the supplemental annuity beginning date. This is regardless of when the report is received.

3. Adjustment Report – Change In Monthly Rate

   When an adjustment report is received showing a change in the monthly benefit amount, no action is necessary if the new amount does not affect the supplemental annuity. If the change in rate affects the supplemental annuity, adjust the reduction for the new rate effective the month following the month the report is received.

315.19.2 Reducing for a Lump Sum In Lieu of a Monthly Pension

A. Definition of a Lump Sum In Lieu of a Monthly Pension

A *lump sum in lieu of a monthly pension* is when an employee covered under a private pension plan (either a *defined benefit plan* or a *money purchase plan*) elects to receive the balance of their pension account in a lump sum payment instead of receiving a monthly pension. This applies even if most participants elect a lump sum under the

plan. As long as the payment of a monthly pension benefit is provided as an option under a plan, if the employee elects to receive their pension account in a lump sum payment, it is a *lump sum in lieu of a monthly pension*.

B. Making the Reduction to the Supplemental Annuity

When an employee elects a lump sum in lieu of a monthly pension, they are treated for the purpose of reducing the supplemental annuity as receiving the monthly benefit. In other words, the supplemental annuity is reduced for the monthly pension the employee would have received if they had not elected the lump sum.

1. The reduction is permanent and remains in effect until entitlement to the supplemental annuity ends.

2. Assume the monthly pension the employee would have received is greater than $43.

3. The reduction is effective the later of:

    - The supplemental annuity beginning date.

    - The date the monthly pension would have begun if the employee had not elected the lump sum.

Example:

An employee attains age 60 on 11/22/2013 and is entitled to a 60/30 and a supplemental annuity beginning 12/1/2013. He also is eligible for a monthly railroad pension beginning 12/1/2013. When inquiring about his pension, the employee learns the value of his pension account is $125,000.00. He decides to take that amount in a lump sum payment instead of receiving a monthly pension. In this case, the supplemental annuity is permanently reduced to zero effective 12/1/2013, the supplemental annuity beginning date.

C. Lump Sum Elected Before SUP ANN Eligibility

If an employee terminates employment with a railroad before they are eligible for the supplemental annuity, and elects to receive a lump sum instead of receiving a reduced monthly pension immediately or an unreduced monthly pension in the future, the supplemental annuity is reduced effective with the supplemental annuity beginning date.

Example:

An employee with 26 years of service attains age 65 on 6/12/2014. He terminated railroad employment at age 57. The railroad pension plan under which the employee was covered provided these options at termination: receive a reduced monthly pension at age 60; receive an unreduced monthly pension at age 65; immediately receive the balance of his pension account in a lump sum. He elected to receive the lump sum. In

this case, the supplemental annuity is permanently reduced to zero effective 7/1/2014, the supplemental annuity beginning date.

D. Lump Sum Paid In Installments

If the lump sum is paid in installments, the installment payments are not considered periodic pension payments, but part of a single, lump-sum payment. The supplemental annuity is reduced permanently, not just for the months installment payments are made.

E. Employee Rolls Over Pension Account Balance

When an employee rolls over the balance of their railroad pension account to another account, such as and Individual Retirement Account (IRA), the rollover is considered a lump sum distribution. Therefore, an employee who rolls over their pension account instead of receiving a monthly pension is considered to have elected a *lump sum in lieu of a monthly pension*. The supplemental annuity is permanently reduced effective with the supplemental annuity date.

315.19.3 "Small Benefit" Lump Sum Payment

Most pension plans do not pay a monthly pension if the value of the employee's pension account is less than a minimum amount specified in the pension plan. The amount typically is $5,000.00, but may be less under some plans. This is sometimes referred to as a plan's "small benefit" provision. Under a "small benefit" provision, if the value of a plan participant's account is less than the minimum amount stated in the plan, the employee is required to receive the account in a lump sum payment, with no option of receiving a monthly pension.

Because a monthly pension is not payable in these cases, the reduction to the supplemental annuity is not permanent. Instead, the lump sum, or amount of the lump sum attributable to the employer's contributions, is divided by the supplemental annuity. The total is the number of months the supplemental annuity should be withheld to recover the amount of the employer's contributions. The effective date of the reduction is the month following the month the RRB receives the G-88p with the lump sum information from the employer.

Example:

The employee attains age 60 on 3/22/2014 and is entitled to a 60/30 and a supplemental annuity beginning 4/1/2014. He states on his application that he was covered under a railroad pension plan for a short time and received a small lump sum from the period he was covered. A G-88p is released to the employer. The completed G-88p is received by the RRB on 6/7/2014. It shows that the employee was paid a "small benefit" lump sum of $2,222.20 on 4/5/2014. The reduction to the supplemental annuity is calculated as follows:

2220.20 ÷ 43 = 51.68; the supplemental annuity is reduced to zero for 51 months effective 7/1/2014 (month after month G-88p received), a partially supplemental annuity

is payable in the 52nd month, and the full supplemental annuity is again payable beginning with the 53rd month.

Note: An employee may elect to have their supplemental annuity permanently reduced by a small amount rather than have it reduced to zero for a number of months. If the employer can provide an actual or estimated monthly benefit amount, that amount may be used to permanently reduce the supplemental annuity.

315.20 Reducing Sup Ann Pending Return of G-88p

Reduce the supplemental annuity to zero from the supplemental annuity beginning date when a G-88p has been released and one of these conflict situations exists:

- The employee states on their application that they are not receiving, or will not receive a monthly pension, or did not, or will not, receive a lump sum pension payment from their last or any previous employer, and the last or previous employer and the employee's job category are on the Pension Table.

- The employee states on their application that they are receiving, or will receive, a monthly pension or received, or will receive, a lump sum pension payment from their last or any previous employer, and the employer is not on the Pension Table.

When the G-88p is returned, make any necessary adjustments based on the information the employer provided, e.g., remove the reduction if the G-88p shows that the employee is not entitled to a monthly pension.

315.21 Reopening When Reduction Previously Not Applied

Use the following guidelines to handle cases in which RRB discovers that the reduction to the supplemental annuity was not made timely.

A. Within Four Years

- If the employee *stated on the application that they are receiving a monthly pension benefit*, reduce the supplemental annuity retroactively to the date the reduction should have begun and assess the corresponding overpayment **if** the date of the correction award and the date the overpayment is posted is within four years of the date the supplemental annuity was paid. The four year limit can be extended six months if a G-88p was released before the four year limit expired.

- If the employee *stated on the application that they are not , and will not be, entitled to an employer pension*, reduce the supplemental annuity retroactively to the date the reduction should have begun and assess the corresponding overpayment. The four year limit does not apply in these cases.

B. After Four Years

- If the employee *stated on the application that they are receiving an employer pension*, reduce the supplemental annuity prospectively. Do not assess an overpayment.

- If the employee *stated on the application that they are not, and will not be, entitled to an employer pension,* reduce the supplemental annuity retroactively to the date the reduction should have begun and assess the corresponding overpayment. The four year limit does not apply in these cases.

315.22 Special Employer Pension Situations

315.22.1 Burlington Northern Santa Fe (BNSF)

Pension Payments to UTU Members Who Formerly Worked for ATSF.

Retiring BNSF employees who are members of the United Transportation Union (UTU) and formerly worked for the Atchison, Topeka and Santa Fe (ATSF) before its merger with Burlington Northern (BN) may receive a lump sum payment of around $65,000 from one of these two pension plans:

- "The BNSF Railway Company Pension Plan for Conductors, Trainmen and Yardmen on the Western Region (Coast Lines) and Texas Division"

- "The BNSF Railway Company Pension Plan for Conductors, Trainmen and Yardmen on the Former Eastern and Western Lines (Excluding Northern and Southern Divisions)"

The plans were established as part of collective bargaining agreements between UTU and ATSF in 1989 and 1992, respectively.

Most employees covered under these plans take the pension in a lump sum payment because that is more advantageous for them. However, because these are defined benefit plans, *the lump sum is in lieu of a monthly pension*. Permanently reduce the supplemental annuity to zero effective with the supplemental annuity beginning date.

Note: Because both plans are nearly identical, the BNSF Contact Official does not differentiate between the two and identifies both as "UTU $65,000.00" on the G-88p.

315.22.2 Pension for Long Island Railroad Locomotive Engineers (BLE-DIV 269)

Most Long Island Railroad (LIRR) agreement employees are covered under one of three pension plans which cause a reduction to the supplemental annuity:

- *The LIRR Company Pension Plan*, which covers all LIRR employees hired before January 1, 1988.

- *The LIRR Money Purchase Plan*, which covers all LIRR employees hired January 1, 1988 or later.

- *The Metro-North Defined Benefit Plan for Agreement Employees*, which covers LIRR agreement employees who were hired January 1, 1988 or later and were on the payroll December 31, 2003 or later.

LIRR also funds an additional pension plan which is only for members of Division 269 of the Brotherhood of Locomotive Engineers (BLE 269). Under this plan, the monthly pension is reduced for the supplemental annuity. Because the monthly pension is reduced for the supplemental annuity under the BLE 269 plan, the supplemental annuities of BLE 269 locomotive engineers are not reduced for any LIRR pension (see FOM1 315.12.4).

315.22.3 CSX-UTU Agreement Pension Plan

CSX agreement employees who are members of UTU and previously worked for one of the CSX predecessor railroads listed below may be covered under the "Retirement Plan for Certain Hourly Employees of CSX Transportation, Inc., under CSXT Labor Agreements with the United Transportation Union (UTU) 4-064-93, 4-086-93, 4-087-93 and 4-134-93".

- Effective 07/01/1993: Employees of the former Baltimore and Ohio Railroad (BA 1302); Pere Marquette or Hocking Valley Railroads; and Three Rivers Railway (BA 3291).

- Effective 08/01/1993: Employees of the former Chesapeake and Ohio Railroad (BA 1401).

This pension benefit usually is paid in a lump sum. However, because this is a defined benefit plan, the lump sum is *in lieu of a monthly pension*. Permanently reduce the supplemental annuity to zero effective with the supplemental annuity beginning date.

Note: All of the railroads listed above ceased to be covered employers when they became part of CSX.

315.22.4 Canadian National Railway

A. Employee States Last Employer Was Canadian National

If an employee states they last worked for Canadian National Railway (CN), do not enter BA 1103 Canadian National as the employer on the APPLE Supplemental Annuity screen until you have verified the railroad under which the employee's service and earnings were reported. This is important because CN is divided into two, separate business entities: CN's Canada Operations (CN-Canada) and CN's U.S. Operations (CN-US). The CN-Canada headquarters are in Montreal, Canada and the CN-US headquarters are in Homewood, IL. All records for the employees of CN-US railroads are maintained in the Homewood, IL headquarters. If BA 1103

Canadian National is entered as the employer on the APPLE Supplemental Annuity screen, the G-88p would be released to CN's Montreal headquarters. Because the records of CN-US employees are not maintained there, releasing the G-88p to the Montreal headquarters could cause a significant delay in handling if the employee actually worked for a CN-US railroad.

The following are the CN-US railroads:

- BA 1303 – Bessemer and Lake Erie
- BA 1516 – Illinois Central
- BA 1607 – Duluth Winnipeg and Pacific (Merged into Wisconsin Central 12/2011)
- BA 1617 – Duluth Missabe and Iron Range (Merged into Wisconsin Central 12/2011)
- BA 2630 – Chicago Central and Pacific
- BA 2633 – Wisconsin Central
- BA 3397 – Elgin Joliet and Eastern
- BA 4227 – Grand Trunk Western (Previously BA 1208)
- BA 4249 – Pittsburgh and Conneaut

B. CN-US Agreement Employees Who Are Covered By an Employer Pension Plan

In 2004, CN acquired these three railroads:

- BA 1303 – Bessemer and Lake Erie
- BA 1617 – Duluth, Missabe and Iron Range
- BA 4249 – Pittsburgh and Conneaut

In 2009, it also acquired the following railroad:

- BA 3397 (previously BA 1309) – Elgin, Joliet and Eastern.

All four railroads were subsidiaries of United States Steel (USS) and the employees of these railroads were covered under the USS pension plan. Because CN was obligated to honor the contracts that the various unions had previously negotiated with USS, the agreement employees of these four railroads remained covered under the pension plan after CN acquired them.

Many of the agreements have since expired. Under most of the newly negotiated agreements, the pension plan that covered the agreement employees of these four railroads is closed to new employees hired after a specific date. However, this does not affect the employees who were covered under the plan prior to the new agreements. They are still covered under the pension plan.

C. Former Duluth, Missabe & Iron Range Employees of Wisconsin Central

In December 2011, BA 1607 Duluth, Winnipeg and Pacific (DW&P) and BA 1617 Duluth, Missabe and Iron Range (DM&IR), were merged into BA 2633 Wisconsin

Central (WC). Both DW&P and DM&IR ceased to be covered employers effective with the merger. Service and compensation of the employees who worked for these railroads are now reported under BA 2633 Wisconsin Central.

At the time of the merger, DW&P and WC agreement employees were not covered under a railroad pension plan. However, the employees of DM&IR were covered. If a current WC employee worked for DM&IR before the merger, enter the information for DM&IR on the APPLE Supplemental Annuity screen, not the information for WC (see FOM1 315.17.1).

315.22.5 Canadian Pacific Railroad

This is the same situation described in FOM1 315.22.4.A for Canadian National Railway. If an employee states they last worked for Canadian Pacific Railroad (CP), do not enter BA 1104 Canadian Pacific as the employer on the APPLE Supplemental Annuity screen until you have verified the railroad under which the employee's service and earnings were reported. The records of employees of CP's U.S. railroads are maintained in the CP-US headquarters in Minneapolis, MN. If BA 1104 Canadian Pacific is entered on the APPLE Supplemental Annuity screen, the G-88p will be released to the CP-Canada headquarters in Toronto, Canada. This could cause a significant delay in handling if the employee actually worked for a CP-US railroad.

The CP-US railroads are:

- BA 1606 – Soo Line
- BA 2252 – Delaware and Hudson
- BA 2632 – Dakota, Minnesota and Eastern
- BA 2661 – Iowa, Chicago and Eastern (merged into Dakota, Minnesota and Eastern)

315.22.6 Union Pacific Pension Plan – "Level Income" Option

The *Union Pacific (UP) Pension Plan for Salaried Employees* includes a “Level Income” option. The “Level Income” option allows an individual to receive an increased monthly pension until the attainment of either age 60, 62 or 65, whichever age the individual expects to receive social security benefits or an annuity payable under the RRA. Upon attainment of that predetermined age, the monthly pension decreases, regardless of whether or not the employee has actually started to receive the expected SSA or RRA benefits.

EXAMPLE: The employee retires from UP at age 55 with over 30 years of service. He is entitled to a monthly pension of $500.00. He elects the “Level Income” option, which allows him to receive a monthly pension of $2000.00 until he becomes entitled to his railroad retirement annuity at age 60. When he becomes entitled to the annuity, his monthly pension benefit is reduced to $30.00.

The RRB's General Counsel ruled in Legal Opinion L-99-8, dated August 11, 1999, that when the employee elects the "Level Income" option, the supplemental annuity should be reduced by the amount of the monthly benefit he would have received had he not elected that option. In the above example, because the employee would have received a monthly pension benefit of $500.00 had he not elected the "Level Income" option, the supplemental annuity is reduced by $500.00, i.e., it is reduced to zero. It is not reduced by $30.00, the actual monthly amount he receives when he becomes entitled to the retirement annuity.

315.22.7 Conrail

On August 22, 1998, Norfolk Southern and CSX purchased 58% and 42% of Conrail stock, respectively. When this occurred, some Conrail employees left Conrail (early retirement, severance, etc.), others remained with Conrail, and others transferred to either NS or CSX. Those who transferred to NS or CSX eventually were covered under the respective railroad's pension plan, with credit given for Conrail service. Current Conrail employees or former Conrail employees who did not transfer to NS or CSX and were vested under the Conrail Pension Plan prior to August 22, 1998 may be eligible for a Conrail pension benefit

315.23 RBD Handling of Attainment Cases

315.23.1 RASI Awards

If the final employee annuity was paid mechanically, RASI will produce an award message requiring a type 150 or 954 RASIFORM (Key/Master) input when the employee is not eligible for a SUP ANN at the time the employee annuity is paid, but will attain the age requirement within three months. If the employee is eligible for a SUP ANN within three months, RBD will submit the RASIFORM (Key/Master) input. RASI will hold the data until the SUP ANN can be paid.

315.23.2 ROC Awards

In final ROC employee annuity awards, no referral will be produced for any case in which the employee is entitled to a SUP ANN and attains the age requirement within three months after the employee annuity is paid. MAP, the Monthly Attainment Program, scans PREH three months prior to and every month after the attainment month. A MAP referral will be downloaded to STAR and referred to examiners to enter the pension information where pension rights information is indicated on PREH.

315.23.3 Relinquishment of Rights for Disability Annuitants

In RASI cases where relinquishment of rights is necessary before the SUP ANN can be awarded, RASI will release the type code 150 HSL message with the legend "R/R REQUIRED FOR SUP".

RBD will examine the folder to see if the employee has authorized the RRB to automatically relinquish rights when a SUP ANN becomes payable. Form AA-1d authorizes the RRB to relinquish rights when the annuitant becomes entitled to a SUP ANN. In addition, Form G-346, *Employee's Certification*, includes a statement authorizing the RRB to relinquish rights when the employee's spouse becomes entitled to a spouse annuity.

If such authorization is not in file, RBD will request the field office to obtain Form G-88, *Employee's Certificate of Termination of Service and Relinquishment of Rights*, from the employee. RBD will not submit the SUP ANN data to RASI or pay the SUP ANN on ROC until the G-88 is received from the field office. If the G-88 is not received within 30 days, RBD will trace for it through the field office.

If the employee does not want to relinquish rights, RBD will not process the case as a SUP ANN denial, and will not release a denial letter to the annuitant.

If the annuitant later relinquishes rights, RBD will award the SUP ANN on ROC. The SUP ANN may retroact up to 12 months prior to the date the employee's rights are relinquished if the employee was otherwise entitled to a SUP ANN for that entire period.

315.24 Reduction to SUP ANN When Employer Coverage Terminates

In most cases, retired employees continue to receive their employer pensions after an employer's coverage terminates. The pension payments might continue to be made by a successor railroad, an insurance company contracted by the railroad to pay benefits, or the Pension Benefit Guaranty Corporation. Legal Opinion L-76-97 states that the supplemental annuity continues to be reduced by the employer pension and no adjustment is required.

However, the reduction to the supplemental annuity for the employer pension should be removed after the employer coverage terminates if the retired employee either:

- Does not continue to receive the employer pension; or
- Does not receive a lump sum in lieu of continued monthly pension payments.

315.25 Income Taxes on SUP ANN

315.25.1 Federal Income Tax

The RR Act specifies that supplemental annuities are not exempt from Federal income tax laws. Supplemental annuities are included in income taxable under Federal income tax laws because they are considered to be in the same category as other employer-financed private retirement programs. Refer to TOM1.120.05.10 for information about how supplemental annuities are taxed under federal laws.

315.25.2 State Income Tax

The RRA excludes both regular and supplemental annuities from state income tax laws (see TOM1.130).

315.26 Additional Historical Background

Additional historical background on supplemental annuities is in FOM1 Art. 3 App. E. The appendix includes the legislative history of supplemental annuities, the supplemental annuity cutbacks from 1987 through 1990, how the Railroad Retirement and Survivors Improvement Act of 2001 (RRSIA) affected supplemental annuities, and a brief description of the TACAL program, which was used prior to RRSIA to calculate employers' supplemental annuity taxes.

320.5 Spouse or Divorced Spouse Defined

The term "spouse" means a legal or a de facto (deemed) wife or husband of an employee annuitant. The term "spouse" in this chapter does not include a divorced spouse unless a specific reference is made to include a divorced spouse.

320.5.1 Legal Spouse Defined

The applicant must either:

A. Be the spouse of an annuitant under the laws of the state of the employee's domicile at the time the spouse files an application; or

B. Have the same rights as a spouse to share in the distribution of the employee's intestate (without a will) personal property under the laws of the state of the employee's domicile at the time the spouse files an application.

320.5.2 De Facto (Deemed) Spouse Eligibility Requirements

A spouse may qualify as a de facto (deemed) spouse even if the marriage to the employee is invalid due to an impediment. The impediment may result from a prior undissolved marriage of the employee or a defect in the procedure of the employee's purported marriage to the applicant.

For a person to qualify as a defacto (deemed) spouse, the following requirements must be met:

A. There was a marriage ceremony; and

B. The spouse went through the ceremony in good faith, not knowing of the impediment at that time. The spouse must submit a statement that she married the employee in good faith; and

C. The spouse was living in the same household with the employee at the time the spouse's application was filed (see FOM-I-935); and

D. At the time the spouse files the application, there is no other person who has the status of spouse, based on a valid marriage or inheritance rights under state law, who is or was entitled to a spouse's benefit at the Social Security Administration based on the employee's wage record.

A defacto or deemed spouse's entitlement ends when the deemed spouse marries someone other than the employee, or when a legal spouse becomes entitled to an annuity.

NOTE: If a spouse annuity is paid to a deemed spouse and it is later found that there is a legal spouse entitled to SS Act benefits based on the employee's wage record, refer the case to RAS.

320.5.3 Divorced Spouse Defined

The term "divorced spouse" means the former legal spouse (wife or husband) of an employee annuitant who is finally divorced from the employee, who had been married to the employee for a period of at least 10 consecutive years immediately before the date the divorce became final.

There are no provisions in the RRA for paying a divorced spouse annuity based on having a minor or disabled child of the employee in-care. An annuity is not payable before an employee annuitant attains age 62 or before the divorced spouse applicant attains age 62. Effective August 17, 2007, it is no longer necessary for the employee to retire before a divorced spouse annuity is payable.

The term "spouse" in this chapter does not include a divorced spouse unless a specific reference is made to include a divorced spouse.

320.6 Full Retirement Age for a Spouse Annuity Based on Age or Divorced Spouse Annuity

The term *Full Retirement Age* (FRA) means the age at which the spouse of an employee with less than 360 months of railroad service can receive a full annuity (not reduced for early retirement).

(Exception - FRA could affect some spouse 60/30 age reduced annuities (ABDs are before 1-1-12002 - see FOM-I-320.12 for details).

The term *Full Retirement Age* (FRA) also means the age at which the divorced spouse can receive a full annuity (not reduced for early retirement), regardless of the employee's total years of railroad service.

Full Retirement Age also affects the spouse annuity or divorced spouse annuity deductions due to earnings as described in RCM 5.7, regardless of the employee's total years of railroad service.

FRA for the spouse or divorced spouse is age 65 if the person was born before January 2, 1938. The FRA for persons born after January 1, 1938, will gradually increase over a 20-year period to age 67, as illustrated in the following chart. FRA is attained the first day of the month in which that age is attained.

Determining Spouse Full Retirement Age			
If spouses were born:	**then their FRA is:**	**If spouses were born:**	**then their FRA is:**

Before 1-2-1938	65	1-2-1955 thru 1-1-1956	66 and 2 months
1-2-1938 thru 1-1-1939	65 and 2 months	1-2-1956 thru 1-1-1957	66 and 4 months
1-2-1939 thru 1-1-1940	65 and 4 months	1-2-1957 thru 1-1-1958	66 and 6 months
1-2-1940 thru 1-1-1941	65 and 6 months	1-2-1958 thru 1-1-1959	66 and 8 months
1-2-1941 thru 1-1-1942	65 and 8 months	1-2-1959 thru 1-1-1960	66 and 10 months
1-2-1942 thru 1-1-1943	65 and 10 months	1-2-1960 and later	67
1-2-1943 thru 1-1-1955	66		

320.7 Cessation of Service and Relinquishment of Rights Requirement

320.7.1 Employee

An employee disability annuitant under *Full Retirement Age* must relinquish whatever rights (s)he may have to return to work for any railroad before a spouse annuity may be paid.

Certain disabled employees may not wish to relinquish their rights because of possible adverse effects on their benefits from the railroad. If the employee does not relinquish rights, a statement should be submitted as explained in FOM-I-330.71B.

The date of the relinquishment of rights will not affect the retroactivity of the spouse ABD. If the employee does not wish to relinquish his rights and the spouse is otherwise eligible, a spouse application can still be taken in order to protect the spouse's filing date for retroactivity purposes. However, the case must be coded for manual review, as the annuity cannot be paid until the employee relinquishes his rights. The field office should not enter a SPAR rate in these cases.

320.7.2 Spouse or Divorced Spouse

The spouse or divorced spouse must have ceased all railroad service and must have relinquished all rights to return to the railroad service.

Before 12-1-88, the spouse or divorced spouse was also required to cease employment and relinquish employment rights with a last pre-retirement, non-railroad (LPE) employer.

320.8 Application Requirement

The spouse or divorced spouse must file an application for a spouse annuity. The application requirements at initial entitlement are explained in FOM-I-110. A spouse may have to make a decision whether to file for a reduced annuity (see FOM-I-320.10 or a full annuity based on a child-in-care (see FOM-I-320.14).

The new application requirements when post-entitlement events occur (i.e. divorce or re-marriage) are explained in FOM-I-320.50-59.

320.8.1 Eligible for More Than One RR Act Annuity

If the spouse or divorced spouse is eligible for another annuity under the Railroad Retirement Act, refer to FOM-I-120.5.

320.8.2 Retroactive Annuities

The retroactive periods are described in FOM-I-112.10. If the eligibility requirements were met any time during the retroactive period of the application, they are considered to have been met on the filing date.

A retroactive reduced annuity may not be paid if the application is filed 9-1-1983 or later, because the reduced annuity may not begin before the month the application is filed.

320.9 Insured Status Requirement for Tier 1 Component

Employees must have an SSA *Fully Insured Status* based on combined SSA wages and railroad earnings to qualify their spouse or divorced spouse for a Tier 1 component.

The Quarter of Coverage (QC) requirement for *Fully Insured Status* for employees born after 1928 is 40 QCs. Therefore, if employees have at least 120 months of railroad service, they are assumed to have at least 40 quarters of coverage.

If employees have less than 120 months of railroad service, but at least 60 months of railroad service after 1995, their SSA wages must provide the additional quarters of coverage needed for an SSA *Fully Insured Status* to qualify their spouse or divorced spouse for the Tier 1 component. Refer to RCM 5.6.5 for more information about a *Fully Insured Status*.

320.10 General Requirements for Spouse Annuity Based on Age

The spouse age requirement depends on the employee's annuity beginning date (ABD), the employee's years of service and the employee's age. This is summarized in the following charts.

320.10.1 Spouse Age Requirements When Employee Age and Service Annuitant has at Least 360 Months of Railroad Service

If the employee is retired based on age and service:	and the employee retired at:	with an employee ABD:	the spouse annuity can begin the first full month the spouse is age 60. The spouse Tier 1 will:	The Tier 2 will:

and attained age 60 and acquired 360 months of railroad service before July 1984,	age 60 or later,	July 1, 1974, or later,	not have an age reduction. Note: For these cases, the spouse annuity did not begin before January 1, 1975.	not have an age reduction.
and either attained age 60 or acquired 360 months of railroad service in July 1984 through December 2001,	age 62 or later,	July 1, 1984, or later,	not have an age reduction.	not have an age reduction.
and either attained age 60 or acquired 360 months of railroad service in July 1984 through December 2001,	age 60 through age 61	July 1, 1984 through December 31, 2001	have an age reduction based on the employee's age reduction until both the spouse and the employee have attained age 62. The spouse will then have an age reduction for the number of months the spouse is under FRA when both the spouse and the employee are age 62.	not have an age reduction.
and attained age 60 and acquired 360 months of railroad service at any time,	age 60 or later	January 2002 or later	not have an age reduction	not have an age reduction.

320.10.2 Spouse Age Requirements When Employee Disability Annuitant has at Least 360 Months of Railroad Service

If the employee is retired based on disability with an ABD:	and the employee has attained:	the spouse annuity can begin the first full month the spouse is age 60. The spouse Tier 1 will:	The Tier 2 will:
Before July 1, 1984,	age 60,	not have an age reduction.	not have an age reduction
July 1, 1984, or later,	age 60,	have an age reduction depending on the spouse ABD. • If the spouse annuity begins before January 2002, and begins before the spouse FRA, the spouse Tier 1 will have an age reduction. (The spouse is deemed age 62 on the spouse ABD.) • If the spouse annuity begins January 1, 2002, or later, the spouse Tier 1 will not have an age reduction.* * The employee may have 360 SM on EDM but his disability annuity was based on less than 360 SM. The spouse will not qualify for the full age spouse annuity unless the employee chooses to use additional SM to attain 360. See FOM1 207.12.6 for handling these cases.	not have an age reduction

320.10.3 Spouse Age Requirements When Employee Age and Service Annuitant or Employee Disability Annuitant has 60 - 359 Months of Railroad Service

If the employee retired:	and the employee has attained	the spouse annuity can begin the first full month the spouse are age 62. The spouse Tier 1 will have an age reduction if the spouse retires:	The spouse Tier 2 will have an age reduction if the spouse retires at the RRB before attaining:
before 1975 based on at least 120 months of railroad service,	age 65,	at RRB before attaining FRA.	age 65.
in 1975, or later, based on at least 120 months of railroad service, including some railroad service before August 12, 1983,	age 62,	at RRB before attaining FRA.	age 65.
in 1975, or later, based on at least 120 months of railroad service and no railroad service before August 12, 1983,	age 62,	at RRB before attaining FRA.	FRA.
January 2002 or later, based on 60-119 months of railroad service with at least 60 months of railroad service after 1995, and had some railroad service before August 12, 1983,	age 62,	at RRB or SSA before attaining FRA. (The employee must have an *SS Act Insured Status* to qualify the spouse for a Tier 1 benefit.)	age 65.
January 2002 or later, based on 60-119 months railroad with at least 60 months of railroad service after 1995, and did not have railroad service before August 12, 1983,	age 62,	at RRB or SSA before attaining FRA. (The employee must have an *SS Act Insured Status* to qualify the spouse for a Tier 1 benefit.)	FRA.

320.10.4 Additional Requirements for Male Spouse Annuity

In addition to the spouse requirements in sections FOM-I-320.10.1-3 above, the following applies to a male spouse:

A. One-Half Support

Before March 1,1977, a male spouse had to be at least 50% dependent on the female employee's income, for the 12 months prior to the employee's ABD, for the male spouse to qualify for a spouse annuity (Tier 1 and Tier 2) or to be included in the employee's O/M computation. See RCM 4.7.28 and 4.7.41 for details of evidence that was required.

A male spouse does not need to be dependent on or receive one half support from the female employee in order to qualify for a spouse annuity effective March 1, 1977.

B. Annuity Based on Child-in-Care

- Before May 1, 1983, a male spouse annuity was not payable based on a child of the employee being in his care.

- Effective May 1, 1983, a male spouse under FRA may qualify for a Tier 1 component only of a spouse annuity based on a child of the employee being in his care.

- Effective September 1, 2010, a male spouse under FRA may qualify for both the Tier 1 and Tier 2 components of a spouse annuity based on a child of the employee being in his care.

320.11 Current Amount of Spouse Annuity Age Reduction

320.11.1 Spouse of Employee Who Has 120-359 Months Service

In general, if the employee has less than 360 months of railroad service, and the spouse is entitled based on age, the age reduction factor for a reduced spouse Tier 1 and Tier 2 components are 1/144 for the first 36 months the spouse is under Full Retirement Age (FRA) and 1/240 for each additional month the spouse is under FRA on the ABD.

320.11.2 Spouse of Employee Who Has Less Than 120 Months Service

If the employee has less than 120 months of railroad service but has 60-119 months of railroad service with at least 60 months of railroad service after 1995, the spouse Tier 1 and Tier 2 components are reduced by 1/144 for the first 36 months the spouse is under *FRA* and by 1/240 for each additional month the spouse is under *FRA* on the RRA spouse ABD, or, if earlier, the spouse's social security benefit date of entitlement.

320.11.3 Spouse of 60/30 Employee

Currently, the spouse Tier 1 and Tier 2 components do not have an age reduction if the employee has at least 360 months of railroad service. However, if the employee age and service annuity ABD is before age 62 and before January 1, 2002, refer to FOM-I-320.12.

320.12 Spouse Tier 1 Age Reductions Before 1-1-2002

320.12.1 Spouse of Age and Service Employee

If the employee either attained age 60 or acquired 360 months of railroad service between July 1984 and December 2001 and the employee age and service annuity ABD is before age 62 and before January 1, 2002, the spouse Tier 1 had an age reduction.

A. Adjustment Before Age and Service Employee and Spouse Attain Age 62

The spouse (with or without a child-in-care) received a Tier 1 component based on 1/2 of the employee's age reduced Tier 1 component until both the employee and the spouse attained age 62 for a full month.

B. Age 62 Recalc When Both the Employee and Spouse are Age 62

When both the employee and spouse are age 62 for a full month, the spouse entitled based on child-in-care received an unreduced Tier 1 component. The spouse entitled based on age received a Tier 1 component reduced by 1/144 for the first 36 months the spouse is under FRA plus 1/240 for each additional month the spouse is under FRA on the effective date of the adjustment. If the employee attained age 60 or acquired 30 years of service between July 1, 1984 and December 31, 1986, the spouse age reduction factor was then divided by 2. Otherwise, the full age reduction factor applied.

320.12.2 Spouses of Disabled Employee

If the employee was a disability annuitant with at least 360 months of railroad service and an ABD after June 30, 1984, and the spouse was entitled based on child-in-care, there was no spouse Tier 1 component age reduction. If the spouse was entitled based on age, the spouse Tier 1 component age reduction depended on the spouse ABD.

A. Spouse ABD Before January 2002

If the spouse annuity began before January 2002, and began before the spouse FRA, the spouse Tier 1 component was reduced by 1/144 for the first 36 months under FRA plus 1/240 for each additional month the spouse was under FRA on the ABD. However, a spouse age 60-61 11/12 was deemed to be age 62 on the spouse ABD. The age reduction months were counted from deemed age 62 until the FRA month for that spouse.

B. Spouse ABD January 2002 or Later

If the spouse annuity began January 1, 2002 or later, the spouse Tier 1 component did not have an age reduction.

320.12.3 Age Reductions for Annuity Initially Paid Before October 1981

The age reduction factor for a reduced spouse RR formula annuity initially paid prior to October 1981, is 1/180 for every month the spouse is under age 65 on the ABD (or date of annuity increase if prior to 1-1978). See RCM 8.8, G-353a.1 instructions and RCM 9.1 for details on proration of age reduction in effect before October 1981.

320.13 Spouse Annuity Marriage Requirements

320.13.1 Duration of Marriage

The applicant must meet the definition of “spouse” in FOM-I-320.5 and meet one of the following “duration of marriage” conditions:

1. Be married to the employee for a period of at least one year immediately prior to the annuity beginning date. The ABD would be the first day of the month in which the anniversary occurs. For example, if the marriage occurred on 3-29-2004, the

anniversary falls on 3-29-2005. The ABD can be as early as 3-1-2005. However, the application may be filed as early as 3 months before the earliest ABD. In the above example, the date of filing could be as early as 12-1-2004.

The requirement to be married to the employee for a period of at least one year immediately preceding the day on which the spouse annuity application is filed need be met only once. Certain types of prior entitlements allow the one-year requirement to be waived for a subsequent eligibility.

Type 1 - A spouse met the one-year requirement to previously receive a spouse annuity, and that annuity terminated due to divorce. If that spouse remarries the same railroad employee, and meets the other requirements for a spouse annuity, the one-year marriage requirement is waived for that subsequent spouse annuity.

Type 2 - A divorced spouse annuitant, previously married to the employee annuitant ten years, remarried the same employee. The one-year requirement is waived for the second marriage. If all other eligibility requirements are met, the annuity beginning date may be the month of the subsequent marriage: the month after the month the divorced spouse annuity terminates.

NOTE: If a claimant currently married less than one year to the employee, but previously married at least one year to that employee, DID NOT previously receive a spouse annuity (potentially entitled), the claim must be denied for failure to meet the one-year marriage requirement; or,

2. Be the natural mother or father of the employee's child. This requirement is met if a live child was born to the employee and the spouse. Such a child need not still survive. The ABD cannot be earlier than the first full month the spouse meets this requirement; or,

3. Have been eligible for a widow(er)'s, parent's, or disabled child's insurance annuity on any account under the RR Act in the month before the month of marriage to the employee.

   Eligibility to a surviving divorced spouse, surviving divorced young mother/father or remarried widow(er) annuity in the month before the month of marriage to the employee, DOES NOT fulfill the marriage requirement.

   Under this requirement, the term "eligible" means that the spouse received or would have been entitled to an annuity if an application had been filed and (s)he had attained the required age. It is not necessary for the spouse to have filed a survivor application or to have attained age 60 before the month of marriage to be eligible for a spouse annuity from the first day of the month of the current marriage.

   In both examples below, the one year marriage requirement is waived.

EXAMPLE #1: The young widow of a deceased RR employee would be eligible for a widow's annuity if she were age 60. Before she attains age 60, she marries a disabled RR annuitant who has attained age 62 and has a young child. She is eligible for a spouse annuity from the month of her remarriage based on having the EE's child in her care because she was eligible for a widow's annuity in the month before her remarriage.

EXAMPLE #2: The widow of a deceased RR employee will be eligible for a widow's annuity in August 1980, the month she attains age 60. In June 1980, she marries a retired RR employee who is receiving a 60/30 annuity. She is eligible for a spouse annuity from 8-1-80 since she was eligible for a widow's annuity in the month before her remarriage.

320.13.2 Living With

Prior to August 12, 1983, all spouse applicants had to be “living with” the employee as of the spouse annuity application filing date. Effective August 12, 1983, the 1983 RR Act Amendments eliminated "living-with" as an eligibility requirement for a legal spouse.

Living-with is still a requirement for a deemed spouse applicant. This concept means:

1. The spouse and employee must have been members of the same household; or

2. The spouse must have been receiving regular contributions (See RCM 4.6.25) toward support from the employee; or

3. The employee must have been under a court order to contribute to the spouse's support. A spouse's annuity could not, by virtue of the retroactive feature of a court order for support, begin earlier than the first of the month in which the court order is dated, because in spite of the retroactive feature, the spouse could not actually meet all the qualifications of a "spouse" until the order was entered.

320.14 Requirements for Spouse Annuity Based on Child-in-Care

320.14.1 Eligibility Requirements

A spouse under FRA may qualify for a spouse Tier 1 and Tier 2 if he or she, individually or jointly with the employee, has the employee’s child-in-care. The child must meet the conditions of both A and B below.

See FOM1 320.10.4 B for details on when a child-in-care annuity may be paid to a male spouse.

A. Relationship and Dependency

The child must:

1. Be the employee's natural, adopted or stepchild, or, under certain conditions, a grandchild whose parents are deceased or disabled, as explained in RCM 4.4; and,

2. Be dependent on the employee, as explained in RCM 4.7; and

3. Be unmarried. A child who is widowed or divorced when the spouse applies for a child-based annuity is considered unmarried. However if the initial entitlement based on having a child-in-care terminates due to the child's marriage, the spouse cannot later become re-entitled to an annuity based on that child's unmarried status. If the marriage was annulled, refer the case to your attorney-advisor.

B. Minor Child or Disabled Child

The child must be either:

1. under age 18; or,

2. have a permanent disability that began before the child attained age 22 and which prevents any kind of regular employment. Note: If the spouse was previously entitled based on having a disabled child in his/her care and the annuity terminated due to the child's recovery, it is possible to become entitled again if the child meets the re-entitlement requirements as explained in DCM 3.10.10. If the re-entitlement requirements are met more than 7 years after the termination of the previous annuity, the spouse will be entitled to tier 1 only. In such cases, the APPLE application must be marked for manual review.

320.14.2 Definition of Child-in-Care

The child must be in the spouse's care. A child is in the spouse's care if the spouse exercises parental control over, and is responsible for, the welfare and care of the child. A child who is permanently disabled, but mentally competent, is considered to be "in care" if the spouse performs personal services. The RRB will make the final determination regarding the personal services performed and whether or not they constitute the child being in the spouse's care (see RCM 4.7.95).

320.14.3 First Full Month Requirement

Section 103 of P.L. 98-76 amended the RRA to make the annuity beginning dates under the RRA conform to those under the SSA. Since SSA has the full month of entitlement rule for child-in-care, the RRB also applies this rule. For applications filed after August 1981, a spouse born September 2, 1919, or later is not eligible for Tier 1 in any month before the first full month throughout which the entitled child is in care. If filing on the basis of a disabled child, the child must have been in the spouse's care and disabled for every day of an entire month for the spouse to be first entitled.

320.14.4 Nancy Johnson Cases -

In August 1993, Board Order 93-108 approved payment of retroactive Tier 1 benefits to spouse, widow and widower annuitants who, during the period January 1, 1986, through July 31, 1992, were entitled to an annuity based on having a minor child between ages 16 and 18 in care, and that benefit was terminated solely because the minor child attained age 16. The Tier 1 component does not retroact prior to January 1, 1986. This Board Order applies to both female spouse annuitants and male spouse annuitants. These are called "Nancy Johnson" cases.

From May 1, 1983, through December 31, 1985, the child must have been under age 16 to qualify a male spouse for an annuity. From August 1981 through December 31, 1985, the child must have been under age 16 to qualify a female spouse for Tier 1 and the child must have been under age 18 to qualify a female spouse to Tier 2.

320.14.5 Age Reduction for Spouse With Child-in-Care

In general, the spouse Tier 1 component does not have an age reduction if the spouse has the employee's child-in-care. Before RRSIA, an exception applied when the employee has at least 360 months of railroad service and has an age and service annuity ABD before age 62 and before January 1, 2002. The spouse Tier 1 component age reduction is described in FOM-I-320.12.

320.15 General Requirements for Divorced Spouse Annuity

The divorced spouse annuity cannot begin before the employee annuity unless the divorced spouse meets the requirements in FOM1 111.12 for an independently entitled divorced spouse annuity. Regardless of the employee's total railroad service months, the divorced spouse annuity cannot begin before the employee meets the age requirement in the chart below.

The type of SS Act insured status makes a difference in employee 60/30 cases and employee disability cases.

If, based on combined railroad and SSA earnings, the employee has:	and the employee is receiving an RRA employee annuity and is at least:	the divorced spouse annuity can begin:	The annuity will have an age reduction if the divorce spouse ABD is:
an *SS Act Fully Insured Status* (40 *Quarters of Coverage* for those born after 1928),	age 62 for a full month,	the first full month the divorced spouse is age 62.	before the divorced spouse attains FRA.
An SS Act Disability Insured Status (disability freeze),	age 62,	the first full month the divorced spouse is age 62.	before the divorced spouse attains FRA.

320.16 Divorced Spouse Marriage Requirements

320.16.1 The 10-Year Marriage Requirement for Divorced Spouse

The divorced spouse must have been married to the EE for a period of at least 10 years immediately before the date the divorce became final. The 10-year marriage requirement is met when the final decree of divorce is dated on or after the 10th anniversary of the applicant's and the employee's marriage.

Example, if the date of marriage is June 23, 1956 and the date of divorce is June 22, 1966, the divorced spouse applicant is not eligible.

The 10-year period of marriage must immediately precede the divorce. However, the 10-year requirement may be met if the period of marriage was interrupted by a previous divorce, provided the employee and spouse remarried in the same year or in the calendar year immediately following the year in which the divorce took place. If the remarriage does not occur in the prescribed time, two periods of marriage cannot be "added together" to produce 10 years. Example: The employee and spouse were married on April 9, 1950, and divorced on June 8, 1957. They remarried on July 15, 1958, but were again divorced on November 3, 1960. The 10-year marriage requirement is met because they remarried before the end of the calendar year following the year the divorce took place. When this requirement is met, the time period during which the couple was divorced is counted as if they had been married.

If the employee and spouse in this example remarried in 1959, the 10-year marriage requirement would not be met. The divorced spouse then could qualify only if the second marriage lasted 10-years before the divorce. The first 7 years of marriage cannot be added to a subsequent period to produce 10 years.

If the 10-year marriage requirement is not met by the most recent period of marriage the divorced spouse may be eligible based on a previous 10-year period of marriage.

Example: The employee and spouse were married on April 9, 1950, and divorced on June 8, 1973. They remarried August 9, 1979, and were again divorced July 15, 1980. The divorced spouse may qualify based on the first 10-year marriage, because the employee and divorced spouse were married 10 years immediately before the divorce.

320.16.2 Divorce Decrees

If a divorce decree is signed one date and “entered” on another date, it is effective on the date it is “entered.” A divorce is deemed to exist throughout the month in which it is “entered.”

EXAMPLE: The divorce decree was “entered” on June 17, 1983 and the divorced spouse meets all other requirements for entitlement to a divorced spouse annuity. The ABD can be as early as June 1, 1983.

For further information about divorce decrees and foreign divorces, see RCM 4.3.

A. Types of Final Divorce Decrees

A final divorce completely dissolves a marriage and restores the parties to the status of single persons. These can also be referred to as:

1. absolute divorce, or

2. divorce a vinculo matrimonii

Some divorce decrees contain the Latin phrase “nunc pro tunc”(then for now) and two dates. This is an entry made now for something previously done and has a retroactive effect. For example, a judge may issue a “nunc pro tunc” order to correct a trial record made earlier. The correction would be considered effective from the date of the original record rather than the date of the correction. Headquarters must make a determination as to the correct date of divorce in cases where the final divorce decree has the phrase “nunc pro tunc.”

B. Actions that are not Divorces for Entitlement Purposes:

The following legal actions are not considered to be final divorce decrees for entitlement purposes:

1. a legal separation,

2. qualified or preliminary divorce,

3. divorce from bed or board,

4. divorce a mensa et thoro,

5. interlocutory decree, or

6. decree nisi

C. Allegations

Do not accept the applicant's allegation that the marriage was legally terminated as a result of separation of parties, abandonment, or limited divorce as sufficient for entitlement unless specifically covered by the laws of the State in which the divorce took place.

D. Annulments

Annulment decrees should be referred to P&S. A decree of annulment usually constitutes a judicial declaration that a purported marriage is:

1. void (legally non-existent from its beginning) or

2. serves to terminate a voidable marriage (a defective marriage which is valid unless and until declared void by a court action).

However, in some places, a decree of annulment may serve to terminate a valid marriage (although such action is usually called a divorce).

320.16.3 When A Divorce Decree Can Be Used As Proof Of Marriage

A final decree of divorce presupposes that the marriage terminated by the divorce was a valid one. Thus, in most cases, proof of the divorce also constitutes evidence of the validity of the divorced spouse's marriage to the employee. Additional development of proof of marriage would only be required when:

1. Development is necessary to establish the validity of the divorce decree itself; or,

2. Information in file, in the divorce decree, etc., raises a reasonable doubt of the validity of the marriage; or,

3. The divorce decree does not contain sufficient information to determine that the marriage lasted at least 10 years.

If any of these exceptions apply, proof of marriage must be obtained.

320.16.4 Divorced Spouse Must Be Unmarried

A divorced spouse annuity is not payable for any month in which the divorced spouse is married. However, divorced spouses can be entitled (or re-entitled) to divorced spouse annuities even though they remarry after the divorce from the employee, provided that:

1. All other requirements are met; and

2. The later marriage terminated by death, divorce or annulment.

This provision applies even though the divorced spouses can qualify for SS benefits on the later spouses' wage records; no matter how many times they remarried, provided all marriages have ended; and regardless of when the marriage(s) took place or ended in relation to this provision. Entitlement cannot, however, be established for any month(s) prior to the month in which the later marriage ended.

320.17 Divorced Spouse Annuity Age Reduction

320.17.1 Tier 1 Component

Divorced spouse entitlement is limited to the Tier 1 component, which is the amount of the SS formula spouse's benefit. No Tier 2 component is payable.

320.17.2 Age Reduction When Employee Has at Least 120 Months Service -When No Previous Entitlement to Spouse Reduced Age

The age reduction factor for a reduced divorced spouse annuity is 1/144 for the first 36 months the divorced spouse is under FRA and 1/240 for each additional month the divorced spouse is under FRA on the RRA divorced spouse ABD.

320.17.3 Age Reduction When Employee Has Less Than 120 Months Service - When No Previous Entitlement to Spouse Reduced Age

If the employee has less than 120 months of railroad service but has 60-119 Months of Railroad Service with at least 60 Months of railroad service After 1995, the divorced spouse annuity is reduced by 1/144 for the first 36 months the divorced spouse is under *FRA* and by 1/240 for each additional month the divorced spouse is under *FRA* on the RRA divorced spouse ABD, or, if earlier, the divorced spouse's social security benefit date of entitlement.

320.17.4 Age Reduction When There was Previous Entitlement to Spouse Reduced Age Annuity

Effective August 12, 1983, or later, when the divorced spouse was previously entitled to a spouse annuity that was reduced for age, the age reduction factor from the previous spouse annuity is used as the age reduction factor of the divorced spouse annuity. This rule applies even when there is a gap in entitlement between the spouse annuity and divorced spouse annuity.

Prior to August 12, 1983, the divorced spouse annuity age reduction was always calculated based on the ABD of the divorced spouse annuity.

320.17.5 Divorced Spouse Previously Entitled to a Reduced 60/30 Annuity Under '83 Amendments

If the divorced spouse was previously entitled to a spouse reduced 60/30 annuity under the '83 Amendments, the age reduction that applied to the spouse does not carry over to the divorced spouse annuity. The age reduction, if any, of the divorced spouse annuity is based on the number of months the divorced spouse is under FRA on the annuity beginning date of the divorced spouse annuity.

320.18 Divorced Spouse RIB/DIB Entitlement

Divorced spouses must not be entitled to their own RIB or DIB, based on a PIA which is equal to or greater than one-half of the employee's PIA-1. Use the MBR PIA based on the divorced spouse's own earnings record to determine if this provision applies. Do not use the amount of the RIB or DIB currently payable. If the RIB or DIB PIA equal or exceeds 50% of the employee's PIA1, the divorced spouse annuity application must be denied.

EXAMPLE: The employee's Tier 1 PIA is $620.40. The divorced spouse is entitled to an RIB of $262.50 based on a PIA of $350.00. Because her PIA ($350.00) is greater than one-half of the employee's PIA ($310.20), she is not eligible for a divorced spouse annuity.

Even though a divorced spouse may be entitled to an annuity because her RIB/DIB PIA does not equal or exceed one-half of the employee's Tier I PIA, she may be entitled to a zero rate annuity. This may occur when a divorced spouse's annuity is reduced for age, and her SS benefit amount reduces Tier 1 to zero.

In some cases, the divorced spouse may wish to wait until Full Retirement Age to file, since Tier 1 will then exceed the SS benefit. RBD will ask you to contact a divorced spouse with a zero rate reduced annuity, who would receive an annuity if the divorced spouse annuity began at Full Retirement Age. The divorced spouse may wish to cancel the reduced annuity application.

EXAMPLE: One-half of the employee's PIA is $310.20. The divorced spouse's annuity Tier 1 is $232.60 at age 62. The divorced spouse's DIB PIA and benefit is $296.70. She is entitled to a divorced spouse annuity, because her DIB PIA is less than one-half of the employee's PIA. However, her annuity rate is zero, because the SS benefit ($296.70) exceeds her tier I ($232.60). If the divorced spouse ABD were at Full Retirement Age 65, she would be entitled to the difference between the unreduced Tier 1 and her SS benefit.

Also note that the divorced spouse who is not eligible for an annuity because of this requirement may be eligible for a surviving divorced spouse's annuity when the employee dies. A surviving divorced spouse's RIB/DIB PIA may be equal to 100% of the employee's death PIA. A divorced spouse who has a RIB/DIB greater than 50% but less than 100% of the employee's PIA should be advised to contact the RRB when the employee dies.

320.19 Other Reductions to Spouse and Divorced Spouse Annuities

320.19.1 Reduction for Public Service Pension

Refer to FOM-I-120.40 for all public service pension information.

320.19.2 Reduction for Worker's Compensation Or Public Disability Benefit

Tier 1 of a spouse or divorced spouse annuity may be reduced if the reduction for worker's compensation or a public disability benefit applies to the employee's disability annuity. The reduction is first applied to the spouse or divorced spouse tier I, then to tier I of the employee's disability annuity. See FOM-I-120.35 for more information.

320.19.3 Reduction for Earnings

A spouse or divorced spouse annuity may be reduced for earnings as explained in FOM-I-1120 and FOM-I-1121.

320.19.4 Eligibility for Another Railroad Retirement Act Annuity

If the spouse or divorced spouse is eligible for another annuity under the Railroad Retirement Act, refer to FOM-I-120.5.

320.20 Development of Spouse Annuity Applications

320.20.1 Development Policy for Spouse Annuities

It is the RRB's policy to solicit an application whenever it is determined that a spouse may be eligible for an annuity upon filing. Both manual and mechanical means are used to develop such claims as explained in the following section.

320.20.2 Forms and Evidence Requirements for Spouse Annuity

Evidence	When Required
Application Form AA-3	Always.
Application for Substitution of Payee (AA-5)	Required if a substitute payee is to be appointed for a spouse.
Employee's Certification (G-346)	Required in all cases except when the spouse's application filing date is less than 90 days from the voucher date of the employee's initial award.
Age of Spouse	When spouse entitlement is based on age.
Marriage	Always, (Prior to 6-1-1958 documentary evidence was not required, spouse's statement was acceptable if verified by employee's Form G-346.)
Public Service Pension Questionnaire (G-208)	When AA-3 indicates spouse is receiving or will receive a public service pension.

	It is not necessary to secure form G-208 if the application is taken on APPLE. The form must be obtained if the application is taken on a paper AA-3.
Living-With (Members of Same Household)	If filing as a deemed spouse. The employee and deemed (defacto) spouse should reside at the same address.
Termination of Prior Marriage	If reasonable doubt whether prior marriage of either employee or spouse was ended.
AA-19a, Application for determination of Child Disability	If a spouse is under FRA (or age 60 in a 60/30 case) and the only child-in-care has attained age 18 and is alleged to be disabled.
Proof of Public Service Pension Rate	Required to document G-208, with rate effective date, if a reduction for a public service pension (PSP) applies, and the estimated spouse Tier 1 after all reductions is greater than zero.
Proof of Public Service Pension Eligibility Date and Starting Date	Required if a spouse may be exempt from PSP reduction because the PSP eligibility was earlier than 12-1-1982, but the pension began after 11-30-1982. Proof is also required if a reduction exemption is claimed based on dependency and the eligibility is before 7-1-1983, but the PSP began after 6-30-1983. See FOM1 120.40.3 for a complete list of exemptions.
Statement Regarding Contributions and Support (G-134)	Required if spouse claims exemption from PSP reduction based on dependency.
Child-in-Care	Only when a spouse under FRA (or under age 60 in a 60/30 case) is applying for an annuity on the basis of having a child-in-care.
Proof of Child's Age, Marital Status and Relationship to Employee	If child-in-care necessary to qualify spouse under FRA (or under age 60 in 60/30 case) for unreduced annuity. The proofs required are explained in RCM Part 4. It is preferable to get such proofs for the youngest unmarried child under age 18.

Notice of Protection of Filing Date for Social Security Benefits (RR-8)	Submit with the Form AA-3 only if a spouse is eligible for social security benefits, or will be eligible within 3 months, and wishes to use the filing date of the Form AA-3 as the filing date of an application for social security benefits.
Employee's Certification of Termination of Service and Relinquishment of Rights (G-88)	Required when a spouse files if the employee did not previously relinquish his rights and no G-346 is submitted or item 8 of the G-346 was crossed out. Do not solicit for a divorced spouse application
Earnings Information Request (G-19F)	Required if a spouse had pre-retirement non-railroad employment earnings and the ABD is in a prior year or the ABD is in the current year and the applicant has ceased the non-railroad work after the month of the ABD.

320.20.3 RL-100 Program

Form RL-100 is a computer-prepared card notice addressed to the employee annuitant stating that the spouse may be eligible for benefits and how the spouse can get such benefits.

The cases are selected and the cards prepared when:

1. Spouse attains age 59 years 9 months if employee annuitant is at least age 60, has 30 years of service; or

2. Spouse attains age 61 years 9 months if employee annuitant is at least age 62; or

3. Disabled employee annuitant attains age 59 years 9 months and (s)he has 30 years of service and the spouse is at least age 59 years 9 months, or

4. Disabled employee annuitant attains age 61 years 9 months if spouse is at least age 62.

320.20.4 Manual Release of RL-100

At the time a suspended employee annuity is reinstated, RBD will prepare an RL-100 notice if the annuity was in suspense on the G-96 cut-off date in the month the case would have been selected by the computer for preparation of an RL-100.

Enter the employee's name, address, and claim number, the servicing field office address and, in the upper left corner just below the form number the month of eligibility.

If the employee must relinquish rights before the spouse can receive an annuity, also enter "R of R needed." Release the card in a window envelope to the employee.

320.20.5 When Direct Development Is Required

RBD will develop a claim by direct correspondence when the applicant lives outside the U.S., Canada or Mexico. Correspondence requesting proofs should contain information about where evidence may usually be obtained.

320.20.6 Establishing Minor Child's Disability

A determination on the alleged disability of a minor child in the spouse's care is not required until the child attains age 18 (or age 16 if child-in-care of a male spouse). When the child is the applicable age, the field office will develop the required AA-19a application and proofs to establish the spouse eligibility based on a disabled child-in-care and/or to establish the child's Medicare entitlement.

320.20.7 When Employee will not Submit a Required Form G-346

When a Form G-346 is required and the employee is physically unable to complete a Form G-346 or refuses to submit a Form G-346, the field office is to secure a statement from the spouse explaining that to the Spouse’s knowledge, neither the Employee nor the Spouse have filed for or secured a divorce.

NOTE: If neither a Form G-346 nor statement can be secured, refer the case to P&S-RAC. P&S-RAC will make a final determination (e.g., acceptance or denial) based on the circumstances of each case.

320.20.8 Spouse Annuity under the Retirement O/M

To qualify for an increase in a spouse annuity under the O/M or for a spouse to be included in the computation of the employee's annuity under the O/M as an IPI the spouse must meet the qualifying requirements of the SS Act for entitlement to a wife's, or husband's benefit. See RCM 8.3.22.

Note: If the employee's annuity is increased under the "Spouse Election" procedure, refer to RCM 1.3, Appendix C.

320.25 Development of Divorced Spouse Annuity Applications

320.25.1 Development Policy for Divorced Spouse Annuities

The RRB does not solicit divorced spouse applications. The divorced spouse must initiate the annuity application.

There are no provisions in the RRA for paying a divorced spouse annuity based on having the employee’s minor or disabled child-in-care or for paying a divorced spouse before the employee retires.

320.25.2 Forms and Evidence Requirements for Divorced Spouse Annuity

Evidence	When Required
Application Form AA-3	Always.
Application for Substitution of Payee (AA-5)	Required if a substitute payee is to be appointed for a spouse.
Age of Spouse	When spouse entitlement is based on age.
Marriage	Always, (Prior to 6-1-1958 documentary evidence was not required, spouse's statement was acceptable if verified by employee's Form G-346.)
Divorce	Always. The evidence should indicate that the duration of the marriage was at least 10 consecutive years.
Self-Employment and Substantial Service Questionnaire (Form AA-4)	Required when a divorced spouse has been self-employed within 12 months preceding the application filing date.
Public Service Pension Questionnaire (G-208)	When AA-3 indicates spouse is receiving or will receive a public service pension. It is not necessary to secure form G-208 if the application is taken on APPLE. The form must be obtained if the application is taken on a paper AA-3.
Proof of Public Service Pension Rate	Required to document G-208, with rate effective date, if a reduction for a public service pension (PSP) applies, and the estimated spouse Tier 1 after all reductions is greater than zero.

Proof of Public Service Pension Eligibility Date and Starting Date	Required if a spouse may be exempt from PSP reduction because the PSP eligibility was earlier than 12-1-1982, but the pension began after 11-30-1982. Proof is also required if a reduction exemption is claimed based on dependency and the eligibility is before 7-1-1983, but the PSP began after 6-30-1983. See FOM1 120.40.3 for a complete list of exemptions
Statement Regarding Contributions and Support (G-134)	Required if spouse claims exemption from PSP reduction based on dependency.
Termination of Prior Marriage	If reasonable doubt whether prior marriage of either employee or spouse was ended.
Proof of Other Marriage Termination	Required when a divorced spouse was remarried between her divorce from the employee and her filing as “unmarried” for a divorced spouse annuity.
Notice of Protection of Filing Date for Social Security Benefits (RR-8)	Submit with the Form AA-3 only if a spouse is eligible for social security benefits, or will be eligible within 3 months, and wishes to use the filing date of the Form AA-3 as the filing date of an application for social security benefits.

320.25.3 Divorced Spouse Annuities and the Retirement O/M

The divorced spouse's annuity rate may never be increased under the O/M to an amount that exceeds his/her RR formula Tier 1 rate. The divorced spouse is not included in the family group when computing the Retirement O/M family maximum. See RCM 8.3.21.

320.25.4 Independently Entitled Divorced Spouse (IEDS) Annuities

Effective August 17, 2007, it is possible to pay a divorced spouse before the employee is entitled to an annuity. In order to pay this independent annuity to the divorced spouse, the employee must be eligible for an annuity. When taking the application, determine the following:

1.	Is the employee eligible for an age and service annuity? Check EDMA to make sure the employee has 120 months of service, or 60 months after 1995. Develop lag service if necessary for eligibility.

2.	Are the employee and the divorced spouse age 62 for a full month? The divorced spouse will have to present proof of age for the employee as well as her/himself. If proof of age for the employee can't be obtained, the application will have to be denied.
3.	Have the employee and the divorced spouse been divorced for 2 full years? The first ABD for an IEDS is August 17, 2007. Therefore, the date of divorce for that ABD can be no later than August 16, 2005. If the date of divorce is later, the earliest ABD is the first day of the month two full years after the divorce. This rule is in addition to normal rules that apply to determining the ABD.

Enter the application in APPLE as usual. The following entitlement exceptions will apply:

- The employee will not have to be entitled to an annuity.
- The employee will not have to quit work in the railroad industry.
- The employee will not have to relinquish rights in order for the divorced spouse to receive an annuity.
- Normal retroactivity will apply to these annuities with the exception that no independently entitled divorced spouse award will retroact before 08-17-2007.
- The divorced spouse annuity will not be reduced for the employee's earnings.

The divorced spouse will have to stop work in the railroad industry and relinquish rights before an annuity will be paid. The reductions to the annuity are the same as with the regular divorced spouses (e.g., PSP, SS benefits, work deductions).

320.30 Spouse/Divorced Spouse Annuity Beginning Date

The "Annuity Beginning Date" (ABD) is explained in FOM-I-111.

320.31 Death of Spouse or Divorced Spouse Applicant Before ABD

If there is a valid spouse or divorced spouse annuity application pending when the applicant dies, refer to FOM-I-1581.35.7.

320.32 Suspension of Spouse or Divorced Spouse Annuity

The procedure explaining when to suspend a spouse/divorced spouse RRB annuity is in RCM 6.3. The field office instructions for FAST-S/T for suspending the RRB annuity are in FOM-I-1560.

The RRB field office is not authorized to suspend social security benefits being paid by the RRB without the permission of SSA (see FOM-I-715.25).

320.33 When a Spouse/Divorced Spouse Annuity Terminates

320.33.1 When Entitlement Ends for Spouse Annuity

A legal spouse's annuity terminates with the last day of the month before the month in which:

- The marriage to the employee annuitant is ended. If the marriage is ended by divorce, refer to FOM-I-320.50.
- The spouse dies;
- The employee's entitlement to an employee annuity ends; or
- The employee dies (See FOM-I-320.57).

320.33.2 When Entitlement Ends for a Spouse with a Child in Care

In addition to the events listed in FOM-I-320.33.1, the entitlement of a spouse under Full Retirement Age (or under age 60 in a 60/30 case) to an unreduced spouse's annuity ends with the last day of the month before the month in which the youngest child:

- Is no longer in care; or
- Marries; or
- Dies; or
- Attains age 18 and is not disabled. The procedure explaining the monthly age 18 attainment processing is in RCM 6.3.

  EXCEPTION: For spouse annuity rates effective between, 9-1981 and 8-1992, a wife was eligible for Tier 2 until the child attained age 18. However, payment of tier I ceased when the child attained age 16.

When a disabled child age 18 or over recovers from disability, the spouse annuity is payable for 2 months after the month in which the child recovers.

Refer to FOM-I-320.40 if the spouse could qualify for an annuity based on age.

NOTE: A child age 18-22 who is a full-time student will NOT qualify a spouse for an annuity.

320.33.3 When a Divorced Spouse Annuity Terminates

A divorced spouse annuity terminates the last day of the month before the month in which:

1. The divorced spouse remarries. (Note: If the divorced spouse remarries the employee, refer to FOM-I-320.55.)

2. The divorced spouse becomes entitled to an RIB or DIB based on a PIA which equals or exceeds one-half of the employee's PIA;

3. The divorced spouse dies;

4. The employee dies (refer to FOM-I-320.57); or

5. The employee's entitlement to an annuity ends.

320.34 Field Office Processing Termination of Spouse or Divorced Spouse Annuity

The field office instructions for FAST-S/T for terminating the annuity are in FOM-I-1560.

The RRB field office is authorized to terminate social security benefits when the termination is due to the beneficiary's death (see FOM-I-715.25.3). Therefore, the field office FAST-S/T termination code “51” due to the death of the spouse or divorced spouse should terminate both the RR annuity and any SS benefit.

The RRB field office is not authorized to terminate social security benefits without the permission of SSA, when the termination is for a reason other than the beneficiary's death (see FOM-I-715.25.3). Field office FAST-S/T termination code “57” due to the divorce of the spouse or remarriage of the divorced spouse should terminate the RRB annuity only, not any SS benefit payable to the spouse or divorced spouse.

The Retirement Benefits Division (RBD) must be notified if the spouse/divorced spouse RRB annuity was not terminated timely.

The termination of the spouse/divorced spouse annuity may affect jurisdiction of Medicare (see FOM-I-810.45)

320.35 Spouse or Divorced Spouse Annuities Due but Unpaid

320.35.1 Death of Employee Annuitant

Entitlement to a spouse or divorced spouse annuity for a retroactive period can be established after the employee annuitant's death if the survivor files an RRB application for the spouse or divorced spouse annuity and the eligibility requirements for a spouse or divorced spouse annuity were met before the month in which the employee died as explained in FOM-I-112.10.

320.35.2 Death of Spouse or Divorced Spouse Annuitant

There may be an accrued spouse or divorced spouse annuity due if the folder or on-line screens contain:

1. Information indicating that the spouse or divorced spouse annuity payments were "suspended" effective a month before the month of death; or,

2. Information indicating that there are one or more uncashed spouse or divorced spouse annuity checks outstanding for month(s) before the month of death; or,

3. Information indicating that a spouse or divorced spouse annuity rate adjustment is needed that will increase the amount of the spouse annuity for months before the month of death.

320.35.3 When an Application is not Required for Accrued Annuity Based on Death of Spouse or Divorced Spouse

If the employee annuitant survives the spouse or divorced spouse, an application is not required for payment of the accrued spouse or divorced spouse annuity to the employee. Use the previously-filed employee annuity Application AA-1 as an application for any accrued annuity payable to the employee.

320.35.4 Application and Proofs

Headquarters will handle the claim according to the instructions in RCM 2.7, "Annuities Due But Unpaid at Death."

320.40 When Child No Longer In Care

The procedure explaining the monthly attainment processing of spouses and their children is in RCM 6.3.

320.40.1 Spouse Qualifies For Immediate Annuity Based on Age -

The spouse annuity based on child-in-care must be terminated and a new award prepared for the annuity based on age. The spouse will receive a new ABD based on the RRA provisions in effect at the time the annuity based on age is paid. Any public service pension reduction is based on the ABD for the previous annuity.

A modified application is required only when there is no break in entitlement, but an age reduction applies to the spouse annuity based on age. The application allows the person to “accept” the age reduction.

When the required forms are in the claim file and there is no break in entitlement, the annuity based on age may be processed without termination of the previous annuity. The new ABD and type of entitlement are required on the annuity award.

Release a letter to the spouse indicating the change in the basis of entitlement.

NOTE: If the spouse annuity based on a child-in-care was computed under 1974 Act or conversion rules and the basis for entitlement changes 10-1-81 or later, the unreduced

age annuity was still computed under 1974 Act or conversion rules as long as the spouse annuity entitlement did not end.

320.40.2 Break in Entitlement of One Month or More -

A new application is always required when there is a break in entitlement between the spouses annuity based on child-in-care and the spouse annuity based on age.

320.50 Spouse Divorces the Employee

The spouse annuity must be terminated when the spouse and the employee divorce. Entitlement ends with the last day of the month before the month in which the decree of divorce becomes final. Entitlement is not ended by a limited decree of divorce or an interlocutory decree of divorce;

If the spouse is entitled to a divorced spouse annuity (see FOM-I-320.5.3) Headquarters must prepare a new award to pay the divorced spouse annuity. Use the date of the final divorce decree as the filing date on the new award. Proof of divorce (see FOM-I-320.25.2) is required.

NOTE: A defacto (deemed) spouse (see FOM-I-320.5.2) is not eligible for a divorced spouse annuity regardless of the duration of the deemed marriage to the employee annuitant.

320.50.1 No New RRA Application Required -

No new RRA application is required when:

A. A legal RRA spouse's annuity is terminated by divorce and the divorced spouse meets the requirements for a divorced spouse annuity, including attainment of age 62 and

B. Was entitled to a spouse annuity on the same RRB claim number in the month before the divorce is final.

320.50.2 New RRA Application Needed -

A new RRA application is needed for a divorced spouse annuity after a legal spouse's annuity is terminated by final divorce when:

A. there is a gap in eligibility between the end of the spouse annuity and the annuity beginning date of the divorced spouse annuity (i.e. months before the divorced spouse is age 62) or

B. entitlement to the divorced spouse annuity is based on a different RRB claim number.

320.50.3 Direct Deposit Data

The RRB field office should check for any change in the divorced spouse's name, bank, and bank account number and process the direct deposit information according to FOM-I-110.73.

320.50.4 Change from Full Spouse Annuity to Reduced Age Divorced Spouse Annuity

If an age reduction is to be applied to the divorced spouse annuity and the previous spouse annuity was not subject to an age reduction (i.e. spouse 60/30 annuity or spouse with child-in-care), determine if an additional statement is needed by reviewing the spouse's original application.

A. If the application indicates the spouse will accept a reduced annuity, use that application to process the reduced age divorced spouse annuity.

B. If the application indicates the spouse will not accept a reduced annuity, a signed statement accepting a reduced annuity is needed before a reduced age divorced spouse application can be processed.

NOTE: If the spouse's original application is not available on APPLE or imaging, request the RBD examiner review the claim folder for the original application.

320.55 Divorced Spouse Remarries the Employee

320.55.1 Development Required

When the divorced spouse was entitled to a divorced spouse annuity on the same RRB claim number in the month before the remarriage, and the person remarries the employee, the divorced spouse annuity must be terminated and a new award prepared for the spouse annuity. No new RRA application is required. Use the date of remarriage as the filing date on the new award. Proof of the remarriage is required. See FOM1 320.13.1 to determine if the one-year marriage requirement can be waived.

A modified G-88 is also required. The LPE will be any nonrailroad employer that the person worked for within 6 months of the new spouse annuity ABD.

The RRB field office should check for any change in the spouse's name, bank, and bank account number and process the direct deposit information according to FOM-I- 110.73.

320.55.2 Change from Reduced Divorced Spouse Annuity to Unreduced 60/30 Spouse Annuity

If an age reduction was applied to the divorced spouse annuity and the spouse is entitled to a 60/30 annuity without an age reduction, pay the 60/30 spouse annuity without an age reduction.

320.56 Divorced Spouse Who Becomes Re-entitled to a Divorced Spouse Annuity

A divorced spouse must be “unmarried.” Thus, if a divorced spouse annuitant's entitlement ends because of marriage and that subsequent marriage is later terminated, the divorced spouse may again be entitled to a divorced spouse annuity as “unmarried.” Proof of subsequent marriage termination would be required.

Whenever there is a gap in entitlement, a divorced spouse must file a new application. If the divorced spouse is still under full retirement age, the age reduction for the new entitlement will be based on the divorced spouse's previous age reduction.

The RRB field office should check for any change in the spouse’s name, bank, and bank account number and process the direct deposit information according to FOM-I- 110.73.

320.57 Spouse or Divorced Spouse on Rolls When Employee Dies

So that they may continue to receive benefits without interruption, the widow(er) or Surviving Divorced Spouse of a completely insured annuitant is deemed to have filed an application for a survivor annuity. They continue to receive their spouse/divorced spouse annuity until the spouse-to-widow conversion is processed, unless evidence in file creates doubt as to eligibility for a widow(er)’s annuity or surviving divorced spouse annuity.

However, such payments are restricted to a "reasonable" period after the month in which the employee died. If proof of death is not received within six months after the month of death, the field office should determine why proof of the employee's death has not been submitted and whether payments made to the widow(er) or surviving divorced spouse after the employee's death were proper.

320.58 When Spouse May Switch From Reduced Annuity To Unreduced Annuity

A spouse who previously elected a reduced annuity may later become entitled to an unreduced annuity if there is a change in the law which provides eligibility for an unreduced annuity.

EXAMPLE 1: A spouse has a dependent grandchild in her care on 1-1-1972, the date she is entitled to a reduced spouse's annuity. On 1-1-1973, the earliest date female spouse benefits are payable based on a dependent grandchild, she becomes entitled to an unreduced spouse's annuity.

EXAMPLE 2: A male spouse is receiving an age reduced annuity from 6-1-1982. Effective 5-1-1983, he can receive an unreduced annuity based on a child-in-care.

This provision does NOT apply to spouse cases where the spouses acquire an entitled child after they elected the reduced annuity (e.g. the child was adopted after the reduced annuity began). However, in such a situation, the spouse has the option of canceling the reduced-age application and filing for the unreduced annuity. This may be especially advantageous if the spouse filed for a reduced annuity after the child attained age 18 and the child became disabled before attaining age 22. (See RCM Chapter 5.1 for procedure on cancellation of application.)

320.59 New Application Required After Denial of Application

Before the RRB makes a final decision on the annuity application, applicants can change their application to agree with the proofs they submit. However, after a formal denial of an application, applicants cannot change their application to agree with the proof they submits. A new application is required.

RBD/SBD takes formal denial action as explained in FOM-I-110.20.

At one time, it was the policy of the RRB to consider all denied applications for employee or spouse annuities as effective for any annuities for which the applicants later became eligible. That was known as the “Continuing Application Concept.” That concept no longer applied to an application that was denied for any reason with the date of the notice of the formal decision after 9-7-61.

Also, if the applicants do not meet the conditions outlined in RCM Chapter 6.2 “re-openings,” a new application is required.

320.60 Vested Dual Benefit Entitlement Requirements

Under the 1974 Railroad Retirement Act, a spouse annuitant who is entitled to social security benefits, in addition to a spouse annuity, does not receive the full advantage of receiving both benefits. A railroad annuity must be adjusted for the amount of social security benefits payable. However, for spouse annuities authorized for payment before 8-13-81, a spouse annuitant could benefit from social security coverage if she was vested for a "vested dual benefit" (VDB), an amount added to the annuity computation. It was designed to simulate the additional amount that the spouse would receive because of entitlement to both RR and SS benefits.

The 1981 RRA amendments eliminated VDB entitlement for spouses paid under the 1981 RRA amendments. A VDB may be paid only if the spouse was vested as of 12-31-74, her spouse annuity was authorized for payment before 8-13-81 (the enactment date of the amendments), and the spouse was entitled to the VDB before 8-13-81. Prior to 8-13-81, the spouse only had to be vested as of 12-31-74. A divorced spouse, and a husband based on a child in care effective 5-1-83, are not eligible for a VDB.

The requirements for a vested status are in FOM-I-320.60.1 and 320.60.2. It is not necessary that the employee be vested for the spouse to be vested. The requirements for payment of a VDB 8-13-81 or later are explained in FOM-I-320.65.

Because of separate funding, VDBs may be subject to a percentage cutback if the total amount appropriated is insufficient to pay total VDBs for that fiscal year.

320.60.1 Spouse on the Rolls on 12-31-74

A spouse who filed an application before 1-1-75 and had a beginning date before 1-1-75 is vested if she was:

A. Receiving SS benefits on 12-31-74; or

B. Fully or transitionally insured under the Social Security Act on her own wage record on 12-31-74.

320.60.2 Spouse on the Rolls After 12-31-74

A spouse who filed an application after 1-1-75 or had a beginning date after 1-1-75 is vested if either A. or B. below apply:

A. The spouse has a fully or transitionally insured status under the Social Security Act as of 12-31-74; the employee has at least 10 years of RR service as of 12-31-74; and the employee HAS EITHER

   1. Some RR service in 1974; or

   2. A current connection (C/C) on either 12-31-74 or on his ABD; or

   3. At least 25 years of RR service as of 12-31-74;

OR

B. The employee has at least 10 years of RR service as of 12-31-74 and the spouse has a fully insured status under the Social Security Act by the end of the year before 1974 in which RR service was last performed by the employee.

   EXAMPLE 1: The employee, who has 25 years of RR service, was receiving both an RR and an SS benefit on 12-31-74. His wife filed for a wife's annuity after 12-31-74. She was insured for an SS benefit on her own wage record as of 12-31-74. All of the requirements in FOM-I-320.60.2A are met for her to be vested.

   EXAMPLE 2: The employee worked in the RR industry from May 1, 1932, to April 24, 1951. From 5-1-51 on, he worked for an SS employer. His ABD and his SS effective date both are on 7-1-74.

   His wife worked for an SS employer from 1939 to 1962. She had an insured status under the Social Security Act by 12-31-51. Her ABD is 1-1-75. Since her husband had over 10 years of RR service and she was insured for SS benefits

by the end of the year in which her husband last performed RR service, she is vested under the conditions in FOM-I-320.60.2B.

320.65 Vested Dual Benefit Payment 8-13-81 Or Later

A vested dual benefit (VDB) may be paid only if the spouse was vested as of 12-31-74, her spouse annuity was authorized for payment before 8-13-81, and the spouse was entitled to the VDB before 8-13-81.

Generally, if the spouse annuity was paid before 9-1-81, it was probably authorized for payment before 8-13-81. An annuity award processed by RASI is authorized for payment on the date the computer run is made. A claim processed manually is authorized for payment on the date the award form is signed by both a claims examiner and a claims authorizer.

To be entitled to the VDB on her own account before 8-13-81, the spouse's date of birth must be before 8-14-19, or the spouse must be entitled to a social security disability insurance benefit which began in August 1981 or earlier, and the VDB must be payable before 8-13-81. To be entitled to the VDB based on the employee's earnings record, the spouse's date of birth must be before 8-14-19, or the spouse must be entitled to a social security benefit based on a child in care, and the employee's VDB date of entitlement must be before 8-13-81. When VDB entitlement depends on SS benefit entitlement, the SS benefit must have been paid before 8-13-81, and the RRB must have been aware of such entitlement before that date.

The spouse VDB may not be paid if it was erroneously denied before 8-13-81. The 1981 Railroad Retirement Act (RRA) amendments prohibit payment of a VDB in all cases in which entitlement was not determined prior to 8-13-81, including cases when entitlement was denied incorrectly.

An erroneous VDB denial generally means that the spouse was eligible for the VDB when the annuity was awarded or recertified, but the VDB determination was not made or was made incorrectly. The fact that the VDB was not paid, for whatever reason (delay, oversight, etc.), when evidence indicates such entitlement, means that the VDB was erroneously denied and cannot be paid.

EXAMPLE 1: A spouse annuitant was paid one-half of the employee's VDB on 8-1-81. The evidence in file also indicated she was vested for an RIB/DIB on her own account, but the RIB/DIB VDB was not paid on 8-1-81. Because the RIB/DIB VDB was not paid when the annuity was recertified and the spouse was eligible for the VDB, the RIB/DIB VDB was erroneously denied and cannot be paid.

EXAMPLE 2: A 60/30 spouse annuity was paid 3-1-81, showing that the spouse was eligible for an RIB/DIB VDB on 7-1-81, when she attained age 62. Even though the VDB was not paid before 8-13-81, the VDB should be paid. This situation does not involve erroneous denial of the VDB.

320.70 Employee Is Vested But The Spouse Is Not

Although the employee annuitant may be vested, the spouse is not vested if:

A. She is fully insured under the Social Security Act on 12-31-74 but the employee annuitant does not meet the RR requirements necessary for her to be vested (only in 1974 Act cases); or

B. The spouse is not fully insured or transitionally insured under the Social Security Act on her own wage record on 12-31-74 or fully insured by the end of the year before 1974 in which the employee last performed RR service.

However, if the employee is fully insured under the Social Security Act, the female or male spouse could still receive a VDB benefit because the spouse of a vested employee was guaranteed at least one-half of the employee's VDB. This VDB is payable from the employee's VDB date of entitlement but not before the spouse attains age 62 or has an eligible child of the employee in care. If the spouse is a male age 60-61, he may receive one-half of the employee's VDB effective 12-1-78 or later if he has a minor child of the employee in his care. The 1981 amendment requirements in FOM-I-320.65 must be met for any spouse VDB payment 8-13-81 or later.

If the employee is entitled to a VDB based on a transitional insured status at the Social Security Administration but the spouse is not eligible for a transitional wife's benefit because she did not attain age 62 before 1969, no VDB can be paid to the spouse.

320.75 One-Half Support Requirement For Male Spouse's VDB

A male spouse who is vested for a VDB on his own wage record may not receive a VDB amount based on being insured for a retirement insurance benefit (RIB) or disability insurance benefit (DIB) unless he also meets the one-half support requirement. Since one-half support was a requirement for paying a husband's benefit as of 12-31-74, a non-dependent male spouse cannot receive a full RIB or DIB VDB but is limited to only one-half of the employee's VDB, if any. If the female employee is not vested, a non-dependent male spouse is not entitled to a VDB amount even if he is vested on his own wage record. The 1981 amendment requirements in FOM-I-320.65 must be met for VDB payment 8-13-81 or later.

320.75.1 When Requirement Must Be Met

The point at which the one-half support requirement must be met is at the later of:

A. The ABD of the spouse annuity; or

B. The date the spouse could become entitled to an RIB; or

C. The date the spouse could become entitled to a DIB.

320.75.2 When Proof Must Be Submitted

Proof of support must be filed within 2 years after the point at which the support requirement must be met, unless good cause can be established. The male spouse should submit a Form G-134 (Statement Regarding Contributions and Support). Proof must have been submitted before 8-13-81.

EXAMPLE: The employee's husband (date of birth 2-15-16) is entitled to a spouse annuity beginning 2-1-78. He is entitled to a DIB effective 11-1-77 based on a period of disability beginning 5-1-77. He attains age 65 in 2-81, when the DIB is switched to an RIB. In this case, the support requirement may be met on 11-1-77, 2-1-78, or 2-1-81. If the spouse has not filed proof of support by 2-1-80 (2 years after the spouse ABD), he can still become entitled to a VDB effective 2-1-81 if the one-half support requirement is met on that date and the spouse files proof of support before 8-13-81.

320.80 When The Vested Dual Benefit Is Payable

The earliest point at which the spouse annuitant would be eligible for a vested dual benefit (VDB) depends on whether eligibility is based on the spouse's own wage record or on the employee's wage record. No VDB may be paid 8-13-81 or later unless the requirements in FOM-I-320.65 are met.

320.80.1 Eligibility Based on the Spouse's Own Wage Record

The VDB amount on a spouse's own wage record becomes payable to the spouse annuitant at the earliest point at which she would be eligible for an SS benefit, either:

A. Age 62 if she is eligible for a reduced RIB; or

B. Any age if she is eligible for a DIB.

320.80.2 Eligibility Based on the Employee's Wage Record

A spouse's VDB based on the employee's entitlement to a VDB is not payable before the employee's VDB date of entitlement. The employee does not actually have to have filed for an SS benefit to qualify the spouse for one-half of the employee VDB amount.

The spouse would be eligible for a VDB at:

A. Age 62 if the spouse is eligible for a wife's or husband's SS benefit; or

B. Any age if a female spouse is eligible for an SS benefit based on having in her care a child eligible for a child's SS benefit on the employee's wage record; or

C. Age 60 if a male spouse is eligible for an SS benefit based on having in his care a child eligible for a child's SS benefit on the employee's wage record. The VDB entitlement is not effective before December l, 1978.

320.81 Waiver Of Vested Dual Benefit Entitlement

When entitlement to a vested dual benefit (VDB) causes a decrease in the annuity rate, the annuitant may wish to waive entitlement to the VDB. An annuitant may request VDB waiver at any time. However, RBD will initiate the development of VDB waiver only in the following situations:

A. The VDB entitlement causes the annuity rate to decrease; or

B. The VDB cutback percentage is greater than 75%. The Tier 2 reduction for VDB entitlement is 25% of the VDB. If the VDB is cut back more than 75%, the Tier 2 reduction will exceed the amount of the VDB payable. VDB entitlement, therefore, will cause the annuity rate to decrease; or

C. The spouse is vested for an RIB/DIB VDB and a spouse VDB, but only the spouse VDB is payable. In this case, the spouse's Tier 2 is reduced for her RIB/DIB VDB entitlement. However, the RIB/DIB VDB is not payable because the spouse VDB is higher. If the spouse waives her RIB/DIB VDB entitlement, Tier 2 will not be reduced and the VDB amount will be the same.

This will only apply to cases in which VDB entitlement was established before 8-13-81. Whenever entitlement to an RIB/DIB VDB is waived, the annuitant's Tier 2 is not reduced for the VDB. However, the waiver does not affect any other annuity. That means that the RRA maximum computation, and the spouse minimum guaranty for a widow(er)'s annuity, will be based on Tier 2 after reduction for VDB entitlement.

The effective date of the waiver and other general information is in FOM-I-110.115. If the VDB has not been awarded, the waiver may be effective with the VDB date of entitlement. If the VDB has been paid, the rules in FOM-I-110.115 apply.

When RBD initiates development in the situations listed in this section, you will receive a memorandum which explains the advantages of waiving the VDB. The memo will include the annuity rates with and without the VDB, and the effect on annuity payments if the VDB is not waived (e.g., an overpayment). You should contact the annuitant to explain the advantages of waiving the VDB. Your response to RBD should be:

1. If the annuitant agrees, a clear and unambiguous statement waiving VDB entitlement; or

2. If the annuitant does not wish to waive the VDB, notify RBD; or

3. If the annuitant does not respond immediately, notify RBD of the date you contacted the annuitant. If VDB has not received a response within 60 days of the date of your contact, the VDB will be paid and any overpayment will be recovered. An extension of the time for response will be granted if requested.

320.85 When Vested Dual Benefit Entitlement Ends

Vested dual benefit (VDB) entitlement for a spouse annuitant ends either when her SS eligibility ends or when her annuity is terminated.

320.85.1 Spouse Annuity Based on Age

A spouse's VDB entitlement ends with the earliest of the following dates:

A. The last day of the month before the month in which the spouse dies; or

B. The last day of the month before the month in which the employee dies; or

C. The last day of the month before the month the marriage to the employee annuitant is ended. If the marriage is ended by divorce, entitlement ends with the month before the month in which the decree of divorce becomes final; or

D. The last day of the month before the month of termination of entitlement to a DIB, wife's, or husband's benefit under the Social Security Act.

320.85.2 Spouse with a Child in Her Care

In addition to the events listed in FOM-I-320.85.1, if the spouse VDB is based on having a child in care, VDB entitlement ends the last day of the month before the month the last child:

A. Is no longer in care; or

B. Marries; or

C. Dies; or

D. Attains age 18 and is not disabled. A spouse may be eligible for continued VDB payment if the child age 18 is disabled.

EXCEPTION: The VDB of an annuity awarded under the 1937 RR Act is payable until the child attains age 18.

Prior to 9-1-83, the VDB in all cases terminated when the child attained age 18. The VDB in a 1974 Act case was terminated 8-31-83 if the child was age 16-18 and not disabled.

E. Is age 18 or over and is no longer considered eligible based on a disabling condition. When a disabled child recovers from disability, the VDB is payable for 2 months after the month in which the child recovers; OR

F. VDB entitlement ends the month before the month of termination of the spouse's entitlement to an SS benefit based on having in care a child who is entitled to a child's SS benefit on the employee's wage record.

NOTE: If the VDB benefit is being paid, it is not terminated when an SS benefit is terminated because the spouse becomes entitled to a new type of SS benefit still based on her own or the employee's wage record, since the spouse is still eligible for an SS benefit. However, if there is a change in the type and rate of the SS benefit, and the new benefit is based on either the spouse's or the employee's wage record, the VDB benefit will be recomputed even if the change in computation is 8-13-81 or later.

325.5 Overall Minimum Defined

The overall minimum (O/M) guaranty is a provision of the Railroad Retirement Act (RR Act) that guarantees the employee and his family the same amount of benefits that would be payable under the Social Security Act (SS Act) if his railroad earnings were wages under the SS Act. The O/M applies if benefits payable under the O/M formula exceed the benefits payable to the employee, spouse and divorced spouse under the railroad formula.

In determining the O/M amount, all persons in the family group who could qualify for benefits under the SS Act are taken into account. The additional amount provided under the O/M is prorated between the employee and the spouse if the spouse is eligible for a railroad annuity. If the spouse is not eligible for an annuity, the amount of the increase under the O/M is included in the employee's annuity. A divorced spouse's O/M share is not prorated, because her O/M benefit is not reduced for the family maximum.

The term "spouse" in this chapter does not include a divorced spouse unless there is a specific reference to a divorced spouse.

325.5.1 Retirement Overall Minimum Provisions of the 1937 RR Act

The retirement O/M provision of section 3(e) of the 1937 RR Act guarantees that, effective 6-1-59, the total annuities payable for a full month to an employee and his family will not be less than 110% of the monthly amount which would be payable under the SS Act if railroad service after 1936 were credited as employment under the SS Act.

To be entitled to this retirement O/M computation, the employee must have filed his annuity application and have an annuity beginning date (ABD) before January 1, 1975. These benefits were converted to 1974 RR Act rates effective 1-1-75.

325.5.2 Retirement Overall Minimum Provisions of the 1974 RR Act

A. 110% grandfather retirement overall minimum -- The 110% retirement O/M provision of section 3(f)(2) of the 1974 Railroad Retirement Act guaranteed that, when an employee's annuity under the 1974 RR Act began to accrue after December 31, 1974, but before January l, 1983, the total monthly annuities (including any supplemental annuity payable before age 65 but excluding any vested dual benefit) payable to an employee and his family would not be less than the total amount that would have been payable under the retirement O/M provisions of the 1937 RR Act as in effect on December 31, 1974.

To be entitled to this retirement O/M computation, the employee must have filed his annuity application or have an annuity beginning date after December 31, 1974.

This provision no longer applied in most cases beginning 6-1-1976. Cumulative cost of living increases by 6-1-1976 caused the 100% retirement O/M rate to exceed the 12-31-1974 retirement O/M rate.

B. 100% retirement overall minimum -- The 100% retirement O/M provision of section 3(f)(3) of the 1974 RR Act guarantees that the total monthly benefits payable (including any vested dual benefit but excluding any supplemental annuity) to an employee and his family will not be less than the monthly amount which would be payable under the SS Act if railroad service after 1936 were credited as employment under the SS Act. To be entitled to this O/M computation, the employee must have filed his annuity application or have an annuity beginning date after December 31, 1974.

325.10 Types of Overall Minimum

There are three types of retirement overall minimum (O/M) payments possible, depending on the status of the employee.

325.10.1 Full Overall Minimum

The employee may be entitled to the full age and service (A&S) retirement O/M computation if he has attained Social Security Act (SS Act) retirement age before the retirement O/M effective date.

The spouse must have attained age 62 or have an eligible child of the employee in care to be included in the full retirement O/M computation. If the spouse is under SS Act retirement age and does not have an eligible child of the employee in care on the date the spouse is included in the full retirement O/M computation, the spouse retirement O/M share is reduced for age.

A divorced spouse may be included in the retirement O/M only if she is entitled to a divorced spouse annuity. See FOM-I-325.20. The employee and divorced spouse must have attained age 62. A divorced spouse is not eligible before age 62 based on a child in care. The divorced spouse's retirement O/M share is reduced for age if she is under SS Act retirement age, even if she does have a child in care.

325.10.2 Reduced Overall Minimum

The employee may be entitled to a reduced age and service retirement O/M computation if he has attained age 62. The employee's retirement O/M share is reduced for the months the employee is under SS Act retirement age on the retirement O/M effective date. If the employee is under SS Act retirement age on his/her ABD, the employee's retirement O/M share is reduced for age, regardless of the number of railroad service months (s)he may have.

The spouse must have attained age 62 or have an eligible child of the employee in care to be included in the reduced retirement O/M computation. If the spouse is under SS

Act retirement age and does not have an eligible child of the employee in care on the date the spouse is included in the reduced retirement O/M computation, the spouse retirement O/M share is reduced for age.

A divorced spouse may be included in the retirement O/M only if she is entitled to a divorced spouse annuity. See FOM-I-325.20. The employee and divorced spouse must have attained age 62. A divorced spouse is not eligible before age 62 based on a child in care. The divorced spouse's retirement O/M share is reduced for age if she is under SS Act retirement age, even if she does have a child in care.

325.10.3 Disability Retirement Overall Minimum

The disability retirement overall minimum (DIB O/M) may be paid to the employee with a disability freeze and a DIB (disability insurance benefit) insured status at any age up to SS Act retirement age without an age reduction. The DIB retirement O/M is converted to a full age retirement O/M in the month the employee attains SS Act retirement age, if the retirement O/M is still applicable.

The spouse must have attained age 62 or have an eligible child of the employee in care to be included in the DIB retirement O/M computation. If the spouse is under SS Act retirement age and does not have an eligible child of the employee in care on the date the spouse is included in the DIB retirement O/M computation, the spouse retirement O/M share is reduced for age.

A divorced spouse may be included in the DIB retirement O/M only if she is entitled to a divorced spouse annuity. See FOM-I-325.20. The employee and divorced spouse must have attained age 62. A divorced spouse is not eligible before age 62 based on a child in care. The divorced spouse's DIB retirement O/M share is reduced for age if she is under SS Act retirement age, even if she does have a child in care.

325.15 Requirements for Employee Retirement Overall Minimum Increase

325.15.1 Retirement Overall Minimum Based on Age and Service

In order to have an annuity increased under the retirement overall minimum (O/M) based on age and service, the employee must:

A. Have filed an annuity application; and,

B. Have 120 or more months of railroad service; or at least 60 months of railroad service after 1995; and,

C. Have ceased all RR service; and,

D. Have relinquished all rights to return to the service of employers under the Railroad Retirement Act (RR Act); and,

E. Have attained age 62. Effective 9-1-81, an employee must be age 62 for a full month before he is eligible for the Retirement O/M.

The employee is age 62 for a full month if his 62nd birthday is on the first or second day of the month. If his 62nd birthday is on or after the third day of the month, the retirement O/M may not begin until the first day of the following month.

Before 9-1-81, the employee was eligible for the retirement O/M the first day of the month in which he attained age 62; and

F. Be fully insured under the Social Security Act (SS Act) using the employee's combined railroad service after 1936 and wages (PIA 9). The employee's railroad service is treated as employment covered under the SS Act when determining the employee's insured status for the retirement O/M computation. For example, an employee who needs 28 quarters of coverage (QCs) for an insured status under the SS Act is insured for the retirement O/M if he has 28 compensation (railroad) quarters of coverage.

The fully insured status of the employee also entitles his spouse, divorced spouse annuitant or children to be included in the retirement O/M computation as long as they meet the other requirements for retirement O/M entitlement.

The retirement O/M fully insured status determination is separate from the determination of vested dual benefit (VDB) insured status. VDB insured status is based on wages only, as explained in FOM 230.

G. The employee must not be subject to suspension due to criminal activity, be a fugitive felon, or a probation or parole violator, or be removed/deported from the United States. Please see FOM1 150 for information on how to determine whether any of these suspension events applies and, if so, how to handle the case from that point on.

325.15.2 Retirement O/M Based on Disability

In order to have an annuity increased under the retirement O/M based on disability, the employee must:

A. Have filed an application for a disability annuity; and

B. Have 120 or more months of railroad service; or at least 60 months of railroad service after 1995; and

C. Have ceased all RR service; and

D. Be totally and permanently disabled within the meaning of the SS Act (i.e., he must have a disability freeze). Felony conviction may affect the disability rating for the Disability O/M; see FOM-I-1305.20. Payment of disability or retirement

O/M benefits may be withheld and the tier 1 may be withheld or taxed as all NSSEB if the employee is subject to any of the suspension rules found in FOM1 150, Criminal Activity Cases, or is removed/deported from the U.S.

E. Have a disability insured status under the SS Act using the employee's combined railroad service after 1936 and wages. The employee's railroad service is treated as employment covered under the SS Act when determining the employee's disability insured status for the retirement O/M computation.

To have a disability insured status, an employee must be fully insured under the SS Act (railroad compensation is treated as wages) and must have at least 20 quarters of coverage in a period of 40 consecutive calendar quarters ending with the quarter in which the disability onset is established. (Disability insured status requirements are outlined in FOM-I-230.)

The employee's disability insured status also entitles his spouse, divorced spouse annuitant, or children to be included in the disability retirement O/M computation as long as they meet the other requirements for retirement O/M entitlement; and

The disability insured status determination for the disability retirement O/M is separate from the determination of VDB insured status. VDB insured status is based on wages only, as explained in FOM 230.

F. Serve a waiting period, if required. Under SS Act rules, an employee must have been under a continuous period of disability for 5 full calendar months before entitlement to the disability O/M. A waiting period is not required if the annuitant's previous disability freeze (DF) or disability ended within 60 months before the month his current disability began. (The waiting period requirements are outlined in FOM-I-230.)

325.20 Ineligible Person Included Defined

A spouse who is not receiving a railroad retirement spouse annuity or a child may be included in the retirement overall minimum (O/M) as an "ineligible person included" (IPI), if she would be entitled to an auxiliary social security benefit if the employee's railroad service were covered under the Social Security Act (SS Act) and she is not excluded under the Railroad Retirement Act (RR Act).

An auxiliary beneficiary under the SS Act is a person in a retirement case, other than the wage earner, who would be entitled to benefits on the wage earner's account if the Social Security Administration had jurisdiction of payments.

The 1972 Technical Amendments to the 1937 RR Act and section 3(f)(3)(i) of the 1974 RR Act exclude a divorced spouse and a not living with spouse from the retirement O/M computation. Any divorced or not living with spouse who was included in the retirement O/M prior to 10-5-72 continued to be included until the retirement O/M no longer

applied, the annuity was terminated or the spouse could no longer qualify for a benefit under the SS Act.

Beginning 10-l-81, a divorced spouse may be included in the retirement O/M only if she is entitled to a divorced spouse annuity. A divorced spouse who is not entitled to an annuity cannot be included in the retirement O/M as an IPI, because of the 1972 Technical Amendments.

325.25 Eligibility of Spouse Under The Overall Minimum

If the employee has attained age 62 or is entitled to a disability freeze (DF) and is insured under the Social Security Act (SS Act) (RR service after 1936 is treated as SS Act employment in determining insured status), the spouse may be included in the family group for the purpose of computing the retirement O/M if she meets the following requirements:

325.25.1 Age Requirement

A male or female spouse is entitled at any age if he or she has the employee's minor or disabled child in care; see FOM-I-325.25.5.

A male or female spouse may be entitled to a reduced spouse benefit at age 62 or a full spouse benefit at SS Act retirement age under the retirement O/M computation.

Beginning 9-1-81, the employee and spouse must be age 62 for a full month before the spouse may be included in the O/M. If her 62nd birthday is on the first or second day of the month, she may be included beginning the first day of that month. If her 62nd birthday is on or after the third day of the month, she may not be included until the first day of the following month. If the employee is a disability annuitant or has a DF, the spouse may be included in the retirement O/M the first day of the month in which the employee attains age 62. The spouse, however, always has to be age 62 for a full month.

Before 9-1-81, the spouse was eligible for the retirement O/M the first day of the month in which she attained age 62.

If you receive an inquiry from a spouse who is eligible for a reduced spouse benefit under the retirement O/M but is not eligible for an RR spouse annuity because the employee does not meet the age requirement to qualify the spouse for an annuity, refer to FOM-I-325.150 - "Spouse Retirement O/M Elections."

If a spouse meets the age requirements and other eligibility requirements (e.g., ceases last person service) for an RR spouse annuity and the employee is old enough to qualify the spouse for an RR spouse annuity, the spouse should file an application Form AA-3 (Application for Spouse/Divorced Spouse Annuity).

325.25.2 Marriage Requirement

To be included in the family retirement O/M computation, the spouse must be:

A. The legal or deemed spouse; and either

B. The natural parent of the employee's child (the child need not still survive); or

C. Married to the employee for at least one year; or

D. Eligible for a widow(er), parent, or disabled child insurance annuity under the RR Act in the month before the month the spouse married the employee.

   A spouse is considered eligible under the RR Act if the spouse meets all the requirements for entitlement under that act, other than the filing of an application and the attainment of the required age; or

E. Entitled or potentially entitled to a widow(er)'s, parent's, or disabled child's benefit under the SS Act in the month the spouse married the employee.

   A spouse is considered potentially entitled under the SS Act if the spouse meets all the requirements for entitlement under that act, other than the filing of an application and the attainment of the required age.

325.25.3 Living With Requirement

The 1983 RR amendments eliminated the living with requirement except when:

A. The spouse could be included in the retirement O/M as a de facto (deemed) spouse; or

B. The spouse could be included prior to 8-12-83. The spouse must, on the retirement O/M effective date:

   1. Be a member of the employee's household; or

   2. Receive regular contributions from the employee toward support; or

   3. Have a court order requiring the employee to contribute towards her support.

325.25.4 Dependency Requirement

A husband must have been dependent on the railroad employee for one-half of his support in order to be included in the retirement O/M before 3-1-1977.

325.25.5 Eligibility Based on Child in Care

A spouse may be included in the retirement O/M at any age if he or she has the employee's minor or disabled child in care. A male spouse with a child of the employee in his care became eligible for inclusion in the retirement O/M effective December 1, 1978.

The child must meet the eligibility requirements listed in FOM-I-325.30.2 - 325.30.5. The 1981 SS Act amendments changed the child's age requirements for the spouse's eligibility. The age requirements for the child's eligibility in FOM-I-325.30.l are unchanged.

The amendments also require that a spouse have a child in care for a full month, unless the spouse was born before 9-2-19. The child must be eligible for a full month before he may be included in the O/M.

A. Child's age requirement for spouse's eligibility

1. When the spouse is first eligible based on a minor child in care 9-1-81 or later, the child must be under age 16.

2. When the spouse is eligible in August 1981 based on a minor child in care, the child must be under age 18. However, the spouse's eligibility terminates 8-31-83 if the child has attained age 16. Beginning 9-1-83, a spouse must have in care a child under age 16.

3. A spouse may be included in the retirement O/M if she has a disabled child in care. The child must be age 16 or over, with a permanent disability that began before age 22 and prevents any kind of regular employment. A child may be rated disabled at age 16-18 to qualify a spouse, if the spouse is not eligible because the minor child is age 16-18.

B. Full month care requirement - Under the 1981 SS Act amendments, a spouse must have a child in care throughout the entire month before she may be included in the O/M. The requirement does not apply if the spouse attained age 62 before 9-1-81 (date of birth before 9-2-19).

The child must also meet the eligibility requirements for a full month (see FOM-I-325.30.5) before the spouse is eligible based on having the child in care.

325.26 Eligibility Of Divorced Spouse Under The Overall Minimum

A divorced spouse must be entitled to a divorced spouse annuity to be included in the overall minimum (O/M). All the requirements in FOM-I-320.11 must be met.

The employee and divorced spouse must be age 62 for a full month before the divorced spouse may be included in the retirement O/M. If the employee has a disability freeze

(DF), the divorced spouse could be included in the retirement O/M the first day of the month in which the employee attains age 62. The divorced spouse, however, always has to be age 62 for a full month.

A divorced spouse is not eligible before age 62 based on having a child in care.

325.30 Eligibility Of Child Under The Retirement Overall Minimum

The 1937 and 1974 Railroad Retirement Acts (RR Acts) does not currently provide a child's annuity in retirement cases. However, if the employee has attained age 62 or is entitled to a disability freeze (DF) and is insured under the Social Security Act (SS Act) (RR service after 1936 is treated as SS Act employment in determining insured status), a child may be included in the family group for the purpose of computing the retirement O/M if he meets the requirements outlined below.

325.30.1 Age Requirement

The child must be:

A. Under age 18; or

B. Age 18 or over and either:

1. A full-time student (FTS) as defined in FOM-I-5; or

2. Disabled before age 22.

325.30.2 Relationship Requirement

The child must be the child, stepchild, grandchild or step-grandchild of the wage earner. The child meets this requirement if he meets one of the conditions below. The child must be:

A. A natural, legitimate child who is:

1. A child of a valid ceremonial marriage; or

2. A child of a voidable marriage; or

3. A child of a void marriage, in some states; or

4. A child legitimated under applicable state law; or

5. A legitimate child under state law even though there has been no marriage or act of legitimation; or

B. An illegitimate child, if the child would have rights under applicable state law for the purpose of inheriting the employee's intestate (without a will) personal property; or

C. A stepchild. The marriage of the employee and the child's parent must take place one year before the child otherwise qualifies for inclusion in the O/M. The month in which the first anniversary date occurs is the first month the stepchild may be included in the O/M; or

D. A legally adopted child. The child may be adopted at any time. However, if the child is adopted after the employee would be entitled to an age or disability benefit under the SS Act if his RR service were wages under that act, the special dependency requirements in FOM-I-325.30.3 must be met; or

E. An equitably adopted child; or

F. A deemed child; or

G. A grandchild. Effective 1-1-73, a grandchild of an employee is deemed to be the employee's child to qualify for the retirement O/M if:

1. The grandchild began living with the employee before the grandchild became age 18; and

2. The grandchild was living with the employee and receiving one-half support from the employee for the year before the month the employee became entitled to the retirement O/M or the year before a DF began which continued until the retirement O/M effective date; and

3. The grandchild's parents were either dead or disabled in the month the employee became entitled to the retirement O/M or the month a DF began which continued until the retirement O/M effective date.

325.30.3 Dependency Requirement

The child must be dependent on the employee for the 1-year period before the month the child may otherwise be included in the O/M, or in the month the employee would be entitled to an age or disability benefit under the SS Act if his RR service were wages under that act, or in the month the employee's DF begins, if the DF continues until the employee would be entitled to an age or disability benefit under the SS Act.

A. When dependency may be deemed

1. Natural child or Adopted Child - Deem a child dependent upon the employee when the employee is his natural parent. If dependency is deemed, an indication that a child is actually dependent on someone other than the employee is immaterial.

A legally adopted child (including an adopted grandchild) who is adopted by the employee during his lifetime is deemed dependent to be included in the computation of the employee's annuity under the retirement O/M, if the following requirements are met:

a. Months after 9-1972 - Deem a legally adopted child dependent upon the employee when the employee is his legally adoptive parent. This is true even when the child is living with and chiefly supported by his stepfather. A child will not be removed from the employee's retirement O/M computation if he is subsequently adopted by someone other than the employee.

b. Months after 1-1968 and prior to 10-1972 - A child is deemed dependent upon the employee as for months after 9-1972 unless the child is subsequently adopted by someone other than the employee.

See FOM-I-945.10.9 if an employee legally adopts a grandchild after the employee would be entitled to an SS benefit.

2. Illegitimate child - An illegitimate child is deemed a child of the employee if the child has inheritance rights under state law.

3. Child of invalid ceremonial marriage - Deem the dependency of such a child upon his natural parent as for a legitimate child. Since the dependency of such a child is deemed, it is not necessary to determine whether the child has inheritance rights under applicable state law.

4. Illegitimate child deemed a child - Deem the dependency of such a child upon the parent as for a legitimate child upon the parent as for a legitimate child.

B. Equitably adopted child - Do not deem a child's dependency upon an equitably adopting parent as in the case of a legally adopting parent. To establish dependency upon an equitably adopting parent, he or she must be either:

1. Be living with the equitably adopted child; or

2. Be contributing to the equitably adopted child's support.

If a child is equitably adopted after the employee would be entitled to an age or disability benefit under the SS Act if his RR service were wages under that act, the child may not be included in the retirement O/M.

C. Stepchild - Do not deem a child's dependency upon a stepparent. To establish dependency upon a stepparent, he or she must meet the following requirements:

1. Months after July 1, 1996 - The employee must be contributing at least one-half of the stepchild's support. "Living-with" is no longer an option for meeting dependency.

2. Prior to July 1, 1996 - The stepparent must either:

   a. Be living with the stepchild; or

   b. Be contributing one-half of the stepchild's support.

D. Grandchild - In establishing the dependency of a grandchild on the employee, the grandchild must have:

1. Begun living with the employee before the grandchild attained age 18;

2. Currently living with the employee; and

3. Receiving at least one-half support from the employee; and,

4. The child's parents must be deceased or disabled.

The grandchild must have been living with and receiving at least one-half support from the employee for the entire year before the beginning date of the retirement O/M. If the grandchild was born during this 1-year period, the dependency requirements are deemed to be met if the grandchild lived with the employee in the U.S. and received at least one-half support from the employee for substantially the entire period between the date of his birth and the retirement O/M beginning date.

325.30.4 Marriage Requirement

The child must be unmarried at the time the child is otherwise qualified for the O/M. A widowed or divorced child or a child whose marriage is void or has been annulled is considered unmarried.

325.30.5 Full Month Eligibility Requirement

Beginning 9-1-1981 a child who was not entitled on any earnings record before September 1981 must meet the 1981 SS Act amendment full month requirement. The conditions for eligibility must be met on the first day of the month and throughout the month before eligibility is established. If this requirement is not met, entitlement begins the first day of the following month. This provision does not apply to surviving children of a deceased employee.

Following are some examples of the full month entitlement requirement:

A. A child must be born, adopted, have inheritance rights or otherwise meet the definition of a child on the first day of the month.

EXCEPTION: A deemed child is eligible from the first day of the month in which the employee acknowledged the child in writing, or was decreed by a court to be the child's parent or was ordered by the court to contribute to the child's support. If the child's relationship is deemed on the basis of other evidence, the conditions for entitlement must be met throughout the entire month. This exception is effective 9-1-1981 for age and service annuitants, and for disability annuitants paid final 4-20-1983 or later.

B. A child must be dependent throughout the first month of entitlement; or

C. A child must be unmarried throughout the first month of entitlement; or

D. A child must be a full-time student or be disabled throughout the first month of entitlement. A child qualifying as a student must be in full-time attendance (FTA) throughout the first month of entitlement. A secondary school student is deemed to meet this requirement.

325.30.6 Child Entitled Under Two Railroad Earnings Records

A child can usually be included in the computation of benefits payable on only one RR earnings record. The dually entitled child should be paid on the RR earnings record with the higher PIA, unless this would result in the family as a whole receiving less total monthly benefits (the RR rate must be considered in retirement cases). Once a determination is made as to which record produces the higher benefit as of the latest ABD, eligibility cannot switch to the other record.

If both the employee and spouse are railroad employees, a child may be eligible for inclusion in the retirement O/M on one record and qualify that employee for a spouse annuity on the other earnings record, on the basis of having a child in care. However, it is possible that the retirement O/M will not apply. If a beneficiary is simultaneously entitled to both an employee annuity on one wage record and a spouse annuity on another wage record, the total retirement O/M benefits payable on both wage records must exceed the total railroad formula rates payable on both wage records for the retirement O/M to apply in either case.

325.31 The Family Maximum Benefit (FMB) Amount

The social security formula limits the maximum amount of monthly benefits which may be payable for any month on any one wage record. This maximum amount is called the Family Maximum Benefit (FMB) amount. When the retirement overall minimum (O/M) amount is calculated for payment, by law PIA 9 is used. Since the field offices do not have access to and/or a method to compute PIA 9, the field offices should use the tier I PIA in place of PIA 9. Therefore, the final retirement O/M amount might be different due to the fact that PIA 9 may be higher or lower than the tier I PIA the field offices is using.

NOTE: The tier I PIA AND PIA 9 are not always the same. The tier I PIA is based on the employee's annuity beginning date (ABD) year, and PIA 9 is based on the

employee's actual age. Therefore in the following cases, the tier I PIA used by the field offices may be greater than the PIA 9 that would be used to pay the O/M-full 60/30, full 60/30 with a disability freeze (DF), a disability annuity with no DF and a disability annuity with the DF year after the ABD or RR disability year.

325.31.1 Age and Service Retirement O/M

PIA 9 (Field offices use tier I PIA) and the corresponding FMB amount are used to determine the amount to pay. The family maximum bend points and formulas for age and service retirement O/M and disability retirement O/M cases can be found in FOM 1010. The employee's share of the rate payable to the family is PIA 9 reduced for any months before the employee attains Social Security Act (SS Act) retirement age (field offices use the tier I PIA).

Note: When the employee claims only one minor/disabled child, the FMB amount does not apply. However, the most the employee can receive is 150% of the tier I PIA.

325.31.2 Disability Annuity with No Disability Freeze

The retirement O/M is not payable until the employee attains age 62 and qualifies for the age and service retirement O/M. The computation is then the same as 1 above.

325.31.3 Disability Annuity with Disability Freeze

The disability (DIB) retirement O/M can be paid to the employee, as long as all of the eligibility requirements are met. The 1980 Social Security DIB Amendments established separate rules limiting the family maximum for DIB retirement O/M cases when the disability onset is after 1978 and the DIB Retirement O/M effective date is 7-1-80 or later. Before the amendments, the age and service and DIB retirement O/M family maximum computations were the same.

Under this provision, the DIB retirement O/M is the higher of 100% of the Primary Insurance Amount (PIA) or 85% of the AIME (Average Indexed Monthly Earnings), but not to exceed 150% of the PIA. The family maximum bend points and formulas for age and service retirement O/M and disability retirement O/M cases can be found in FOM 1010.

325.32 Reduction for Worker's Compensation And Public Disability Benefits

An annuity paid under the DIB (disability) retirement O/M is reduced for any month in which a disabled worker is entitled to state or Federal periodic worker's compensation (WC) benefits. Beginning 3-2-1981, offset may also apply for entitlement to a public disability benefit. Black lung benefits paid under the Federal Coal Mine and Safety Act, applied for on or after July 1, 1973, are considered worker's compensation and are used

as an offset against the DIB retirement O/M beginning January l, 1974. FOM-I-120 defines WC payments and public disability benefits.

325.32.1 Conditions for Reduction for Current Cases

The DIB retirement O/M effective date and the disability freeze date affect the conditions for applying the WC/public disability benefit reduction. If the DF date is 3-2-1981 or later, offset applies under the following conditions:

A. Offset is removed when the employee attains age 65;

B. Offset applies for public disability benefits, as well as WC payments and black lung benefits; and

C. Offset applies in any month the WC/public disability benefit is payable, regardless of when the RRB received notice.

325.32.2 Applying the Reduction

The initial worker's compensation or public disability benefit reduction is equal to the difference between:

A. The total family DIB Retirement O/M plus the amount of the WC/public disability benefit; and

B. The higher of the total family DIB Retirement O/M or 80% of the employee's average current earnings (ACE) before his disablement. The ACE is defined in FOM-I-120.

The reduction equals zero if the total family DIB retirement O/M plus the WC/public disability benefit is lower than 80% of the ACE. The reduction is never greater than the amount of the WC/public disability benefit.

The reduction is first applied to the retirement O/M shares of any auxiliary beneficiaries. The employee's share is reduced only if the WC/public disability benefit is larger than the auxiliaries' retirement O/M shares. The reduction is applied after adjustment for the family maximum, but before reduction for other benefits or excess earnings. If the family composition changes the reduction is recomputed as if the new family composition had existed when the reduction was originally calculated.

If the employee is receiving an SS benefit that is reduced for worker's compensation, the SS benefit that is being paid after the worker's compensation reduction is used for reduction.

The applicant may have the option of receiving his worker's compensation in a lump-sum payment in lieu of periodic payments. Electing such a lump-sum payment will not exempt his worker's compensation from offset; it will simply be prorated for offset purposes, based on the periodic rate to which he would have been entitled if he had

selected installment payments. Generally, most lump-sum settlements are in lieu of periodic payments.

325.32.3 Developing Worker's Compensation Information

The application Forms AA-1 and AA-1d ask if the employee has received or expects to receive workman's compensation (WC) or public disability benefits. Form G-204 (Verification of WC/Public Disability Benefit Information) should be released to the payer of the benefit when the response is "Yes."

You should also release a Form G-204 if a disability retirement O/M annuitant in pay status reports receipt of a WC/PDB or the Headquarters adjudicating unit requests release based on a report from the Social Security Administration or the annuitant.

If the employee has an award notice or other verification of the WC/public disability benefit that includes the information necessary to make an offset determination (see FOM -I-1720), submit a copy and do not release a Form G-204. If the award letter or other verification provides some, but not all information, submit a copy but also release a Form G-204. Until the payment is verified, the Headquarters adjudicating unit will use the maximum WC rate payable by the state of the employee's residence for the offset amount, or the claimed public disability benefit amount, if it is higher. The Headquarters adjudicating unit will adjust the amount of the reduction, if necessary, after verification is received.

If the amount of the employee's monthly worker's compensation payment, or public disability benefit increases or decreases, notify the Headquarters adjudicating unit. The retirement O/M payment will be adjusted effective with the date of the change.

325.33 Securing Public Service Pension Information

A spouse or divorced spouse included in the retirement overall minimum (O/M) may be subject to reduction for a public service pension (PSP). The PSP must be based on the spouse's or divorced spouse's own earnings that are not be covered under the Social Security Act (SS Act) (Federal Insurance Contribution Act taxes were not deducted on the last day the individual was employed in that position).

The offset only applies to spouses and divorced spouses who:

A. Do not meet the January 1977 SS Act eligibility requirements. That includes divorced wives married to the employee less than 20 years, non-dependent husbands, husbands entitled based on a child in care and divorced husbands.

B. Are first eligible for the PSP 12-1-1982 or later, and are not dependent (or deemed dependent) on the employee; or

C. Are first eligible for the PSP 7-1-1983 or later. Dependency does not matter.

The retirement O/M share is reduced for only 66 2/3% of the PSP instead of 100% of the PSP if the annuitant is first eligible for the PSP 7-1-1983 or later. Effective 12-1-1984, the reduction in the retirement O/M share is 66 2/3% of the PSP, including any beneficiary whose previous reduction was 100% of the PSP.

The guidelines for determining one-half support, to qualify the spouse for an exemption, are in FOM-I-945.10. Form G-134 (Statement Regarding Contributions and Support) is used to prove the dependency to qualify the spouse for an exemption to the PSP offset. The dates that the dependency requirement may be tested are any of the following times:

The employee's annuity beginning date; or

When the employee's disability began. This date can be used only if the disability continued until the employee attained age 65; or

Secure Form G-208 (Public Service Pension Questionnaire) when Form G-319 indicates that the spouse is entitled to a public service pension unless the pension is payable by a state or local government entity and FICA taxes were deducted on the last day of employment.

Proof of the PSP rate must be submitted if the PSP reduction applies and a net tier I or retirement O/M share is payable after offset for the PSP. When the spouse or divorced spouse who meets the January 1977 SS Act requirements is eligible for the PSP before 12-1-82, but the PSP does not begin until 12-1-82 or later, she must submit proof that she was eligible for the PSP before 12-1-82. A spouse or divorced spouse who is eligible for the PSP before 7-1-83 and claims dependency must prove eligibility before 7-1-83 if her PSP begins 7-1-83 or later. If an individual's eligibility for the PSP was postponed until December 1982 or July 1983 because of a condition that eligibility requirements had to be met for a full month, she is deemed to be eligible for the PSP in either November 1982 or June 1983, and must submit proof. This exemption is effective 12-1-84.

Proof of payment of FICA tax on the date last worked for the PSP employer must be submitted if this qualifies the spouse or divorced spouse to an exemption.

Note: The 1% "Medicare Only" tax for employees covered under the Civil Service Retirement System does not qualify the spouse or divorced spouse to an exemption to the PSP reduction.

More information about the PSP offset is in FOM-I-120.

325.34 Securing SS Benefit Information

RBD always develops social security benefit information from the Social Security Administration when information on the retirement Overall minimum development forms or in the claim file indicates that a minor child, disabled child or full time student is

entitled to or has filed for social security benefits on his own, his mother's, the employee annuitant's or any other wage record.

325.35 Overall Minimum (O/M) Testing

Use Form G-301 on RRAILS for overall minimum (O/M) testing. When the O/M amount is calculated for payment, by law PIA 9 is used. Since the field offices do not have access to and/or a method to compute PIA 9, the field offices should use the tier 1 PIA in place of PIA 9. Therefore, the final O/M amount might be different due to the fact that PIA 9 may be higher or lower than the tier 1 PIA.

Check APPLE for eligible family members on the Employee Family screen. If there are no eligible minor or disabled children or full-time students, the O/M will probably not apply.

Check for social security benefits. Reduce the O/M rate by the total social security benefits received by the family. This includes any social security benefits the employee and the included beneficiaries are receiving on any Social Security Administration (SSA) claim number, plus benefits paid on the employee's number, whether the person(s) receiving those benefits are included as beneficiaries in the O/M test or not. Remember to include SSA benefit reductions for both O/M and RR rates when testing for O/M payability.

NAVIGATING THE G-301 ON RRAILS

Choose G-301 from the Form section of RRAILS. Double click and the form will open up.

- Enter the claim number.
- Tab to the TYPE OF EMPLOYEE ANNUITY to highlight the field, and then tab again.
- From the shaded field below the TYPE OF EMPLOYEE ANNUITY, a pop up box will ask ‘Is the employee a DIB?’ If the answer is YES, the blank field under the TYPE OF EMPLOYEE ANNUITY will display **DISABILITY TEST.** Move to the **DISABILITY TEST** section on the right side of the form.
- If the answer is NO, a pop up box will ask ‘Is the employee age 62?’ If the answer is NO, the field under the TYPE OF EMPLOYEE ANNUITY will display **O/M DOES NOT APPLY**. Terminate the test.
- If the answer is YES, a pop up box will ask ‘Did the employee claim more than 1 child?’ If the answer is YES, the blank field under the TYPE OF EMPLOYEE ANNUITY will display **FMB TEST.** Move to the **FMB TEST** on the top left side of the form.

- If the answer NO, the blank field under the TYPE OF EMPLOYEE ANNUITY will display **150% PIA 1 TEST**. Move to the **150% PIA 1 TEST** in the middle of the left side of the form.

- The fields are self-explanatory. Some of the computations will be done for you. The program will use standard rounding procedures.

- Once you have completed the form, route it to IMAGING through RRAILS.

EXAMPLES

EXAMPLE 1: The employee is over FRA and indicates one disabled child in care. SS benefits are not involved. The employee's date of birth (DOB) is 12-23-25 and his annuity beginning date (ABD) is 01-01-92.

FULL O/M—150% of PIA 1

A. Enter the ABD annuity rate

(T1 = 1041.00, T2 = 647.31, VDB = 200.21): $1,888.51

B. Enter the tier 1 PIA amount: 1,041.80

C. Enter the ABD age reduction factor: 0.00

D. The program will compute the amount from Item B. times Item C.: 0.00

E. The program will compute150% of PIA 1: 1,562.70

(1) Enter the SS BEN the employee is receiving: 0.00

(2) Enter the SS BEN the included beneficiary is receiving: 0.00

(3) Enter the SS BEN other beneficiaries are receiving on the employee's number: 0.00

(4) The amount from Item D. will prefill: 0.00

F. The program will total E(1) + E(2) + E(3) + E(4): 0.00

G. The program will compute Item E. minus Item F.: $1,562.70

Since A. is greater than G., the "O/M does not apply."

EXAMPLE 2: The employee is age 62 and indicates he has two minor children in his care. SS benefits are involved. Each of the children is receiving $90.00 per month on the spouse's wage record as of 08-01-91. The employee's DOB is 07-03-1930, and his ABD is 08-01-1992. His eligibility year is 1992.

REDUCED RETIREMENT O/M - FMB

A. Enter the ABD net annuity rate

(T1 = 554.00, T2 = 11.41, VDB=92.15): $657.56

B. Enter the tier 1 PIA amount: 687.80

C. Enter the age reduction factor: 19444 (Notice the factor is entered as 5 digits without a decimal or per cent sign.)

D. The program will compute Item B. times Item C.: 133.80

E. Enter the FMB amount: 1266.90 (See FOM1 1010.20.)

(1) Enter the SS BEN the employee is receiving: 0.00

(2) Enter the SS BEN the included beneficiary is receiving: 180.00

(3) Enter the SS BEN the other beneficiaries are receiving on the employee's number: 0.00

(4) The program will prefill the amount from Item D.: 133.80

F. The program will total E(1) + E(2) + E(3) + E(4): 313.80

G. The program will compute item E minus Item F: $953.10

Since A. is less than G., the "O/M may apply." Code RASI REV on the APPLE Summary Screen with an “O”. Do not develop any O/M forms until you receive an email from headquarters indicating the O/M will definitely apply. See NOTE below before continuing.

EXAMPLE 3: The employee is over age 62 but under FRA. The employee indicates two minor children in his care. SS benefits are not involved. The employee's DOB is 11-22-29, and his ABD is 11-01-92. His eligibility year is 1992.

REDUCED RETIREMENT O/M - FMB

A. Enter the ABD net annuity rate

(Tl = 696.00, T2 = 794.13): $1,490.13

B. Enter the tier 1 PIA amount: 804.10

C. Enter the ABD age reduction factor: 13333 (Notice the factor is entered as 5 digits without a decimal or per cent sign.)

D. The program will compute Item B. times Item C.: 107.20

E. Enter the FMB amount: 1,458.90 (See FOM1 1010.20.)

(1) Enter the SS BEN the employee is receiving: 0.00

(2) Enter the SS BEN the included beneficiary is receiving: 0.00

(3) Enter the SS BEN other beneficiaries are receiving on the employee's number: 0.00

(4) The program will prefill the amount from Item D.: 107.20

F. The program will compute the total of E(1) + E(2) +E(3) +E (4): 107.20

G. The program will compute Item E minus Item F.: $1,351.70

Since A is greater than G, the "O/M does not apply."

EXAMPLE 4: The employee filed for a disability annuity, and indicates a minor child in his care. SS benefit is involved. The minor child is receiving $250.00 per month on the spouse's wage record as of 10-01-91.

DIB O/M TEST

A. Enter the ABD annuity rate

(T1 = 950.00, T2 = 34.13): $984.13

B. Enter the tier 1 PIA 950.10

C. The program will compute 150% of the PIA 1: 1425.10

(1) Enter the SS BEN the employee is receiving: 0.00

(2) Enter the SS BEN the included beneficiary is receiving: 250.00

(3) Enter the SS BEN other beneficiaries are receiving on the employee's number: 0.00

D. Enter the total of C.(1) + C.(2) + C.(3): 250.00

E. Item C minus Item D.: $1,175.10

Since A is less than E, the "O/M may apply." Code RASI REV on the APPLE Summary Screen with an “O”. Do not develop any O/M forms until you receive an email from headquarters indicating the O/M will definitely apply. See NOTE before continuing.

NOTE: Occasionally, you will see ‘special interest cases.’ These could be terminally ill (TERI) cases, Compassionate Allowance (CAL) cases, Congressionals, etc., that invite additional scrutiny. If the O/M may apply, follow these steps.

Code the RASI REV on the APPLE Summary Screen with an “O”.

Develop the G-319 **for natural minor children only** at the time you take the application.

Image the completed G-319 and send to RBD via **Imaging Active Workflow**. RBD will pay the case with the O/M as soon as it is appropriate. If there is a six month or more lapse between the date of the application and the date the case is ready to pay, RBD will instruct the field to contact the employee and make sure the family information has not changed.

Development for disabled, step, grand, and adopted children will still be deferred IN ALL CASES until RBD determines the O/M will definitely apply.

If unsure, consult with your manager to determine if you have a ‘special interest case’.

325.36 Retirement Overall Minimum (O/M) Development Procedure

When taking an application (age & service or disability), if the employee states that a minor child, disabled child, student or spouse (not entitled to a spouse annuity) is in his/her care, the contact representative should make an initial determination as to whether the retirement overall minimum (O/M) could apply. Use the G-301 on RRAILS. See the instructions in FOM1 325.35 above.

The field offices should identify these cases by coding RASI REV on the APPLE Summary Screen with an “O”. Do not develop any O/M forms until you receive an email from headquarters indicating the O/M will definitely apply. See the NOTE in FOM1 325.35 for ‘special interest cases’.

In disability cases, the disability freeze (DF) rating will generate a DF G-90 (wage record) at the end of the month. Examiners in RBD will screen each G-90 in the month after the freeze is granted to determine if either an increase in the railroad annuity is due, or if the O/M could apply. If RBD determines that the O/M is payable, an email will be sent to the field office to develop for the G-319 and G-320. Actionable G-90s are controlled on STAR.

If, after the rating is made, the annuitant contacts the field office regarding payment of the O/M, and the claims representative knows the O/M will be payable, do not wait for the field assignment. Secure the forms and send them to RBD.

In age and service cases, the RBD examiner will review each case with the award message “O/M May Be Payable” after the annuitant is paid final. If the examiner determines that the O/M is payable, an email will be sent to the field office to develop the G-319 and the G-320. As with disability G-90s, possible age and service O/M cases are controlled on STAR.

The RBD assignment should always give the type of O/M payable, the O/M effective date, the amount of the increase, and the number of auxiliary beneficiaries needed to provide the maximum benefits. Usually, development only needs to be made for one or two of the employee's youngest children since this will result in the maximum O/M benefit.

NOTE: Effective July 1, 1996, a stepchild can no longer qualify for an annuity based on "living with" the employee. A stepchild must be or have been receiving one-half of his/her support from the employee to be eligible for a survivor annuity or to be included in the O/M computations. For survivor annuities, the dependency requirement must be met at the time of the employee's death, unless the employee had a DF. In that case the dependency requirement can be met at the time of the period of disability or when the employee would have qualified for social security benefits. In O/M cases where stepchildren are involved and the employee has a DF, develop a dependency determination for each stepchild regardless as to whether or not the stepchild is the qualifying dependant. (It is not necessary to develop dependency for stepchildren in age and service O/M cases unless the child is needed to increase the O/M rate. That is because dependency in non-freeze cases must be re-established at the time of the employee's death to pay survivor benefits.) Making a dependency determination will protect each stepchild's eligibility to future survivor benefits.

The forms to be included with the initial retirement O/M development are:

Form G-319, "Statement Regarding Family and Earnings For Special Guaranty Computation"; and,

Booklet G-179, "Special Guaranty in Employee and Spouse Annuities."

If the family group includes a child age 18-19, RBD will request the field office to develop for student benefits. See FOM1 525.10 for evidence requirements for students.

If the family group includes a disabled child, RBD will also request the field office to develop a Form AA-19a, "Application For Determination of Child Disability." Booklet RB-19a, "Child Disability Benefits," should be given to the applicant to explain the child disability requirements. The child's disability rating will be handled by DSUBD. DSUBD will initiate development of medical evidence or contact the Social Security Administration for copies of their medical evidence.

325.37 Handling Inquiries at The Field Office

When an inquiry is received about a possible increase under the retirement overall minimum (O/M):

A. Determine if a switch to the O/M is possible; and

B. Determine if the O/M rate could exceed the tier formula rate(s); be sure to consider the reduction for the family's Social Security Act benefits. A divorced

spouse's annuity is included in the total RR rate for the O/M test. However, the family maximum is not adjusted to include the divorced spouse.

If the O/M rate is the lesser figure, the O/M does not apply. Advise the annuitant accordingly.

If the estimated O/M rate is the higher figure, the O/M may apply. Forward the inquiry to the Headquarters adjudicating unit for necessary attention. Wait until the Headquarters adjudicating unit determines if the O/M applies before developing evidence and statements.

325.38 Evidence Requirements

In addition to evidence required for an age and service or disability annuity, the following evidence is required for increasing an annuity under the overall minimum (O/M): (The RRB forms G series and AA series are available on RRAILS).

Statement Regarding Family and Earnings for Special Guaranty Computations (G- 319, Employee, Spouse)

Form G-319 is always required from the employee (and spouse). Form G-319 is required from the spouse when no AA-3 application has been filed in the past 6 months and the spouse is eligible for inclusion in the O/M. Statement by Employee Annuitant regarding Student Age 18-19 (G-320)

If an FTS age 18-19 is to be included in the O/M.

Student Questionnaire (G-315)

If FTS age 18-19 can be included in O/M.

Statement by School Official of Students Full-Time School Attendance (G-315a)

If FTS age 18-19 can be included in retirement O/M and the full time student was not verified on Form G-315.

Notice of Cessation of Full-Time School Attendance (G-315a.1)

If FTS age 18-19 can be included in O/M. This form is released to the school after the full time attendance is verified.

Application for Determination of Child's Disability (AA-19a)

If an alleged disabled child age 18 or over (or attaining age 18 within 3 months) is to be included in the retirement O/M or is filing for early disability Medicare. It is also required for spouse's eligibility based on a child in care age 16-18 and disabled.

Public Service Pension Questionnaire (G-208)

If a spouse is to be included in the O/M and social security taxes were deducted from the spouse's earnings on the last day of employment by a state or local government entity. If the spouse was a federal employee, the G-208 must be secured.

Proof of public service pension rate or exemption

If the spouse Retirement O/M share after public service pension (PSP) rate or reduction is greater than zero. Proof of any exemptions to the PSP reduction is required, when applicable.

Statement Regarding Contributions and Support (G-134)

If a spouse may be exempt from a PSP reduction based on dependency.

Proof of age of spouse

If the spouse is to be included in the retirement O/M based on age, or if the spouse will attain age 62 before her eligibility based on a child in care terminates.

Proof of marriage

If the spouse, or the employee’s stepchild is to be included in the O/M.

Marital Relationship of Child's Parents

If child is stepchild of employee annuitant or when child's natural mother is eligible for spouse's annuity and does not file, or when "child" is born of an invalid ceremonial marriage.

Proof of living with

If the spouse is to be included in the retirement O/M as a de facto (deemed) spouse, or if the spouse could be included before 8-12-83.

Proof of termination of marriage prior to the marriage to the employee

If there is reasonable doubt whether the prior marriage of either the employee or spouse was ended.

Proof of age and relationship of children

If children may be included in the O/M.

Proof of dependency of child (G-134)

If an equitably adopted child, grandchild, or a stepchild is included in the O/M.

Proof of termination of marriage of child

If a child has been married but is widowed or divorced at the time the initial application is filed, he may be considered unmarried. Secure proof of the termination.

"Child in care"

Only when a spouse under FRA may be included in the retirement O/M on the basis of having a child in care.

Proof of child's disability

If an alleged disabled child age 18 or over (or will attain age 18 within 3 months) is to be included in the retirement O/M or is filing for early disability Medicare. May be required for spouse's eligibility based on a child in care age 16-18, and disabled.

Proof of death or disability of grandchild's parents

If a grandchild is to be included in the retirement O/M as a child IPI who has not been adopted by the employee.

325.40 Switch From RR Rate To Retirement Overall Minimum (O/M) Rate Permitted

Amendments effective 10-5-1972 restricted the times when the annuity may be switched from the RR formula rate to the retirement overall minimum (O/M) formula rate.

325.40.1 Initial Change To Retirement O/M Formula On Annuity Beginning Date Or Month Immediately After Disability Waiting Period

Practically all retirement annuities are initially awarded under the RR formula. The retirement O/M computation increase, if applicable, is awarded later by means of a recertification award.

The spouse and children may be included in the family group at this time if they meet the eligibility requirements and the retirement O/M effective date is the annuity beginning date (ABD), or the first day of the month following the month in which a disability waiting period ends.

A divorced spouse may be included at this time only if she qualifies for a divorced spouse annuity.

325.40.2 Change to Retirement O/M Effective After ABD or Month Not Immediately After Disability Waiting Period

If it was initially determined that the retirement O/M was not applicable on the ABD, or on the first day after the month in which a disability waiting period ends, the retirement O/M can be tested again effective the month in which:

A. The employee attains age 62; or

B. The spouse who was married to the employee when the employee's annuity attains age 62 and the employee is eligible for the retirement O/M computation. Any eligible children listed in the claim file will be included in the retirement O/M test. If the retirement O/M does not apply, no development will be initiated to determine if other children not listed in the claim file may be eligible for inclusion in the O/M; or

C. The spouse who married the employee after the employee's annuity began becomes entitled to an RR spouse annuity and both the employee and spouse are eligible for the retirement O/M computation. Only the employee and spouse may be included in the family group. Children may not be included, even if a spouse is entitled based on children in care. This situation may occur when the employee acquires an eligible child after the employee was initially entitled to the O/M; or

D. There is a general benefit or cost-of-living increase which increases the retirement O/M rates, and the retirement O/M formula rates exceed the RR formula rates. Only the employee, a divorced spouse annuitant, and either an eligible spouse who was married to the employee when the employee's annuity began or an eligible spouse who married the employee after the employee's annuity began but is receiving an RR spouse annuity, may be included. Children may not be included, even if a spouse is entitled based on children in care. This situation may occur when the employee acquires an eligible child after the employee was initially entitled to the O/M.

325.45 Continuous Retirement Overall Minimum (O/M) Entitlement

When a terminating event occurs for an auxiliary beneficiary in a retirement O/M case, the retirement O/M may continue to apply for the employee alone or for the employee and other family members. If the retirement O/M continues to apply after a terminating event, an eligible auxiliary beneficiary may be included in the retirement O/M computation.

If the RR formula is actually paid for 1 or more months after the terminating event, and retirement O/M entitlement is restored back to the month in which the terminating event occurred, the annuity may be switched back to the O/M.

EXAMPLE: A full time student ceases full-time attendance (FTA) and is removed from the retirement O/M computation. As a result, the annuity is switched to the RR formula. Later, the child resumes FTA and is deemed to be in FTA during the period of non-attendance. The annuity may be switched back to the retirement O/M retroactive to the month the annuity was switched to the RR formula.

325.50 Switch From RR Rate To Retirement Overall Minimum (O/M) Rate Prohibited

Effective 10-5-72, the annuity rate may not be changed from the RR formula to the retirement overall minimum (O/M) computation if it was initially determined that the retirement O/M did not apply or the retirement O/M did apply but later was removed, breaking the continuity of the retirement O/M computation. Switching is prohibited in the following situations, even though the retirement O/M rate may be higher than the RR rate (this list is not exhaustive):

A. The employee marries after the annuity beginning date (ABD) and the spouse is not receiving a spouse annuity. The spouse may not be included until she becomes entitled to a spouse annuity; or

B. The employee adopts a child after the ABD; or

C. A child who was previously removed from the retirement O/M computation becomes re-entitled in a month after a month in which the RR formula applies (e.g., a child returns to full-time school attendance); or

D. A child who qualified a wife for a spouse annuity which was paid under the RR formula attains age 18 and is a full time student; or

E. A spouse who qualified for a spouse annuity based on having children in her care, which was paid under the RR formula, dies.

325.55 Changes From Retirement Overall Minimum (O/M) Rate To RR Rate Permitted

The annuity rate may be changed from the retirement overall minimum (O/M) to the RR formula rate whenever the RR rate yields a higher monthly benefit. The RR rate may be paid, subject to Railroad Retirement Act work deductions, if that rate is higher after work deductions are applied to the O/M.

The annuity rate may also be switched from the retirement O/M rate to the RR rate, even if the retirement O/M is still applicable, to prevent an overpayment or to conduct an investigation to determine continuing retirement O/M entitlement. The RR rate may be paid, for example, when investigating the continuance or cessation of disability.

325.60 Effective Date of Retirement Overall Minimum

Entitlement to the retirement overall minimum (O/M) increase begins with the first month in which all the requirements are met, unless the employee limits the retroactivity of his application.

325.60.1 Retirement O/M Based on Age and Service

The effective date of the retirement O/M based on age and service is the later of:

A. The first full month the employee is age 62; or

B. The employee's annuity beginning date (ABD).

325.60.2 Retirement O/M Based on Disability

The effective date of the retirement O/M based on disability is the later of:

A. The first day of the month following the month in which the disability waiting period ends, in a case requiring a waiting period; or,

B. The first day of the first month in which the employee is disabled and meets the disability insured status requirements under the Social Security Act, if no waiting period is required. Railroad service after 1936 is treated as social security employment in determining the disability insured status.

   A waiting period is not required if the employee previously had a disability freeze or a disability which ended within 60 months before the month his current disability began; or,

C. The ABD.

325.65 Effective Date Of Spouse Retirement Overall Minimum Benefit

325.65.1 Married When Employee Filed for Annuity

A spouse who was married to the employee at the time he filed for the employee annuity may be included in the family group for the retirement overall minimum (O/M) computation on the later of:

A. The employee's annuity beginning date (ABD); or

B. The first day of the month after the month in which a disability waiting period ends; or

C. The first full month the employee is age 62. If the employee is a disability annuitant or has a disability freeze (DF), the retirement O/M may begin the first day of the month the employee attains age 62; or

D. The first full month the spouse attains age 62.

325.65.2 Married After Employee Filed for Annuity

A spouse who was married to the employee after he filed for the employee annuity may be included in the family group for the retirement O/M computation on the later of:

A. O/M Computation rate in force when spouse becomes eligible - If the total retirement O/M computation rates exceed the total RR formula rates for the month before the month in which the spouse meets the eligibility requirements, the spouse may be included in the family group as soon as she meets the eligibility requirements.

Example: The family group on the employee's ABD of 5-1-77 consists of the employee and a full time student (FTS). The retirement O/M is in force. On 8-1-78, the spouse meets the eligibility requirements and may be included in the family group.

B. RR formula rate in force when spouse becomes eligible - A spouse who was married to the employee after he filed for the employee annuity and is at least age 62 or has the employee's child in care, may be included in the family group for the retirement O/M computation on the later of:

1. The first day of the month after the month in which a disability waiting period ends; or

2. The first full month the employee is age 62. If the employee is a disability annuitant or has a DF, the spouse may be included in the retirement O/M the first day of the month the employee attains age 62; or

3. The spouse ABD.

325.66 Effective Date of Divorced Spouse Retirement Overall Minimum Benefit

A divorced spouse annuitant may be included in the retirement overall minimum (O/M) on the later of:

A. October 1, 1981; or

B. The employee's annuity beginning date (ABD); or

C. The first full month the employee is age 62. If the employee has a disability freeze, the retirement O/M may begin the first day of the month in which the employee attains age 62; or

D. The divorced spouse's ABD.

325.70 Effective Date Of Child's Retirement Overall Minimum Benefit

325.70.1 Child Eligible on Annuity Beginning Date or After Disability Waiting Period

If the child meets the eligibility requirements on the employee's annuity beginning date (ABD), or on the first day of the month following the month in which the disability waiting period ends, the child may be included in the family group for the retirement overall minimum (O/M) computation.

EXAMPLE: The family group on the employee's ABD consists of the employee and two eligible full-time students. The students may be included in the retirement O/M computation.

325.70.2 Retirement O/M in Force When Child Becomes Eligible

If the total retirement O/M computation rates exceed the total RR formula rates for the month before the month in which the child meets the eligibility requirements, the child may be included in the family group for recomputing the retirement O/M rates.

EXAMPLE: The family group on the employee's ABD of 5-1-80 consists of the employee, spouse, and minor child. The retirement O/M computation is in force. On 9-1-80, a second child becomes a full time student (FTS). This child may be included in the family group for the retirement O/M computation.

325.70.3 RR Rate in Force When Child Becomes Eligible

If the total RR formula rates exceed the total retirement O/M rates for the month before the month in which the child meets the eligibility requirements, the child may not be included in the family group for computing the retirement O/M rates.

If an alleged disabled child may not be included in the O/M, develop a Form AA-19a and medical evidence for Medicare eligibility only.

EXAMPLE 1: The family group on the employee's ABD consists of the employee and RR spouse annuitant with a minor child in her care. The RR formula employee and spouse rates exceed the total retirement O/M formula rates. The child attains age 18 in 9-79 and the spouse annuity terminates. Although the child is an FTS, he may not be included in the family group for the retirement O/M computation.

EXAMPLE 2: The family group on the ABD 1-1-80 consisted of the employee and FTS. The retirement O/M formula applied. The child ceased full time attendance (FTA) on 5-13-80. This caused the employee annuity to revert to the RR formula. When the child returned to FTA on 1-1-81, the child's benefit may not be considered in the retirement O/M computation to cause an increase from the RR formula to the O/M, because of the break in the continuity of the retirement O/M formula.

325.75 Developing Child's Disability at Age 16

If a spouse is included in the retirement overall minimum (O/M) computation based on a minor child in care, 4 months before a child attains age 16, a computer-prepared Form Letter RL-175 is released to the employee. This advance notice is sent out before payments are suspended to develop the possibility of continuing eligibility. The employee is advised to contact the field office if the child is disabled.

If the spouse is not eligible for an unreduced spouse annuity based on her age and claims that the child in her care is disabled, develop a Form AA-19a and medical evidence for the child. A new Form G-319 is not required. If a child is rated disabled at age 16, only disability monitoring would be required after that date. It is not necessary to re-establish the child's disability at age 18.

If the spouse is eligible for an unreduced annuity based on her age when the child attains age 16, a determination on the alleged disability of that child is not required until the child attains age 18.

If the spouse files for a spouse annuity and the combined employee and spouse annuity tier rates exceed the retirement O/M rate, retirement O/M no longer applies. If the child is disabled, a disability determination should be made only for the child's eligibility for Medicare coverage.

325.80 Developing Child as Full Time Student After Age 18

Form letter RL-175 is released to the employee 4 months before a child will attain age 18. This advance notice is sent out before payments are suspended to enable the employee to contact the RRB field office to develop the possibility of continuing eligibility after the child attains age 18. The form shows the month the child attains age 18 and advises the employee to call the nearest RRB field office if the child is disabled or is attending school full-time.

Diary cards are also forwarded to RBD for action. Listed below are the possible messages for children included in the retirement O/M:

CHILD IPI ATTAINING AGE 18 OR 19

CHILD IPI OVER AGE 18 OR 19

If the retirement O/M is in force when the child attains age 18, and the child is entitled as an FTS, the RRB field office will only need to develop current information on Form G-320 and the Form G-315 series forms. The other information on Form G-319 should already be in the claim file.

Develop Form AA-19a if the child attaining age 18 is disabled and the disability has not yet been established in the claim file. A new Form G-319 is not required.

If a child may be eligible as either a full time student (FTS) or a disabled child, develop entitlement as a disabled child. However, if there will be a delay in establishing the child's eligibility as a disabled child, develop entitlement as an FTS as well. The child can then continue to be included in the retirement O/M while disability is being developed.

325.85 Suspension Of Employee Retirement Overall Minimum Annuity

When the employee's annuity is not payable, benefits are not payable for the spouse, divorced spouse or child based on the employee's wage record. If the employee's annuity is suspended to recover an overpayment, the annuity is still considered to be payable. If the retirement overall minimum (O/M) increase is not payable, in some cases, the employee's annuity may continue to be paid under the RR formula (e.g., when work deductions apply).

325.85.1 Railroad Retirement Act Provisions

A. The retirement O/M increase is not payable if the employee does not agree to keep the RRB informed of any event that affects the inclusion of an ineligible person included (IPI) who is not living with the employee.

B. The employee annuity under either the retirement O/M or RR computation is not payable for months in which the employee works in RR employment.

C. The DIB retirement O/M is subject to the work restrictions under the RR Act, i.e., no annuity is payable for any month in which a disability annuitant earns more than the monthly earnings amount (see FOM1.1125.5.2) in employment or self-employment of any type, except employment under the Domestic and Volunteer Service Act of 1973. Programs under this act, including VISTA, are listed in FOM-I-310.40.1.

   The disability retirement O/M is not subject to excess earnings deductions under the SS Act limit. However, disability may cease if the beneficiary is performing or is able to perform substantial gainful activity (SGA). See FOM-I-310.65 and 325.95.

D. The age and service retirement O/M is subject to the SS Act annual exempt amount earnings limitation while the employee is under age 70 (age 72 before 1983). The retirement O/M may be suspended if the employee has earnings

over the annual exempt amount. However, the RR rate will continue to be paid, but with a reduction for excess earnings if the employee has a work deduction insured status.

325.85.2 SS Act Provisions

The employee annuity may not be increased under the retirement O/M when any of the following events occur. These non-payment provisions would apply under the SS Act, and therefore may affect the payment of the O/M.

A. Vocational rehabilitation deductions - A vocational rehabilitation (VR) deduction is imposed against the disability retirement O/M for any month in which the employee refuses, without good cause, to accept VR service available to him under an approved VR program; or

B. SGA suspension for blind workers over age 55 - An employee who is entitled to the disability retirement O/M as a blind worker over age 55 will continue to be entitled for months in which he is engaging in "non-comparable" SGA. Disability for these workers is defined as inability because of blindness to engage in SGA requiring skills or abilities comparable to those of any gainful activity in which they have previously engaged with some regularity and over a substantial period of time. SGA that is "non-comparable" does not disqualify a blind worker from entitlement under this provision. However, retirement O/M payments to the employee or his auxiliaries will be suspended for any month in which the employee engages in comparable SGA. Payment may be initiated or reinstated for any month in which it is determined the employee is not engaging in comparable SGA; or

C. Deductions for work outside the U.S. - Beginning 5-1-83, work deductions may apply to the age and service retirement O/M if the employee works outside the U.S. for more than 45 hours in a month. For months before May 1983, a 7-day work test (see FOM-I-11) was applied to the age and service retirement O/M if the employee worked outside the U.S. Beginning 9-1-84, work deductions may apply to the shares of the spouse and child auxiliary beneficiaries when the employee works outside the U.S. for more than 45 hours in a month. For months before September 1984, a 7-day work test was applied to the shares of the spouse and child when the employee worked outside the U.S.; or

D. Removal/Deportation P.L. 108-203 changed the term deportation to removal effective as if enacted on April 1, 1997. Payment of age and service or disability retirement O/M benefits may be withheld if the employee is removed/deported from the U.S. after 9-1-54; or if removed/deported 11-10-88 or later, due to associations with the Nazi government of Germany during World War II; or

E. Conviction for subversive activities - Payment of the age and service or disability retirement O/M may be affected when the employee has been deprived of certain

benefit rights by sentence of a court after conviction on a charge involving espionage, sabotage, treason, sedition or subversive activities; or

F. Confined to a penal or correctional facility - O/M benefits are suspended or Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense and is confined in an institution at public expense for more than 30 continuous days. See FOM1 150, Criminal Activity Cases for more information.

325.90 Termination of Employee Retirement Overall Minimum Annuity

When the employee's annuity is not payable, benefits are not payable for the spouse, divorced spouse or child based on the employee's wage record.

The employee benefit under the retirement overall minimum (O/M) computation terminates with the last day of:

A. The month before the month in which the employee dies; or

B. The second month after the month the disabled employee annuitant medically recovers from his disability; or

NOTE: Beginning December 1, 1980, disability retirement O/M payments will not be terminated or suspended when the annuitant's impairment ceases because of substantial gainful activity (SGA), if the annuitant is participating in an approved vocational rehabilitation program. The Headquarters adjudicating unit will determine if continuation in the program is likely to increase the possibility that the annuitant will eventually be permanently removed from the disability rolls. Information about vocational rehabilitation is requested on Form G-254 (Continuing Disability Report).

C. The 36th month after the trial work period, if disability ceased after December 1987 because the disabled employee is performing SGA, but has not medically recovered from disability. The old (15-month) rule still applies when a retroactive SGA cessation is being processed prior to January 1988. The 15-month trial work period cannot begin any earlier that December 1, 1980. See the following section.

325.95 Trial Work Period Extension

Public Law 96-265 changed the termination date for an annuitant receiving the DIB retirement O/M or for a disabled child included in the O/M. Prior to the amendment, retirement O/M benefits were terminated 2 months after disability ceased, whether because of medical recovery or because of the ability to perform SGA. Beginning 12-1-80, if disability has not ceased before that date, a trial work period extension (TWP EXT) may apply when disability ceases because of the ability to perform SGA.

325.95.1 TWP EXT Defined

A DIB retirement O/M annuitant or a disabled child included in the retirement O/M who has not medically recovered is allowed a 9-month trial work period (see FOM-I-310.65.2). If the work performed during the TWP shows that the individual's impairment is no longer severe enough to prevent him from performing SGA, it is determined that the disability has ceased. The TWP EXT begins after the end of the TWP and does not end for at least 36 months if the beneficiary is not medically recovered. Effective 1/92, the TWP EXT begins the month after the 9th service month completed within 60 consecutive months. The TWP EXT ends according to the following rules:

A. If the beneficiary performs SGA during the 36 months following the TWP, the TWP EXT ends the last day of the month before the first month the beneficiary performs SGA after the 36-month period; or

B. If the beneficiary does not perform SGA during the 36 months following the TWP, the TWP EXT continues until the second month after the month the beneficiary first performs SGA; or

C. If the beneficiary medically recovers from his disability during the TWP or the following 36 months, the TWP EXT ends the last day of the second month after the month of medical recovery.

The following chart gives an example of how the first two rules are applied.

<table>
<tr><td colspan="2">9-month TWP
(April 87 - December 87)</td></tr>
<tr><td colspan="2">SGA in next 36 months?
(January 88 - December 90)</td></tr>
<tr><td>YES</td><td>NO</td></tr>
<tr><td>TWP extends at
least 36 months
(Jan 88 - Dec 90)</td><td>TWP extends at least
36 months
(Jan 88 - Dec 90)</td></tr>
<tr><td>1st month of SGA
after 36 months
(January 91)</td><td>1st month of SGA
after 36 months
January 91</td></tr>
<tr><td>TWP extension date
last day of month
preceding SGA
(December 31, 1990)</td><td>TWP extension ends
2 months later
(February 28, 1991)</td></tr>
</table>

If the applicant in this example medically recovers in June 88, the TWP EXT ends August 31, 1988.

325.95.2 Payment of Retirement O/M

RR annuities paid under the retirement O/M continue to be payable for the first 2 months after it is determined that disability ceased because of SGA (i.e., the beneficiary is paid for the first 3 months after the TWP). The retirement O/M is not payable for any month SGA is performed in the next 12 months of the TWP EXT. If the beneficiary does not perform SGA in any of the next 12 months, the retirement O/M may still be paid for those months if the RR annuity is payable. Entitlement to the retirement O/M terminates the last day of the 36th month of the TWP EXT, even though the TWP EXT may not have ended then.

The RR annuity must still be suspended if the annuitant earns more than the monthly earnings amount (see FOM1.1125.5.2); the retirement O/M cannot be paid if the annuity is in suspense. Even though the annuity is suspended according to RRB rules, the end of the retirement O/M entitlement must still be determined according to SSA's TWP EXT rules, unless annuity entitlement ends first. The TWP EXT will not affect the DIB retirement O/M in most cases because the RR annuity will be suspended because of earnings over the monthly earnings amount , or terminated because a total and permanent disability annuity is terminated 2 months after disability ceases because of work performance. However, the TWP EXT will always apply to an A&SA who is receiving the DIB retirement O/M or a disabled child included in the O/M, as long as the retirement O/M is otherwise payable. The TWP EXT also will apply to a widow or child who are found disabled and are receiving survivor annuities.

325.95.3 Termination of Disability Freeze

The date the disability freeze terminates depends on the pattern of SGA during the 36 months after the TWP. The DF can terminate before the trial work period extension ends.

A. If the beneficiary performs SGA during the 36 months following the TWP, AND if he engages in SGA for every subsequent month in the 36 months, the DF ends the last day of the month before the retirement O/M is suspended.

Example: Joe Jones completes a TWP in December 87. It is determined that his disability ceased because of SGA in January 88, so the DIB Retirement O/M is payable for January, February and March 88. He is performing SGA in January 88, and continues to do so through December 88 (36 months after the TWP) and thereafter. The DF terminates March 31,1988, the month before the month the retirement O/M is suspended. The TWP EXT ends December 31, 1990 (the month before the first month of SGA after the 36 months of the TWP EXT).

1987 A M J J A S O N D TWP ends in Dec

1988 J F M A M J J A S O N D Retirement O/M susp. April; DF ends March 31

1989 J F M A M J J A S O N D

1990 J F M A M J J A S O N D TWP EXT ends December 31

1991 J F

If Joe did not perform any SGA in January 88 through December 90, the DIB retirement O/M would be payable through December 90. If he performs SGA in every month June 90 through December 90 (remaining months of the 36 months after TWP) and thereafter, the DF would terminate December 31, 1990 because the retirement O/M is suspended beginning January 91.

B. If the beneficiary does not perform SGA during the 36 months following the TWP or if he does perform SGA but then has 1 or more months of no SGA before 36 months have passed, the DF ends the date the TWP EXT ends.

Example 1: Mary Smith completes a TWP in December 87, and the TWP EXT begins January 88. She does not perform any SGA until January 91. Her TWP EXT ends March 31, 1991 (the second month following the first month of SGA after the TWP); the DF also ends March 31, 1991 (the last month of the TWP EXT).

1987 A M J J A S O N D TWP ends in Dec

1988 J F M A M J J A S O N D

1989 J F M A M J J A S O N D

1990 J F M A M J J A S O N D Retirement O/M terminated Dec. 31

1991 J F M A TWP EXT, DF end March 31

If Mary did not perform SGA until March 91, her TWP EXT and DF would end May 31, 1991.

Example 2: Jane Brown completes a TWP in January 88 and her TWP EXT begins February 88. She performs SGA in May and June 88, does not perform SGA in July 88, then performs SGA in August 88 through February 91. The TWP EXT ends January 31, 1991 (the month before the first month of SGA after the 36 months of the TWP EXT). The DF also ends January 31, 1991.

1987 A M J J A S O N D

1988 J F M A M J J A S O N D Retirement O/M susp. May 1; Retirement O/M payable July 88

1989 J F M A M J J A S O N D

1990 J F M A M J J A S O N D

1991 J F M A TWP EXT, DF end Jan. 31; Retirement O/M term.

325.95.4 Handling TWP EXT Cases

If a disabled beneficiary ceases SGA during the TWP EXT, or if the earnings fall below the level deemed to be SGA ($500.00 a month) during the TWP EXT, the retirement O/M can be reinstated without developing a new application, when the annuity is still payable. When disability ceases because of SGA and the TWP EXT applies, DMOD will notify the annuitant (copy to field office) that the retirement O/M may still be payable, and furnishes the date the TWP EXT ends. DMOD also informs the annuitant of the date Medicare will terminate; the TWP EXT gives at least 39 months additional Medicare coverage.

The annuitant is instructed to notify the field office when he works. Report the work information to DMOD; you will be advised if additional development is necessary.

325.100 Suspension of Spouse Retirement Overall Minimum Benefit

325.100.1 Railroad Retirement Act Provisions

The retirement overall minimum (O/M) is not payable for any month in which the employee's annuity is suspended. If the spouse is entitled to a spouse railroad annuity under either the retirement O/M or RR computation, the annuity is not payable for months in which the employee or spouse works in RR service. The spouse may not be included in the retirement O/M for months she works in employer service. If the spouse annuity or retirement O/M share is in suspense due to work in RR service, the spouse's share under the retirement O/M may be redistributed among the other auxiliaries.

The spouse annuity is subject to the earnings limitations under the Social Security Act (SS Act) while the spouse is under age 70 (age 72 before 1983). The retirement O/M may be suspended if the spouse has earnings over the annual exempt amount. However, if the spouse is entitled to an RR annuity, the RR rate will continue to be paid, but with a reduction if the spouse has a work deduction insured status or earnings from Last Pre-retirement Non-railroad Employer (LPE). The employee's excess earnings can also be charged against the spouse's retirement O/M share or the spouse's RR annuity. However, a divorced spouse who has been divorced from the employee for at least 2 years will not be subject to work deductions based on the employee's earnings, beginning 1-1-85.

325.100.2 SS Act Provisions

The spouse retirement O/M benefit is not payable for any month in which the employee's retirement O/M benefit is not payable due to the events described in FOM-I-325.85.2.

In addition, the spouse retirement O/M benefit is not payable for any month in which the following events occur:

A. Deductions for work outside the U.S. - Beginning 5-1-83, work deductions may apply if the spouse works outside the U.S. for more than 45 hours in a month. For months before May, a 7-day work test (see FOM-I-11) is applied if the spouse works outside the U.S.; or

B. Conviction for subversive activities - The spouse retirement O/M benefit is not payable when the spouse has been deprived of certain benefit rights by sentence of a court after conviction on a charge involving espionage, sabotage, treason, sedition or subversive activities; or

C. Confined to a penal or correctional facility - O/M benefits are suspended or Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense and is confined in an institution at public expense for more than 30 continuous days. See FOM1 150, Criminal Activity Cases for more information.

325.105 Termination of Spouse Retirement O/M Benefit

The spouse benefits are taken into account in figuring the family retirement O/M computations only for those months in which the spouse would have been eligible for benefits under the Social Security Act. The spouse benefits end with the last day of the month before the month in which:

A. The spouse dies; or

B. The marriage between the spouse and the employee is ended by absolute divorce or, in some cases of putative marriage, by knowledge that the marriage was invalid. When California law is applicable, and the parties undertake in good faith to legalize their marriage within a reasonable time after learning of the defect, benefits do not end. Entitlement is not ended by a limited decree of divorce nor by an interlocutory or preliminary decree until such decree becomes final. The divorced spouse may continue to be included in the retirement O/M if she is entitled to a divorced spouse annuity; or

C. The employee's annuity terminates due to death or medical recovery from disability; or

D. The spouse does not have in care a minor or disabled (before attaining age 22) child of the employee and the spouse is under age 62.

The Retirement O/M share of a spouse who was eligible in August 1981, based on a child in care, ends the earlier of:

1. The month before the month in which the youngest child attains age 18; or

2. August 31, 1983, if the youngest child is over age 16. Otherwise, the spouse is entitled until the child attains age 16.

A spouse who was first eligible 9-1-81 or later, based on a child in care, is entitled until the youngest child attains age 16.

325.106 Suspension and Termination Of Divorced Spouse's Retirement Overall Minimum Benefit

The suspension events stated in FOM-I-325.100 also apply to a divorced spouse.

A divorced spouse is included in the retirement overall minimum (O/M) only if she is entitled to a divorced spouse annuity. A divorced spouse's entitlement terminates with the last day of the month before the month in which:

A. The divorced spouse dies; or

B. The employee's annuity terminates due to death or medical recovery from disability; or

C. The divorced spouse becomes entitled to an SS retirement or disability insurance benefit that is based on a PIA (primary insurance amount) that equals or exceeds one-half of the employee's PIA; or

D. A divorced wife remarries.

325.110 Suspension of Child's Retirement Overall Minimum Benefit

325.110.1 Railroad Retirement Act Provisions

The retirement overall minimum (O/M) is not payable for any month in which the employee's annuity is suspended. If the child is in employer service, the child may not be included in the retirement O/M and the child's share may be redistributed among the other auxiliaries.

The child's retirement O/M share is also subject to the Social Security Act (SS Act) annual exempt amount earnings limitation. The retirement O/M will be adjusted if a minor child or full time student (FTS) earns over the annual exempt amount. A disabled

child is not subject to the earnings limitation, but earnings may indicate recovery from disability.

325.110.2 SS Act Provisions

The child's retirement O/M share is not payable for any month in which the employee's retirement O/M benefit is not payable due to the events described in FOM-I-325.85.2.

In addition, the child's retirement O/M share is not payable for any month in which the child's benefits would not be payable under the SS Act, due to the following events:

A. Vocational rehabilitation deductions - A vocational rehabilitation (VR) deduction is imposed against the disabled child's retirement O/M share for any month in which the disabled child refuses, without good cause, to accept VR service available to him under an approved VR program; or

B. Substantial Gainful Activity suspension for blind workers over age 55 - If the child is a disabled adult child based on the special provisions for blind persons over age 55, the disabled child's retirement O/M share may be affected when the child engages in substantial gainful activity (SGA); or

C. Deductions for work outside the U.S. - Beginning 5-I-83, work deductions may apply if the child works outside the U.S. for more than 45 hours in a month. For months before May, a 7-day work test (see FOM-I-11) is applied if the child works outside the U.S.; or

D. Conviction for subversive activities - Payment of the child's share may be affected when the child has been deprived of certain benefit rights by sentence of a court after conviction on a charge involving espionage, sabotage, treason, sedition or subversive activities; or

E. Confined to a penal or correctional facility - O/M benefits are suspended or Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense and is confined in an institution at public expense for more than 30 continuous days. SeeFOM1 150, Criminal Activity Cases for more information.

Benefits for the other family members are payable as if the confined person were receiving benefits.

325.115 Termination of Child's Retirement Overall Minimum Benefit

The child's benefits are taken into account in figuring the family retirement overall minimum (O/M) computations only for those months in which the child would have been eligible for benefits under the Social Security Act (SS Act) rules.

A child's retirement O/M benefit terminates:

A. the last day of the month before the month in which the child dies; or

B. the last day of the month before the month in which the child attains age 18, unless the child is determined to be disabled before attaining age 22 or is an full time student (FTS); or

C. the last day of the second month after the month in which the disabled child medically recovers from his disability.

NOTE: Beginning December 1, l980, retirement O/M benefits for a disabled child will not be terminated or suspended when the child's impairment ceases because of substantial gainful activity (SGA), if the child is participating in an approved vocational rehabilitation program. The Headquarters adjudicating unit will determine if continuation in the program is likely to increase the possibility that the child will eventually be permanently removed from the disability rolls. Information about vocational rehabilitation is requested on Form G-254; or

D. the 36th month after the trial work period (TWP), if disability ceased after December 1987 because the disabled child is performing SGA, but has not medically recovered from disability. The old (15-month) rule still applies when a retroactive SGA cessation is being processed prior to January 1988. Beginning December 1, 1980; if disability has not ceased before that date, a TWP EXT may apply when disability ceases because of the ability to work. See FOM-I-325.95; or

E. the last day of the month in which the child ceases to be an FTS; or

F. the last day of the month before the month in which the child marries.

EXCEPTION: Under the SS Act, a disabled child age 18 or over may marry any SS beneficiary, other than a child beneficiary under age 18 or a child beneficiary age 18-22 entitled because he is a FTS, without loss of benefits. However, if a female disabled child married a man entitled to a child's disability benefit or to a disability insurance benefit (DIB), the female child's entitlement ended the same month her husband's benefits ended (e.g., recovery from disability), unless the husband's entitlement (either child's disability benefits or DIB) ended because of death or (in the case of a DIB only) entitlement to an RIB.

Effective 6-1-83, the female disable child's entitlement on her husband's E/R does not end, even if he recovers from his disabilitiy; or,

G. In the case of a stepchild of the employee, the month after the month in which the divorce between the employee and the natural parent becomes final.

325.135 Assignment Of Payment Cases

The employee may authorize the RRB to pay part of his total retirement overall minimum (O/M) computation annuity rate to another person by completing an "Assignment of Payment Statement" (a special form provided by the Headquarters adjudicating unit). If a garnishment is involved, see FOM-I-325.140. It is necessary for the person to be included in the retirement O/M computation for the assignment to be made. Usually the amount authorized by the employee to be paid to the assignee is equal to the amount the employee retirement O/M computation increases because of that person. However, the employee may designate an amount that is not necessarily attributable to the ineligible person.

The employee may request that this retirement O/M assignment amount be increased or decreased at any time. It is not the RRB's responsibility to solicit changes in the amount of the assignment whenever there is a cost-of-living increase or change in family group composition. The assignment amount should continue to be paid until the employee completes a new assignment or until the person may no longer be included in the retirement O/M computation. However, if the RR formula exceeds the retirement O/M formula, but the person for whom the assignment was made is still eligible to be included in the O/M, the Headquarters adjudicating unit will ask the field office to contact the employee to ask if there should be a change in the assignment.

Do not suggest assignment of payment or solicit a specific request for an assignment payment. When a request for an assignment payment is received, refer the inquiry to the Headquarters adjudicating unit. The "Assignment of Payment Statement" will be prepared by the Headquarters adjudicating unit and forwarded to the field office for completion by the employee.

325.140 Assignment In Lieu Of Garnishment

Beginning with the passage of the Social Services Amendments of 1974 (Public Law 93-647), assignments may also be made with the approval of the Bureau of Law when an RR formula rate is payable, only if a request is made because garnishment of the annuity or a court order for alimony or child support is threatened. Assignments in retirement overall minimum (O/M) formula cases may still be made if requested by the employee; question the employee for the reason for the assignment to determine if a garnishment is involved. If the assignment is in lieu of garnishment, the procedure in this section applies.

An annuitant may assign a specific amount of an annuity to be paid directly to the spouse or to someone else, even if that person is not included in the retirement O/M computation. The assignment must be in accordance with state law provisions concerning garnishment, which generally require that the annuitant must be in arrears in making court ordered payments for alimony or child support. The amount assigned must meet the Federal exemption rules outlined in the following section, and the employee must file an acceptable assignment of payment statement with the RRB.

325.140.1 Federal Exemption Rules

A portion of retirement benefits payable is exempt from garnishment by Federal law. If the state in which the legal process is issued also provides for an exemption, the larger exemption will apply in the case.

In the absence of a state law providing for a higher exemption, the Federal law exempts 35% of benefits from garnishment. The amount of the exemption is:

A. Increased by 10% if the beneficiary is supporting a spouse or child other than the spouse or child for whose support the legal process is issued; or

B. Increased by 5% if the support or alimony arrearage which caused the garnishment order is less than 12 weeks old.

If both of these conditions exist, the maximum retirement benefit subject to garnishment is 50%, unless an applicable state law provides a higher exemption.

The amount of the retirement benefits considered for possible garnishment is the rate after any necessary reductions, such as withholding by the RRB for recovery of an overpayment or deduction of Medicare premiums. Any applicable exemptions are applied to the reduced benefits actually being paid.

325.140.2 Statement for Assignment

When an annuitant expresses the desire to assign a portion of an annuity in lieu of having the benefit garnisheed or attached, legal assistance in preparing the assignment statement may be suggested or you may assist in preparing the statement to be sent to the Bureau of Law. The statement of assignment which you assist in preparing must include:

A. That this statement is intended to be in accord with appropriate state law and in lieu of garnishment;

B. That a court order for payment of alimony or child support which is the obligation of the annuitant exists and a copy of the order is attached;

C. That the annuitant is in arrears in making the ordered payments and the amount of the arrearage;

D. Declaration of the amount to be assigned per month, and the name and address of the party to whom the assigned payment is to be made;

E. The signature, address, and telephone number of the annuitant; and

F. The notation that the annuitant was "Assisted in preparation by (your name and district office location)."

The Bureau of Law handles all matters and makes all decisions related to the appropriateness and acceptability of assignment requests in lieu of garnishment. In these cases the critical claims and reconsideration unit implements the decision of the Bureau of Law. This includes any subsequent rate adjustments in the employee's annuity. Any action that does not directly affect the annuity rate or relate to or cancel a garnishment (e.g., a change of address) is handled in the regular adjudication units.

325.145 Inquiries About Ineligible Person Included (IPI) Shares

The additional amount payable due to the inclusion of ineligible person included (IPI) is an increase in the employee's annuity. The additional amount cannot in itself be regarded as payable to the IPI spouse or child; the annuity remains the employee's benefit, even if the employee assigns part of his annuity to someone else.

In providing information on the amount of the increase due to a spouse or child, the amount should be that person's share of the increased retirement O/M amount payable above the employee's RR rate or the employee alone retirement O/M rate, whichever is higher.

325.150 Spouse Retirement Overall Minimum Elections Defined

The Social Security Act (SS Act) was amended effective 11-1-56 to provide reduced benefits for wives, ages 62-64, if the wage earner was at least age 62 or eligible for a disability freeze (DF). At that time, the Railroad Retirement Act (RR Act) stated that the spouse of an RR annuitant, age 65 or over, could not qualify for an RR Act spouse annuity until age 65, unless the spouse had a minor or disabled child of the employee in care.

The spouse election procedure was initiated to permit the inclusion of spouses ages 62-64 who would have qualified under Social Security Administration rules in the retirement overall minimum (O/M) computation, provided the employee had attained age 62 or was entitled to a DF. The employee's annuity increased under the retirement O/M to include a share for the spouse until the spouse became entitled to an RR spouse annuity at age 65. By filing an election, the spouse agreed to have the spouse annuity permanently reduced by a specific amount in order to permit the employee's annuity to be increased under the O/M.

325.155 Spouse Elections Under The 1974 Railroad Retirement Act

The benefits payable under the 1974 Railroad Retirement Act eliminated the need for a spouse election in most cases, and the RRB discontinued soliciting spouse elections. Spouse election information is released only when an inquiry concerning benefit entitlement or adjustment is received from an eligible employee or age 62-64 spouse.

A spouse election is not required to include an age 65 spouse or a spouse with a child in care in the overall minimum.

325.160 When A Spouse Election May Apply

Assuming the spouse meets all other retirement overall minimum (O/M) eligibility requirements, a spouse election is currently required to increase the employee's annuity under the retirement O/M computation only in the following cases:

325.160.1 Employee's Annuity Beginning Date and Filing Date Before 1-1-75

The spouse is not eligible for a railroad spouse annuity until the employee attains age 65 if the employee's reduced age annuity or disability annuity:

A. Began before July 1, 1974; or

B. Began between July 1, 1974 and December 31, 1974 and the employee had less than 30 years of railroad service.

The spouse age 62-64 (without the employee's minor or disabled child in care) may file a spouse election to be included as an IPI in the retirement O/M computation if the employee either has attained age 62 or qualifies for a disability freeze.

325.160.2 Employee's Annuity Beginning Date or Filing Date is 1-1-75 or Later with Less Than 30 Years Service

The spouse is not eligible for a railroad spouse annuity until the employee attains age 62 if the employee is receiving an annuity based on disability. A spouse age 62-64 (without the employee's minor or disabled child in care) may file a spouse election if the employee is under age 62 but has a DF.

325.160.3 Employee's Annuity Beginning Date is 7-1-74 or Later with 30 or More Years Service

The spouse is not eligible for a railroad spouse annuity until the employee attains age 60 if the employee under age 60 is receiving an annuity based on disability. A spouse age 62-64 (without the employee's minor or disabled child in care) may file a spouse election if the employee has a DF.

325.165 Development Of Spouse Election

325.165.1 Field Office Handling of Inquiries

Upon receipt of an inquiry from the annuitant or an age 62-64 spouse who meets the conditions specified in FOM-I-325.25, develop the necessary information concerning the annuitant and spouse and forward their inquiry to the Headquarters adjudicating unit. The RRB does not solicit spouse elections.

NOTE: It would not be advantageous to the annuitant or spouse to file an election if either of them are receiving SS benefits or expect to receive SS benefits in the near

future, or if either is working and has earnings in excess of the current annual exempt amount.

325.165.2 Headquarters Adjudicating Unit Action on Report of Inquiry

Upon receipt of information from a field office indicating that an annuitant's spouse wants to file an election, the Headquarters adjudicating unit will test the O/M. If the inclusion of the annuitant's spouse as an IPI in the retirement O/M computation would increase the monthly amount otherwise payable to the annuitant, the Headquarters adjudicating unit will prepare and release dictated letters and statements to the field office for personal delivery to the employee and spouse.

325.165.3 Field Office Action upon Receipt of Election Letters from Headquarters Adjudicating Unit

Schedule an appointment with the employee and spouse. Date and deliver the dictated spouse election letters, and explain their contents. Also, furnish the employee and spouse with Form G-319 plus the dictated statements for their signature. Advise the employee and spouse that an election will not be accepted if it is made more than 30 days after the date of the letters.

If the spouse wishes to make an election, help the employee and spouse complete the Form G-319 and the statements. Secure the required proofs.

If the spouse does not wish to make an election or is not sure if she wishes to make an election, advice the Headquarters adjudicating unit of the date on which you delivered the letters.

325.170 Forms Required In Spouse Election

325.170.1 Spouse Requirements

In order to process a spouse election, the spouse must file Form G-319 plus a signed statement witnessed by an RRB representative indicating that she understands that:

A. The amount of the spouse's annuity she may receive in the future will be permanently reduced to take into account the additional amount paid to the employee before she becomes entitled to a spouse annuity; and

B. This election will not cause a reduction in any annuity payable to her as a widow(er); and

C. This election may not be revoked or changed in any way after the employee's annuity has been increased.

325.170.2 Employee Requirements

The employee must file Form G-319 plus a signed statement witnessed by an RRB representative indicating that he understands that, as a result of the election made by the spouse:

A. His annuity will be increased and he will receive at least the amount his spouse and he would receive if his railroad service were covered by the Social Security Act; and

B. The amount of the spouse annuity that the spouse may receive in the future will be permanently reduced to take into account the additional amount paid to him before his spouse became entitled to a spouse annuity; and

C. All or part of the increase will not be payable if:

1. While under age 70 (age 72 before 1983), the spouse

   (a) Works outside the U.S.; or

   (b) Works in the United States and earns over the annual earnings exempt amount; or

2. The employee or spouse receives social security benefits; or

3. The marriage is terminated by death or divorce.

The employee must agree to notify the RRB promptly of the occurrence of any of these events.

NOTE: The Headquarters adjudicating unit will prepare the necessary statements and transmit them to the district office with the request to deliver the dictated letters.

325.175 Evidence Required In Spouse Election Cases

The evidence required in a spouse election case is the same as the evidence listed in FOM-I-35. In addition, the employee and spouse must sign statements agreeing to the increase in the employee annuity and the future actuarial adjustment to the spouse annuity due to spouse election.

325.180 Retroactivity Of Spouse Election

The spouse may be included in the employee annuity retroactive to the first day of the month in which the employee and spouse meet the eligibility requirements, provided the spouse election is filed within 30 days of the date of the spouse election letters.

325.185 Finality Of Spouse Election

Once the retirement overall minimum (O/M) computation rate is paid with the spouse election, the election may not be cancelled. The spouse election reduction may, however, be adjusted for non-payment months when the spouse annuity becomes payable.

The employee's monthly rate may revert back to the RR formula computation whenever this rate exceeds the retirement O/M computation rate.

325.190 Termination Of Increase In Employee Annuity

The increase made in the employee's annuity because of a spouse election will end with the month immediately preceding the month in which:

A. The marriage of the employee and the spouse is ended by a final divorce decree; or

B. The spouse dies; or

C. The spouse is awarded a spouse annuity.

NOTE: If the spouse annuity beginning date (ABD) is after the first day of the month, the spouse election increase is payable up to the day before the spouse annuity ABD.

If the employee is under age 62 and the disability insured status is terminated, the increase made in the employee's annuity because of the spouse election will end the second month after the month in which the disability ceased.

325.195 Spouse Later Does Not Qualify For RR Annuity

A spouse who has filed a valid spouse election is retained in the retirement overall minimum (O/M) computation as long as she meets the Social Security Act eligibility requirements, even though she is later not eligible for a railroad spouse annuity (e.g., working in RR service) or does not file for a spouse annuity.

The additional amount included in the employee annuity under the O/M provision due to the spouse election is made only to the employee with nothing in the statute requiring it to be paid to the spouse or used for her support. The employee must either file an assignment of payment or make regular contributions to the spouse to support her. Such an assignment may be made at the employee's request only.

325.200 Effect Of Spouse Election On Future Widow(er)'S Annuity

The spouse election reduction is never applied to the widow(er)'s annuity. When the spouse made an election to be included in the retirement overall minimum (O/M) computation of the employee's annuity and subsequently does not become entitled to a

railroad spouse annuity in a month before the month in which the employee died, no reduction is required due to the spouse election.

When the spouse made an election to be included in the retirement O/M computation of the employee's annuity and subsequently was paid a spouse annuity that had a spouse election reduction in the month before the month in which the employee died, the spouse minimum rate used in the computation of the widow(er)'s annuity is the spouse annuity rate before the spouse election reduction.

Example: The spouse RR annuity effective 9-1-79 before the spouse election reduction is $198.44. The reduction of $5.89 results in a spouse benefit payable of $192.55. The employee dies 12-3-79. The spouse minimum rate considered in the widow(er)'s insurance annuity computation effective 12-1-79 is $198.44 (rate before the spouse election reduction).

330.5 Non-railroad Work

330.5.1 Before December 1, 1988

To be eligible for an employee, spouse or divorced spouse annuity before December 1, 1988, the applicant must have stopped any compensated service for, and relinquished all rights to return to, the service of a "Last Pre-retirement Nonrailroad Employer" (LPE), even though the compensation may be small and the service performed on a temporary, part-time, casual or irregular basis.

LPE is explained in more detail in FOM-I-330.15.

An applicant for an employee, spouse or divorced spouse annuity did not have to cease the types of nonrailroad work that was not LPE.

330.5.2 December 1, 1988, or Later

Effective December 1, 1988 the applicant does not have to stop any nonrailroad service and the applicant is no longer required to relinquish rights to nonrailroad service.

This includes a "Last Pre-retirement Nonrailroad Employer" (LPE) (see FOM-I-330.15). However, LPE earnings after the ABD require deductions from the applicant's tier 2 and supplemental annuity. A spouse's tier 2 is reduced for the employee's LPE earnings as well as for the spouse's own LPE earnings. [redacted]Refer to FOM1 1121.05.

330.15 Last Pre-Retirement Non-Railroad Employment Defined

330.15.1 Definition

An annuitant’s Last Pre-Retirement Nonrailroad Employer (LPE) is defined as any nonrailroad individual, company or institution for whom they are working on their annuity beginning date (ABD) or for whom they stopped working for within six months of the ABD in order to receive an annuity. With the exception of seasonal employment as described in [redacted]FOM1 330.37, the nonrailroad employer is always the annuitant’s LPE if they are working in nonrailroad employment on their ABD or, if they have stopped working, they still hold rights to return to service of the nonrailroad employer on their ABD.

Note: This definition of the LPE employer is effective for ABDs February 1, 2004 and later. Cases with an ABD prior to February 1, 2004 were processed without regard to the “within six months” rule.

If the applicant stopped work for a nonrailroad employer more than six months before the ABD, and does not have re-employment rights, we assume the person stopped working for reasons other than receiving an annuity, unless there is

information to the contrary. Therefore, such employer is not considered to be their LPE.

Example 1: The spouse's ABD is 12/01/2008. On her application she indicated that she last worked for Chili's, a nonrailroad employer on March 19, 2008. Since her date last worked for Chili's is more than six months before her ABD, Chili's is not her LPE employer.

Example 2: An employee's ABD is 06/01/2009. According to his application, he last nonrailroad employer Microsoft and he date last worked was November 25, 2008. Since his date last worked is more than six months before his ABD, Microsoft is not his LPE employer.

Example 3 (An Actual Case): A spouse has a 2-1-2009 ABD. Her date last worked is July 31, 2008 for her nonrailrod employer, Farmer's Mart. This is a unique case because there are exactly six months in the period between the date last worked and the ABD. If evidence in the case proves that the date last worked is correct and that the annuitant does not have any rights to return to work for Farmer's Mart, then Farmer's Mart would not be her LPE employer. In this type of case, examiners might request further development from field offices.

If the applicant stopped work for a nonrailroad employer within six months of the ABD, we assume the person stopped work in order to receive an annuity, unless there is information to the contrary. Therefore, such employer is considered to be their LPE.

If annuitants begin nonrailroad employment on or after their ABD, the RRB does not consider that nonrailroad employment to be LPE.

Example: The spouse's ABD is 12/01/2008. On her application she listed her LPE employer with a DLW of 6/06/2008. We later discovered that she began working for a new employer on 12/01/2008. Apply FOM 330.15 as written to this situation; this new employer would not be her LPE because she began working for the employer on her ABD.

330.15.2 More than One LPE

When the annuitant was working for two or more persons, companies, or institutions within the six months preceding their ABD, all such employers are presumed to be their LPE.

330.25 LPE Determinations

Each LPE decision is based on the facts and circumstances in the particular case. Although there are no set rules that cover every case, the basic guidelines are in FOM-I-330.30. It is extremely important to have an accurate LPE determination made before the annuity is awarded. Be sure to consider any non-

railroad work that might begin before the annuity beginning date but after the filing date. An erroneous decision or a decision based on incomplete or inaccurate information may result in a large overpayment.

330.25.1 By RRB Field Office

The field office has the authority to make the LPE or simple "seasonal employment" or "self-employment" determination. The field office will decide what data to develop and whether a review of their determination by RBD is required. If the claimed "seasonal employment" or "self-employment" does not specifically meet the basic guidelines in FOM-I-330.30, the field office should request a review of their determination by RBD. The field office may also request a RBD review for any other case in which they want RBD to make the LPE determination.

When LPE, seasonal employment or self-employment indicated on an application does not require review by RBD, the field office will make the determination that the work is LPE, seasonal employment or self-employment. The field office will document this decision by specific entries made on the APPLE APMU032 *Non-Railroad Employment* screen, APPLE APMU005 (PF 24) *Summary* screen, and APPLE APMU550 *Remarks* screen of the application. The APPLE *Receipt for Your Claim* will include the name of the LPE that was entered on the application as LPE.

However, when the applicant is claiming self-employment or "seasonal employment" that could be LPE, the field office should always release an RL-299 series letter to the applicant (see FOM-I-330.28). The LPE, seasonal employment or self-employment determination made by the field office that did not require review by RBD will be final.

330.25.2 By RBD

In most cases, RBD can resolve LPE questions using the information in this chapter or precedent legal opinions. If the examiner cannot readily resolve an LPE question, the case should be discussed with their supervisor, who will complete Form G-231a *Worksheet for Development and Determination of Pre-Retirement Nonrailroad Employment* and either make the decision based on precedent opinion or refer the case to their attorney-advisor. RBD should always release an RL-299 series letter to the applicant (see FOM-I-330.28).

330.25.3 By RRB Bureau of Law

The RRB Bureau of Law has the authority to make LPE determinations when the employee or spouse writes to them directly or when the field office or RBD requests them to make the LPE determinations.

a. Informal Determination

The Bureau of Law may make an informal determination by replying to the inquiry by email. RBD should document this determination by sending an RL-299 series letter to the employee or spouse. Send a copy of the letter to imaging for the claim file.

b. Formal Determination

The Bureau of Law makes a formal determination by responding directly to the employee or spouse. The final determination is the legal opinion issued by the Bureau of Law. Send a copy of the legal opinion to imaging for the claim file.

330.26 How to Request RBD Review

At the time of filing, the contact representative, in a questionable situation, enters an “S” in the RASI Rev item of the APPLE Summary Screen to request a Headquarters review. (See FOM-I-1581).

The contact representative should document the nonrailroad employment on the APPLE APMU550 *Remarks* screen of the application. Include employer's name, address, the dates of employment involved, and the rational for determining the LPE or non-LPE. (See FOM-I-1581.11 for a description of the APPLE screens.)

When Headquarters review is requested using the RASI Rev item of the APPLE Summary Screen, RASI will continue to prevent final payment until the RBD examiner makes a self-employment determination.

It is not necessary to enter a review code in the Manual Review item of the APPLE Summary Screen to prevent the release of IMPACT and/or SPAR, unless the contact representative questions whether LPE or self-employment is actually railroad employment.

If the question is whether employment is LPE, the RRB field office should apply a potential LPE work deduction reduction to the tier 2 IMPACT or SPAR amount.

330.27 Advance LPE Determinations

A potential employee or spouse annuitant may request an LPE determination before he or she files an application. Such a request will be handled in the same manner as if an annuity application had been filed. Complete information should be developed and reviewed by the field office. Based on the criteria presented in FOM-I-330.30, the field may either make the determination whether employment is LPE or self-employment, or can refer the advance LPE determination to RBD for a decision. Use an RL-299 series letter to advise the employee or spouse of the determination (see FOM-I-330.28).

An advance LPE determination remains effective when an application is filed, provided the facts on which the decision is based have not changed. The facts must be restated to insure that no change has occurred alter the determination.

330.28 RL-299 Series Notification of Decision Letters

As explained in FOM-I-1745, the field offices or RBD examiners use the following letters to advise an employee or spouse of an LPE determination:

- Use Form RL-299A to notify an employee whether the RRB considers work claimed as self-employment to actually be self-employment or to be Last Pre-retirement Nonrailroad Employment (LPE).

- Use Form RL-299B to notify a spouse whether the RRB considers work claimed as self-employment to actually be self-employment or to be Last Pre-retirement Nonrailroad Employment (LPE).

- Use Form RL-299C to notify an employee or spouse that the RRB considers the work to be “seasonal employment.’

- Use Form RL-299D to notify an employee or spouse that the RRB considers work claimed as “seasonal employment” to actually be LPE.

- Use Form RL-299E for advance LPE determinations for an employee or spouse (see FOM-I-330.27) when the LPE does not involve any claim of SEI or “seasonal employment.” Note that the RL-299E letter is not required if the applicant is filing an AA-1 or AA-3 at the same time. The APPLE Receipt page of the application, which includes the name of the LPE, is sufficient notice to the applicant of the LPE determination.

Do not include an AB-25 appeals paragraph in these letters. Instead use one of the code paragraphs designed for these letters that will advise the person that a subsequent award or adjustment letter will provide appeals rights. The applicant can appeal any mention of the LPE on the RL-20 award letters.

330.30 LPE Guidelines

Each LPE decision is based on the facts and circumstances in the particular case. There are no set rules that cover every case. The following guidelines indicate the information needed by the field office or RBD to make an LPE determination.

330.30.1 Employment That is Considered LPE -

The following types of work are LPE if the work continues past the ABD or ends within 6 months of the ABD. The RRB field office may make the LPE determination.

1. Ordinary nonrailroad work for wages or commissions, full or part- time.

2. Service in Canada for a railroad employer whose principal operation is in Canada (see RCM 5.2.13).

3. Public office. (See FOM-I-330.34.)

330.30.2 Employment Not Considered LPE -

The following types of work are not LPE. The RRB field office may make the LPE determination without RBD review.

1. Ordinary nonrailroad work for wages or commissions, full or part time that ends more than 6 months before the ABD

2. Service in Canada for a railroad employer, whose principal operation is in the United States.

3. Self-employment (see FOM 330.31).

4. Military Service.

5. Employment that is gratuitous or for which only a gratuity is paid.

6. Service for less than $25.00 ($3.00 before 1-1-75) a month to a local lodge or division of a railway labor organization is not railroad service or LPE. An exception is service performed as an employee representative by a local lodge or division secretary collecting insurance premiums. This service is considered LPE even if the commissions received are less than $25.00 a month.

7. Mail handling under contract for the Post Office Department.

8. Jury duty.

9. For annuity beginning dates prior to 12-1-88, nonrailroad employment which begins after the applicant demonstrated intent to retire (see FOM 330.110).

10. Nonrailroad employment which began on or after the annuity beginning date.

11. Ownership of a Limited Liability Corporation (LLC), legally referred to as being a “member” (see FOM-I-330.36.)

12. “Seasonal” employment (see FOM-I-330.37.)

330.30.3 Work That Does Not Need RBD Review -

The following types of work may or may not be LPE. The RRB field office may make the LPE determination.

1. Public Employment. (See FOM-I-330.35.)

2. Work for a Corporation. (See FOM-I-330.36.)

3. Work for a Reorganized or Merged Employer. (See FOM-I-330.38.)

330.30.4 Work That Needs RBD Review -

The following types of work require RBD review:

1. Consultants, especially consultants for a former employer (see FOM-I-330.33.3).

2. Ministers of churches (see FOM-I-330.33.5.)

3. Salesmen (see FOM-I-330.33.4), and

4. Volunteer Public Service, such as CETA employment (see FOM-I-330.35.2).

330.31 Self-Employment

Self-employment is work performed in a person's own business, trade or profession, rather than for an employer. While self-employment is not LPE, some activities claimed by the applicant as self-employment may actually be employment for someone else (e.g., salesman or domestic worker). An applicant may or may not be considered self-employed if he works in an incorporated business. Refer to FOM1-330.36 if the claimed self-employment involves a corporation. Refer to FOM1-330.33.4 if the applicant claims self-employment as a independent contractor. The fact that an applicant has reported earnings as self-employment to the Internal Revenue Service does not make his work "self-employment."

A determination must be made by the RRB field office or RBD in each case the Application AA-1 or Application AA-3 indicates self-employment within the last 12 months. The applicant should also complete Form AA-4, "Self-Employment and Substantial Service Questionnaire." Consider the circumstances of each case. Form G-177L *General Information about Continuing in or Returning to Nonrailroad Employment after Retirement under the Railroad Retirement Act* provides guidelines, based on precedent legal opinions that will permit a determination in most cases.

In disability cases, DBD must evaluate all work done in the last 15 years immediately prior to alleged disability onset date in order to determine SGA and whether or not substantial services were performed. Therefore, in disability cases, secure an AA-4 for work shown as self-employment during this 15-year period. If the work does not affect C/C or LPE determination (e.g. the work covered on the AA-4 was performed more than 12 months before date last worked in RR or non-RR work), a determination by RBD or the field office is not necessary.

Use this information to make a determination before the case is processed for award.

330.32 Railroad Employment vs. Self-Employment Determination

See FOM-I-330.36 if the claimed self-employment involves a corporation. Otherwise, the fact that an applicant has claimed self-employment and reported earnings as self-employment to the Internal Revenue Service does not require the RRB to consider the work to be "self-employment." Secure complete details of the work on Form AA-4, *Self-Employment and Substantial Service Questionnaire.* Refer to FOM-I-212.8 if the employee is only receiving reimbursement for expenses.

330.32.1 APPLE Summary Screen

The RRB field office will leave the IMPACT and SPAR items blank and code the APPLE Summary Screen for MANUAL REVIEW (to prevent the release of IMPACT and/or SPAR) when claimed nonrailroad employment or self-employment could actually be railroad employment.

330.32.2 Work for a Railroad Employer

If applicants perform work for a railroad and that work is subject to the continuing authority of the railroad to supervise and direct the manner in which the work is done, or if they are integrated into the staff or operations of the railroad while performing such work, then they are considered to be acting as an employee of the railroad. This is especially true if the work is similar to their last railroad job.

330.32.3 Consultant Services

Employment as a consultant in work similar to their last railroad job is not considered LPE when the person is reimbursed only for expenses incurred or his services are also available to the public. On the other hand, consultant services performed exclusively for the railroad for an indefinite period may be railroad employment.

330.32.4 Self-Employed Independent Contractor

In general, if the arrangement between the applicants and the railroad is such that the applicants are not supervised by the railroad when performing their services and they are not integrated into the staff or operations of that railroad, then they are considered to be self-employed independent contractors.

330.32.5 Notice of Self-Employment vs. Railroad Determination

RBD will use RRAILS letter RL-299A to advise an employee or RL-299B to advise a spouse when the RRB considers work claimed as self-employment to actually be self-employment (see FOM-I-330.28).

If RBD considers work claimed as self-employment to actually be railroad employment, they should refer the case to BFO - Audit and Compliance Section for a “coverage determination.” A copy of this referral should be sent to the applicant and imaged for the claim file.

330.33 LPE vs. Self-Employment Determination

See FOM-I-330.36 if the claimed self-employment involves a corporation. Otherwise, the fact that an applicant has claimed self-employment and reported earnings as self-employment to the Internal Revenue Service does not require the RRB to consider the work to be "self-employment." Secure complete details of the work on Form AA-4, *Self-Employment and Substantial Service Questionnaire.*

330.33.1 APPLE Summary Screen

The RRB field office will not prevent the release of IMPACT and/or SPAR pending an RBD review of an LPE vs. self-employment determination. However, the field office is to apply a potential LPE work deduction reduction to the tier 2 IMPACT or SPAR amount. See [redacted]FOM1 1121.05. for more information about LPE work deductions.

330.33.2 Work for an Employer

If the person performs work for their client subject to the continuing authority of that client to supervise and direct the manner in which the person works, or if the person is integrated into the staff or operations of their client while performing such work, then the person will be considered to be acting as an employee and their client is their LPE employer.

330.33.3 Consultant Services

Employment as a consultant (such as a physician or an attorney) is not considered LPE when the person is reimbursed only for expenses incurred or his services are also available to the public. On the other hand, consultant services

performed exclusively for one individual or company for an indefinite period may be LPE.

330.33.4 Self-Employed Independent Contractor

In general, if the arrangement between the person and their client is such that the person is not supervised by their client when the person performs services and the person is not integrated into the staff or operations of that client, then the person is considered to be a self-employed independent contractor.

a. Salesmen

Salesmen who work as independent contractors are self-employed. Salesmen who cannot be considered independent contractors or self-employed persons are considered to be working for someone else. As such, the employment is considered LPE.

Whether or not a salesman (e.g., real estate, insurance, cosmetic) can be considered an independent contractor will depend on several factors discussed on Form AA-4. Specifically pertinent:

- Income is derived solely from sales activity (commissions) rather than a guaranteed salary for specific hours worked; and

- There is a contract stipulating that the individual is not an employee of the company, rather he is an independent contractor.

b. Avon Lady

Situation: The spouse applicant is an Avon sales representative. She solicits orders for Avon products, collects payment and delivers products to the customer. She has a written contract that specifically disallows any employer/employee relationship and identifies the amount of commission to be paid based on total sales. She reports her earnings to the IRS and pays self-employment tax.

Determination: This is self-employment. The spouse is not under any individual's supervision. She alone determines the amount of time spent on this activity. Her income is based solely on the amount of products sold.

c. Gas Station Franchise

Situation: The spouse applicant owns and operates a Shell gas station. His business is not incorporated. He has a contract with the Shell Oil Co. to purchase gasoline and other petroleum products, renewable yearly. He employs 2 part-time attendants. He determines the number of hours he will work, pays all the expenses related to operating the station, reports his earnings to the IRS and pays the self-employment tax.

Determination: This is self-employment. The spouse is able to terminate the relationship with Shell Oil; he is not subject to their supervision and his income is not guaranteed. It is based solely on the amount of products and services he sells.

d. Coffee Cart Service

Situation: The spouse applicant has a coffee cart service. She provides coffee snacks to the employees of a Power Co. She is not supervised and she determines the number of hours she will work. She has a written contract with the Power Co. that states spouse is an independent contractor; that she does not participate in employee benefits; that she is responsible for all state and federal tax and unemployment insurance; and that her compensation consists of income derived from services rendered after the expense of supplies and equipment.

In addition to the preceding, the Power Co. guarantees her a minimum monthly income of $750.00, reserves the right to terminate the contract and mandates at least 2 daily runs, once in the morning and once in the afternoon.

Determination: This is LPE.

e. Cattle Rancher

Situation: The employee applicant raises cattle and grows feed for these cattle on a family owned farm. His earnings are based on the cattle sold. He is responsible for all the expenses and pays self-employment tax on the net income.

Determination: This is self-employment.

330.33.5 Minister

Employment as a minister of a church (or a rabbi of a synagogue) may be considered as self-employment or LPE depending on the circumstances. The fact that wages as a minister are reported to SSA as self-employment income has no bearing on our determination. A church is an identifiable entity and may be considered a "person" within the meaning of the LPE provision of the Railroad Retirement Act.

If the individual does not have any specific duties with the church and is not subject to the direction and control of a supervisor, the activities claimed by the applicant are considered self-employment. If the church exercises control over the way the minister serves the congregation, the church is an LPE employer.

When employment as a minister is indicated, Headquarters review of the field office determination is required. If doubt exists about whether the activity is self-employment or LPE, RBD should refer the case to their attorney-advisor.

The following aspects should be considered when determining whether or not the individual is performing "compensated service" within the meaning of the Railroad Retirement Act:

- Motive for working - The receipt of remuneration should be incidental to and not at all the motivating factor in the performance of the functions of the religious office.

- Previous Agreement with the Church Regarding Remuneration - If the individual reports that he has an agreement to receive any form of payment or fixed amount in return for his services, determine that the individual is performing compensated service.

- Other Considerations - Reimbursement to clergyman for expenses incurred while performing job should not be considered compensation.

a. Minister in LPE

Situation: John Doe is a clergyman at a church in Louisville, KY. His duties consist of visitation of members, sick calls, mid-week services and two services each Sunday. These duties have been chosen and assigned to him by the church. Before assuming the position of minister with this Church, he made an agreement with the elders to receive a fixed percentage of the contribution made by his parishioners to the church. He had been a minister to this church for 2 years averaging about $250 per month at the time he filed for a railroad retirement annuity.

Determination: Mr. Doe is working for a church that can be considered an LPE employer because they exercise control over his duties. He is also rendering compensated service because he made an agreement with the elders to receive money for his services.

b. Minster Not LPE

Situation: Donald Smith is a clergyman at a church in Seattle, Washington. He performs the various duties required of a minister such as making sick calls, mid-week services, and Sunday services. Occasionally at the Sunday services, a collection is made for the benefit of the minister. The amounts of money collected range from $25 to $75 per month. There is no agreement between the minister and the congregation that these collections are made in return for Mr. Smith's services as minister.

Determination: This church is considered an LPE employer because it exercises control over the way Mr. Smith renders service to the church. However, Mr. Smith has no previous agreement to receive money for being a minister, so that he is not in compensated service to an LPE employer. Therefore, he may go on

rendering service to the church and receive money from them in the same manner without LPE work deductions.

330.33.6 Notice of SEI vs. LPE Determination

The field office or RBD will use RRAILS letter RL-299A to advise an employee or RL-299B to advise a spouse whether the RRB considers work claimed as self-employment to actually be self-employment or to be LPE (see FOM-I-330.28).

330.34 Public Office

330.34.1 General

If the application filing date in June 24, 1991, or later, all appointed or elected public office is considered to be LPE and subject to LPE work deductions.

330.34.2 Appointed Public Office When Filing Date before June 24, 1991

Appointed public office positions were or were not considered to be LPE depending on the primary motive that the individual had in serving. The following guidelines were used in determining whether or not the public office was considered LPE:

a. Remuneration of More Than $150 a Month (More Than $1800 a Year)

This service was treated as LPE because we assumed that the individual's prime motive in serving in the public office was the salary involved rather than the desire to serve the public.

b. Remuneration of $150 a Month ($1,800 a Year) or Less -

An LPE determination was required because we could not make an assumption of what the individual's prime motive in serving was. The field office developed information concerning the statute or ordinance that established the office, the duties and the term of office and the amount of compensation paid.

330.34.3 Elected Public Office When Filing Date Before June 24, 1991. -

If the elected public office positions were with a foreign country, they were subject to the guidelines in FOM-I-330.34.2. Otherwise, an exception was made for elected officials based on their annuity beginning date:

a. Annuity Beginning Date was 1-1-75 or Later -

The elected public office positions within the United States, a State, or political sub-division of a State were not considered LPE, and the elected official did not have to stop that service, regardless of the amount of remuneration received or

the motive the individual had in serving. This provision also applied to individuals appointed to fill an unexpired portion of a term of an elected office; or,

b. Annuity Beginning Date was before 1-1-75 -

The elected public office positions within the United States, a State, or political sub-division of a State was subject to the guidelines outlined in Section B(2) above.

330.34.4 Public Office Questionnaire Used Before June 24, 1991

Form AA-4 was not used. The RRB field offices secured the following information in a domestic appointed public office position or in a foreign appointed or elected public office position. The field offices developed the following information.

1. Is the applicant in an elected or appointed position?

2. Was the applicant required to take an oath of office?

3. Is there a definite term of office? If so, what is the term?

4. How often, and in what amounts, is compensation paid (i.e., salary per day, per month, or per year, whichever is appropriate)?

5. What are the duties and responsibilities of the office?

6. How much time is spent in the performance of the duties of the office?

7. What is the citation to the state statute that establishes the position and prescribes the duties and compensation? If the position is provided by local ordinance, obtain a copy or submit a verbatim extract of the pertinent provision.

330.35 Public Employment

For public employment, in addition to Form AA-4, determine if the service is regular employment, is performed under provisions of The Domestic and Volunteer Service Act of 1973 or is performed Title V of the Older American Community Service Employment Act.

330.35.1 General

"Public employment" (i.e., employment by a unit of a local, State, or Federal government) differs from "public office" in that the person in public employment is under the control and supervision of another "person." Therefore, "public employment" is usually considered LPE.

If a unit of a local, state, or Federal government employs the applicant, determine whether the governmental unit by which the applicant is employed is independent of any larger unit or is an integral part of a larger unit. In public employment cases it is necessary to determine which governmental unit is the last employer. Generally, if an employee worked for a governmental unit that is an integral part of a larger political entity, the entire entity is the LPE employer.

EXAMPLE 1: An age and service applicant last worked for the VA. His LPE employer is the U.S. Government and not just the VA.

EXAMPLE 2: A spouse applicant last worked for the Klondike Water Department that is an integral part of the village government of Klondike, Arizona. Her LPE employer is the village of Klondike, and not just the Water Department.

In some cases, particularly those involving local governmental units, it may be difficult to distinguish the political entity. Most States have independent local or regional districts such as school districts, park districts, sanitation districts, fire protection districts, etc., which are not part of a larger political entity. In developing data in these cases, be sure to find out whether the governmental unit is "independent" or part of a larger unit.

EXAMPLE 3: A disability applicant last worked for the Frostfree Falls Park District, an independent political unit that operates the park system in the town of Frostfree Falls, Minnesota. His LPE employer is the Frostfree Falls Park District and not the town of Frostfree Falls.

330.35.2 Volunteer Public Service (Not Covered By Domestic and Volunteer Services Act of 1973)

In a case in which persons appear to have an LPE because of their continued service as a volunteer worker, that is not covered by the Domestic and Volunteer Services Act of 1973, (such as volunteer firemen), investigate the payments made to them. If the organization considers the payments to be just reimbursement for the person’s expenses, the organization is not the person’s LPE. Under such circumstances, their service is not LPE, even if the payments are reported to SSA as wages or if payment is made at a set rate; for instance, $3 for each fire to which the annuitants respond.

If, however, the person receives payments that are considered to be compensation, and not merely reimbursement for expenses, the organization is their LPE and their employment is considered earnings from LPE.

330.35.3 Volunteer Services under Domestic and Volunteer Service Act of 1973

The Domestic and Volunteer Service Act of 1973 consolidated, under the ACTION Agency, the domestic volunteer programs. The act was comprised of six

volunteer service programs throughout the Federal Government identified under Titles I, II and III of this act.

These services are meant to be provided by volunteers and not by members of the labor force. A stipend or allowance may be provided only to enable volunteers to effectively carry out their assignments. Payments to volunteers under this Act shall not eliminate eligibility for any government program. Therefore, this employment is not LPE.

These programs are:

a. Title I - National Volunteer Antipoverty Programs

Part A - Volunteers in Service to America (VISTA).

Part B - Service - Learning Programs.

Part C - Special Volunteer Programs.

b. Title II - National Older American Volunteer Programs

Part A - Retired Senior Volunteer Program.

Part B - Foster Grandparent Program and Older American Community Service Programs.

c. Title III -

National Volunteer Programs To Assist Small Business and Promote Volunteer Service By Persons With Business Experience

330.35.4 Public Service Performed under Title V of the Older American Community Service Employment Act

Service performed under and entirely funded by Title V of the Older American Community Service Employment Act does not constitute LPE.

330.35.5 CETA employment

The purpose of the Comprehensive Employment and Training Act (CETA) is to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible and decentralized system of Federal, state, and local programs.

CETA employment may or may not be regular employment that is considered to be LPE. A determination must be made by RBD in each case, based on the

particular facts in the case. The wages may or may not be covered under the Federal Insurance Contributions Act (FICA), and may or may not be creditable as employment for purposes of state unemployment compensation acts. Since the facts vary in individual cases, no guidelines have been established that will indicate whether CETA employment is LPE.

CETA employment, in addition to Form AA-4, secure the following information:

1. Under which subchapter or Title was the person employed?

2. What type of work did the person perform?

3. Was this work similar to that performed with the railroad?

4. Did the person receive any special training for this job?

5. How long was the person employed under CETA?

6. Did the person pay FICA taxes?

330.36 Corporations

Employment with Corporations may or may not be LPE.

330.36.1 Corporation Work that is Self-Employment

1. Directors of a Corporation - Directors of a corporation are persons who represent the stockholders in business dealings with the corporation's management. A person serving as a member of a corporation's board of directors is not an employee of the company. The company is not their LPE. The position is self-employment that will not break their C/C.

   NOTE: When applying work deductions for years before 1991, corporate director's earnings are treated as earnings for the year in which they are received. Effective January 1991, corporate director's earnings are treated as received in the year that the relevant services are performed.

2. Limited Liability Corporations (LLC) - LLC is a business that has some of the organizational features of an incorporated business but does not meet the federal requirements of a true corporation. An owner of a LLC is legally referred to as a "member." Membership in a LLC is self-employment, not LPE.

   The person that is claiming that his company is an LLC must submit proof. Proof of LLC structure is the individual's statement supported by the business name on any license, articles of the organization, or the operating agreement. If the person is claiming a consultant business, the LLC contracts with various clients will be preferred proof.

330.36.2 Corporation Work that is LPE

When a business has been incorporated, the corporation is a legal person and, therefore, an employer.

1. Corporate officers -Corporate officers (e.g. President, Vice-President, Secretary, or Treasurer) are employees that have administrative duties. The corporation is their LPE.

2. Subchapter "S" corporations.- Subchapter "S" type corporations are full corporations and are LPE.

3. Limited Liability Corporations (LLC) - An LLC is an LPE for persons who do not own the LLC, but are hired by the members who own an LLC.

330.37 Seasonal Employment

330.37.1 Definition of "Seasonal Employment"

Some types of nonrailroad seasonal work are not LPE, even though work is performed in the 6 months immediately before the ABD. With respect to nonrailroad seasonal employment (i.e. Christmas season employment), L-97-37 states that the employer is not considered to be LPE if:

- the annuitant possesses no re-employment rights and must reapply each year for the position; and,

- the employment relationship is terminated at the end of each period of employment; and,

- such employment has terminated prior to the annuity beginning date for some reason not related to the application for an annuity under the Railroad Retirement Act.

Whether an individual is in a period of seasonal employment when his or her annuity begins is relevant to the question of whether LPE work deductions apply **only to the extent** that such information sheds light on the question of whether the seasonal employment terminated prior to the annuity beginning date for some reason not related to the application for an annuity.

You have to determine if there is a pattern of seasonal employment during the years prior to the time the application is filed. If there is a pattern of prior seasonal employment, then that employment terminated prior to the annuity beginning date for some reason not related to the application for an annuity. The annuitant does not have to be outside of a period of seasonal employment for the exemption to apply.

Example 1 - The employee works for H&R Block during the tax season from January 15, 2003 through May 15, 2003. He does not retain employment rights with H&R block when he stops working on May 15, 2003. His RRB annuity begins July 15, 2003. H&R Block is not his LPE. If he re-applies to work at H&R Block in the next tax season and begins work on January 15 2004, he is not in LPE.

Example 2 -The employee (age 62 with 32 years of railroad service) stop working in railroad employment on December 20, 2003. The earliest possible ABD by law is December 21, 2003. On that day, the employee is working for Mr. Santa Claus as an order fulfillment specialist. The employee has worked for Mr. Santa Claus for the last three Christmas seasons. Mr. Santa Claus is not the employee's LPE employer even though he is working for Mr. Santa Claus on his ABD because a pattern of seasonal employment has been established.

330.37.2 Document the APPLE Screen

The field office should document the decision that the nonrailroad employment was "Seasonal Employment" by using the *Employment Type Code* = 6 - "Seasonal Employment." on the APPLE Nonrailroad Work screen. Document the decision that the nonrailroad employment was seasonal work, on the APPLE APMU550 *Remarks* screen (PF-12). Enter a complete explanation about the seasonal non-RR employment (include employer's name and address, and dates involved).

When pre-filling the name of the LPE on the Form AA-1 *Receipt for Your Claim*, APPLE will edit out nonrailroad work that has an *Employment Type Code* = 6 - "Seasonal Employment."

If the claimed "seasonal employment" does not specifically meet the basic guidelines in FOM-I-330.30 and the field determines the employment not to be LPE, the field office should request RBD manual review by using manual review code "3" on the APPLE Summary screen.

330.37.3 Notice of Seasonal vs. LPE Determination

The field office or RBD will use RRAILS letter RL-299C to advise an employee or spouse that the work is considered to be "seasonal employment or RL-299D to advise an employee or spouse that the RRB considers work claimed as seasonal employment to actually be LPE (see FOM-I-330.28).

330.38 Work for Reorganized or Merged LPE Employer

330.38.1 Change in Employer EIN

Most LPE employers are identified by their Employer Identification Number (EIN). L-77-135 and L-68-1 explain that the dissolution of a corporation and creation of

a new corporate entity or other business structure, such as a partnership, with a new EIN, means that an employer becomes a "new person." Employment for that new person is not LPE, even if there is no change in the duties of the job.

330.38.2 Under Jurisdiction of Holding Company

The fact that an LPE is in Chapter 11 bankruptcy and is under the jurisdiction of a holding company does not necessarily mean that it has become a new corporation entity. The annuitant's earnings may temporarily be reported under the holding company's EIN for the LPE employer. However, the LPE may emerge from the Chapter 11 proceedings with the original corporate structure and the original EIN.

330.38.3 Working for Subsidiary with Different EIN

L-77-162 describes a situation in which the annuitant was working for a subsidiary of the LPE with different EIN. It states that the strongest indication of an employer-employee relationship is the continuing authority of the employer to supervise and direct the manner of the annuitant's performance. Annuitants are determined to be in LPE, even though they are carried on the payroll of a subsidiary

330.38.4 Consolidation of Payroll Processing for the Federal Civilian Workforce

Effective January 10, 2003 the Office of Management and Budget (OMB) consolidated the payroll processing for the civilian Federal workforce As a result; the entire Federal civilian payroll is processed by the following four agencies:

- Department of Defense Finance and Accounting Service
- General Services Administration
- Department of Agriculture National Finance Center
- Department of Interior National Business Center

Due to the consolidation of payroll processing for the Federal civilian workforce, the Employer Identification Number (EIN) appearing for a civilian Federal employee may not show the agency the employee worked for, but will show the agency that processes the payroll.

330.40 LPE Entries on Annuity Application Forms

Instructions for completing the Nonrailroad work items on the RRAILS Application AA-1 is in FOM-I-1710, Form AA-1.

APPLE On-line Help includes instructions for completing the nonrailroad work screen.

330.41 When LPE Data On Application Is Incorrect

LPE information provided by the applicant or annuitant might be contradicted by other evidence in file. An example would be a wage pattern - confirmed as LPE by SSA's employer breakdown - showing employment after the ABD year.

330.41.1 Annuitant's Statement

If the employment requires LPE work deductions, handle the case as follows:

1. Obtain the Form G-19F, *Earnings Questionnaire* , or an equivalent statement if the annuitant failed to report post-ABD earnings in a prior year. (Earnings reports are discussed in FOM-I-1121.40.2); or,

2. If the annuitant stopped working in LPE and does not need to report prior year earnings, obtain the annuitant's certification on Form G-88 or in a signed statement.

In all other situations, the annuitant should provide a signed statement acknowledging or protesting the LPE data.

330.41.2 Contact the Employer(s) Regarding LPE

When necessary, RBD will release Form G-231 (Request for Field Investigation of Last Pre-retirement Nonrailroad Employer) to the field office serving the area in which the employer is located.

330.42 Annuitant Protests Earnings Report From SSA

Information on earnings amounts and employers is received twice a year from SSA, usually in May and November. When an annuitant's payments have been suspended or are being adjusted based on his wage record from the Social Security Administration (SSA) indicating LPE, and the annuitant protests that he did not perform the service, develop the basis for the protest.

The actual work may have been performed by someone else using his SSA number, such as his wife or other family members, or by persons not of the family. Get statements from the employer, the actual employee, and the annuitant explaining in detail the circumstances of the employment. If the work was not the annuitant's, RBD will adjust the annuity accordingly.

RBD will send a full report of our investigation and decision, including any copies of statements, to the appropriate SSA office and request SSA to notify us of any action they take to adjust the wages of the persons involved. An adjustment to

remove the earnings from the computation of the annuity will be made after SSA has adjusted the annuitant's wage record.

330.43 Correcting LPE Information on RASI

RASI accepts LPE data for up to two employment periods per application. If the nonrailroad employment begins after the ABD, and is indicated in the “Remarks” section of the annuity application, RASI does not consider it LPE.

RASI considers LPE employment periods and average monthly salaries in assessing temporary LPE work deductions. If RBD should review any aspect of the LPE entries, use manual review code”3” on the APPLE APMU005 (PF 24) *Summary* screen. Use APPLE APMU550 (PF-12) *Remarks* screen of the application to explain the reason the manual review is needed.

If the case is pending payment on RASI, and the month that LPE employment ends must be changed, request the RIS senior claims examiner to use the miscellaneous RASIFORM correction “996” to correct that field on RASI, so that LPE work deductions will be terminated correctly. If the date cannot be changed prior to final payment, adjust the LPE work deductions manually.

330.44 LPE Earnings Reports

LPE work deductions are discussed in FOM-I-1121.

330.44.1 Annuitant Stops LPE

A person is considered to cease service as of the last day they performs compensated service for an LPE. If "Pay For Time Lost" or vacation pay extends past the actual day last worked, the person is considered to cease service at the end of the "Pay For Time Lost. If the person stops LPE, they should contact the nearest RRB office to complete Form G-19F, *Earnings Questionnaire*.

The field office should use the SPEED (System Processing Excess Earnings Data) found in Boardwalk to report the earnings information. By doing so, the earnings information is stored in a database and a STAR referral is created for handling by the appropriate unit in Operations. Refer to FOM-I-15125 for detailed instructions for accessing and using SPEED. Make sure you use the proper reporting screen in SPEED and indicate it is a “Cease Work” report.

If LPE Work deductions are being applied to the spouse based on EE’s LPE and the EE ceases such work, indicate in Remarks on the EE’s Cease Work Report that the spouse work deductions also need to be removed.

Field offices should retain all original earnings reports until September 30th each year. At that time, the accumulated reports should be batched and submitted to headquarters for imaging as explained in FOM-I- 1115.35.3.

330.44.2 Annuitant Returns to LPE

An employee or spouse must notify the RRB immediately of return to work for an LPE employer. A written statement must be submitted if the employee or spouse has already retired and wishes to return to work.

Obtain a written statement from the annuitant which includes:

- An estimate of the expected average monthly earnings;
- The name and address of the employer; and
- The beginning date, and if known, the ending date of the employment.

Advise the employee or spouse that next year the RRB will request a final report of earnings, including a monthly breakdown of LPE earnings.

330.50 Railroad Work

330.50.1 Railroad Work Applicants Must Stop

An employee, spouse or divorced spouse annuity cannot begin earlier than the day after the last day of the applicant's railroad service.

The one exception to work the applicant must stop is service for less than $25.00 a month to a local lodge or division of a railway labor organization. However, work by a local lodge or division secretary collecting insurance premiums, regardless of the amount of salary, is railroad work which must be stopped.

After the annuity is awarded, payment cannot be made for any month in which the annuitant works for a railroad employer.

In contrast with the above, the payment of membership dues by local lodges on behalf of their secretaries is not creditable compensation (railroad work). This represents payments of an employee expense and will not affect payment of the annuity.

330.50.2 When Cessation of Service Occurs

An applicant is considered to cease service as of the last day he performs compensated service for an RR or LPE employer. If "Pay For Time Lost" extends past the actual day last worked, the applicant is considered to cease service at the end of the "Pay For Time Lost."

330.52 Relinquishment of Rights

The relinquishment of rights only affects the benefits under the Railroad Retirement Act (RRA). The relinquishment of rights does not bind the railroad

should the employer choose to provide certain employee benefits (i.e. health insurance, an employee buyout) after the employee stops working.

If an individual cancels a previously submitted relinquishment of rights before it becomes effective, no annuities that require the individual's relinquishment of rights are payable. However, once effective, the employees cannot revoke the relinquishment of rights, even if they offer to refund the amount of the RRA annuities that were paid based on the relinquishment of rights.

330.52.1 Age and Service Cases

Before an age and service employee annuity can be paid under the Railroad Retirement Act (RRA), an applicant for an employee age and service annuity must relinquish all seniority or other rights he or she may have to return to work for any railroad employer.

While a non-disability annuity can begin to accrue when an applicant stops working, it cannot be awarded until relinquishment of rights is effected. For example, a qualified age and service applicant who stops working on December 31 but does not relinquish his rights until March 15, is entitled to an annuity from January 1. However, payment cannot be vouchered before March 15, the day relinquishment of rights is accomplished.

330.52.2 Disability Annuities

A disability annuity can be paid to an employee who has stopped railroad employment, but has not relinquished his rights.

If a disability annuitant under Full Retirement Age becomes eligible for a supplemental annuity (SUPP ANN), the employee must relinquish rights to railroad employment before the SUPP ANN may be paid. A SUP ANN may not begin before the 1st day of the 12th month prior to the month the employee relinquishes his rights.

Automatic relinquishment of rights in disability cases at Full Retirement Age is explained in FOM-I-330.54.

330.52.3 Spouse/Divorced Spouse Annuities

Before applications for spouse annuities or divorced spouse annuities can be paid, the applicants must relinquish all seniority or other rights they may have to return to work for any railroad employer. While a spouse annuity or divorced spouse annuity can begin to accrue when an applicant stops working, it cannot be awarded until relinquishment of rights is effected.

For example, a qualified spouse applicant who stops working for a railroad on December 31, is entitled to a spouse annuity from January 1. However, the

spouse does not relinquish rights until March 15. Payment cannot be vouchered before March 15, the day relinquishment of rights is accomplished.

If a disability annuitant under Full Retirement Age has a spouse eligible for a spouse annuity, the employee must relinquish rights to railroad employment before the spouse annuity may be paid. The retroactivity of a spouse's annuity is not affected by the date the employee relinquishes rights. Therefore, the spouse may file an application as soon as she is otherwise eligible for an annuity in order to protect her filing date. However, the annuity cannot be paid until the employee relinquishes his rights.

In these cases, code the APPLE Summary screen for manual review. Do not enter a SPAR rate. Explain the reason for the manual review code in the remarks section of the APPLE Summary screen and in an email message to RBD. If a G-346 is submitted, Item 8 should be crossed out and initialed by the employee..

330.53 When Relinquishment Of Rights Is Accomplished

An individual's right to return to work for an employer is ended (for the purposes of the Railroad Retirement Act) whenever any of the following events occur:

A. An employer reports to the RRB that the individual no longer has the right; or

B. The individual or an authorized agent of that individual gives the employer an oral or written notice of the individual's wish to give up that right; and:

   1. The individual certifies to the RRB that the right has been given up; and,

   2. The RRB notifies the employer of the individual's certification; and,

   3. The employer either confirms the individual's right has been given up or fails to reply within 10 days following the day the RRB mailed the notice to the employer; or,

C. The employer or the individual or both take an action which clearly and positively ends that right; or,

D. The individual signs a statement that he or she gives up all rights to return to work in order to receive a separation allowance or severance pay.

E. An event occurs which under established rules or practices of the employer automatically ends the right to return to service; or

F. The RRB gives up that right for the applicant filing up to 3 months in advance of the date last worked or disability annuitant, having been authorized to do so, as explained in FOM-I-330.56); or,

G. The individual never has that right and permanently stops working; or,

H. The applicant dies.

330.54 How Relinquishment Of Rights Is Accomplished

330.54.1 Relinquishment of Rights to Railroad Service in Age and Service Cases

Before an annuity can be awarded, an employee age and service applicant, a spouse applicant or a divorced spouse applicant must certify to the RRB that (s)he has relinquished any and all rights to return to railroad service.

The Form AA-1 "Application For Employee Annuity" and Form AA-3 "Application For Spouse/Divorced Spouse Annuity" include questions concerning the applicant's rights to return to railroad service.

Under advance filing procedures, an age and service employee or spouse applicant may file for an annuity up to 3 months before retiring from railroad service. After certifying the date on which employment ended or will end on the annuity application, the applicant must promptly report any change in the date last worked. Otherwise, the annuity beginning date could be incorrect, resulting in erroneous payments. Use electronic mail to notify RBD when the applicant reports a change.

Relinquishment of rights is satisfied if the applicant:

A. Indicates on the Form AA-1, Form AA-3 or Form G-346 that he does not have seniority or other rights to work for a railroad employer or work for a railroad labor organization; or

B. Completes an acceptable Form G-88, a modified Form G-88 in the case of a spouse applicant; or

C. Furnishes the required information in a signed statement witnessed by 2 persons or authenticated by an authorized RRB employee.

330.54.2 Relinquishment of Rights to Railroad Service in Disability Cases

Disability annuitants who file a Form AA-1d "Application For Determination of Employee Disability," authorize the RRB to automatically relinquish their rights either at attainment of Full Retirement Age or before attaining Full Retirement Age when:

1. The disabled annuitant becomes eligible for a SUPP ANN, or,

2. the spouse of the disability annuitant becomes eligible for a spouse annuity; or,

3. If the disability annuity is denied, the employee is eligible for a reduced age annuity, and the employee indicated on the Application AA-1 that he or she would accept the reduced age and service annuity.

In addition, Form G-346, "Employee's Certification," with a revision date of 10-92 or later, includes the statements from the employees authorizing the RRB to relinquish their rights in order to pay the spouse annuities.

Note - Before 5-76, the Form AA-1d "Application For Determination of Employee Disability" with a revision date before 5-76 gave the applicant the option of having the RRB relinquish his rights at age 65. If the annuitant did not authorize the RRB to relinquish his rights at age 65, his annuity payments were suspended at age 65. We informed the annuitant that we would resume payments when he relinquished his rights. When the annuitant later notified us that he had relinquished his rights, we furnished the date rights relinquished (DRR) to the employer and reinstated payments from the date of suspension.

330.55 R Of R When An Employee Claims His Termination Is Wrong

The applicant has no rights but is attempting to restore them when:

A. an applicant's employment has been terminated by an employer; and,

B. the applicant disputes the termination action and is prosecuting a claim before the National Railroad Adjustment Board for reinstatement and for time lost from the effective date of the termination action.

The following statement must be made over the applicant's signature in the remarks sections of the application and the Form G-88: "I do not at this time possess any rights to return to the service of an employer. This statement shall be without prejudice to my claim that I was wrongfully deprived of such rights on (date of termination)." Item 4 on the Form G-88 and item 11 on the Form G-88A.2 should not be completed.

The applicant must also sign an "Assignment of Claim" statement to the extent of the annuity payments he may receive for any period for which he may subsequently be awarded back pay. RBD requires only the original copy of the statement in the format listed below.

330.55.1 Action by the Field Office

The field office will prepare Form RL-40A, Assignment of Claim, for the employee’s signature. The form is available on RRAILS. Forward the signed statement to the Retirement Benefits Division-Retirement Initial Section (RBD-RIS). with the application package.

If the employee requests a copy for himself, or his representative, prepare additional copies as needed.

If the employee does not wish to complete the "Assignment of Claim" statement at the time of filing (e.g., he wishes to consult a representative), give the employee the "Assignment of Claim" statement, to be returned to your office. Indicate on the APPLE Summary screen that the "Assignment of Claim" statement will be submitted at a later date. Always code the APPLE Summary screen for MANUAL REVIEW.

330.55.2 Action by RBD-RIS Examiner

The RBD-RIS examiner will review Form RL-40A for completeness and forward it, along with the Form RL-40 cover letter, to the railroad employer's highest ranking official. Form RL-40 is available on RRAILS. The title of the railroad official and address of the employer can be obtained on RRAILS by using the railroad employer's BA number.

NOTE: No annuity will be paid until the RL-40 A statement has been reviewed by the RIS examiner.

330.56 Annuitant Protests Automatic Relinquishment Of Rights

Certain disabled employees may not wish to relinquish their rights because of possible adverse effects on their benefits from the railroad. If an employee does not wish to relinquish his rights before he attains full retirement age, he must notify the RRB in writing when he files the application. Secure a signed statement from the employee that he does not authorize the RRB to relinquish his rights before full retirement age. You may use the "Remarks" section of the application for this purpose. Code the case for MANUAL REVIEW on the APPLE Summary screen. Instruct the employee that he must notify the RRB if he later wishes to relinquish his rights before attaining full retirement age. When the annuitant later notifies the RRB that he has relinquished his rights, RBD will furnish the date rights relinquished (DRR) to the employer and pay the benefits that require the relinquishment of rights.

330.57 Annuitant Wants to Revoke Relinquishment of Rights

If a disability annuitant protests the RRB's automatic relinquishment of rights before it becomes effective, no annuities that require the individual's relinquishment of rights are payable.

However, the age and service or disability annuitant cannot revoke the relinquishment of rights once relinquishment of rights has become effective, even if they offer to refund the amount of the RRA annuities that were paid based on the relinquishment of rights.

330.58 Unacceptable Certifications

A certification of termination of service and relinquishment of rights is not acceptable if executed:

A. Before the date on which the applicant claims to have stopped work and relinquished rights to return to service; or,

B. Before the date on which the applicant states the employment relationship ceased and rights were relinquished to return to service; or,

C. More than 15 days before the ABD. When an employer indicates on a Form G-88A.1 listing or G-88A.2 that the DLW or DRR is later than the date claimed by the applicant, consider the applicant's certification acceptable if it was not completed more than 15 days before the ABD determined on the basis of the employer's report. Use the dates furnished by the employer for all adjudicative purposes.

If an employee or spouse applicant completes an unacceptable certification, RBD will request the RRB field office to obtain a Form G-88 from the applicant certifying the revised date RR employment ended and rights were relinquished. The field office should advise the applicant when to complete and return the Form G-88 to the RRB. (This depends on why the former certification was not acceptable.)

A Form G-88 should not be requested in any case when the age and service application is filed more than 3 months before the annuity may begin. RBD will deny the claim and advise the applicant to file a new application.

330.60 Notifying Employers In Age And Service Cases

330.60.1 Railroad Employers

A. Action by RRB Field Office - Release Form G-88A.2 if the employee's lag railroad service is required for eligibility.

B. Action by Headquarters - When the annuity is initially awarded in an age and service case, a G-88A.1 listing is sent to the railroad employer notifying of the established DLW and relinquishment of rights as explained in FOM-I-1720.

330.60.2 LPE Employers

It is not necessary to notify the LPE employer when the annuitant claims to have terminated service with that employer. Accept the annuitant's statement of an ending date for these cases.

330.61 Notifying Employers In Disability Cases

330.61.1 Cessation of Service

A. Action by Railroad Retirement Board field office - Release Form G-88A.2 if the employee's lag railroad service is required for eligibility. This will notify the employer of the date last worked (DLW) in disability cases.

Generally, the forms should be released to the employer when the application package is forwarded to RBD. To expedite processing of the Form G-88A.2, you may release the form to the employer immediately if the application package will be delayed in the field office. However, do not release the G-88A.2 to the railroad before the claimed DLW-RR.

B. Action by Headquarters - When the annuity is initially awarded in a disability case, a G-88a.1 listing is sent to the railroad employer notifying them of the established DLW and relinquishment of rights, as explained in FOM-I-1720.

330.61.2 Relinquishment of Rights

A. Before Full Retirement Age - If the disability applicant has not attained Full Retirement Age, the employer will not be notified of cessation of service and relinquishment of rights unless the railroad has requested to receive this information on Form RL-5a. In cases involving the spouse's entitlement to an annuity after the disabled employee is on the rolls, RBD will release a Form RL-13g.1 to notify the employer of relinquishment of rights.

B. At Full Retirement Age - A Form RL-13g is used to notify a railroad employer that the RRB has relinquished an annuitant's rights at Full Retirement Age. The release of this form is explained below.

1. Disability annuity in payment status in month before Full Retirement Age attained - The Form RL-13g form is computer-printed and released in the month before the annuitant attains Full Retirement Age. A Form RL-13g is not printed in cases where the annuitant previously relinquished rights. No manual action is required to effect relinquishment of rights.

2. Disability annuity initially awarded in or after month Full Retirement Age attained - The Form RL-13g is computer-printed and released in the month following the month of the award. No manual action is required to effect relinquishment of rights.

3. Disability annuity in suspense in month before Full Retirement Age attained - Each month, tickler referrals are produced for these

cases for review by RBD unless the employee previously relinquished his rights. RBD will manually prepare and release Form RL-13g, except if the employee is currently in railroad service.

330.75 Confirmation Of Date Last Worked And Date Of Relinquishment Of Rights

In most cases, an applicant's claimed date last worked (DLW) and date of relinquishment of rights (DRR) are confirmed by the absence of a notice to the contrary from an employer. Failure of an employer to refute the employee's claim (as shown on a Form G-88A.1 listing to the employer) in essence confirms the DLW and DRR.

In other cases, the applicant's certification that he has ceased service and relinquished rights is confirmed by one of the following methods:

A. An employer's statement that the applicant ceased service and relinquished rights to return to service; or

B. The employer's certification that the applicant previously stopped working and did not have rights to return to service; or

C. Correction of the DLW OR DRR by an employer with a later DLW OR DRR date.

330.80 Discrepancy In RR Employer's And Applicant's Statement Of Date Last Worked

330.80.1 Vacation Allowance Involved

Reconciliation of the date last worked (DLW) is usually not required when the discrepancy is explained by the fact that the applicant received a vacation allowance. In most cases, payment of a vacation allowance after the last day of compensated service does not change the employee's DLW for Railroad Retirement Act purposes. However, if the vacation period extends beyond 1 calendar month and it would benefit the employee to have the additional service, the vacation allowance can be credited as a service month. A vacation allowance should never be used as service if it will affect the annuity beginning date unless, of course, eligibility is involved.

A few employers consider non-agreement (supervisory) employees to be in compensated service during the period covered by the vacation allowance. In these cases, the employer-employee relationship does not end until the vacation period is over, and the annuity cannot begin until the day after the vacation period ends. These employers will change the DLW on their Form G-88A.1 listings to the day the vacation period ends and enter the notation "Employee Not Covered By Vacation Agreement" in "Remarks." See FOM-I-210.

330.80.2 Vacation Not Involved

RBD will accept the employer's record of the applicant's last day of service unless it is obvious from information in file that the record is not correct. When the employer's record is obviously incorrect, RBD will ask the RRB Field office servicing the area in which the employer is located to inform the employer of the discrepancy and ask him to furnish a revised earnings report to the RRB.

330.95 Discrepancy In Applicant's And Employer's Statement Of R Of R

330.95.1 Acceptance of Employer's Record

Accept the employer's record of DRR if the date shown on that record is:

A. No earlier than the DLW (the date shown by the employer as the last day the applicant was considered an employee); and

B. Not more than 15 days later than the date on which the applicant filed his application or completed a Form G-88, provided the applicant has stated that he is not working and has not worked for any person, company or institution since leaving the service of an employer.

330.95.2 When Reconciliation Is Required

Reconciliation of any discrepancy between the applicant's statement and the employer's record of DRR is required when the employer's record may not be accepted under the conditions given in FOM-I-330.95.1, or before 12-1-88, when the applicant's employment outside the railroad industry might affect the ABD.

RBD will ask the field office to tell the applicant the date the employer reported and ask him to recheck his own records. If the applicant wishes to change his previous statement, obtain a Form G-88. Tell him also that if he feels the employer's report is in error, he must submit a statement from the foreman or supervisor for whom he last worked to confirm the DRR.

330.110 Intent To Retire

Intent to retire rules are applicable only to cases with ABDs before 12-1-88.

330.110.1 Demonstrating Intent to Retire

An intent to retire is demonstrated if before entering any new employment the applicant relinquished rights to return to the service of a nonrailroad employer for whom (s)he last worked before the earliest or designated ABD. Intent to retire is also demonstrated in:

a. Age and Service and Spouse Annuities - When the applicant does not work through the earliest possible ABD or, before 12-1-88, did not begin any new employment for at least six months after that date.

b. Disability Annuities - When the applicant filed an Application AA-1d.

330.110.2 Applying Intent to Retire Rules (ABD Before 12-1-88)

When nonrailroad employment begins after the earliest possible annuity beginning date, consider the annuity beginning date, the employer for whom the applicant last worked before that date, the date the applicant relinquished his rights to return to the service of that employer and the date the applicant began any new employment. In absence of information to the contrary, it is assumed that an employee did not retain rights to return to the service of a nonrailroad employer after he stopped working for that employer.

Apply these rules to determine the applicant's ABD and LPE employer:

a. When Rights were Relinquished BEFORE the Applicant Began Other Employment - The new employment is not LPE.

b. When Rights were NOT Relinquished Before the Applicant Began Other Employment

1. In age and service and spouse cases

- If the new employment did not begin within 6 months after the earliest possible annuity beginning date, it is not LPE;
- If the new employment began within 6 months after the earliest possible ABD, it is LPE.

2. In disability cases

- If the employment began after the application was filed, it is not LPE;
- If the employment began before the application was filed, it is LPE.

Intent to retire rules do not apply if the ABD is after 11-30-88.

405.5 Widow(er) Defined

To qualify for a survivor annuity under the Railroad Retirement Act (RR Act) before October 1, 1981, an applicant must have been the unremarried widow(er) of an insured employee.

Effective October 1, 1981, amendments to the RR Act establish entitlement for surviving divorced wives, surviving divorced husbands and remarried widow(er)s.

Eligibility and entitlement criteria for each type of widow(er) annuity based on age is described in this chapter. Unless a section in this chapter specifically refers to a certain type of widow(er), any reference to widow(er) applies to all widow(er) annuities (unremarried, divorced, remarried).

405.5.1 Legal Widow(er) Defined

Relationship Requirement

The applicant must:

- Be considered as validly married to the employee under the laws of the state of the employee's domicile at the time of his death; or

- Have the same rights as a widow(er) to share in the distribution of the employee's estate under the laws of the state of the employee's domicile at death.

In some instances it may be possible for more than one person to meet the above requirements based on relationships with the same employee; one applicant can meet the valid marriage test, and the other can qualify under the inheritance test. When this occurs, both widow(er)s may be entitled to an annuity under the RR Act.

Marriage Requirement

The widow(er) must meet one of the following requirements:

1. Have been married to the employee for 9 months prior to death.

   NOTE: The 9-month requirement is met if the employee was alive on or after the 9th month recurrence of the calendar day that marks the marriage, e.g., if the marriage occurred on February 29, the 9-month period would end on November 29; if the employee was alive on November 29, the duration of marriage requirement is met. That requirement would also be met if the marriage occurred on May 30 and the employee was alive on the next February 28 (February 29 in a leap year).

2. Can be deemed to meet the duration of marriage requirements.

General - The 9-month marriage requirement is deemed to be met in the following situations:

- The employee's death was accidental; or
- The employee's death occurred in the line of duty while serving on active duty as a member of the United States Armed Forces.

> Note: The 9-month requirement CANNOT be deemed if at the time of the marriage the employee could not have reasonably been expected to live for 9 months.

Development of deemed 9-month duration of marriage - An accidental death is defined as a death, which occurred as a direct result of bodily injuries received by violent, external and accidental means. The death must occur from the bodily injuries independent of other causes and must occur within 3 months after the day on which the employee received such injuries.

Obtain a certified copy of the death certificate or a casualty report from a branch of the Armed Forces. Assume that, at the time of marriage the employee was reasonably expected to live 9 months unless information obtained in the normal course of development indicates otherwise. If such information is obtained that, for example, at the time of marriage the employee had an illness, which is ordinarily fatal, advice Headquarters of any pertinent information when submitting the application and proofs. A final decision on whether the marriage requirement has been met will be made in Headquarters.

Death certificates generally indicate whether the death falls into one of four categories: natural, accidental, homicide or suicide. For purposes of this provision, consider death accidental when the death certificate so indicates. Assume that accidental death was independent of other causes unless the death certificate clearly indicates that an ordinarily fatal illness was a contributing factor.

Even though the death certificate shows that death resulted from natural causes, develop for accidental death if the applicant claims death was accidental. The immediate cause of death may be, for example, pneumonia which was contracted as a result of lowered resistance caused by an automobile accident. When the death certificate shows "natural" causes and development indicates accidental injury may have been a contributing factor, develop fully, including an annuity application, and submit to Headquarters for a determination.

3. Have been previously married to the employee for at least 9 months, divorced and then remarried the employee. As long as the previous marriage lasted at least 9 months, the length of the subsequent marriage and the life expectancy of the employee at the time of that remarriage do not need to be considered.

4. Be the natural parent of the employee's child (the child must be born alive but need not still survive).

5. Have legally adopted a child of the employee during their marriage and before the child attained age 18.

6. Be the parent of a child legally adopted by the employee during their marriage and before the child attained age 18.

7. Have been married to the employee at the time both of them legally adopted a child under age 18.

8. Have been entitled or potentially entitled to a widow's, widower's, parent's or disabled child's insurance annuity under the RR Act in the month before the month of the widow(er)'s marriage.

   General - Potentially entitled means that we can presume the filing of an application and the attaining of eligibility age for a widow, widower's or parent's insurance annuity if the deceased employee had the required status and the widow(er) met all other requirements.

   For potential entitlement to a disabled child's insurance annuity, only the filing of an application can be presumed. All other requirements must actually have been met in the month before the month the widow(er) married the employee.

   Development - When a widow(er) seeks to qualify under this provision, secure the RR claim number and name of employee on whose record (s)he claims actual or potential entitlement. If the widow(er) does not know the RR claim number, secure the employee's name, date and place of birth, mother's maiden name and father's name.

   This data should be shown in the "Remarks" section on the annuity application.

9. Have been entitled or potentially entitled to a widow(er)'s, parent's, wife's, divorced wife's, divorced widow's or disabled child's insurance benefit under the SS Act in the month before the month of their marriage.

   General - For the purpose of qualifying under this provision, potentially entitled means that we can presume the filing of an application and the attainment of retirement age providing the widow(er) actually met all other requirements.

   For potential entitlement to a disabled child's benefit under the SS Act, assume only the filing of an application. All other requirements must actually have been met in the month before the month of their marriage.

   Do not consider a widow(er) entitled or potentially entitled to an SS Act widow(er)'s, parent's, divorced spouse's, divorced widow(er)'s or disabled child's insurance benefit if widow(er) was actually entitled to an retirement insurance

benefit (RIB) or disability insurance benefit (DIB) which equaled or exceeded such other benefit. Entitlement to an RIB or DIB cannot be presumed.

Development - When a widow(er) qualifies under this provision secure the SS account number of the person on whose record the widow(er) might qualify for benefits. If the widow(er) does not know the SS account number, request the wage earner's name, date and place of birth, mother's maiden name and father's name. This data should be shown in the "Remarks" section on the annuity application.

10. Effective with applications filed on or after March 2, 2004, at the time of the employee's death, the employee and widow(er) were married for less than 9 months because:

- the employee was married prior to the marriage to the widow(er), but the prior spouse was institutionalized due to a mental or similar incapacity; and
- during the period of the prior spouse's institutionalization, the employee would have divorced the prior spouse and married the widow(er), but (s)he did not do so because such a divorce would have been unlawful, by reason of the prior spouse's institutionalization, under the laws of the State in which the employee was domiciled at the time; and
- the prior spouse remained institutionalized up to the time (s)he died; and
- the employee married the widow(er) within 60 days after the institutionalized spouse's death.

Field Office Handling – Because of the rarity of these cases, they should be referred to Policy and Systems to determine if the widow(er) meets the 9 month marriage requirement under this provision. Code the APPLE application for manual review and enter in the remarks section that the case is a special deemed 9 month marriage case that needs to be forwarded to P&S-RAS for a determination. SBD will then refer the case to P&S-RAS.

Since laws vary from state to state, no special preliminary development action needs to be taken. Policy and Systems will determine what needs to be developed and advise the field office accordingly. However, if the applicant has already submitted any materials to support his/her claim, notate the remarks accordingly and send those materials to SBD. They will forward those materials, along with the APPLE referral, to P&S-RAS.

405.5.2 De Facto (Deemed) Widow(er) Defined

A. General - An applicant may qualify as a widow(er) if the marriage to the deceased employee was invalid because:

- At the time of the marriage there was an impediment arising out of a prior marriage, either of the employee or spouse, or its dissolution; or

- There was a defect in the procedure of the marriage.

B. Relationship requirement - An applicant may qualify as a de facto widow(er) if all the following requirements are met:

1. There was a marriage ceremony; and

2. The applicant went through the ceremony in good faith, not knowing of the impediment at the time; and

3. The applicant was living in the same household with the employee at the time of death. This requirement must be met even if the applicant was entitled to a spouse annuity at the time of the employee's death; and

4. At the time of filing, there is no other person who has filed and been found entitled to any type of survivor benefit as the legal widow(er).

C. Marriage requirement In order to qualify for an annuity, a widow(er) must meet one of the requirements listed in FOM-I-405.5.1B.

405.5.3 Surviving Divorced Spouse Defined

A. General - Effective October 1, 1981 a surviving divorced spouse may qualify for an annuity if (s)he meets certain requirements. A surviving divorced spouse is precluded from being entitled to an annuity if the legal or de facto widow(er) previously elected the residual lump-sum.

B. Relationship requirement - The applicant must be finally divorced from the deceased employee.

If a final divorce was not effective prior to the employee's death, the spouse may qualify as a legal or de facto widow(er).

C. Marriage requirement - Must have been married to the deceased employee for at least 10 years immediately before the date a final divorce was effective. This requirement is met if the divorce became final on or after the 10th anniversary of their marriage. The 10 year requirement can still be met when the period is interrupted by divorce. If the applicant and employee married, then divorced and remarried each other again and divorced again, the 10 year requirement can be met if the remarriage took place no later than the calendar year immediately following the calendar year of the divorce.

For example: If the applicant and the employee were married 8-9-1945, they were divorced 5-22-50, they remarried on 9-15-51 and were divorced again on 12-1-55; the applicant may qualify as a surviving divorced spouse. The applicant

meets the 10 year requirement with the appropriate proofs. But, if this remarriage took place in 1952 and all other facts above remain the same, this applicant could not meet the 10-year marriage requirement.

(Note: For entitlement 1/1991 or later, a "deemed" marriage satisfies the 10-year duration of marriage requirement for divorced spouses.)

A limited divorce (divorce from bed or board) or a preliminary decree of divorce (interlocutory decree or decree nisi) is not a final divorce. For further information about divorce decrees and related topics, see RCM 4.3.51 and RCM 1.3.80.

EXCEPTION: A surviving divorced spouse who has a minor (under age 16) or disabled, natural or legally adopted child of the deceased employee in her care can qualify for a widow(er)'s current insurance annuity (WCIA). The 10-year marriage requirement is not necessary for entitlement to a WCIA, but a surviving divorced spouse cannot receive a WIA based on age or disability unless (s)he meets the 10-year marriage requirement.

405.5.4 Remarried Widow(er) Defined

A. General - Effective October 1, 1981, certain widow(er)s who have remarried can qualify for an annuity under the RR Act.

B. Relationship requirement - The applicant must be the widow(er), as defined in this chapter, who remarries any time after the employee's death. Once a widow(er) has remarried, (s)he is considered a remarried widow(er) for purposes of entitlement and payment under the RR Act. A widow(er) who remarries permanently loses entitlement to any tier II and vested dual benefit.

C. Marriage requirement - The applicant must meet requirements for a widow(er) as defined in this chapter.

405.10 Eligibility And Entitlement

405.10.1 Eligibility and Entitlement Requirements

In addition to being the widow(er) (includes legal, deemed and remarried) or surviving divorced spouse of a deceased employee who died completely insured for survivor benefits under the 1974 Act (see FOM-I-230.15), an applicant must meet the following requirements:

A. Age - The survivor must have attained age 60.

NOTE: A person attains a given age on the day preceding the anniversary date of his birth. For example, a person born on March 2, 1925 attained age 65 on March 1, l990; if his DOB had been March 1, 1925, he would have attained age 65 on February 28, 1990.

B. One-Half Support

Before 3-1-77 a widower must have been receiving one-half support from the employee at the time of her death or at the time her retirement annuity began;

After 2-1977, a widower does not have to prove one-half support except for payment of a vested dual benefit before 8-13-81 or an employee annuity restored amount. Proof of support must be filed within 2 years after the point at which the support requirement must be met.

When proof of support is needed and not filed during the appropriate period, submit proof of support along with a statement over the applicant's signature, explaining why the proof was not previously furnished. The examiner will determine whether the support requirement can be met.

C. Living-With

1. Legal widow(er) - Living-with is not required to qualify a widow(er) for an insurance annuity under the Railroad Retirement Act (RR Act).

   NOTE: Prior to 11-66, living-with was a requirement for payment of a widow(er)'s insurance annuity (WIA). A widow(er) denied a WIA prior to 11-1-66 on the basis of not living with the employee at death must file a new application to establish entitlement to a WIA.

2. De Facto (Deemed) widow(er) - In order to qualify for an insurance annuity under the RR Act, a widow(er) must be living in the same household as the employee at the time of the employee's death.

3. Surviving divorced spouse - Living-with is not required.

D. Marital Status - Prior to October 1, 1981, a widow(er) who remarried could not qualify for an annuity beginning with the month of remarriage. The 1981 and 1984 amendments to the RR Act provided for the entitlement of certain widow(er)s who remarry.

Refer to FOM-I-405.10.2 for additional information about the effect of remarriage on continuing annuity eligibility and entitlement.

E. SS Entitlement - The entitlement of a surviving divorced spouse or remarried widow(er) to any social security benefit which is greater than the employee's death primary insurance amount (PIA), prevents eligibility to a widow(er)'s insurance annuity under the RR Act. However, if the social security benefit is smaller than the employee's PIA, but larger than the surviving divorced spouse's or remarried widow(er)'s age reduced rate, and the possibility of an age 62 or FRA adjusted reduction factor (ARF) exists that could increase the annuity rate above zero, the surviving divorced spouse or remarried widow(er) will be entitled

to a zero annuity rate. Headquarters will process a constructive award and enter a call-up for the ARF.

The entitlement of a widow(er) to any social security benefit does not affect eligibility; however, such entitlement will affect the tier I amount payable.

F. Application - In order to establish entitlement to a WIA, a widow(er) including a surviving divorced spouse or remarried widow(er), who meets the necessary eligibility requirements, must file an annuity application.

Exception: If a widow(er) is in receipt of a survivor annuity (DWIA, WCIA or WIA) upon attainment of age 60 or remarriage and there is no break in entitlement, a new application is not required to convert the DWIA to a WIA, WCIA to a WIA or a WIA to a remarried WIA. Refer to FOM-I-405.30.1 for information on what application and proofs should be developed.

405.10.2 Effect of Remarriage on Entitlement

A. Remarriage occurs before entitlement to an annuity

1. Effective 1-1-84 and later:

A non-disabled widow(er) or a non-disabled surviving divorced spouse may qualify for an annuity if (s)he remarries:

a. After age 60;

b. More than once after the employee's death provided the last marriage occurred after (s)he attained age 60; or

c. Before age 60, provided the marriage terminates. (The annuity cannot begin until the marriage terminates.)

2. Before 1-1-84:

A non-disabled widow(er) could qualify for an annuity if (s)he remarried:

a. After age 60;

b. More than once after the employee's death, provided the last marriage occurred after (s)he attained age 60; or

c. Before age 60 and the marriage terminated. (The annuity could not begin until the marriage terminated.)

A surviving divorced spouse could qualify for an annuity if (s)he remarried after age 60 provided:

a. (S)he married an individual entitled to a widow(er)'s, mother's, father's, parent's or disabled child's benefit under the RR Act or the Social Security Act (SS Act); or

b. The marriage to a person not listed in above terminated. (The annuity could not begin until the marriage terminated.)

B. Remarriage occurs after entitlement to an annuity

1. Effective 1-1-84 and later.

A non-disabled widow(er) or a non-disabled surviving divorced spouse may continue to receive an annuity consisting of only a tier I component if (s)he remarries :

a) After the attainment of age 60; or

b) After the attainment of age 50 but before the attainment of age 60 and (s)he was entitled to a disabled widow(er)’s or disabled surviving divorced spouse annuity at the time of remarriage.

Note: A new application is required whenever there is a break in entitlement.

2. Before 1-1-84.

a. A non-disabled widow(er) could continue to receive an annuity consisting of a tier I component if (s)he remarried after age 60.

b. A surviving divorced spouse could continue to receive an annuity provided (s)he married an individual entitled to a widow(er)'s, mother's, father's, parent's or disabled child's benefit under the RR Act or the SS Act.

c. If the conditions in a. or b. above were not met, the annuity terminated. (S)he could not become re-entitled unless the marriage terminated.

C. Action Required Upon Notice of a Widow(er)'s Remarriage - SBD should be advised immediately of a widow(er)'s remarriage to permit proper adjustment or termination action to be taken. If a widow(er)'s annuity entitlement terminates upon remarriage, only the date of remarriage and the widow(er)'s new name and address are required. Certain additional information will be required when the legal or de facto widow(er) can qualify for an annuity as a remarried widow(er) or the surviving divorced spouse's annuity entitlement continues. Refer to FOM-I-405.30.3 for additional information about development when a widow(er) has remarried.

405.10.3 Possible Entitlement/Re-entitlement After Annulment

When a marriage that terminated or prevented entitlement to benefits is annulled, payment of widow(er)'s insurance annuity (including a tier II) may be possible if the annulled marriage was a void or voidable marriage and, where applicable, no alimony is awarded. If a widow(er) inquires about adjustment, reinstatement or entitlement after a marriage is annulled, develop as follows:

1. Secure a copy of the annulment decree. If the decree does not state the ground for the annulment, secure a copy of the complaint filed in the proceedings.

2. If the widow(er) claims that the marriage is void under state law, but has not been annulled by a court, secure a complete statement of facts showing the basis of the contention and evidence of the impediment or condition which made the marriage void.

3. Secure an application. A new application may not be required in all cases. However, due to the diversity in state laws and language used in annulment decrees, it is not always easy to determine when a new application is not required. All annulment cases are referred to the Bureau of Law for determination. For this reason, an application should be secured in every case. This will prevent further development and delay if it is determined an application is required.

   Based on the information secured, a determination will be made by an attorney or the General Counsel in Headquarters as to whether an annuity can be paid, and if so, from what date.

405.10.4 Widow(er) Remarries Another RR Employee

If a widow(er) who is eligible for a WIA marries an RR employee, (s)he may qualify for an annuity as a remarried widow(er) and as a spouse. However, the widow(er) can only receive one of the two annuities. Generally, the widow(er) will be paid the higher annuity, but (s)he may elect to receive the lesser annuity when a residual lump-sum may be involved.

Refer to FOM-I-405.30.4 for development required when a widow(er) remarries and there is possible eligibility for a spouse annuity.

405.15 Amount Of A Widow(er)'s Insurance Annuity

This section contains basic information about the components of a widow(er)'s insurance annuity. For more detailed information refer to FOM-I, Article 10, Computations.

405.15.1 Widow(er)'s Tier I

A. Gross Tier I

Any widow(er), full retirement age or older on the annuity beginning date, is entitled to a tier I component equal to the lesser of:

- 100% of the employee's primary insurance amount (PIA) based on wages and compensation and including any delayed retirement credits earned by the deceased employee; or

- 100% of the widow(er)'s share of the total maximum family benefit.

EXCEPTION: A surviving divorced spouse always receives 100% of the employee's PIA based on wages and compensation because her entitlement is not considered in the family maximum.

NOTE: Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense confined in an institution at public expense for more than 30 continuous days. See FOM1 150 for more information about criminal activity procedures.

B. Tier I Adjustment For Age Prior to the Year 2000 - A reduction is required in the tier I of any widow(er) who is under full retirement age when first entitled to an annuity based on age. The reduction is equal to 19/40 of 1% (.00475) for each month the widow(er) is under full retirement age on the annuity beginning date, and it is the first adjustment made in the gross tier I amount. An aged legal or de facto unremarried widow(er) is deemed to be age 62 when entitlement begins between age 60-62; so the maximum number of reduction months is 36, or 17.1%. No deeming provision applies to other aged widow(er)s (divorced, remarried); their tier I amount is reduced for the actual number of months they are under full retirement age on their original annuity beginning date (maximum of 60 months, or 28.5%.)

Tier 1 Age Adjustment Effective With the Year 2000 – Beginning in the year 2000, the eligibility age for a full widow(er)’s insurance annuity will gradually rise from 65 to 67. The maximum reduction will ultimately be 20.36% for widow(er)s and remain at 28.5% for surviving divorced spouses, remarried widow(er)s, disabled widow(er)s, disabled surviving divorced spouses and disabled remarried widow(er)s. This change in age reduction does not affect the deeming of age 62 principles which applied prior to the year 2000. Widow(er)s are deemed to be age 62 when entitlement begins between age 60-62. No deeming provisions apply to divorced or remarried widow(er)s.

For widow(er) type annuitants born January 2, 1940 and later, with an annuity beginning date of January 1, 2000 and later, “Full Retirement Age, (FRA) replaces age 65 in the calculation of the number of age reduction months.

The FRA attainment date is determined by the year in which the widow(er) was born as follows:

If the widow(er) was born:	FRA is:
1-2-1940 through 1-1-1941	65 and 2 months
1-2-1941 through 1-1-1942	65 and 4 months
1-2-1942 through 1-1-1943	65 and 6 months
1-2-1943through 1-1-1944	65 and 8 months
1-2-1944 through 1-1-1945	65 and 10 months
1-2-1945 through 1-1-1957	66
1-2-1957 through 1-1-1958	66 and 2 months
1-2-1958 through 1-1-1959	66 and 4 months
1-2-1959 through 1-1-1960	66 and 6 months
1-2-1960 through 1-1-1961	66 and 8 months
1-2-1961 through 1-1-1962	66 and 10 months
1-2-1962 and later	67

C. Adjusting the Age Reduction for Widow(er)'s Entitled to an SSA DIB.--Under the provisions of the Social Security Act, if an age reduced widow(er) is entitled to a disability benefit based on her own earnings record, (s)he may be entitled to the tier 1 age adjusted rate. If this provision applies, only the amount of the widow(er)'s tier 1 which exceeds the amount of the disability annuity is reduced for early retirement.

- This provision applies if the following conditions are met:
- The widow(er)'s annuity is age reduced; and,
- The widow(er) is entitled to a disability insurance benefit (DIB) under the SS Act and the date of entitlement is the same as, or earlier than, the OBD; and,
- The DIB PIA is less than the death PIA (increased for DRC's) or the widow(er)'s share of the maximum, if applicable; and,
- The widow(er)'s tier 1 is not reduced by an additional amount (i.e., PSP or EE tier 1) which, when added to the SS DIB, exceeds the death PIA; and,

- The OBD is 1/1978 or later

- Attainment of Full Retirement Age

  Under the SS Act, a disability insurance benefit is converted to a retirement insurance benefit at full retirement age. Therefore, when the widow(er) attains full retirement age, the tier 1 age reduction is removed.

- Tier 2

  Entitlement to this provision has no effect on the 1981 Act tier 2.

- RIB Limit

  If the employee's annuity was age reduced, the RIB limit must be considered. If the tier 1 age adjusted rate is higher than the RIB limit, either the RIB limit amount or 82.5% of the PIA, whichever is greater, becomes the tier 1 age adjusted rate. If the RIB limit applies, there is no change in the age reduction at full retirement age.

- Notifying the Widow That the Age Adjusted Rate Applies

  Code paragraph 504.5 is included on the award letter. It reads as follows:

  "Since you are entitled to a Social Security disability insurance benefit, we have applied an age reduction to only a portion of your Tier 1. When you attain full retirement age, your Tier 1 age reduction will be removed."

D. Tier I adjustment for employee's RIB limit - When the deceased employee was entitled to a reduced age annuity the widow(er)'s annuity tier I amount after any adjustment for age is restricted to the amount the employee would have been entitled to at SSA based on combined RR and SS earnings.

E. Tier I Benefit Reductions - A widow(er)'s tier I is subject to reduction for entitlement to certain other benefits. The tier I is reduced by:

- The amount of any SS benefit to which the widow(er) is entitled;

  EXCEPTION: Remarried widow(er)s awarded an annuity prior to 8-12-83 are not reduced for any social security auxiliary benefit.

- If either the employee or the widow(er) had railroad earnings prior to 1975, the net tier I amount of any RR retirement annuity the widow(er) is entitled to if the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or the case is reopened 10-1-88 or later;

- If either the employee or the widow(er) had railroad earnings prior to 1975, the tier I amount before age reduction of any RR retirement annuity the widow(er) is

entitled to through 9-30-88, and the net tier I of any RR retirement annuity the widow(er) is entitled to 10-1-88 and later, if the reduction for the employee tier I is first applied on an award vouchered prior to 10-1-88;

- If neither the railroad employee nor the widow(er) had railroad earnings prior to 1975, the tier I of the widow(er)'s annuity will be reduced by the total employee annuity to which the widow(er) is entitled (net tier I, net tier II and vested dual benefit);

- The amount of any public service pension payable to:

    1. Non-dependent widowers who filed for an annuity after 11-30-77;

    2. Non-dependent widows who become eligible for a public service pension after 11-30-82;

    3. Non-dependent surviving divorced wives married to the employee for at least 20 years who become eligible for a public service pension after 11-30-82;

    4. Non-dependent surviving divorced spouses married to an employee less than 20 years and all non-dependent surviving divorced husbands regardless of when they become eligible for the public service pension;

    5. Non-dependent remarried widow(er)s who become eligible for a public service pension after 11-30-82;

    6. Dependent widow(er)s who become eligible for a public service pension after 6-30-83;

    7. Dependent remarried widow(er)s who become eligible for a public service pension after 6-30-83;

    8. Dependent surviving divorced spouses who become eligible for a public service pension after 6-30-83.

        Note: For months prior to 12-1-82, the tier I of a dependent surviving divorced wife who was married to the employee for less than 20 years and any surviving divorced husband is subject to reduction for a public service pension. However, beginning 12-1-82, any reduction is removed providing the survivor submits proof of dependency.

        The tier I of annuitants subject to a PSP reduction is reduced by 100% of the PSP if they first became eligible for the PSP before 7- 1-83. Annuitants who became eligible for a PSP 7-1-83 or later are subject to a tier I reduction of 66 2/3% of the PSP.

Refer to FOM-I-120.40 for additional information on public service pension reduction.

405.15.2 Widow(er)'s Tier II

Only an unremarried, widow(er) is entitled to a tier II. Remarried widow(er)s or surviving divorced spouses are not eligible for a tier II. Once a legal widow(er) remarries (s)he is no longer eligible for a tier II even if the subsequent marriage terminates.

NOTE: A widow(er) who remarries and the marriage is subsequently annulled may again be eligible for a tier II.

A widow(er)'s tier II is equal to 30% of the widow(er)'s tier I after reduction for age and any public service pension amount when the widow(er)'s insurance amount (WIA) is awarded before 10-1-86 and the employee died or retired before 10-1-81. In all other cases, the widow(er)'s tier II is equal to 50% of the employee annuity tier II amount computed as of the WIA beginning date. When a widow(er)'s tier II is based on the employee's tier II amount, a reduction for age similar to that made in tier I is required.

A widow(er) who is eligible for a tier II may receive an additional tier II amount when a spouse minimum guarantee rate applies or when a widow or dependent widower is entitled to an RR employee annuity and qualifies for an employee restored amount.

Effective February 1, 2002, a widow(er) who is paid under the 1981 Amendments may receive an additional tier II amount called the “Widow(er)’s Initial Minimum Amount”, (WIMA). The WIMA guaranty provides that the widow(er)’s annuity will be calculated using 100 percent of the tier 2 that would have been used to compute the annuity for the deceased employee on the survivor OBD.

405.15.3 Widow(er)'s Vested Dual Benefit

A widow or dependent widower who filed for and was awarded an annuity before August 13, 1981 is entitled to a vested dual benefit (VDB) if:

- The annuitant is the unremarried, legal or de facto widow or dependent widower of a deceased employee;
- The deceased employee had 10 years of service before 1-1-75; and
- The widow(er) was insured at SSA based on his/her own earnings as of 12-31-74; and
- The VDB date of entitlement is before August 13, 1981.

The VDB is basically a guarantee that annuities for widow(er)s meeting the above requirements will not be reduced below the rate they would have received if the 1974 RR Act were not enacted. Refer to FOM-I-405.75 for additional information about VDB

entitlement. A surviving divorced spouse or remarried widow(er) cannot qualify for a VDB.

The 1981 amendments to the RR Act eliminated new VDB entitlement for widow(er)s effective August 13, 1981.

405.20 Annuity Beginning Date

The beginning date and retroactivity of a widow(er)'s insurance annuity (WIA) is explained in FOM-I-111.20 FOM-I-111.51 and FOM-I-112.9.2.

405.25 Annuity Conversions

There are two types of annuities which may be converted to a widow's insurance annuity (WIA): a spouse annuity and a widow(er)'s current insurance annuity (WCIA).

405.25.1 Spouse Annuity in Force when Employee Dies

Spouse annuity payments, including payments to divorced spouses and husbands with child(ren) in care, may continue after notice of the employee's death, provided the employee died fully insured under the Railroad Retirement Act (RR Act).

A. Spouse annuity payments will continue pending development and award of a widow(er)'s annuity if:

- The employee is insured under the RR Act at death (has 120 months of RR service or 60 months of railroad service after 1995), and a current connection); and
- All information indicates that the spouse is obviously eligible for a WIA; and
- Development necessary for the payment of the WIA is completed within 6 months of the employee's death.

When the employee's spouse was receiving an annuity which was reduced for entitlement to a spouse's social security benefit based on the employee's earnings record, the interim widow(er)'s rate will be adjusted to remove the social security offset if she will be eligible based on age.

If the RRB is paying the spouse's social security benefit, the amount of the spouse's SS benefit is automatically added onto the spouse's railroad annuity rate.

If SSA is paying the spouse's social security benefit, the interim widow(er)'s rate cannot automatically increase. The examiner will, however, either pay the widow(er)'s annuity within 120 days or manually re-certify the spouse annuity to remove the reduction for SS entitlement provided there are no outstanding not-due employee checks.

In all cases, the spouse annuity payments made after the employee's death are deducted from the survivor annuity accrual.

B. Spouse annuity payments will be stopped pending development and award of a widow(er)'s annuity if an application is not submitted within 6 months of the employee's death.

Effective August 1, 1990, it is no longer necessary for a spouse to file for conversion to a WIA. Therefore, the determining factor for the 6-month restriction is now the submission of proof of death for the employee.

C. If a widow(er) met all requirements for entitlement to and receipt of a WIA, other than the filing of an application or submitting proof of the employee's death, spouse annuity payments made to the widow(er) after the employee's death are not erroneous. This rule applies regardless of the reason for failure to file and, if the widow(er) died, regardless of the date of death.

If the widow(er) dies before the annuity conversion is processed, any difference between the WIA amount and the spouse annuity rate being paid at the time of the widow(er)'s death would represent an accrued survivor annuity due, but unpaid at death.

405.25.2 Widow(er)'s Current Insurance Annuity (WCIA) in Force When Widow(er) Attains Age 60

When the widow(er) of an employee who died completely insured for survivor benefits under the 1974 Act (see FOM-I-230.15) is receiving a WCIA at age 60, the WCIA rate is usually paid until one of the following events occurs:

- The widow(er) ceases to qualify for a WCIA; or
- The widow(er) attains FRA; or
- The widow(er) requests to be paid an age reduced widow(er)'s insurance annuity.

It is policy not to initiate conversion of a WCIA to a WIA before one of the above events occurs to allow the least possible age reduction in the WIA rate.

A new application is not required when converting a WCIA to a WIA as long as there is no break in entitlement. That is, the widow(er) must be entitled to a WIA in the month eligibility to a WCIA ceases. If there is any break between the last month of entitlement to a WCIA and the first month of WIA entitlement, a new application is required.

NOTE: If a widow(er) is between age 60 and FRA when initially entitled to benefits and has care of a minor or disabled child, refer to FOM-I-415.35.

A. <u>Conversion to WIA when widow(er) ceases to qualify for a WCIA</u>

1. Conversion from a WCIA to a WIA will usually be effective with the first month the widow(er) no longer qualifies for a WCIA. An earlier beginning date is only advantageous when both the following conditions exist:

- The widow(er) is under age 62 when WCIA entitlement ends; and
- Maximum benefits were not being paid when the WCIA terminated.

2. The claims examiner determines the beginning date for the WIA based on information in file. An award is processed and a letter is released advising the widow(er) that (s)he has been awarded a WIA and the effective date of the award. The letter will also advise the widow(er) that the annuity is reduced for months s(he) is under FRA; if s(he) does not wish to receive a reduced annuity, s(he) can return the check. A copy of the award letter is sent to the servicing field office.

3. If proof of the widow(er)'s age is not in file when the WCIA terminates, the field office will be asked to secure proof of age (POA); otherwise, no field action is required for the conversion.

B. Conversion to WIA when widow(er) attains FRA

1. When a widow(er) attains FRA, (s)he is paid a WIA regardless of whether there are entitled children in the widow(er)'s care. Conversion to a WIA at FRA means that the WIA is not reduced for age, and, therefore, the total amount of benefits being paid are not reduced. However, the individual annuity rates may change when the widow(er) is entitled to a larger share of the maximum.

2. An award is processed to pay the widow(er) a WIA, and an award letter is prepared notifying the affected beneficiaries of the adjustment. A copy of the award letter is sent to the servicing field office.

3. If proof of the widow(er)'s age is not in file, the field office will be asked to secure POA; otherwise, no field action is required.

C. Conversion to WIA upon widow(er)'s request - A widow(er) age 60-FRA who is receiving a WCIA can be converted to an age reduced WIA upon written request over her/his signature, providing acceptable proof of the widow(er)'s age has been submitted. The WIA is paid effective with the latest of the following:

- Month an inquiry or request is made; or
- Month widow(er) attained age 60; or
- Month of the employee's death.

1. Advantages/Disadvantages

The only situation where it clearly would be to an unremarried, legal or de facto widow(er)'s advantage to receive a WIA at age 60 would be when the family maximum is not involved and the child upon whom WCIA entitlement is based is not disabled and will attain age 18 (16 if WCIA entitlement began 9-1-81 or later or child attains age 16 after August 1983 and WCIA entitlement began under the 1974 Act) before the widow(er) attains age 62. When this situation exists, and the widow(er) inquires about receiving the WIA, secure a statement over the widow(er)'s signature requesting to be paid a WIA. Submit the statement to Headquarters for handling.

Whenever the conditions above do not exist, the advantages or disadvantages are not obvious. For example, if the family maximum applies when the widow(er) is paid as an age reduced widow(er), the WIA rate may or may not be higher than the WCIA rate, but the CIA rate will be lower than the CIA rate paid when the WCIA was being paid. In some instances the total benefits payable may be less when a legal, de facto or remarried widow(er) is paid a WIA because the widow(er)'s age reduction is computed based on the tier I after adjustment for the family maximum. When a surviving divorced spouse is paid a WIA other family members are not adversely affected because a WIA payable to a surviving divorced spouse is not considered in the family maximum.

EXAMPLE

Death PIA $362.90 Family Maximum $567.30

Entitled Beneficiaries:
Un-remarried, Legal Widow - Age 60
Disabled Child

Rates payable when widow paid a WCIA:

WCIA		CIA
Tier I	$272.20	Same as WCIA
Tier II	81.66	
WCIA Rate	$353.86	

Total benefits payable: $707.72

Rates payable when widow paid a WIA:

WIA		CIA	
Gross Tier I	$324.20 (100% share)	Tier I	$243.20 (75% share)
Tier I After Age Reduction	268.80	Tier II	$ 72.96

Tier II	80.64	CIA Rate	$316.16
WIA Rate	$349.44		

Total benefits payable $666.10

Another consideration would be whether a slight increase now is more advantageous than a more substantial increase which could be paid when the widow(er) attains FRA or WCIA entitlement ends. In these cases, the advantages must be weighed by each widow(er) based on their own financial and/or personal circumstances. When the advantage is not obvious follow the guidelines listed in the next section.

2. Field action upon receipt of inquiry or request from widow(er) to be paid a WIA

   a. Advise widow(er) that rate information will be requested; and

   b. Encourage widow(er) not to make a formal request for payment of the WIA until rate information is secured. Because of many factors (family maximum, number of family members, amount of age reduction) it may be disadvantageous for a widow(er) to be paid a WIA. If a widow(er) insists on being paid the WIA rate after being advised of the possible disadvantages, secure a statement from the widow(er) requesting that the WIA rate be paid.

      Send a memo to BSB advising that the widow(er) is inquiring about or requesting payment of the WIA rate. If widow(er) wants to be furnished family rates if (s)he is paid a WIA, ask BSB to advise rates. Also ask BSB to furnish WIA rate that could be payable (at current COL rate level) if the widow(er) waits until the WCIA terminates to receive a WIA.

3. BSB handling of field office request

   a. Upon request, BSB will compute and furnish rates for all family members. After furnishing rate information BSB will not control the file for a response.

   b. When the widow(er) requests to be paid a WIA without first being furnished rate information, BSB will make any necessary adjustments to award WIA. The field office will receive a copy of the award letter as notification that adjustment has been made.

4. Field action upon receipt of rate information from BSB

   a. Contact the widow(er) to furnish and explain rate information.

b. If widow(er) wishes to be paid a WIA, secure a statement over the widow(er)'s signature requesting payment. Forward the statement to Headquarters.

c. If widow(er) wishes to continue receiving the WCIA no action is required.

405.30 Evidence And Development

405.30.1 Evidence Requirements for WIA

Evidence	**When required**
Application	Always, unless converting from an MA or WCIA. a. No longer necessary, if the spouse is not caring for a minor or disabled child. b. Use AA-17 in all other cases provided that the applicant is not also applying for insurance annuities on behalf of children. c. When the applicant, regardless of age, is also applying for benefits on behalf of children, form AA-18 is the appropriate application.
Proof of employee's death	Always.
Proof of one-half support (G-134)	Always when dependency is claimed and the widower is eligible, or may be eligible in the future, for an employee annuity. Also secure when a widow(er), surviving divorced spouse, or remarried widow(er) claims dependency and could be exempt from PSP offset if dependency is established.
Proof of widow(er)'s age	Always.
Proof of marriage to employee	Always.
Widow(er)'s SS account number	Always. Request widow(er) to secure one unless she resides outside the U.S.

Public service pension information (G-208)	Required when indicated by the response on form AA-17. Also secure when a widow(er) annuitant becomes entitled to a remarried widow(er)'s annuity with no break in entitlement, unless the widow(er) has been continuously entitled to an annuity based on the employee's record since before 12-l-77.
Application for substitution of payee (AA-5)	Required when a representative payee is newly selected.
Documentation for prior service (AA-15)	Only when less than 120 months of subsequent service can be verified.
Proof of employee's age	In “A” cases POA is always required if the employee's DOB has not been previously verified through submission of the employee’s proof of birth. Assume DOB has been verified in the following situations: • The employee received an annuity • The employee filed for and received Medicare • The employee’s POA is on APPLE Note: If none if the above conditions apply, but the AFCS systems indicate that a folder was established, the field may first contact RBD to verify whether the employee’s POA was submitted before obtaining the proof from the widow. Effective 03-01-2004 POA of deceased employee is required in all “D” cases when a survivor recurring application is filed.
Proof of legal adoption of child	Only when widow(er) seeks to qualify on that basis
Proof of military service	Only when employee's M/S after 1936 would be creditable under either the RR or SS Act.

Proof of termination of prior marriage	If there is reasonable doubt whether a prior marriage of employee or widow(er) was ended and the widow(er) cannot qualify as a de facto widow(er).
Proof of divorce from employee	Always from a surviving divorced spouse.
Proof of remarriage(s)	Always from: • Widow(er) • Surviving divorced spouse when annuity entitlement may continue after remarriage
Proof of termination of subsequent marriage(s)	Always from: • Widow(er) who remarried before age 60 • Surviving divorced spouse who may be entitled or re-entitled after a subsequent marrieage terminates
Check list - form G-659a	Always. Forward original to SBD; retain copy for field office file.

405.30.2 General Development

Initiate development for a WIA when:

- The employee was insured under the Railroad Retirement Act at death; and
- A widow(er) survives who meets the eligibility requirements listed in FOM-I-405.10.1; and
- An inquiry has been received, or SBD has requested development.

Develop a claim for a widow(er)'s annuity by personal contact if possible, by mail if necessary. When practical, arrange by telephone to obtain or develop the application or required proofs. When contact is made by telephone or mail be sure to send the widow(er) an RB-17 booklet.

RL-55 series letters can be used to ask a prospective applicant to call at a field office, or at a specified itinerant point, to receive assistance in filing a survivor application. Form letter RL-57B-F may be used to trace and furnish an application to an applicant who fails to call at a field office or itinerant point as requested.

When you will not be able to meet with the employee's legal widow(er) who was receiving a spouse annuity and a social security benefit based on the employee's earnings record that was being paid by SSA, within 30 days of the employee's death, develop proof of death, earnings information, etc., by telephone or mail. Call the supervisor in the survivor module whenever an interim widow(er) claims hardship because SSA terminated her spouse benefit.

In other cases, if it is not possible for an applicant to call at a field office or itinerant point, an RL-56 series letter can be used to mail the application. Use the telephone, when possible, to complete the application in whole or in part, then mail the application for signature of the applicant.

Trace on a request for an application or evidence after 15 days. An RL-57 series letter can be used to trace an application. If the application or evidence is not submitted within 30 days of the tracer action, and there are no apparent extenuating circumstances, abandon development. Notify the Survivor Benefits Division (SBD) when you abandon development in cases where an application has been submitted or when SBD is expecting reports on development.

A. Development of Wage Record (G-90) - Field offices should request SURGE On-Line wage records in cases where the employee died some time ago, the widow(er) or other beneficiary is now entitled or re-entitled, and a FAST First Notice of Death entry is not being completed. See RCM 9.11 for instructions on completing SURGE screens. (A FAST FNOD will automatically initiate a SURGE G-90 request.)

   If the application is paid by headquarters, the procedure in the above paragraph will ensure the wage record is available by the time the application is received. NOTE: If unable to request a survivor wage record during the application process, notate specifying the reason in the remarks section of Form G-659a.

B. Development of P/S - It may be necessary in some cases to develop for P/S because as a part of the requirements for an insured status under the RR Act, the employee must have had 120 months of creditable service. Develop information with respect to P/S as follows:

   1. When an application is received by mail, assume that no P/S was performed if the deceased employee was born after 1921. For any other case in which the employee had less than 120 months of service after 1936, develop Form AA-15 to claim his P/S, if any, unless he had been awarded a retirement annuity before he died.

   2. In some cases, SBD will release Form G-659a to request a field office to develop Form AA-15 from a survivor of the employee when less than 120 months has been verified.

3. When Form AA-15 is used with a survivor claim, modify the form by inserting in the text in the upper right corner between the words "your" and "railroad," the word "deceased" followed by the relationship borne by the deceased employee to the person who is completing the Form AA-15 as "deceased husband's," "deceased wife's."

C. Development of POA - POA is required of an applicant for a widow(er)'s insurance annuity.

When a widow(er) filing an application believes that POA has been previously submitted, so state on form G-659a. In such a case, do not request further evidence of age unless SBD has requested field development and has not shown that POA was previously submitted, or unless SBD has requested that POA be obtained. If the application has been forwarded to SBD before the applicant advises that POA was previously furnished, inform SBD by memorandum of the applicant's statement.

405.30.3 Developing From Widow(er) Who Has Remarried

Certain widow(er)s can qualify or continue to qualify for an annuity after remarriage. The following widow(er)s can receive an annuity after remarriage:

- A widow(er), a surviving divorced spouse or a remarried widow(er) who remarries after age 60. Before 1-84, entitlement was lost unless the marriage was to an individual entitled to RR or SS benefits as a widow(er), parent, father, mother or disabled child.

- A widow(er), a surviving divorced spouse or a remarried widow(er) receiving a DWIA who remarries after age 50 and after the disability onset date. Before 1-84, the marriage must have been to an individual entitled to RR or SS benefits as a widow(er), parent, father, mother, or disabled child.

- Any surviving divorced spouse or remarried widow(er) whose marriage has terminated.

A. Action when widow(er) is in receipt of an annuity at time of remarriage.

1. Use FAST/ST to terminate the annuity of a widow(er). The effective date is the month of remarriage. The termination code is 44.

2. Do not terminate a remarried widow(er) or a surviving divorced spouse annuity.

3. If a widow(er), remarried widow(er) or a surviving divorced spouse marries and entitlement will continue, develop as follows:

- After the widow(er)’s annuity has been terminated, send an e-G-115 to SBD per current procedure. As a heading use WIDOW TO RW

CONVERSION - HANDLE IMMEDIATELY. The following information must be:

- The employee's name
- The employee's claim number
- The widow(er)'s new name and address
- The date of remarriage
- The date the termination was processed
- The new spouse's SS number
- Proof of remarriage must be secured. When you have the proof, enter the remarriage information on APPLE.

Advise widow(er) who is receiving a full WIA (tier I, tier II, and possibly a vested dual benefit) that any annuity payment received after remarriage that has not been returned may result in an overpayment due to the adjustment that is required in her annuity rate since she is no longer eligible for a tier II or vested dual benefit amount. A surviving divorced spouse or remarried widow(er) who is only receiving a tier I amount before remarriage needs to be advised there may be a change in the annuity rate, if the widow applies for Social Security benefits on the earnings record or his/her new spouse.

B. With the exception of the date the termination was processed continue to send the above information for a surviving divorced spouse or remarried widow(er) on a G-115. As their benefits are not terminated, an e-mail is unnecessary.

C. Development when widow(er) not receiving an annuity when remarriage occurs.

Secure information from the widow(er) to determine whether she can qualify for an annuity. Basically, a remarried widow(er) can establish initial entitlement to an annuity only if the marriage(s) since her marriage to the deceased employee have terminated, or if the latest marriage occurred after she attained age 60.

1. If the widow(er) cannot qualify for an annuity, advise her of the eligibility requirements and explain why she does not meet those requirements. Further advise the widow(er) that she cannot qualify for an annuity unless her marriage terminates. Do not develop an application.

2. If it appears the widow(er) can qualify for an annuity, develop the following information and evidence:

- Application (AA-17);

- Proof of the widow(er)'s age;
- Proof of the widow(er)'s marriage(s) after marriage to the deceased employee;
- Proof of termination of marriage(s) after marriage to the deceased employee;
- Public service pension information if indicated by the response on the AA-17

Submit all the above information to SBD via form G-626

405.30.4 Developing From Widow(er) Who Remarries A Railroad Employee Annuitant

A widow , or remarried widow(er) who marries a railroad employee and meets the entitlement requirements for a spouse annuity may qualify as a remarried widow(er) or a spouse, but can be paid only one type of annuity. Normally, she will receive the higher of the annuities payable. However, it may be to a widow(er)'s advantage to elect the lesser annuity because of an RLS that would be payable, or to permit payment of greater total benefits to the family group. More information regarding the election of a lesser annuity can be found in FOM-I-405.55.2.

A. Development when widow(er) is in receipt of an annuity at time of remarriage - If the widow(er) may immediately be entitled as a spouse, develop for a spouse annuity as usual. Proof of the spouse's age need not be secured as it can be taken from the widow(er)'s annuity file.

Complete a form G-230; however, do not enter a SPAR rate. Transmit the AA-3 and proofs via form G-115a to the survivor Mod responsible for the survivor annuity. Advise on the G-115a that the widow(er) has married a railroad employee annuitant and that a spouse annuity application and proofs are attached.

SBD will request the retirement file and have the remarried widow(er) and/or spouse annuity rates computed. WIA payments that include a windfall and/or tier II amount will be suspended pending action to determine whether spouse or remarried widow(er)'s annuity will be paid. Headquarters will award either a remarried widow(er) or spouse annuity and advise the annuitant appropriately. Any WIA overpayment for months after remarriage will be recovered from the remarried widow(er) or spouse annuity payments.

B. Development when widow(er) is not in receipt of an annuity at time of remarriage - If a widow(er) at the time of filing can qualify as a remarried widow(er) on one account and as a spouse on another account develop for both annuities. Transmit both applications to the appropriate survivor Mod in a single packet.

Complete a G-230 for the AA-3 and a G-659a for the AA-17 with a G-115a used as a cover memo. In the cover memo explain multiple eligibility and request payment of most advantageous annuity rate.

Note: In either A or B above if it can be determined based on information in the F/O which annuity will be payable develop only for that annuity. However, if any doubt exists as to which type of annuity will produce the higher rate, develop for both annuities.

405.35 Reduction For Public Service Pension

Refer to section 120.40 of the FOM for all public service pension information.

405.40 WIA Rate Is Zero

A widow(er)'s insurance annuity (WIA) rate can be reduced to zero when a widow(er) is not entitled to a tier II or when a widow(er)'s tier II is zero. In the following situations the WIA rate will be zero:

- A widow(er) who is not eligible for a tier II component is entitled to other benefits that are deductible from tier I and which exceed the widow(er)'s tier I amount; or

- A widow(er) who is subject to a public service pension reduction is entitled to a pension which exceeds the tier I amount, and the widow(er)'s annuity is awarded before 10-1-86 and the employee died or retired before 10-1-81. The WIA rate is zero in this case because the tier II of a WIA awarded before 10-1-86 where the employee retired or died before 10-1-81 is 30% of the widow(er)'s tier I after reduction for age and any public service pension. Consequently, if the widow(er)'s tier I is wiped out by a public service pension, the tier II would also be zero.

The l981 amendments to the Railroad Retirement Act changed the computation of a widow(er)'s tier II. The change prevents the tier II of a WIA from being zero because it is now based on the employee's tier II and is not reduced for anything other than a widow(er)'s age. A 1981 tier II applies in cases where the employee did not retire or die before 10-1-81 and in all annuities awarded after 9-30-86.

If an age reduced remarried widow(er) or surviving divorced spouse is entitled to other benefits which reduce the annuity to zero, and the possibility of an adjusted reduction factor (ARF) exists, Headquarters will code the case for call-up at age 62 nd/or 65 to see if the ARF will increase the rate above zero.

405.40.1 Payment of a RLS When Annuity Rate is Zero

When the WIA rate of other than a surviving divorced spouse is zero, and no other beneficiaries are or will be entitled to monthly benefits, the residual lump-sum (RLS) can be paid to the widow(er) provided the widow(er) is otherwise entitled to the RLS (i.e.

widow(er) living with employee at death and employee did not designate a beneficiary for RLS other than the widow(er)). Payment of the RLS in such a situation does not affect the widow(er)'s eligibility for Medicare coverage at RRB. The widow(er) continues to be considered a qualified annuitant for Medicare purposes.

405.45 More Than One Person Claims Benefits As Legal Widow(er)

When more than one person claims benefits as the employee's legal widow(er), each claim must be resolved under applicable state law. (See Article 9, Proofs, "Marriage-Divorce," for details on such cases.)

In some situations it is possible for more than one legal widow(er) to qualify under the RR Act on the same earnings record; i.e., one claimant meets the valid marriage test, and another meets the inheritance test. Putative marriages which meet the inheritance test are recognized in the following states: Arizona, California, Colorado, Illinois, Louisiana, and Minnesota (see Article 9, Appendix D - Common-Law and Similar Marriages.) A putative marriage is a void marriage where the spouse acquires inheritance rights because (s)he believed the marriage to be valid until the employee's death. When a putative marriage is claimed, headquarters will obtain a legal decision in the case.

Effective January 1, 1991, based on applications filed after December 31, 1990, a deemed widow(er) may be entitled, regardless of the existence or status of a legal widow(er). In this situation, both widow(er)s will be paid. The deemed widow(er) is paid within the tier 1 family maximum and the legal widow(er) is paid outside the tier 1 family maximum. Both the legal widow(er) and the deemed widow are paid within the tier 2 maximum.

For applications filed prior to January 1, 1991, the deemed widow(er) loses entitlement as explained FOM 405.65.

405.50 Work Restrictions

405.50.1 Restricted Employment

A WIA is not payable for any month the widow(er) works for an employer covered by the RR Act. There are no other restrictions in the type of employment in which a widow(er) may engage.

405.50.2 Earnings Restrictions

The annuity of a widow(er) who will attain full retirement age during the year will lose $1 for every $3 of excess earnings over the annual exempt amount. However, only the earnings through the month before the month of attainment will be counted. Once the widow(er) attains full retirement age, there is no further deductions for earnings. A widow(er) under full retirement age is subject to a $1 for $2 deduction for excess

earnings over the annual exempt amount. Refer to Article 11 for more detailed information regarding survivor annuity work deductions.

405.55 Widow(er) Entitled To Other RR Act Annuity

405.55.1 Entitled to RR Act Retirement Annuity

A widow(er) may receive both a widow(er)'s insurance annuity (WIA) and a retirement annuity under the Railroad Retirement Act (RR Act), but the tier I of the WIA must be reduced by:

a. The net tier I of the RR retirement annuity if the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or the case is reopened 10-1-88 or later.

b. The tier I amount after any social security reduction, but before age reduction of any RR retirement annuity the widow(er) is entitled to through 9-30-88, and the net tier I of any RR retirement annuity the widow(er) is entitled to 10-1-88 and later, if the reduction for the employee tier I is first applied on an award vouchered prior to 10-1-88.

   In many cases, an "employee restored amount" is payable in tier II which may in part restore the reduction made in a widow(er)'s tier I.

   An unremarried legal widow or dependent widower is eligible for the employee restored amount computation if:

- The widow or dependent widower is entitled to an employee annuity; and
- Either the widow(er) or the deceased employee completed 10 years of RR service before 1-1-75.

   The employee restored amount is not payable if both the widow(er) and the deceased employee started railroad service after 1974. In addition, the full amount of the survivor annuity is reduced by the full amount of the employee annuity.

   Surviving divorced spouses and remarried widow(er)s are not eligible for an employee restored amount computation.

405.55.2 Entitled to RR Act Spouse Annuity and/or Other Survivor Insurance Annuity

A widow(er) may not receive more than one survivor annuity, or both a survivor and spouse annuity; normally, (s)he will receive only the highest of the annuities payable. It may be to a widow(er)'s advantage to elect to receive a lesser annuity because of an residual lump-sum (RLS) that would be payable on the other record, or to permit payment of greater benefits to the family group.

A. Election of lesser annuity - The election to receive a smaller annuity is revocable. A signed statement by the applicant is sufficient proof of election. This differs from an election to receive an RLS, which is an irrevocable election and must be made on Form G-126.

Headquarters will determine when an election should be solicited. If it appears that it would be to a widow(er)'s advantage to receive the lesser annuity, examiners will release a memo to the field office relating the facts of the case and requesting a contact with the annuitant. If the widow(er) wants the smaller annuity, the district office will be asked to secure a signed statement that establishes that the widow(er) is aware of electing the smaller benefit.

If the widow(er) elects the smaller annuity in order to receive an RLS on the other account, the statement should include the fact that the election of the smaller annuity is made in order to receive the RLS and that the applicant does not intend to revoke it. A G-126 election form is not needed.

B. Revocation of election - If the annuitant later changes his mind and withdraws his election of the smaller annuity, the RLS must be recovered from the larger annuity. No annuity would be payable until the RLS is recovered.

C. LSDP entitlement - A lump-sum death payment is not payable on the account that the annuity is not paid on, because there is eligibility to a monthly benefit, whether or not it is paid.

405.60 RLS Previously Paid

405.60.1 Widow(er) Elected RLS

A WIA is not payable if the widow(er) previously elected and was awarded the residual lump-sum (RLS). The fact that the widow(er) elected the RLS prevents the payment of a widow(er)'s insurance annuity (WIA) since the election of that payment was an agreement by the widow(er) to give up rights to future benefits under the Railroad Retirement Act (RR Act). In addition, an annuity is not payable to a surviving divorced spouse if the widow(er) has elected the RLS because payment of the RLS based on an election prevents payment of further benefits based on railroad earnings. In such cases, however, the widow(er) may qualify for an annuity at the Social Security Administration if the employee was insured under the Social Security Act solely on the basis of wages.

EXCEPTION: If a remarried widow(er) filed a modified election (employee was insured based on wages only) to receive the RLS, (s)he may be paid a remarried widow(er)'s annuity. However, the RLS must be recovered before the annuity can be paid.

405.60.2 RLS Paid Without An Election

If the widow(er) received the RLS without electing it (because (s)he could not qualify for a WIA under the RR Act at that time), (s)he may receive a WIA if otherwise qualified. However, the RLS must be recovered from the WIA.

EXAMPLE: A widow born 10-12-16 was not living with the employee at the time of his death in 8-1966. Since living with was required for a WIA before 11-1-66, she could not qualify for a WIA. However, since she was also the designated beneficiary of the RLS she was paid the RLS. In 10-1976, she files for a WIA as a "not living with" widow. Her WIA beginning date is 10-1-76 (month age 60). However, before she can actually receive her annuity, the RLS must be recovered.

If the RLS was paid to someone other than the widow(er), the RLS is not recovered. Also, if only a portion of the RLS was paid to the widow(er), only the amount of the RLS actually paid to the widow(er) would be recovered from the widow(er)'s annuity.

405.60.3 Widow(er) Waived Future Eligibility To Permit Payment of RLS

An annuity is not payable to a widow(er) who waived future annuity eligibility to permit payment of the RLS to eligible person(s).

405.65 When Entitlement Ends

A widow(er)'s insurance annuity (WIA) ends with the month preceding the month in which:

- the widow(er) dies;
- the widow(er) remarries;

  NOTE: The annuity of a widow(er) terminates upon remarriage; but the widow can qualify for remarried widow(er)'s insurance annuity. Refer to FOM-I-405.10.2.

- the surviving divorced spouse remarries before 1-1-84, unless (s)he marries an individual entitled to benefits under the Railroad Retirement Act (RR Act) or Social Security Act as a widow(er), father, mother, parent or disabled child. Beginning 1-1-84, entitlement continues when a surviving divorced spouse annuitant remarries;
- the widow(er) becomes entitled to another survivor or spouse annuity under the RR Act which is greater than the WIA;
- the remarried widow(er) or surviving divorced spouse becomes entitled to a retirement insurance benefit which equals or exceeds the deceased employee's primary insurance amount;

- the remarried widow(er) or surviving divorced spouse becomes entitled to any social benefit or combination of social security benefits which zero out the annuity rate and no possibility of an adjusted reduction factor exists.

Prior to 1-1-91, the deemed widow(er) lost entitlement if another individual was found to be the legal widow(er). The last month of the deemed widow(er)'s entitlement was the month prior to the month in which an authorizer approved the legal widow(er)'s award.

The fact that the employee was survived by a legal spouse did not preclude the surviving spouse by deemed marriage from qualifying if the legal spouse was not entitled to any type of survivor benefit based on the earnings record of the employee. Similarly, potential future entitlement of a legal spouse did not bar a spouse's entitlement to a deemed marriage.

If the legal widow(er) filed and was found entitled under the RR Act to any survivor benefit on the employee's earnings record, the widow(er) of a deemed marriage was not considered eligible for any type of survivor benefit under the RR Act. Moreover, if the claim of the legal widow(er) was pending before an award to the de facto widow(er) was approved, action on the latter was withheld until the entitlement of the legal widow(er) was determined. In this situation, if it was determined that the legal widow(er) was entitled beginning either with the month the authorizer approved an award to the legal widow(er) or an earlier month, the deemed marriage provision did not apply. It is immaterial that the legal widow(er)'s first month of entitlement was for a later month than the month the widow(er) by deemed marriage would have been entitled.

405.75 Windfall (Vested Dual Benefit) Entitlement

405.75.1 General

Under the 1937 Railroad Retirement Act (RR Act), all survivor annuitants could receive both RR and SS benefits (dual benefits) without restriction as long as they met all of the eligibility requirements under each Act and filed a timely application for each benefit. Under the 1974 RR Act, the only survivor annuitants who may receive the full amount of these dual benefits are legal or de facto widows and dependent widowers, and this is only if they are "dually vested" as of 12-31-74, on the rolls as of 8-13-81, and windfall (vested dual benefit - VDB) entitlement began before 8-13-81.

A widow(er) was dually vested as of 12-31-74 if (s)he was on our rolls on 12-31-74 with an SS insured status on that date, or if (s)he had sufficient quarters for a fully insured status under the SS Act as of 12-31-74, and the employee had at least 10 years of RR service before 1-11-75. In the case of a widow(er) receiving a disability insurance benefit (DIB) at the Social Security Administration (SSA), this vested status determination could, at times, depend upon whether (s)he qualified for a disability freeze.

405.75.2 Widow(er) on the Rolls on 12-31-74

The dual benefit rights of widow(er)s on our rolls as of 12-31-74, who were either receiving SS benefits on that date, or who were fully insured under the SS Act as of that date, were preserved.

An aged widow(er) on the rolls as of 12-31-74 who is transitionally insured under the SS Act is also entitled to a VDB. A widow(er) is transitionally insured if (s)he attained age 72 prior to 1969 and is not insured at SSA under the regular rules, but has at least 3 quarters of coverage (QCs).

405.75.3 Widow(er) on the Rolls After 12-31-74

A widow(er) who came on the rolls after 12-31-74 is vested for a VDB computation if the following requirements are met:

- The deceased employee had 10 years of RR service before 1-1-75; and
- The widow or dependent widower had a permanently or transitionally insured status under the SS Act as of 12-31-74; and
- The widow or dependent widower was entitled to the VDB before August 13, 1981.

NOTE: A non-dependent widower whose annuity beginning date (ABD) is 3-1-77 or later is not entitled to a VDB because the VDB is based on the RR annuity payable on 12-31-74 and no such benefit was payable to this class of beneficiaries on that date.

A. Definition of Permanently Insured Status, 1974 Act - The widow(er) must be permanently or transitionally insured under the SS Act on 12-31-74 to be entitled to a VDB. The 1974 act defines the widow(er) to be permanently insured if (s)he is fully insured solely on the basis of QCs from SS earnings acquired before 1-1-75 when (s)he attains age 62.

405.75.4 VDB Date of Entitlement

The VDB date of entitlement is the earlier of the month and year the widow or dependent widower:

- Attains age 62; or
- Becomes entitled to a DIB at SSA.

However, the VDB date of entitlement could be no earlier than:

- The widow's ABD, if the case was initially paid under the 1974 act; or

- 1-1-75, if the case was initially paid under the 1937 act and converted to the 1974 act computation.

NOTE: The survivor VDB was a guarantee that the annuity of an eligible vested widow or dependent widower would not be less than the widow(er) would have received had the 1974 RR Act not been enacted. A widow(er)'s annuity computed under the 1974 RR Act should always be higher than the same annuity computed under the 1937 RR Act until there is a reduction required because of entitlement to other benefits. Consequently, the VDB computation was not made until the widow(er) actually became entitled to an SS retirement insurance benefit/DIB.

405.75.5 Cost-of-Living Increase

VDB benefits are frozen at the 1974 benefit levels. However, they are initially increased by the cumulative percentage of the cost-of-living increases that occur in the period from 1-1-75 to the later of the widow's SS RIB/DIB date of entitlement or the widow(er)'s insurance annuity ABD, but not after 6-1-81.

405.80 When Entitlement To A Windfall Benefit Ends

Windfall dual benefit payments end with the month in which:

- The widow(er) dies; or
- The widow(er) remarries; or
- The legal widow(er) becomes entitled and a de facto widow(er) is on the rolls (the last month of the de facto widow(er)'s entitlement is the month before the month in which headquarters approves the legal widow(er)'s award even though the legal widow(er) may be entitled for earlier months); or
- The SS DIB is terminated. When a widow(er)'s DIB terminates, entitle- ment to the WF ends effective with the month and year that SSA term- inates the DIB, IF the widow(er) is not permanently insured on l2-3l-74 without a disability freeze, or the widow is permanently insured on l2-3l-74 without a disability freeze but is under age 62 when the DIB terminates.

NOTE: The WF benefit is not terminated when one SS benefit is terminated because the annuitant becomes entitled to a new type of SS benefit (e.g., RIB to WIB) or if the widow becomes entitled to a different type of RR widow's annuity (i.e., WCIA to WIA or DWIA). Furthermore, there is no provision to recompute the WF when the type of benefit changes at SSA or at RRB.

410.5 General

This chapter contains specific information regarding disabled widow(er)'s insurance annuities (DWIA). General information applicable to ALL types of widow(er) annuities, such as the definition of a legal widow(er), de facto widow(er), surviving divorced spouse or remarried widow(er) can be found in FOM-I-405. Therefore, various sections of this chapter are cross-referenced to the more detailed information in FOM-I-405.

410.10 Eligibility and Entitlement Requirements

410.10.1 Eligibility Requirements

In addition to being the widow(er), the surviving divorced spouse or remarried widow(er) of a deceased employee who died completely insured for survivor benefits under the l974 Act (see FOM1 230.15), an applicant must meet the following requirements.

A. Age - The widow(er), including a surviving divorced spouse or remarried widow(er), must have attained age 50 but not have attained age 60. However, a widow(er) who has already attained age 60 can qualify for a DWIA for the months she is under age 60 in the retroactive period. (Refer to FOM1 405.10.1 for age attainment concept.)

NOTE: When a widow(er) who would not currently be entitled to an employee restored amount is within a few months of attaining age 60 when (s)he can qualify for a DWIA, the widow(er) has the option of filing for a WIA at age 60 and for early Medicare or filing for a DWIA to begin before age 60. Since the age reduction amount on a legal or de facto widow(er)'s annuity based on age is substantially less than the age reduction on the annuity based on disability, the widow(er) may want to wait and file as an aged widow(er) to take advantage of a higher annuity rate. Advise the widow(er) that if she files for the WIA and early Medicare and is rated disabled, Medicare coverage will not begin until 24 months after the WIA beginning date.

B. Marriage - The widow(er) must meet the marriage requirements for an aged WIA as explained in FOM-I-405.5

C. Disability - To satisfy the disability requirement, the widow(er) must have a permanent physical or mental impairment or condition that begins before the end of the "prescribed period" and is such as to be disabling for work in any substantial gainful employment. DSUBD will release an RL-121f (Disability Allowance Notice) in all initial disability allowances. Please see DCM 11 RL-121f Disability Allowance Notice for additional information about this letter.

1. A permanent impairment or condition is one that:

a. Can be expected to result in death; or

b. Has lasted at least 12 months; or

c. Can be expected to last for a continuous period of not less than 12 months.

NOTE: In order to qualify for Medicare and for SSEB tax status, the impairment must meet SSA's criteria. While a survivor may become entitled to a disability annuity under the Railroad Retirement Act based solely on drug or alcohol addiction, such cases do not meet SSA's criteria. Therefore, in such cases, if the application was filed January 1, 2008 or later, the widow would not be entitled to early Medicare or SSEB status. For a more detailed explanation, see DCM 4.8.4

2. Determining "Prescribed Period" of Disability Onset - In order for a disabled widow(er) to qualify for a DWIA, the disability must have begun before the end of the "prescribed period."

a. When Period Begins - The widow(er)'s prescribed period of disability onset begins with the latest of the following:

- The month the employee died; or
- The last month of entitlement to a WCIA based on the same employee's earnings record; or
- The last month of previous entitlement to a DWIA based on the same employee's earnings record.

b. When Period Ends - The widow(er)'s prescribed period of disability ends with the earliest of the following:

- The month before the month the widow(er) attains age 60; or
- The close of the 84th month (7 years) following the month in which the period began.

EXAMPLE 1: The employee died 8-14-74 when the widow was 51 years old. The prescribed period begins 8-1974 (the month the employee died) and ends 8-31-81 (the close of the 84th month following the month the period began). She qualifies if her disability began any time before 9-1-81. She need not have had to apply for the disability annuity before the end of the prescribed period.

EXAMPLE 2: The widow, age 40, became entitled to a WCIA when the employee died in 3-1972. Her last child attained age 18 in 7-1980. Her prescribed period begins 6-1980 (the last month of entitlement to a WCIA) and ends 6-30-87 (the close of the 84th month following the month in which the period began).

It is not necessary for the precise date of onset to be established in many cases involving disabled widow(er)s since the claimant need only to have become disabled before the end of the prescribed period. However, if the widow(er)'s disability did not begin before the end of the prescribed period, (s)he is not eligible for an annuity as a disabled widow(er), but (s)he may qualify at age 60 for a regular WIA.

3. Regular employment means the regular performance in the usual and customary manner of the substantial and material duties of any regular and gainful employment, which is substantial and not trifling, with any employer.

   Both medical and non-medical factors are considered in determining whether a widow(er) meets the above definition. The disability programs section uses the prescribed standards that have been developed for total and permanent employee disability determinations.

D. Waiting Period

1. Widow(er) - The 1983 Railroad Retirement Act amendments added a waiting period requirement for all disabled widow(er)s who file an application 9-1-83 or later. The annuity may not begin until the railroad retirement disability waiting period has expired. The waiting period for a legal or de facto widow(er) begins the first day of the month after the month in which disability began, and continues for 5 calendar months. If the disability began the first day of the month, the waiting period still begins the first day of the following month.

   EXAMPLE: A widow became disabled on 10-1-83. The railroad retirement waiting period begins 11-1-83, and ends 3-31-84.

2. Surviving divorced spouse or remarried widow(er) - The waiting period requirement has always applied to disabled surviving divorced spouses and remarried widow(er)s. These applicants must meet the waiting period requirement as defined in the Social Security Act (SSA). The SSA waiting period differs from the railroad retirement waiting period when disability begins on the first day of the month. Under the SSA, that first month of disability onset is counted in the waiting period; under the RRA, it is not.

   EXAMPLE: A surviving divorced spouse became disabled on 10-1-83. The SSA waiting period begins 10-1-83, and ends 2-29-84.

3. Beginning date of waiting period - The waiting period (both RR and SS provisions) can begin no earlier than the later of the following dates:

- The first day of the 17th month before the month in which the application is filed. This allows for the 5-month waiting period and the 12-month application retroactivity; or

- The first day of the 5th month before the month in which the prescribed period (explained in preceding section (C2.) began.

Months before the employee's death, months before the disabled widow(er) attains age 50, or months before the termination of a previous mother's or father's annuity may be included in the waiting period if the applicant was disabled in those months and the disability was continuous. Therefore, a DWIA may begin at age 50 or in the month of the employee's death if the applicant became disabled more than 5 months prior to that month.

4. Waiting period not required - A waiting period (both RR and SS provisions) may not be required when an applicant becomes disabled again after a previous disability annuity termination. A waiting period is not required if the applicant becomes disabled again within 84 months of the month the previous disability annuity terminated. See FOM-I-410.50.

   This rule applies even when a widow(er) was previously entitled before 9-1-83, when no waiting period was required.

   If the applicant does not become reentitled within 84 months, the annuity may not begin until the end of the waiting period.

E. One-Half Support - A widower must have been receiving one-half of his support from the employee at the time of her death or at the time her retirement annuity began for the annuity to begin before 3-1-77; after 3-1-77 a widower does not have to prove half-support except for payment of a vested dual benefit or employee annuity restored amount. There is no time limit for filing proof of one-half support.

F. Living-With - Living-with is required only when the widow(er) is a "deemed" widow(er). Refer to FOM-I-405.05.2 and FOM-I- 405.10.1D.

G. Marital Status - A widow(er) who married after the marriage to the employee terminated, and such marriage is subsequently terminated by death or divorce may qualify for an annuity beginning October 1, 1981.

   Beginning 1-1-84, a former disabled widow(er) or disabled surviving divorced spouse annuitant may be reentitled although she is married. Refer to FOM-I-410.10.2 for information regarding the effect of remarriage on a widow(er)'s entitlement and eligibility.

H. SS Entitlement - The entitlement of a surviving divorced spouse or remarried widow(er) to any social security benefit which is greater than the employee's

death primary insurance amount (PIA), prevents eligibility to a widow(er)'s insurance annuity under the RR Act. However, if the social security benefit is smaller than the employee's PIA, but larger than the surviving divorced spouse's or remarried widow(er)'s age reduced rate, and the possibility of an age 62 or FRA adjusted reduction factor (ARF) exists that could increase the annuity rate above zero, the surviving divorced spouse or remarried widow(er) will be entitled to a zero annuity rate. Headquarters will process a constructive award and enter a call-up for the ARF.

I. Application - In order to establish entitlement to a DWIA, a widow(er) who meets the above eligibility requirements must file an annuity application.

410.10.2 Effect of Remarriage on Entitlement

A. Remarriage occurs before entitlement to an annuity

1. Effective 1-1-84 and later.

A disabled widow(er) or a disabled surviving divorced spouse may qualify for an annuity if (s)he remarries:

a. After age 50 andhis/her disability began prior to the remarriage and (s)he met the disability requirements at the time of remarriage;

b. More than once after the employee's death provided the last marriage occurred after (s)he attained age 50 and the disability began prior to the remarriage and (s)he met the disability requirements at the time of remarriage; or

c. Before age 50 provided the marriage terminates. (The annuity cannot begin until the marriage terminates.)

2. Before 1-1-84.

A disabled widow(er) or a disabled surviving divorced spouse could qualify for an annuity if (s)he remarried only if the marriage terminated.

B. Remarriage occurs after entitlement to an annuity

1. Effective 1-1-84 and later.

A disabled widow(er) or a disabled surviving divorced spouse may continue to receive an annuity consisting of only a tier I component if (s)he remarries after age 50 and his/her disability began prior to the remarriage and (s)he met the disability requirements at the time of remarriage.

If the disabled widow(er) or a disabled surviving divorced spouse recovers and her disability annuity ends before age 60,

- (s)he may be entitled to an annuity at age 60 if (s)he remarried after her annuity beginning date.

- If (s)he remarried after the disability onset date but before her annuity beginning date, (s)he may be entitled to an annuity at age 60 only if the marriage terminates.

Note: A new application is required whenever there is a break in entitlement.

2. Before 1-1-84.

   a. If a disabled widow(er) remarried before age 60, the annuity terminated unless she married an individual entitled to a widow(er)'s, mother's, father's, parent's or disabled child's benefit under the RRA or the SSA.

   b. If a disabled surviving divorced spouse remarried at any age, the annuity terminated unless she married an individual entitled to a widow(er)'s, mother's, father's, parent's or disabled child's benefit under the RRA or the SSA.

   c. If the conditions in a. or b. were not met, the annuity terminated. (S)he could not become reentitled unless the marriage terminated.

C. Action required upon notice of a widow(er)'s remarriage –

- Use FAST/ST to terminate the annuity of a widow(er). The suspension/termination code is 44.

- The effective date is the month of remarriage.

- Do not terminate a remarried widow(er) or a surviving divorced spouse annuity.

- After the widow(er)’s annuity has been terminated, send an e-G-115 to SBD per current procedure. As a heading use WIDOW TO RW CONVERSION - HANDLE IMMEDIATELY

Refer to FOM1 405.30.3 for additional information about developing when a widow(er) has remarried.

410.15 Amount Of A Disabled Widow(er)'s Insurance Annuity

This section contains basic information about the components of a disabled widow(er)'s insurance annuity. For more detailed information, refer to FOM- I, Article 10, Computations.

410.15.1 Tier I

A. Gross tier I - A disabled widow(er)'s tier I before reduction for other benefits is computed as follows:

1. For months after December 1983 a disabled widow(er)'s tier I is equal to the lesser of:

   - 100% of the employee's death PIA reduced only for months between 60 and 65. No reduction for months under age 60 regardless of when the annuity began; or

   - 100% share of the maximum family benefit reduced only for months between 60 and 65. No reduction for months under age 60 regardless of when the annuity began.

   EXCEPTION: A disabled surviving divorced spouse always receives 100% of the employee's death PIA. His/her tier I is reduced only for months between 60 and 65. No reduction for months under age 60 regardless of when the annuity began.

2. For months before January 1984 a disabled widow(er)'s tier I is equal to the lesser of:

   - 100% of the employee's death PIA reduced for all months the widow(er) is under FRA when the DWIA initially begins; or

   - 100% share of the maximum family benefit reduced for all months the widow(er) is under FRA when the DWIA initially begins.

   EXCEPTION: A disabled surviving divorced spouse always receives 100% of the employee's death PIA because his/her annuity is not included in the family maximum. A disabled surviving divorced spouse's tier I is reduced for all months (s)he is under FRA when the DWIA initially begins.

   - If the disabled widow(er) is entitled to a disability benefit based on her own earnings record, (s)he may be entitled to the tier 1 age adjusted rate. If this provision applies, only the amount of the widow(er)’s tier 1 which exceeds the amount of the disability annuity is reduced for early retirement. This provision applies if the following conditions are met:

   - The widow(er)’s annuity is age reduced; and,

   - The widow(er) is entitled to a disability insurance benefit (DIB) under the SS Act and the date of entitlement is the same as, or earlier than, the OBD; and,

- The DIB PIA is less than the death PIA (increased for DRC's) or the widow(er)'s share of the maximum, if applicable; and,

- The widow(er)'s tier 1 is not reduced by an additional amount (i.e., PSP or EE tier 1) which, when added to the SS DIB, exceeds the death PIA; and,

- The OBD is 1/1978 or later

B. Tier I benefit reductions - The tier I is reduced for all of the following:

- The amount of any SS benefit to which the disabled widow(er) is entitled.

- The net tier I amount of any RR retirement annuity to which the disabled widow(er) is entitled if the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or the case is reopened 10-1-88 or later.

- The tier I amount before age reduction of any RR retirement annuity the disabled widow(er) is entitled to through 9-30-88, and the net tier I of any RR retirement annuity the disabled widow(er) is entitled to 10-1-88 or later, if the reduction for the employee tier I is first applied on an award vouchered prior to 10-1-88.

- The amount of any public service pension payable to:

    1. Non-dependent disabled widowers who filed for an annuity after 11-30-77.

    2. Non-dependent disabled widows who become eligible for a public service pension after 11-30-82.

    3. Non-dependent disabled surviving divorced wives married to the employee for at least 20 years who become eligible for a public service pension after 11-30-82.

    4. Non-dependent disabled surviving divorced spouses married to an employee less than 20 years and all non-dependent surviving divorced husbands regardless of when they become eligible for the public service pension.

    5. Non-dependent disabled remarried widow(er)s who becomes eligible for a public service pension after 11-30-82.

    6. Dependent disabled widow(er)s who becomes eligible for a public service pension after 6-30-83.

7. Dependent disabled remarried widow(er)s who becomes eligible for a public service pension after 6-30-83.

8. Dependent disabled surviving divorced spouses who become eligible for a public service pension after 6-30-83.

Note: For months prior to 12-1-82, the tier I of a dependent surviving divorced wife who was married to the employee for less than 20 years and any surviving divorced husband is subject to reduction for a public service pension. However, beginning 12-1-82 any reduction is removed providing the survivor submits proof of dependency.

The tier I of annuitants subject to a PSP reduction is reduced by 100% of the PSP if they first became eligible for the PSP before 7-1-83. That reduction was changed to 66 2/3% of the PSP, effective 12-1-84. Annuitants who became eligible for a PSP 7-1-83 or later are subject to a tier I reduction of 66 2/3% of the PSP.

Refer to FOM-I-405.35 or FOM-I-120.40 for additional information on public service pension reduction.

410.15.2 Tier II

Only a disabled widow(er) is entitled to a tier II. Remarried widow(er)s or surviving divorced spouses are not eligible for a tier II. Once a legal or de facto widow(er) has remarried (s)he is no longer eligible for a tier II regardless whether the marriage subsequently terminates.

EXCEPTION: If a widow(er) remarries and the marriage is subsequently annulled, a tier II may be payable if the marriage was void or voidable, and where applicable, no alimony has been awarded.

A disabled widow(er)'s tier II is equal to 30% of the widow(er)'s tier I amount after reduction for age and public service pension when the annuity is awarded before 10-1-86 and the employee died or retired before 10-1-81. In all other cases the tier II is equal to 50% of the employee annuity tier II amount computed as of the DWIA beginning date. When the DWIA tier II is based on the employee annuity tier II, a reduction for age similar to that made in tier I is required.

A disabled widow(er) who is eligible for a tier II may receive an additional amount in tier II when a spouse minimum guarantee applies or when the disabled widow(er) is entitled to an RR annuity based on her own work and qualifies for an employee restored amount.

Effective February 1, 2002, a disabled widow(er) who is paid under the 1981 Amendments may receive an additional tier II amount called the “Widow(er)’s Initial Minimum Amount”, (WIMA). The WIMA guaranty provides that the widow(er)’s annuity

will be calculated using 100 percent of the tier II that would have been used to compute the annuity for the deceased employee on the survivor OBD.

410.15.3 Vested Dual Benefit

Only an unremarried widow(er) can be entitled to a vested dual benefit (VDB). Remarried widow(er)s or surviving divorced spouses are not eligible for a VDB. Once a legal or de facto widow(er) remarries (s)he no longer can qualify for a VDB regardless of whether the marriage subsequently terminates.

EXCEPTION: If a widow(er) remarries and the marriage is subsequently annulled, a VDB may again be payable.

The VDB is basically a guarantee for certain widow(er)s meeting the requirements listed in FOM-I-405.75. It guarantees that the DWIA will not be reduced below the rate that would have been paid if the 1974 Railroad Retirement Act (RRA) was not enacted. No new VDBs can be awarded for a disabled widow(er) after August 12, 1981, because of the 1981 amendments to the RRA.

410.20 Evidence And Development

410.20.1 Evidence Requirements

Evidence	**When Required**
Application	Obtain Form AA-17 except when WCIA is being converted to DWIA and there is continuous entitlement; in this situation, only a Form AA-I7b is required.
Application for Determination of Widow(er) Disability (Form AA-17b)	Always.
Medical evidence	Always.
Widow(er)'s SS account number	Always. Request widow(er to secure one unless she resides outside the U.S.
Vocational Report (Form G-251)	Always.
Proof of employee's death	Always.
Proof of widow(er)'s Age.	Always.
Proof of marriage to employee	Always.

Prior service (Form AA-15)	Only when less than 120 months of subsequent service can be verified.
Proof of one-half support (Form G-134)	Required from a widower when dependency is claimed and widower is eligible, or may be eligible in the future, for an employee annuity. Also required to prove dependency for exemption from public service pension reduction.
Application for substitution	When a representative payee is to of payee (Form AA-5) be selected.
Widow(er)'s employment history	Always.
Proof of employee's age	In “A” cases POA is required only if the employee's DOB has not been previously verified Effective 03-01-2004 POA of deceased employee is required in all “D” cases when a survivor recurring application is filed.
Proof of termination of prior marriage	If there is reasonable doubt about whether a prior marriage of either widow(er) or employee was ended.
Proof of child's legal adoption	Only when widow(er) seeks to meet marriage requirement on that basis.
Proof of guardianship	If the guardian or other legal representative is selected as representative payee.
Proof of military service	Only when the employee's M/S after 1936 would be creditable under either the Railroad Retirement Act or the Social Security Act.
Public service pension	Required when indicated by response information (Form G-208) on Form AA-17. Also secure when a disabled widow(er) annuitant becomes entitled to a remarried widow(er)'s annuity with no break in entitlement, unless the widow(er) has been continuously entitled to an annuity based on the employee's record since before 12-1-77.
Proof of divorce from employee	Always from a surviving divorced spouse.

Proof of remarriage(s)	Always from: • Widow(er) who remarries after attaining age 60. • Surviving divorced spouse when annuity is not terminated by remarriage. • Beginning 1-1-84, a disabled widow(er) or a disabled surviving divorced spouse who is eligible for an annuity after remarriage.
Proof of termination of subsequent marriages	Widow(er) who remarries before age 60. Surviving divorced spouse for entitlement or reentitlement. Beginning 1-1-84, however, only required for initial entitlement.
Check list (Form G-659a)	Always. Forward original to HQ; retain copy for field office file.

410.20.2 Development of Medical Evidence

A. From applicant sources (refer to Article 13);

1. Request the widow(er) to secure completed Form G-250 from her personal physician.

2. Secure hospital records, if applicable.

3. Develop onset date if earliest date widow(er) can qualify for the DWIA (i.e., month widow(er) attains age 50) is after the end of the prescribed period.

B. If adequate evidence cannot be obtained from applicant sources, and applicant's disability is based on an obvious condition, describe the condition in the remarks section of the disability application. Do not schedule a physical examination unless other than obvious disabling conditions are present.

C. If medical evidence from the above sources is not adequate or available, schedule appropriate medical examination as indicated in FOM-I, Article 13.

410.20.3 Developing From a Disabled Widow(er) Who Has Remarried

Certain disabled widow(er)s can qualify for an annuity after remarriage.

Refer to FOM1 410.10.2 for instructions on development action needed when a disabled widow(er) or disabled surviving divorced spouse remarries.

Refer to FOM1 405.30.3 for instructions on development action needed when a widow(er) remarries.

410.25 Annuity Beginning Date

The beginning date of a disabled widow(er) annuity (DWIA) is explained in FOM-I-111.20 FOM-I-111.51 and FOM-I-112.9.5.

410.30 Annuity Conversions Involving Disabled Widow(er)s

410.30.1 WCIA Converts to DWIA

A WCIA may be converted to a DWIA on the first day of the month the widow(er) age 50-59 meets all the following conditions:

- Is disabled within the meaning of the Railroad Retirement ct; and
- Files an application Form AA-17b; and
- Ceases to qualify for a WCIA because a minor or disabled child is no longer in the widow(er)'s care; and
- A surviving divorced wife must have been married to the employee for at least 10 years.

410.30.2 Widow(er) Files AA-17b While Entitled to WCIA

A disabled widow(er)'s annuity application (Form AA-17b), filed while a widow(er) is entitled to a WCIA, is used for establishing Medicare eligibility based on disability. A WCIA will continue to be paid even if the widow(er) is disabled, as long as a minor or disabled child is in the widow(er)'s care and the WCIA rate is higher. If the disabled widow(er) is under age 60 when entitlement to a WCIA terminates, the widow(er) will need to submit a signed statement advising whether (s)he wishes to receive a reduced annuity. When a widow(er) advises that (s)he does not wish to receive a reduced annuity, the disability Medicare eligibility will terminate if (s)he is not in receipt of an annuity. A DWIA cannot be paid before the signed statement is secured. Headquarters will advise when the statement is necessary.

410.35 Work Restrictions

410.35.1 Widow(er) Under Age 60

The annual earnings test does not apply to a disabled widow(er) under age 60. However, any work performed before age 60 must be considered in determining whether the widow(er) has recovered from the disability. The work and earnings may

demonstrate that the widow(er) is able to perform regular and gainful employment and, therefore, is no longer disabled for purposes of receiving an annuity and/or Medicare. Work for an RR employer during any month, of course, precludes payment of the annuity for that month.

As soon as the widow(er) reports that (s)he is working, refer the case to headquarters for a determination of whether (s)he has recovered from the disability on which the DWIA and/or Medicare is based. Furnish headquarters with pertinent information regarding the type of work and the numbers of hours per day the widow(er) works.

410.35.2 Widow(er) Age 60 and Over

A widow or widower who was receiving an annuity based on disability prior to age 60 will continue to receive an annuity after age 60 but the annuity will have been transformed into an age annuity. Therefore, regular survivor earnings restrictions apply beginning with the month the widow(er) attains age 60 and ending with the month before attainment of the exempt age.

Exception: A disabled surviving divorced spouse or a disabled remarried widow(er) is not subject to the annual earnings test until FRA. However, like a disabled widow(er) under age 60 any work must be considered in determining whether (s)he has recovered from disability.

Refer to Article 11 for more specific earnings restriction information. Work for an RR employer during any month precludes payment of the annuity for that month.

Beginning with 1975, all earnings in the year of attainment of age 60 are considered in determining excess earnings for that year.

If the widow(er) indicates that (s)he was told by the RRB that the annual earnings test would not apply until FRA, advise Headquarters.

NOTE: Work or earnings anytime before a widow(er) attains FRA may affect entitlement to Medicare based on disability. Consequently, as soon as a disabled widow(er) who is under FRA reports that s(he) is working, refer the case to Headquarters for a determination of whether the widow(er) has recovered from the disability on which Medicare is based.

410.40 Disabled Widow(er) Previously Awarded LSDP or RLS

410.40.1 LSDP Previously Awarded

If a widow(er) receives the LSDP and later files for a DWIA which starts in the 12-month period beginning with the month of death, the LSDP award is considered erroneous if the widow(er) is rated disabled as of the sixth month prior to the month of the employee's death. The LSDP is payable if the DWIA cannot begin in the month of the employee's death solely because the 5-month waiting period has not expired. For DWIA applications filed before 9-1-83, the LSDP is considered erroneous if the DWIA

begins in the 12-month period beginning with the month of death and the widow(er) is rated disabled as of the month of the employee's death.

If the LSDP is considered erroneous, it is recovered from the DWIA award. However, a deferred LSDP can be considered if the DWIA payments made for the year after the employee's death are less than the regular LSDP amount.

An LSDP award is not considered erroneous if a widow(er) becomes disabled in a month after the employee's death or when the DWIA begins more than a year after the employee's death.

If the widow(er) claims (s)he became disabled after the month of the employee's death, we presume that (s)he was not disabled at an earlier date, unless the medical evidence clearly shows that (s)he was. When the M/E does show that (s)he was disabled in or before the month of the employee's death, instead of the month (s)he claimed, a decision on whether the LSDP was erroneous will be made in Headquarters based on the individual facts.

410.40.2 RLS Previously Awarded

If the widow(er) previously elected and was paid the RLS, (s)he cannot receive a DWIA. However, if (s)he previously received the RLS because (s)he could not qualify for an annuity (e.g., not 'living-with" prior to 11-1-66, or remarried widow prior to October 1, 1981), (s)he may be eligible for a DWIA. If (s)he is now eligible, the DWIA will be awarded but any part of the RLS paid to the disabled widow(er) will have to be recovered. If the RLS was awarded to someone other than the widow(er), and no election was filed by the widow(er), a DWIA can be paid and no part of the RLS will be recovered.

410.45 When Entitlement To A DWIA Ends

A DWIA terminates with the month before the month in which:

- The disabled widow(er) dies.
- The disabled widow(er) remarries.

EXCEPTION: Before 1-1-84, if a widow(er) marries an individual entitled to benefits under the RR or Social Security Act as a widow(er), mother, father, parent or disabled child, the DWIA tier I may continue but (s)he must submit proof of remarriage and the new spouse's SS number and RR or SS claim number. If the surviving divorced spouse marries a disabled child beneficiary, the DWIA terminates the same month the child's disability benefit terminates, unless the disabled child dies or becomes entitled to a retirement benefit at FRA. Refer to FOM-I-410.20.3 for additional information on development when widow remarries.

If a disabled widow(er) or a disabled surviving divorced spouse annuitant marries any individual 1-1-84 or later, she may qualify as a remarried widow(er).

- Attains age 60. Technically, a DWIA terminates when the widow(er) attains age 60; however, no change is made in the computation of the widow(er)'s annuity.

- A DWIA terminates with the second month following the month in which recovery from the disability occurs. The RRB may decide that a widow(er) has recovered from disability on the basis of work ability or because of actual medical recovery. However, the annuity continues if (s)he attains age 60 on or before the last day of the third month following the month in which (s)he ceased to be disabled.

NOTE: Medicare eligibility for a widow(er) who has been determined to have recovered from disability (due to work), may continue for 24 months after the DWIA terminates providing the widow(er) has not medically recovered from her disability.

- The disabled remarried widow(er) or disabled surviving divorced spouse becomes entitled to an RIB which equals or exceeds the deceased employee's PIA.

410.50 Reentitlement After Former Disability Ceases

A widow(er) may be reentitled to a DWIA if (s)he again becomes disabled after the former DWIA terminated and (s)he meets the entitlement requirements listed below.

410.50.1 Requirements for Reentitlement

Such a widow(er), if (s)he is otherwise qualified, can become reentitled if (s)he:

A. Files a new application for a DWIA; and

B. Has not attained age 60; and

C. Is under a disability that began before the end of the "prescribed period" which begins with the last month of previous entitlement to a DWIA and ends with the earliest of the following:

  - The month before the month in which (s)he attains age 60; or

  - The close of the 84th month following the last month of previous entitlement to the former DWIA.

410.50.2 Date Payment Can Begin

The current DWIA is payable beginning on the first day of the month in which (s)he is again under a disability or the first day of the 12th month before the month the application is filed, whichever is later. A waiting period is not required if the requirements for reentitlement are met.

410.50.3 Age Reduction Amount

Although payment of the current DWIA is restricted to the dates mentioned above, the annuity beginning date remains the same as when the widow(er) initially was entitled to a DWIA. The age reduction is figured based on the initial DWIA beginning date and is not adjusted until the widow(er) attains age 62. If the initial DWIA beginning date and termination date were before 1-1-84, the widow(er) is deemed to be age 60 on the later of 1-1-84 or the date of reentitlement. When the widow(er) attains age 62 the reduction will be adjusted to remove the reduction for the intervening months in which a DWIA was not paid.

410.55 Handling Previously Denied Cases

Any inquiry, protest or additional medical evidence should be forwarded to Headquarters. The denial will be reconsidered.

A. Reconsideration finds that applicant is still not disabled. A letter will be released to the widow(er) from Headquarters advising that the appeal period is 60 days from the date of the reconsideration decision notice.

B. Reconsideration finds applicant to be disabled. A new application is required only if:

- The applicant is found to be disabled from a date after the date of the denial letter; or
- The evidence or correspondence that caused the reconsideration was received 60 days or more after the denial notice.

410.60 Vested Dual Benefit Entitlement

Vested Dual benefit entitlement for a disabled widow(er) is the same as for an aged widow. Refer to FOM-I-405.75.

410.65 When Entitlement To A Vested Dual Benefit Ends

The terminating events for vested dual benefit (VDB) benefit entitlement described in FOM-I-405.80 also apply to disabled widow(er)s. In addition, a disabled widow(er)'s VDB entitlement ends with the earlier of the termination of the SS DIB or RR DWIA.

415.5 General

This chapter contains specific information regarding widow(er)'s current insurance annuities (WCIA), annuities for mothers/fathers who have minor or disabled children of a deceased employee in their care.

General information applicable to ALL types of widow(er)'s insurance annuities such as the definition of a legal widow(er), de facto widow(er), remarried widow(er), or surviving divorced spouse can be found in FOM-I-405.

General information regarding child(ren)'s insurance annuities, for minor and disabled children who qualify a widow(er) for a WCIA, can be found in FOM-I-420.

Since general information is contained in other chapters, various sections of this chapter are cross-referenced to the more detailed instructions in other FOM chapters.

415.10 Eligibility And Entitlement Requirements

415.10.1 Eligibility Requirements

In addition to being the legal widow(er), de facto widow(er) or surviving divorced spouse of a deceased employee who died completely insured for survivor benefits under the l974 Act (see FOM-I-230.15), an applicant must meet the following requirements:

A. Age - The mother/father must be under age 65 when entitlement begins.

NOTE: A mother/father age 65 or older is awarded an aged widow(er)'s insurance annuity regardless whether (s)he has children in care.

B. Marriage - A legal or de facto widow(er) must meet one of the requirements listed in FOM-I-405.5.1B to qualify for a WCIA. A surviving divorced mother/father need not meet the 10-year marriage requirement to qualify for a WCIA, but (s)he must meet one of the following four tests:

(S)he must be the natural parent of the employee's child; or

(S)he must have legally adopted the employee's child while (s)he was married to him and before the child attained age 18 (equitable adoption will not qualify a surviving divorced spouse); or

(S)he must be the parent of a child who was legally adopted by the employee while (s)he was married to him and before the child attained age 18 (equitable adoption will not qualify a surviving divorced spouse); or

(S)he must have been married to the employee at the time both of them legally adopted a child under age 18 (equitable adoption will not qualify a surviving divorced spouse).

C. Child in care - At the time of filing or sometime within the retroactive period, a mother/father must have care and custody of a qualifying minor or disabled child. In order for a mother/father to qualify on the basis of a disabled child, the mother/father must perform personal services for the child. Refer to FOM-I-945.15.1 for additional information. A legal, de facto or remarried widow(er) must have care and custody of a child as defined in FOM-I-420.5. A surviving divorced mother/father must have care and custody of either a natural or legally adopted child of the deceased employee. Note: If the mother/father was previously entitled based on having a disabled child in his/her care and the annuity terminates due to the child's recovery, it is possible to become entitled again if the child meets the re-entitlement requirements as explained in DCM 3.10.10. If the re-entitlement requirements are first met more than 7 years after the termination of the previous annuity, the mother/father will be entitled to tier 1 only. In such cases, the APPLE application must be marked for manual review.

NOTE: When a child is or will be separated from the mother/father for no more than 6 months, the widow(er) may continue to be paid during the period of separation provided the child can be considered to be in care during the period of separation. For more information on this subject, refer to FOM-I, Article 9, Proofs.

The 1974 Railroad Retirement Act (RRA) defines tier I of a WCIA as the equivalent of the benefit the Social Security Administration would pay if it had jurisdiction of survivor benefits. Consequently, changes in the Social Security Act affecting entitlement to a mother's/father's insurance benefit can impact on the tier I of a WCIA under the RRA. Amendments to the Social Security Act enacted in 1981 changed the entitlement requirements for a mother's/father's insurance benefit based on minor children. There is no change in the payment of a child's annuity which remains payable until a child attains age 18. The amendments provide that for:

Initial entitlement September 1981 or later, a mother/father must have care and custody of a child who is under age 16. Mother/father may qualify for a WCIA based on a child age 16-18 who is disabled.

Initial entitlement before September 1981 (includes spouse to widow conversions where entitlement to a spouse annuity began before September 1981), a mother/father may be entitled through the month before the youngest child attains age 18 if the child attains age 18 before September 1983. If the youngest child attains age 18 after August 1983, a mother/father may be entitled until the child attains age 16 or September 1983, whichever is later. A mother/father may be entitled based on a child age 16-18 who is disabled.

The Social Security amendments have the following impact on entitlement to a WCIA under the RRA:

1. WCIA entitlement began under the 1937 Railroad Retirement Act (Filing date and ABD before 1/75) - The 1981 amendments have no impact on

WCIA entitlement. Full WCIA based on minor children is payable until youngest child attains age 18, provided no other terminating event occurs. SS amendments do not impact on this type of case because the 1974 RRA defined tier I for an annuity converted to the 1974 Act as the deceased employee's pass-thru PIA, instead of a social security equivalent benefit.

2. Initial WCIA entitlement began under the 1974 Railroad Retirement Act before September 1981 - For months before September 1983, tier I entitlement exists if widow(er) has care and custody of a minor child under age 18. For months beginning September, 1983, tier I entitlement exists if mother/father has care and custody of a minor child under age 16 (or a disabled child age 16 or older).

   Tier II in these cases would be zero when tier I entitlement ends because it is based on the tier I amount. However, a young widow(er) may continue receiving that tier II if one of the following conditions is met:

The young widow(er) has filed for benefits based on the care and custody of a child between the ages of 16 and 18, but no denial was processed.

The young widow(er) has been referred for termination because the youngest child is 16, but no termination was processed.

Reconsideration or an appeal of reconsideration of a decision denying an application based on the care and custody of a child between ages 16 and 18 has not been finalized.

EXCEPTION: If a mother/father was entitled to a spouse annuity in the month before the employee's death (s)he would be entitled to the spouse annuity rate payable in the month before the employee's death until the youngest child attains age 18.

3. Initial entitlement begins after August 1981 and before August 1992 - A mother/father must have care and custody of a minor child under age 16, or a child age 16-18 who is disabled for entitlement to a tier I amount. Tier II entitlement may continue until the youngest child attains age 18.

4. Initial entitlement begins August 1, 1992 or later - The Tier I is again payable until the last child attains age 18.

   A remarried mother/father or surviving divorced mother/father cannot qualify for a WCIA based on a minor child age 16-18 unless the child is disabled since such a widow(er)'s entitlement is based on Social Security Act provisions.

   NOTE: If a legal or de facto widow(er) was entitled to a spouse annuity in the month before the employee's death, (s)he would be guaranteed to

receive the spouse annuity rate payable in the month before the employee's death until the youngest child attains age 18.

D. Living with - Living-with is required only if the widow(er) is a de facto widow(er). Refer to FOM-I-405.5.2 and 405.10.1C.

E. Marital status - A mother/father must be unmarried to establish entitlement for an annuity.

EXCEPTION: A legal or de facto widow(er) who remarries after attaining age 60 retains eligibility for an annuity. Refer to FOM-I-415.10.2 for information regarding the effect of remarriage on a widow(er)'s entitlement to a WCIA.

F. Application - To establish entitlement to a WCIA, a mother/father who meets the above eligibility requirements must file an appropriate application as described in FOM-I-415.20.

G. RIB entitlement - A surviving divorced mother/father or a remarried mother/father may not be entitled to an RIB which exceeds 75% of the deceased employee's death PIA.

415.10.2 Effect of Remarriage on Entitlement to an Annuity

A. Remarriage occurs before entitlement to an annuity - If a widow(er) or a surviving divorced mother/father remarries before entitlement to an annuity, (s)he cannot be entitled to a WCIA until the marriage terminates. She may, however, qualify for an annuity based on age or disability. (See FOM-I-405.10.2 and 410.10.2.)

B. Remarriage occurs after entitlement to an annuity

1. Effective 1-1-84 or later.

a. A widow(er) or a surviving divorced mother/father may continue to receive a WCIA consisting of only a tier I component if (s)he remarries after age 60 (age 50 if disabled).

b. A widow(er) or a surviving divorced mother/father may continue to receive a WCIA consisting of only a tier I component if (s)he marries an individual entitled to a retirement or disability benefit, a widow(er)'s, mother's/father's, parent's or disabled child's benefit under the Railroad Retirement Act or the Social Security Act.

c. A widow(er)'s or a surviving divorced mother's/father's annuity terminates if (s)he remarries and the conditions in a or b above are not met. (S)he can become re-entitled if the marriage terminates.

2. Before 1-1-84.

a. A widow(er) could continue to receive a WCIA consisting of only a tier I component if (s)he remarried after age 60.

b. A widow(er) or a surviving divorced mother/father could continue to receive a WCIA if (s)he married an individual entitled to a retirement or disability benefit, a widow(er)'s, mother's/father's, parent's or disabled child's benefit under the Railroad Retirement Act or the Social Security Act.

c. A widow(er)'s or a surviving divorced mother's/father's annuity terminated if (s)he remarried and the conditions in a or b above were not met. (S)he could not become re-entitled unless the marriage terminated.

C. Action required upon notice of a mother/father's remarriage - HQ should be advised promptly of the remarriage of any mother/father so proper adjustment or termination action can be taken. Certain information regarding the mother/father's marriage will be required. Refer to FOM-I-415.20.2 for additional information about development requirements.

415.15 Amount Of A Widow(er)'s Current Insurance Annuity

This section contains basic information about the components of a widow(er)'s current insurance annuity (WCIA). For additional information, refer to FOM-I, Article 10, Computations.

415.15.1 Tier I

A mother/father under age 65 with eligible children in her care is entitled to a tier I component equal to the lesser of:

75% of the deceased employee's PIA based on wages and compensation; or

A 75% share of the maximum family benefit.

NOTE: A surviving divorced mother/father's share is included in the family maximum.

The tier I of a WCIA is reduced for entitlement to certain other benefits. The tier I is reduced by the following:

Amount of any SS benefit to which the mother/father is entitled.

Amount of the net tier I of any RR retirement annuity to which the mother/father is entitled if the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or the case is reopened 10-1-88 or later.

Amount of the tier I before age reduction of any RR retirement annuity the mother/father is entitled to through 9-30-88, and the net tier I of any RR retirement annuity the mother/father is entitled to 10-1-88 and later, if the reduction for the employee tier I is first applied on an award vouchered prior 10-1-88.

Amount of any public service pension payable to:

1. Non-dependent fathers who filed for an annuity after 11-30-77.

2. Non-dependent mothers who become eligible for a public service pension after 11-30-82.

3. Non-dependent surviving divorced mothers married to the employee for at least 20 years who become eligible for a public service pension after 11-30-82.

4. Non-dependent surviving divorced mothers married to employees less than 20 years regardless of when they become eligible for the public service pension.

5. Non-dependent surviving divorced fathers.

6. Non-dependent remarried mothers/fathers who become eligible for a public service pension after 11-30-82.

7. Dependent mothers/fathers who become eligible for a public service pension after 6-30-83.

8. Dependent remarried mothers/fathers who become eligible for a public service pension after 6-30-83.

9. Dependent surviving divorced mothers/fathers who become eligible for a public service pension after 6-30-83.

   Note: For months prior to 12-1-82, the tier I of any surviving divorced father and for a dependent surviving divorced mother who was married to the employee for less than 20 years was subject to reduction for a public service pension. However, beginning 12-1-82 any reduction is removed providing the survivor submits proof of dependency.

The tier I of annuitants subject to a PSP reduction are reduced for 100% of the PSP if they first became eligible for the PSP before 7-1-83. Annuitants who became eligible for a PSP 7-1-83 or later are subject to a tier I reduction of 66 2/3% of the PSP.

Refer to FOM-I-405.35 or FOM-I-120.40 for additional information on public service pension reduction.

415.15.2 Tier II

Only unremarried legal or de facto mothers/fathers are eligible for a tier II. Remarried mothers/fathers or surviving divorced mothers/fathers are not eligible for a tier II. Once a legal or de facto widow remarries (s)he is no longer eligible for a tier II regardless of whether the marriage subsequently terminates.

EXCEPTION: If a legal or de facto widow(er) remarries and the marriage is subsequently annulled, a tier II may be payable if the marriage was void or voidable, and where applicable, no alimony has been awarded.

A young mother's/father's tier II is equal to 30% of the tier I before reduction for entitlement to other benefits when the annuity is awarded before 10-1-86, and the employee died or retired before 10-1-81. In all other cases the tier II is equal to 50 % of the employee annuity tier II computed as of the WCIA beginning date. When the tier II is based on the employee annuity tier II, there is a maximum family tier II amount which equals 80% of the employee's tier II. Consequently, when a mother/father and more than two children are entitled to a tier II, their shares will be reduced. An additional amount may be payable in a mother's/ father's tier II when the spouse minimum guarantee applies or when the mother/father is entitled to an RR annuity based on her own earnings and qualifies for an employee restored amount computation.

Effective February 1, 2002, a young mother/father who is paid under the 1981 Amendments may receive an additional tier II amount called the “Widower(er)’s Initial Minimum Amount”, (WIMA). The WIMA guaranty provides that the young mother’s/father’s annuity will be calculated using 100 percent of the tier II that would have been used to compute the annuity for the deceased employee on the survivor OBD. When this provision applies, the tier II family maximum benefit payable is 130 percent of the employee’s tier II.

Note: If the mother/father was previously entitled based on having a disabled child in his/her care and the annuity terminates due the child’s recovery, it is possible to become entitled again if the child meets the re-entitlement requirements as explained in DCM 3.10.10. If the re-entitlement requirements are first met more than 7 years after the termination of the previous annuity, tier II is not payable.

415.15.3 Vested Dual Benefit

Only an unremarried legal or de facto widow can be entitled to a vested dual benefit (VDB) based on WCIA entitlement. A widower entitled to a WCIA is not eligible for a VDB. Remarried mothers/fathers or surviving divorced mothers/fathers also are not eligible for a VDB. Once a legal or de facto widow remarries she no longer qualifies for a VDB regardless of whether the marriage subsequently terminates.

EXCEPTION: If a legal or de facto widow remarries and the marriage is subsequently annulled, a VDB may again be payable.

The VDB is basically a guarantee for an eligible mother/father that her annuity will not be reduced below the rate she would have received if the l974 Railroad Retirement Act had not been enacted. No new VDBs can be awarded after August 12, 1981, because amendments to the Railroad Retirement Act have eliminated VDB entitlement for all widows not entitled to a VDB by that date.

415.20 Evidence And Development

415.20.1 Evidence Requirements

Evidence	When Required
Application (Form AA-18)	Always, when mother/father has never previously been entitled to a WCIA. Not required in conversions when widow(er) previously received a WCIA.
Application for Determination	When mother/father will qualify for child Disability (Form AA19a) on the basis of having care and custody of a disabled child.
Proof of employee's death	Always.
Proof of child's age	Always.
Proof of child's relationship to the deceased employee	Always.
Proof of child being in widow(er)'s care	Always. Ordinarily, the mother's/father's statement on the application that the child lives with him/her will be sufficient. No additional proof of living with is required if the widow(er) received a spouse annuity in the month before the month the employee died.
Proof of marriage to employee	Always.
Public Service Pension (Form G-208)	Required if indicated by the information on Form AA-18. Also secure when an annuitant remarries and is continuously entitled with no break, unless the annuitant has been continuously entitled to an annuity based on the employee's record since before 12-1-77.
Proof of widow(er)'s age	Always, except from a surviving divorced mother/father married to the employee less than

	10 years. Although a WCIA can be paid without the widow(er)'s POA, the proof will be needed to convert the widow(er) to a WIA if (s)he attains age 60 before the WCIA ends. To prevent additional development later, when it may be more difficult for the widow(er) to secure POA, the proof is secured when the widow(er) files for a WCIA.
Proof of divorce from employee	Always from a surviving divorced mother/father.
Proof of remarriage(s)	Always from: • legal or de facto widow(er) who remarries after attaining age 60. • mother/father when annuity is not terminated by remarriage.
Proof of termination of subsequent marriage(s)	Always from mother/father when entitlement or re-entitlement is based on termination of marriage.
SS number for mother/father	Always. Request development for and child(ren) all annuitants, unless they live outside the U.S.
Proof of employee's age	In “A” cases POA is required only if the employee's DOB has not been previously verified Effective 03-01-2004 POA of deceased employee is required in all “D” cases when a survivor recurring application is filed.
Proof of child's legal adoption	Only when mother/father will qualify on that basis.
Proof of child’s disability	When mother/father claims child l6 or over is disabled.
Proof of termination of prior marriage	Only when there is reasonable doubt whether prior marriage of employee or widow(er) was ended and the mother/ father cannot qualify as a de facto widow(er).
Proof of military service	Only when the employee's M/S after 1936 would be creditable either under the Railroad Retirement Act or under the Social Security Act.

Application for substitution of payee (Form AA-5)	Required when a person is newly selected as representative payee for the mother/father and child(ren).
Proof of living-with	Only if mother/father will qualify as a de facto widow(er). The widow(er)'s statement on the application will usually be sufficient to establish living-with.
Check list (Form G-659a)	Always. Forward original to SBD; retain copy for field office file.

415.20.2 Developing from a Mother/Father Who Has Remarried

Certain mothers/fathers can continue to receive an annuity after remarriage. The following mothers/fathers can receive an annuity after remarriage:

Legal or de facto widow(er)s who remarry after age 60.

Widow(er)s, including surviving divorced spouses, receiving a WCIA who marry individuals entitled to RR or SS benefits.

Beginning 1-1-84, a surviving divorced spouse annuitant who remarries after age 60, or a disabled widow(er) or disabled surviving divorced spouse annuitant who remarries after age 50.

Mothers/fathers, including remarried or surviving divorced mothers/fathers, whose marriages have terminated.

A. Development when mother/father is in receipt of an annuity at time of remarriage - The field office should notify SURVIVOR BENEFITS promptly of the mother's/father's remarriage including the date of the remarriage and develop as follows:

1. If WCIA entitlement will terminate (mother/father under age 60 or new spouse not receiving RR or SS benefits) advise mother/ father that (s)he no longer qualifies for an annuity and must return any annuity payment (s)he receives for herself/himself after the date of remarriage. Further advise the mother/father that (s)he cannot again qualify for an annuity unless the marriage terminates. Notify SURVIVOR BENEFITS by memo of date of marriage and that the mother/father can no longer qualify for WCIA. HQ will then adjust other family members as necessary.

2. If WCIA entitlement can continue (widow(er) marries after age 60 or marries an RR or SS beneficiary, or a surviving divorced spouse marries 1-1-84 or later,) develop as follows:

Secure proof of remarriage.

Secure new spouse SS number if it appears entitlement on the account is possible.

Secure the SS number and type of benefit spouse receives from the RRB or Social Security Administration when mother's/father's eligibility s based on spouse entitlement to benefits.

Forward all information to SURVIVOR BENEFITS using Form G-115a as the transmittal.

Advise a legal or de facto widow(er) that she should return any annuity payment (s)he receives for herself after her marriage because an adjustment is required in the annuity rate since she is no longer eligible for a tier II or vested dual benefit amount.

A mother/father who is receiving only a tier I amount before remarriage need not be advised to return payments since there will not necessarily be a change in her annuity rate until or unless (s)he receives a benefit or annuity based on her new spouse's earnings record.

B. Development when mother/father not receiving an annuity when remarriage occurs - Secure information from widow(er) to determine whether (s)he can qualify for an annuity. Basically, only the following mothers/ fathers who remarry can qualify for an initial annuity:

Legal or de facto widow(er)s who remarry after attaining age 60; or

Widow(er)s, including surviving divorced spouses, whose marriage(s) since their marriage to the deceased employee have been terminated.

1. If mother/father cannot qualify for an annuity (widow remarried before age 60, or marriage has not terminated), advise mother/ father of eligibility requirements and why (s)he does not meet requirements. Further advise mother/father that (s)he cannot qualify for an annuity unless the marriage terminates. Do not develop an application.

2. If it appears mother/father can now qualify for an annuity, develop the following information and evidence:

Application (Form AA-18).

Proof of the widow(er)'s age if widow(er) claims (s)he remarried after age 60.

Proof of remarriage(s).

Proof of termination of marriage(s) if such termination is the basis for eligibility.

Public service pension information if indicated by the response on the Form AA-18.

Submit all the above information to SURVIVOR BENEFITS via Form G-659a.

415.20.3 Developing from a Mother/Father Whose Entitlement Is Based on a Child Age 16-18

A. Legal or de facto widow(er) - Develop a Form AA-18 and proofs in initial cases as usual even if it appears mother's/father's annuity rate may be zero. The application protects the widow(er)'s prescribed period should disability later become a factor. If the widow(er) does not file a Form AA-18, the prescribed period would end 7 years after the employee's death. However, if the widow(er) does file a Form AA-18, the prescribed period may extend to 7 years after the child attains age 18. Further, if it appears the child age 16-18 is disabled and the mother's/father's eligibility for an annuity is dependent on the child being rated disabled, develop immediately for child's disability including a Form AA-19a and medical evidence. Additional development will not generally be required when the child attains age 18 if he is rated disabled between age 16-18.

If the widow(er) was receiving a widow(er)'s current insurance annuity and her rate was reduced to zero, the tier II rate, or the spouse minimum rate when the youngest child attained age 16, and she claims to have a disabled child in her care, develop a Form AA-19a and medical evidence. A Form AA-18 is not required as long as there is no break in entitlement. If the widow(er) claims that she is disabled, she must submit Form AA-17b and proof of her disability (see FOM-I-410.30.1). A Form AA-17 is not required as long as there is no break in entitlement.

B. Remarried or surviving divorced mother/father - A remarried or surviving divorced mother/father may not qualify for an annuity based on a minor child age 16-18 unless the child is disabled. Consequently, only develop a Form AA-18 in initial cases if it appears the child is disabled. Also, if eligibility of the remarried or surviving divorced mother/father depends on the child's disability, develop a Form AA-19a and medical evidence as you would for a disabled child's annuity. Additional development will not generally be required when the child attains age 18 if he is rated disabled between age 16-18.

If a remarried or surviving divorced mother's/father's annuity ended when the youngest child attained age 16, and she claims to have a disabled child in her care, develop a Form AA-19a and medical evidence. A Form AA-18 is not required as long as there is no break in entitlement. If the remarried mother/father claims that she is disabled, she must submit Form AA-17b and proof of her disability (see FOM-I-410.30.1). A Form AA-17 is not required as long as there is no break in entitlement.

415.20.4 Developing as a Result of Form RL-175 When Last Child Attains Age 16

When the last child on the rolls is within 4 months of attaining age 16, a computer-printed letter, Form Letter RL-175, is automatically released if the mother/ father

beneficiary is under age 60. This letter notifies the payee that mother's/father's benefits will be adjusted or end when the child attains age 16.

The letter also explains that:

The child's annuity will continue until the child attains age l8.

Full mother's/father's benefits can continue if the payee has in her care an unmarried disabled child under age 22 or a child who became disabled before age 22.

The payee can receive a disability annuity if she is at least age 50 and disabled for all work.

If the payee claims that she has a disabled child in her care, she must submit Form AA-19a and proof of the child's disability (see FOM-I-415.20.3). If the payee claims that she is disabled, she must submit Form AA-17b and proof of her disability (see FOM-I-410.30.1).

415.25 Annuity Beginning Date

The beginning date of a young mother's/father's annuity (WCIA) is explained in FOM-I-111.20. FOM-I-111.51 and FOM-I-112.9.3.

415.30 Annuity Conversions

415.30.1 Conversion of Spouse Annuity to a Widow(er)'s Current Insurance Annuity

To prevent interruption in benefits, the widow(er) of an employee who died completely insured for survivor benefits under the 1974 Act (see FOM-I-230.15) is deemed to have filed an application for a WCIA. The widow(er) will continue to receive the spouse annuity until the WCIA is awarded, unless evidence in file creates doubt as to the eligibility for an annuity. If an application is not filed within 6 months after the employee's death, the spouse annuity will be suspended. Examiners will request that the field office investigate why the widow(er) has not filed.

If the widow(er) meets all requirements for entitlement to and receipt of a WCIA, other than the filing of an application, the spouse payments made before filing an application are not erroneous. This rule applies regardless of the reason for failure to file (i.e., whether (s)he died or merely neglected to file) and, if (s)he died, regardless of the date (s)he died. Spouse annuity payments made after the employee's death are deducted from the WCIA accrual. If the widow(er) died before filing an application, the WCIA accrual less any spouse annuities paid after the employee's death represent survivor annuities due but unpaid at death. Refer to FOM-I, Article 6, for information regarding annuities due but unpaid at death.

If the widow(er) is not eligible for a WCIA, the spouse annuity is terminated and any overpayment recovered.

415.30.2 Conversion of Disabled Widow(er)'s Insurance Annuity (DWIA) to a Widow(er)'s Current Insurance Annuity (WCIA)

If a widow(er) is currently receiving a DWIA, and later qualifies for a WCIA, the DWIA is converted to a WCIA. A Form AA-l8 is required when converting a DWIA to a WCIA only when the widow(er) never previously qualified for a WCIA. It is usually to a widow(er)'s advantage to be paid a WCIA instead of a DWIA. As long as the widow(er) has an entitled child in care, and is under age 65, (s)he may receive a WCIA. When the widow(er) attains age 65, or ceases to have care and custody of an entitled child, the annuity may be converted back to a DWIA if the widow(er) is under age 60 and is still disabled. If the widow(er) is age 60 or older when WCIA entitlement ends the annuity will change to a WIA; but the age reduction in tier I will be based on the widow(er)'s first eligibility for a DWIA. The widow(er)'s annuity will be adjusted at age 62 and/or 65 to remove the age reduction for months (s)he was entitled to a WCIA.

EXCEPTION: A surviving divorced spouse may continue to be paid a DWIA when the family maximum is involved since a DWIA for a surviving divorced spouse is not considered in the family maximum, but a WCIA is considered in the maximum.

415.35 Widow(er) Age 60-65 When Entitlement To WCIA Begins

A widow(er), age 60-65 with a minor or disabled child in care, can be paid either as a young mother/father (75% share of the PIA or family maximum) or as a widow(er) (100% share of the PIA or family maximum).

It is the RRB's policy to pay the annuitant the most advantageous rate when initially awarding benefits. At times it is not readily apparent which rate would be most advantageous. When this occurs, the widow(er) will be given the option of receiving either annuity.

415.35.1 Initial Development Action

When a widow(er) age 60-65 with entitled children in care contacts a field office regarding benefits, take action as follows:

A. Develop a Form AA-18 from the mother/father as an application for benefits for herself and for the entitled child(ren). Also develop a Form AA-l9a on behalf of any disabled child.

   EXCEPTION: If a widow(er) in a family group consisting of more than one child (minor, disabled, or student) is working and expects to have excess earnings, it may be advantageous to file an application(s) only for the children. When a family member who is entitled to an annuity has excess earnings, his share of the maximum is not payable and is not redistributed among other family members. If mother/father does not wish to file for an annuity because of earnings, secure a Form AA-19 and advise in remarks section of application that mother/father is not filing for benefits on own behalf because of earnings. Further advise that

mother/father is aware that a new application must be filed should (s)he ever wish to be included in the family group.

B. When a mother/father and two or more children will be entitled to benefits:

Tell widow(er) that (s)he will probably be paid an annuity as a mother/father because three beneficiaries generally cause maximum benefits to be paid; and

EXCEPTION: A surviving divorced spouse will probably be paid a WIA because then his/her share will not be included in the family maximum.

Advise widow(er) to contact the field office when only one minor or disabled child remains entitled so that (s)he can be furnished family rates payable if (s)he is paid a WIA. If widow(er) does not contact the RRB for information, (s)he will be converted to a WIA on the earlier of the following:

Month entitlement to WCIA ends; or

Month mother/father attains age 65.

C. When mother/father and one child will be entitled to benefits advise as follows:

Tell widow(er) that Headquarters will determine the most advantageous rate to pay. If the advantage is not apparent, the widow(er) will be paid as a mother/father and in the award letter will be furnished the WIA rates so (s)he can choose if (s)he wishes to be paid a WIA.

D. Write in the remarks section of the Form AA-18 and/or Form G-659a that widow(er) wishes to be advised if any advantage could be gained by widow(er) being paid a WIA instead of a WCIA.

415.35.2 BRC Processing

SBD will process and pay cases involving a widow(er) age 60-65 with entitled children in care as follows:

A. SBD will pay widow(er), except a surviving divorced spouse, a WCIA whenever the family maximum applies.

The widow(er) will not be advised of the WIA rate in these instances since it is clearly to the widow(er)'s and family's advantage for the widow(er) to be paid as a mother/father.

B. SBD will pay widow(er) a WIA whenever the situations in A above do not exist, and

A surviving divorced spouse is eligible for a WCIA or a WIA and the family maximum is involved; or

The WCIA will terminate before the widow(er) attains age 65; or

The WIA is restricted because the employee was awarded an age reduced annuity under the RRA; or

The widow(er) will be 65 within 12 months of the annuity beginning date.

When SBD pays the widow(er) a WIA in these cases, a memo is released to the servicing field office advising the advantage of the widow(er) being paid the WIA rate, and asking that a statement be secured from the widow(er) requesting to receive the reduced age rate. The Mod controls the file after paying the WIA rate for receipt of the widow(er)'s statement.

C. Whenever the situations listed in A. and B. above do not exist, Headquarters will pay the widow(er) a WCIA and furnish the widow(er) with the following information:

The WIA rate she could currently receive; and

The WIA rate she will receive if she waits until age 65 or when her WCIA entitlement ends.

The widow(er) can then elect to receive the WIA rate by submitting a statement over her signature asking to be paid the reduced age annuity. Otherwise, the widow(er) will continue to be paid a WCIA until the earlier of the month (s)he attains age 65 or the first month (s)he ceases to have an entitled child in care.

415.40 Work Restrictions

415.40.1 Restricted Employment

A WCIA is not payable for any month the mother/father works for an RR employer. There are no last person service prohibitions for survivor annuities.

415.40.2 Earnings Restrictions

The entire annuity of a mother/father entitled to a WCIA is subject to a deduction of $1 for every $2 by which his/her earnings in a calendar year exceed the exempt amount. Refer to FOM-I, Article 11 for more detailed information regarding work deductions.

415.45 Widow(er) Also Entitled To Other Railroad Retirement Act Annuity

415.45.1 Entitled to Railroad Retirement Act Retirement Annuity

An unremarried legal or de facto widow(er) may receive both a WCIA and a retirement annuity under the Railroad Retirement Act, but the tier I of the WCIA must be reduced by:

a. The net tier I of the RR retirement annuity if the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or the case is reopened 10-1-88 or later.

b. The tier I amount after any social security reduction but before age reduction of any RR retirement annuity the WCIA is entitled to through 9-30-88, and the net tier I of any RR retirement annuity the WCIA is entitled to 10-1-88 and later, if the reduction for the employee tier I is first applied on an award vouchered prior to 10-1-88.

In many cases an employee restored amount may be payable. A widow who is entitled to a WCIA is eligible for an employee restored amount computation if:

The widow is the unremarried legal or de facto widow of the deceased employee; and

The widow is entitled to an employee annuity; and

Either the widow or the deceased employee completed 10 years of RR service before 1-1-75.

The employee restored amount is not payable if both the widow and the deceased employee started railroad service after 1974. In addition, the full amount of the survivor annuity is reduced by the full amount of the employee annuity.

A young widower, remarried widow(er) or surviving divorced spouse is not eligible for an employee restored amount computation.

415.45.2 Entitled to Railroad Retirement Act Spouse Annuity And/Or Other Survivor Annuity

A widow(er) may not receive more than one survivor annuity, or both a survivor and spouse annuity; normally (s)he will receive only the higher annuity. A widow(er) may elect to receive benefits on the record that results in a LOWER monthly annuity rate. For example, it may be to a widow(er)'s advantage to elect to receive the lesser annuity so that other entitled beneficiaries can receive higher benefits. When it does not appear to be to a widow(er)'s advantage to receive the smaller annuity, the higher annuity is paid and the current lower annuity is terminated. The examiner will initiate development when it may be advantageous for a widow(er) to elect the lower annuity.

A. Election of lesser annuity - The election to receive a smaller annuity is revocable and may be made on a month-by-month basis, but it can never be retroactive. A signed statement by the applicant is sufficient proof of election. This differs from an election to receive an RLS, which is an irrevocable election.

When it appears that it would be to the widow(er)'s advantage to receive the lesser annuity, the examiner will release a memo to the field office with the facts in the case and request that the office contact the annuitant. If the widow(er)

wants the smaller annuity, secure a signed statement that establishes that the widow(er) is aware that (s)he is electing the smaller benefit.

B. Revocation of election - If the widow(er) later wishes to receive the higher annuity, (s)he may withdraw the election by signing a statement requesting to be paid the higher annuity.

C. LSDP entitlement - An LSDP is not payable on the account that the annuity is not paid on because there is eligibility to a monthly benefit, whether or not it is paid.

415.50 When Entitlement Ends

A WCIA ends with the month before the month in which any of the following events occur:

The mother/father dies;

The mother/father remarries;

EXCEPTION: If a mother/father marries an individual entitled to retirement, disability or survivor benefits under the Railroad Retirement Act or the Social Security Act, her WCIA may continue. Refer to FOM-I-415.20.2 for information on development required when a mother/father remarries.

The mother/father attains age 65;

The mother/father elects to receive a parent's insurance annuity;

The mother/father ceases to have any qualifying minor or disabled children of the deceased employee in care. The entitlement of a legal or de facto widow(er) continues until a minor child attains age 18 even if the annuity rate is zero. The entitlement of a remarried widow(er) or a surviving divorced spouse based on a minor child ends when the child attains age 16;

NOTE: If a WCIA is being paid on the basis of having care of a disabled child, and the child recovers from disability, the WCIA is paid for 2 months after the month in which the child recovers.

The remarried mother/father or surviving divorced mother/father is entitled to an RIB which equals or exceeds 75% of the deceased employee's PIA.

415.55 Vested Dual Benefit Entitlement

Vested dual benefit (VDB) entitlement for a widow entitled to a WCIA is based on the same criteria as a widow(er) entitled to a WIA. Refer to FOM-I-405.75 for detailed information.

NOTE: A widower entitled to a WCIA is not eligible for a VDB because he could not qualify for benefits on 12-31-74.

415.60 When Entitlement To A Vested Dual Benefit Ends

The terminating events for vested dual benefit (VDB) entitlement applicable to aged widow(er)s as described in FOM-I-405.80 also apply to widows entitled to a WCIA. In addition, VDB entitlement ends when entitlement to the WCIA ends.

This chapter contains general eligibility information for a child's insurance annuity (minor, disabled, or student) and more specific information on minor and disabled children. An in-depth discussion of student annuities is contained in FOM-I, Article 5.

420.5 Child Defined

To qualify for a CIA, a child must be able to establish one of the following relationships to the deceased employee. Information regarding what proofs are required to establish relationship can be found in FOM-I, Article 9.

A. Natural legitimate child - This category includes children:

1. Of a ceremonial marriage; or

2. Of a voidable marriage; or

3. Of a void marriage in some states; or

4. Legitimate under state law.

B. Illegitimate child - who has rights under state law for inheriting the employee's intestate personal property; or

C. Stepchild - if the employee and the child's other parent were married at the time of the employee's death, and the marriage occurred at least 9 months before the employee's death (a 9-month marriage requirement is deemed if employee's death was accidental or occurred while in military service); or

Effective July 1, 1996, a stepchild can only qualify for a CIA if the employee was contributing at least one-half of the child's support. Prior to July 1, 1996 a stepchild could qualify as dependent if the child was living-with the employee at the time of the employee's death. The "living-with" requirement is no longer an option to meeting the dependency requirement.

D. Legally adopted child or a child legally adopted by the employee's surviving spouse - Effective 1-1-91 (for applications filed after 12-31-90), deem a child to be the legally adopted child of the employee at death if the child was living with the employee at the time of the employee's death or such child received one-half support from the employee in the year prior to his death, and either:

1. The adoption was completed within 2 years of the employee's death or 8-29-60, whichever is later, or

2. The adoption was completed at any time after the employee's death if the adoption proceedings were started by the employee before death. (This rule only applies for months after January 1968.)

Prior to 1-1-91, the following requirements applied: living-with the employee at the time of the employee's death, and the child must not have been receiving substantial contributions towards support from a public or private welfare agency which furnishes services or assistance to children, or anyone other than the employee or spouse.

NOTE: In a case in which an LSDP was paid and a child is later adopted by the widow(er) and qualifies under this section, the LSDP must be recovered. The child's eligibility is considered to be retroactive to the month of the employee's death, even though payment of the annuity may not be retroactive to that month, i.e., CIA application is filed more than 6 months after the employee's death. However, a deferred LSDP may be payable if the annuities payable in the 12-month period after the employee's death do not equal 10 times the basic amount.

E. Equitably adopted child - Most states may grant inheritance rights to a child who is the subject of an agreement to adopt and who has performed as a child for such a length of time that failure to allow him to inherit as if he were legally adopted would be an injustice. If a child could be considered equitably adopted under state law he may qualify as a child under the Railroad Retirement Act. Refer to FOM-I, Article 9 for additional information on equitable adoption.

F. Deemed child - A deemed child is one who would not be considered a child under state law but who may be considered a child of the employee under the Railroad Retirement Act.

If the facts indicate that a child is the son or daughter of the employee (i.e., employee acknowledged child in writing, employee was decreed by a court to be the child's parent, employee's relatives knew employee acknowledged child to be his son or daughter), but state law would not recognize child's status (i.e., if state law requires that parents intermarry and the employee did not marry the child's mother), the child may be deemed to be the employee's child for the purpose of paying railroad retirement benefits. A child or stepchild of a de facto (deemed) marriage relationship may also be considered a deemed child. Refer to FOM-I, Article 9, Proofs, for detailed information about how to establish relationship for a deemed child.

G. Grandchild or step grandchild - Effective 1-1-73, a grandchild or step grandchild of a deceased employee is deemed to be the employee's child for purposes of receiving a CIA if:

1. The child's natural or adoptive parents were either deceased or disabled when the employee retired, died or became disabled; or

2. The child was legally adopted by the employee's surviving spouse and the child's natural, adopting or stepparent was not living in the employee's household and making regular contributions to the child's support at the

time of the employee's death. For further information regarding the relationship requirements for a grandchild, refer to Article 9.

In addition, a grandchild or step grandchild must meet special dependency requirements. Dependency can be established if the grandchild was living with and receiving one-half support from the employee when the employee retired, died or became disabled. (See Article 9 for detailed instructions regarding the establishment of dependency of a grandchild.)

NOTE: A grandchild does not have to meet the above requirements to qualify for an RLS or accrued annuity due but unpaid at death.

420.10 Eligibility And Entitlement

In addition to being the child of a deceased employee who died completely insured for survivor benefits under the 1974 Act (see FOM-I-230.15), the following requirements must be met:

420.10.1 Age

The child must be:

1. under age 18; or

2. disabled before age 22; or

3. a full-time student age 18-19.

420.10.2 Marital Status

The child must be unmarried at the time of filing an application for initial entitlement. Initial entitlement refers to the child's first eligibility to any type of CIA. A child who is widowed or divorced at the time of filing an application for initial entitlement is considered unmarried.

If the child annuitant marries subsequent to being awarded an initial CIA, all current and future entitlement to a CIA is terminated, even if the child annuitant is later widowed or divorced. The end of the marriage that caused the loss of entitlement will not reestablish entitlement (One exception can be if the marriage that terminates entitlement is annulled. Refer to FOM 405.10.3 for handling.).

EXAMPLE: An insured employee dies while a child is under age 18 and unmarried. The child's initial entitlement to a CIA is as a minor child beginning with the month of the employee's death. The CIA terminates when the child attains age 18 because he is not a full-time student or disabled. The child marries after attaining age 18 and is divorced before attaining age 22. The child cannot qualify for a CIA (based on disability or as a full-time student) because of his marriage after his initial entitlement to a CIA (as a minor child).

420.10.3 Dependency

Dependency must be established at the time of the employee's death unless the employee had a period of disability (DF) that continued until he met the conditions for entitlement to an RIB or DIB or until his death. If the employee had such a disability freeze, the dependency requirements can be met at any of the following points:

- At the beginning of the period of disability (DF), or
- at the time the employee became entitled to an DIB, or
- at the time the employee became entitled to an RIB.

In cases where there would otherwise be no break in entitlement, a dependency determination made for retirement spouse eligibility, O/M determinations, or Medicare entitlement should carry forward after the employee's death. For example, if a child was determined to be dependent on the employee for purposes of qualifying the employee's spouse for an annuity, and the annuity continued until the employee died, a new dependency determination would not have to be made to qualify the widow for a widow's current insurance annuity or the child for a child's insurance annuity.

If there has been a break in entitlement, the dependency requirement must be met even if the child was previously determined to be dependent upon the employee for the purpose of increasing the employee's O/M, Medicare entitlement, or qualifying a spouse for an annuity. For example, if a child was previously determined to be dependent on the employee for O/M purposes, and the employee later lost entitlement to his annuity, a new dependency determination would have to be made after the employee's death.

The following chart shows when a child can be deemed dependent and when dependency must be proven. Refer to FOM-I, Article 9, for information regarding what evidence is needed to establish dependency when it cannot be deemed.

Natural Legitimate, Legitimated, or Illegitimate Child with Inheritance Rights: Deemed.

Exception: If child was adopted by someone else before the employee's death, employee must have been living with or contributing to the child's support at the time of death.

Legally Adopted Child: Deemed.

Exceptions: If child adopted by someone else during the employee's lifetime or adopted by the employee's widow(er), employee must have been living with or contributing to the child's support at the time of death.

Equitably Adopted Child: Established if the employee was living with or contributing to the child's support at the time of death.

Stepchild Prior to 7-1-96: Established if the employee was living with or contributing one-half of the child's support at the time of death.

Stepchild Effective 7-1-96: Effective July 1, 1996, "living-with is no longer an option for meeting dependency. Dependency can only be established by one-half support.

Grandchild (including step grandchildren): Established if the grandchild was living-with and receiving one-half support from the employee during the year before the employee became disabled, retired with a DF, or died.

420.10.4 Application

An application and proofs must be filed by, or on behalf of, a child. Refer to FOM-I-420.20 for additional information regarding what application and proofs are required.

NOTE: An application filed by, or on behalf of, a minor child protects the child's rights to benefits as a disabled or student child when (s)he attains age 18.

If a child is disabled before age 18, he need submit only an informational supplement (Form AA-19a) to his original application and furnish the RRB with evidence of disability in order to receive benefits.

If payments ended the month before the month the child attained age 18, and the child later establishes he was disabled before attaining age 18, annuity payments can be reinstated effective with the month the child attained age 18.

420.10.5 Disability

A child age 18 or older must be unable to engage in any regular employment because of a disability that began before age 22. Sufficient evidence to support the disability must be submitted before a disabled child's annuity can be awarded.

420.10.6 Adoption

Effective 1-1-73, a child's annuity will not be terminated if he is adopted. Prior to that date, a child's annuity was terminated if he was adopted by someone other than the deceased employee's widow(er) or a close relative. If a child is adopted before annuity eligibility exists, the child must have been living with or receiving contributions from the employee at the time of death.

420.10.7 RLS Previously Paid

A. RLS paid without an annuity waiver (Form G-126a) being filed - Payment of the RLS may have been made if a child was previously ineligible for a CIA, i.e., grandchild, child disabled before age 22 but after attaining age l8. A child may qualify for an annuity now, even though the RLS was paid, if under the law in effect at the time the RLS was paid no one could qualify for an annuity. If the child received all or any portion of the RLS, the amount paid to the child must be

recovered from the annuity payments due him. If the RLS was paid to someone other than the child now filing for an annuity, no recovery of the RLS would be made.

B. RLS paid because child filed a waiver of annuity (Form G-126a) - Prior to July 13, 1979 a child between the ages of 18 and 22 could file a Form G-126a waiving his rights to future entitlement to benefits under the RRA to allow the RLS to be paid to him or to a widow(er). A Form G-126a waiver cannot be revoked; therefore, a child cannot qualify for an annuity if he previously filed a Form G-126a.

420.15 Amount Of A Child's Insurance Annuity

This section contains basic information about the components of a child's insurance annuity. For detailed information refer to Article 10, Computations.

A. Tier I - Each child (minor, disabled or student) is entitled to a tier I component equal to the lesser of:

- 75% of the employee's PIA based on wages and compensation; or
- 75% share of the maximum family benefits.

NOTE: Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense and is confined in an institution at public expense for more than 30 continuous days or is one of the categories of individuals as defined in FOM1 150. See FOM1 150 for additional instructions on handling criminal activity cases.

A child's tier I is subject to reduction for entitlement to any SS benefits but a child is not eligible for a vested dual benefit.

B. Tier II - is equal to 30% of the child's tier I amount before reduction for SS entitlement when the child's annuity is awarded before 10-1-86 and the employee died or retired before 10-1-81. In all other cases, the child's tier II is equal to 15% of the employee annuity tier II amount computed as of the child's insurance annuity beginning date.

EXCEPTION: In cases where the CIA tier II is based on the employee's tier II, there is a tier II family minimum and maximum. The minimum tier II is 35% of the employee's tier II. Consequently, if a child is the only survivor entitled to tier II amount, the tier II is 35% of the employee's tier II. When two children are the only persons entitled to tier II amount, each child receives a tier II equal to 17 1/2% of the employee's tier II.

C. Vested dual benefit - A child is not eligible for a vested dual benefit.

420.20 Evidence And Development

420.20.1 Evidence Requirements

Evidence	When Required
Application for Child's Annuity with Certification Page.	Always. This includes student cases with initial entitlement at age 18-19.
Application for Determination of Child Disability (Form AA-19a)	If filing for benefits for a disabled child. If AA-19a contains information about child's employment, additional information may be needed concerning that employment. On occasion, DBD may request that additional information be supplied on a G-251. Do not develop for G-251 unless specifically requested to do so.
Medical Evidence	If child claims to be disabled.
Proof of child's age	Always.
Proof of employee's death	Always.
Proof of relationship of child to employee	Always.
Proof of child's dependency on employee	Always
Proof of Termination of Marriage	When filing for initial entitlement and child was previously married but is unmarried at the time of application.
Proof of employee's age	In "A" cases POA is required only if the employee's DOB has not been previously verified Effective 03-01-2004 POA of deceased employee is required in all "D" cases when a survivor recurring application is filed.
SS number of child	Always. Request development unless the child resides outside the U.S.

Amount of SS benefits	If child is entitled or may be entitled to SS benefits based on the wages of a person other than the deceased employee.
Application for substitution of payee (Form AA-5)	Required when a person other than a parent, stepparent, or adoptive parent files an application on behalf of a minor child, or if a widow(er) applies for a disabled child who is a resident of a mental health facility.
Proof of military service	If employee's M/S after 1936 would be creditable under either the Railroad Retirement Act or the Social Security Act.
Employee's Wage and Compensation Record	Always
Form G-626	Always when transmitting summary/certification with other attachments to headquarters. For routing instructions, see FOM1 110.100.

420.20.2 Development Requirements

A. Protecting interests of children - Every effort should be made to protect the interests of each child eligible for benefits. When developing a claim on behalf of a child, do not abandon until all efforts to secure an application and required evidence have been exhausted. Neglect or lack of interest by a prospective payee in filing or furnishing evidence should not deprive a child of his rights to benefits.

If the person assuming responsibility for the child refuses to file an application or furnish necessary evidence, advise that person fully of the child's rights to these benefits and that any delay in filing may cause the child to lose part of the benefits he may be entitled to. Impress upon the person the fact that these benefits are a matter of right and not relief or charity. If the person persists in his refusal and will not agree to have another person file for the child, refer the case to survivor benefits with a full explanation of all attempts made to secure an application.

B. Development as a result of RL-175 - When a child on the rolls is within 4 months of attaining age 18, a computer-printed letter, Form Letter RL-175, is automatically released. This letter notifies the payee that benefits will terminate when the child attains age 18, but may continue after age 18 if the child is either disabled or a full-time student.

A child on the rolls may file an application for benefits as a student (Form AA-19s) or as a disabled child (Form AA-19a) anytime after receipt of the RL-175 letter. The 3-month advance filing limit does not apply in these cases since continuous entitlement is involved.

When a beneficiary contacts the field office as a result of receiving a Form Letter RL-175, develop as follows:

1. If the child who is attaining age 18 is disabled, secure a Form AA-19a and develop necessary medical evidence and supporting documentation.

2. If the child who is attaining age 18 can qualify as a full-time student, secure a Form G-315.

   NOTE: If there will be a delay in securing medical evidence for an alleged disabled child who is under age 22 and attending school full-time, develop the child's eligibility as an FTS so that benefits may continue without interruption.

420.25 Disabled Children

A child age 18 or older may be eligible for a child's insurance annuity if (s)he is unable to engage in any regular employment because of a disability that began before (s)he attained age 22. DSUBD will release an RL-121f (Disability Allowance Notice) in all initial disability allowances. Please see DCM 11 RL-121f Disability Allowance Notice for additional information about this letter.

A child under age 18 is not paid an annuity based on disability.

A determination of the alleged disability of a minor child is not required until the child attains age 18. However, when an alleged disabled minor child is on the rolls, development action is started 4 months before the child attains age 18 in order to avoid interruption of benefits. There is no advantage to developing medical evidence earlier because disability Medicare is not available for the disabled child until (s)he is entitled to a disability annuity for at least 24 months, and a disabled child's annuity is not payable before a child attains age 18. Furthermore, if medical evidence is developed too far in advance of when the child attains age 18, additional medical evidence may be required later to verify that the child's condition has not improved.

A disabled child's annuity is payable for as long as the RRB finds that the disability continues.

NOTE: In order to qualify for Medicare and for SSEB tax status, the impairment must meet SSA’s criteria. While a survivor may become entitled to a disability annuity under the Railroad Retirement Act based solely on drug or alcohol addiction, such cases do not meet SSA’s criteria. Therefore, in such cases, if the application was filed January 1,

2008 or later, the child would not be entitled to early Medicare or SSEB status. For a more detailed explanation, see DCM 4.8.4.

420.25.1 Filing Application

A field office should encourage that a disabled child, and/or a widow(er) or other person having care and custody of the child come into the field office or the itinerant point to file an application.

When a personal contact is not possible, the application forms may be sent to the appropriate person for completion. A Form Letter RL-56 series can be adjusted for use in mailing applications to applicants for completion.

A. Disabled child capable of handling own funds - When it appears that a disabled child is capable of handling his own annuity payments, regardless of whether a legal representative has been appointed for him, develop with the disabled child directly.

   If the child is unable to come into the office or itinerant point, send him the necessary forms to be completed. Instruct the child to complete the forms, sign them and then return them to the field office.

B. Disabled child is mentally capable of managing benefits but is physically incapacitated - Develop from disabled child directly. Explain to child that his(her) hand may be guided in writing his(her) signature. Also, if the disabled child is unable to sign his/her name, explain that (s)he may sign application forms and/or checks by mark. Explain that a signature by mark must be witnessed by two persons who must sign their names and addresses. Direct deposit should also be suggested when the disabled child is physically incapacitated. If a disabled child who is competent but is physically incapacitated prefers to have a representative payee, a representative payee may be appointed.

C. Disabled child is not capable (mentally) of handling own funds - Develop an application from the widow(er), legal representative or other person having care and custody of the disabled child when the child cannot manage benefits in his own behalf. Refer to FOM-I, Article 14, for detailed information about development for and selection of a representative payee. Application forms may be sent to a person wishing to file for benefits on behalf of a disabled child. Advise persons wishing to file for benefits on behalf of a disabled child that survivor benefits reserves the right to decide whether a disabled child is competent or incompetent and the right to select a substitute payee for an incompetent child.

420.25.2 Developing Proof of Disability

A. Child has never filed for disability benefits with the Social Security Administration - Secure applicant source medical evidence. Information on disability development can be found in FOM-I, Article 13.

B. Child previously awarded or denied disability benefit by Social Security Administration - Use Form RR-5 to obtain copies of Social Security Administration background information from the Great Lakes Program Service Center. Also request the applicant to have Form G-250 completed by the personal physician as a record of the current medical condition. If a Form G-250 cannot be secured, inform the disability programs section (DPS). Do not schedule specialized examinations unless requested by DPS.

C. Child previously rated disabled for retirement purposes - When a child was previously rated disabled for disability Medicare, inclusion in the employee's O/M or for the purpose of awarding a spouse annuity under the Railroad Retirement Act, additional medical evidence will not usually be necessary. A modified Form AA-19a is to be submitted. Indicate on the Form G-659a that no medical evidence is being developed because the child was previously rated disabled for retirement purposes. The child will be considered disabled for survivor annuity purposes unless there is evidence in the file that the disability may not have continued to the employee's death or a Continuing Disability Review (CDR) needs to be done. If such evidence exists or a CDR is needed, Headquarters will advise you to develop additional medical evidence. (Refer to DCM 3.10.15 for how the Disability Programs Section handles these cases.)

420.25.3 Employment of Disabled Child

The earnings of a disabled child are not subject to regular work deductions. However, when information is received indicating that the child is or has been employed, and the employment was not previously reconciled with the disability, advice survivor benefits by memo immediately. Any work performed by a disabled child may indicate recovery from disability.

420.25.4 Child Recovers from Disability

When a disability recovery determination is made, the disability annuity is payable for 2 months after the month the disabled child is determined to have recovered. A disabled child, whose annuity is terminated because of recovery from disability, can become re-entitled. See DCM 3.10.10 for re-entitlement requirements. In addition, disability Medicare coverage may continue for 24 months after the disabled child's annuity is terminated, provided the child has not been determined to be fully medically recovered from disability.

420.30 Annuity Beginning Date

The beginning date of a child's annuity (CIA) is explained in FOM-I-111.20. FOM-I-111.51 and FOM-I-112.9.5.

420.35 Child Entitled On The Record Of More Than One Deceased Employee

A child may not receive a CIA on more than one earnings record; normally the child will receive only the higher of the two annuities, but (s)he may elect to receive the lesser of two such annuities. For example, it may be to a child's advantage to elect to receive the lesser annuity because of an RLS that would be payable on the other record if such an election were made. It may also be to a child's advantage to receive the lesser annuity so that other entitled family members can receive higher benefits for themselves.

When it does not appear to be to the child's advantage to receive the smaller annuity, the higher annuity will be paid and the current lower annuity will be terminated.

420.35.1 Election of Lesser Annuity

The election to receive a smaller annuity is revocable and may be made on a month-by-month basis. A signed statement by the child or his representative is sufficient proof of election.

If it appears that it would be to a child's advantage to receive the lesser annuity, a memo is released to the field office giving the facts of the case and requesting a contact with the annuitant. If the child wants the smaller annuity, secure a signed statement that establishes that the child is aware that (s)he is electing the smaller benefit.

If the child elects the smaller annuity in order to receive an RLS on the other account, the statement should include the fact that the election of the smaller annuity is made in order to receive the RLS and that the applicant does not intend to revoke it. A G-126 election form is not needed.

420.35.2 Revocation of Election

If the annuitant later changes his mind and withdraws his election of the smaller annuity, the RLS must be recovered from the larger annuity. No annuity would be payable until the RLS is recovered.

420.35.3 LSDP Entitlement

An LSDP is not payable on the account that the annuity is not paid on because there is eligibility to a monthly benefit, whether or not it is paid.

420.40 Maximum Benefits

When three or more persons are eligible for benefits on the same employee's record, the family maximum will generally limit the benefit amounts payable. In some cases the family maximum is exactly 150% of the employee's death PIA and therefore two children will reach tier I maximum benefits. Because benefits are affected by work and entitlement to SS benefits, in some cases where more than two persons are entitled to benefits on an employee's record it may be advantageous if all eligible persons do not file.

420.40.1 All Eligible Persons Are Members of the Same Family Group

A single family group can be defined as one where all the children reside in the same household or can be presumed (because of family ties) to be concerned for the family's welfare.

The following are guidelines, based on the number of persons entitled to benefits, for determining whether to advise all family members to file and necessary action to be taken by a field office to insure payment of the greatest amount of benefits.

A. Less than three persons eligible for benefits - (One or two children or one child and one widow.) Always develop an application on behalf of all eligible persons.

B. Three persons eligible for benefits - (Two children and a mother/father or three children.) Develop an application on behalf of all beneficiaries unless any of the following conditions exist:

1. One or more eligible persons are entitled to SS benefits; or

2. One or more eligible persons are working and expect to have excess earnings; or

3. One or more eligible persons will work in the RR industry during any period.

When any of the above three conditions exist, develop an application for all eligible persons and notify survivor benefits in the remarks section of the Form G-659a or in a memo attached to the application package, that you have developed from all eligible persons. Ask to be notified if it would be advantageous for certain applicant(s) to withdraw their applications to permit payment of greater benefits.

C. Four or more persons eligible for benefits - Advise person filing for the family that three persons will usually cause payment of maximum benefits. Suggest that the family file only for members who are not:

1. Entitled to SS benefits; or

2. Likely to have excess earnings; or

3. Expected to work in the RR industry.

When there are fewer than three family members who are not working and are not entitled to SS benefits, and information available in the field office is inadequate to determine which family members should file, develop an application on behalf of all eligible persons. Notify survivor benefits in the remarks section of the Form G-659a, or in a memo attached to the application package, that you have developed from all eligible persons. Ask to be notified if it would be advantageous for certain person(s) to withdraw their applications to permit payment of greater benefits.

Note: If a surviving divorced spouse is involved and (s)he qualifies for an annuity based on age or disability, such entitlement will not affect the payments to other family members because her share is not included in the family maximum.

NOTE: If a widow(er) wishes to file on behalf of all eligible persons; even after being advised of the possible disadvantages, develop according to the widow(er)'s wishes. Note in the remarks section of the Form G-659a that the provisions of the act were explained and that the widow(er) still wishes to file on behalf of all eligible persons.

420.40.2 Separate Family Units Involved

When all eligible persons do not reside in the same household or do not have the same guardian, develop from all eligible persons.

420.45 Work Restrictions

420.45.1 Restricted Employment

A child's insurance annuity is not payable for any month a child works for an employer covered by the Railroad Retirement Act, regardless of the amount of earnings.

420.45.2 Earnings Restrictions

Regular survivor earnings restrictions apply to a minor child. Refer to FOM-I, Article 11, Work Deductions, for more specific information.

Work deductions are not applied to a disabled child's insurance annuity, but any work activity by a disabled child is to be reported to Headquarters immediately as it may indicate recovery from disability.

420.50 When Entitlement To A Child's Insurance Annuity Ends

A. A CIA ends with the month before the child:

1. Dies.

2. Marries.

   NOTE: Prior to the 1974 Railroad Retirement Act, under the O/M, a disabled child who married an SS beneficiary, other than a minor child or a student child age 18-22, could have been included in the family group. If a female child married a disabled childhood disability beneficiary or a DIB, her eligibility to be included under the O/M ended the same month her husband's SS benefit ended, except when her husband's benefit terminated because of death or entitlement to an RIB. This provision was not carried into the 1974 Railroad Retirement Act.

3. Attains age 18 unless the child is disabled before age 22 or an FTS.

B. In addition to the above events, the annuity of a disabled child ends with the second month following the month in which the child recovers from disability.

425.5 Parent Defined

In order to qualify for a parent's insurance annuity, a person must be:

A. The employee's natural mother or father entitled to share as a parent in the employee's intestate personal property under the law of the state in which the employee was domiciled at death; or

B. A stepparent of the employee by a marriage entered into before the employee attained age 16; or

C. An adopting parent who legally (not equitably) adopted the employee before (s)he attained age 16.

425.10 Eligibility And Entitlement

425.10.1 General Requirements

In addition to being the parent of a deceased employee who died completely insured for payment of survivor benefits under the 1974 Railroad Retirement Act (see FOM-I-230.15), a parent must meet all the following requirements:

A. Age - The parent must have attained age 60.

B. Remarriage - The parent must not have married after the employee's death except as outlined in FOM-I-425.45.

C. Application - The parent must file an annuity application and proofs as outlined in FOM-I-425.20.

425.10.2 Eligibility for Both a Tier I and a Tier II

To be eligible for a Railroad Retirement Act annuity tier I and tier II, a parent must meet the requirements listed in FOM-I-425.10.1 and all the following requirements:

A. Other survivors - The employee must not be survived by a widow(er), divorced widow or child who could ever qualify for monthly benefits (a posthumous child born alive is deemed to survive the employee).

B. One-half support - The parent must have been receiving one-half support from the employee at the time of the employee's death. Also see FOM-I-945.10.

425.10.3 Eligibility for a Tier I Only

Effective September 1, 1983, a parent can receive a tier I annuity only even though the employee was survived by a widow(er) or child who could qualify for a monthly annuity,

provided the parent meets the conditions in FOM-I-425.10.1 and all the following requirements:

A. Entitlement to RIB - The parent is not entitled to an RIB equal to or exceeding the amount of the parent's tier I before reduction for the family maximum.

B. One-half support - The parent was receiving at least one-half support from the employee at the time of the employee's death or at the beginning of the employee's disability freeze period if it continued until the employee's death. Also, see FOM-I-945.10.

425.15 Amount Of Parent's Insurance Annuity

This section contains basic information about the components of a parents insurance annuity. For additional information refer to Article 10, Computations.

425.15.1 Tier I

When one parent is entitled the tier I is equal to 82 1/2% of the employee's PIA based on wages and compensation (death PIA). Two parents are each entitled to a tier I equal to 75% of the employee's death PIA. A parent's tier I is subject to reduction for entitlement to any SS benefits and any RR retirement annuity as follows:

a. The net tier I of any RR retirement annuity to which the parent is entitled if the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or the case is reopened 10-1-88 or later.

b. The tier I amount before age reduction of any RR retirement annuity the parent is entitled to through 9-30-88, and the net tier I of any RR retirement annuity the parent is entitled to 10-1-88 or later, if the reduction for the employee tier I is first applied on an award vouchered prior to 10-1-88.

In addition, if there are two or more beneficiaries, the parent's tier I is subject to reduction for the SSA family maximum.

425.15.2 Tier II

A parent is eligible for a tier II when the requirements in FOM-I-425.10.2 are met. A parent's tier II is equal to 30% of the parent's tier I amount before reduction for SS benefits when the parent's annuity is awarded before 10-1-86 and the employee died or retired before 10-1-81. Otherwise, the parent's tier II is equal to 35% of the employee annuity tier II amount computed as of the parent's insurance annuity beginning date.

425.20 Forms And Evidence Requirements

Evidence	When Required

Application (Form AA-20)	Always. If two parents claim dependency, each must file an AA-20.
Proof of one-half support of parent (Form G-134)	Always. Develop even when parent files Form AA-20 and indicates (s)he did not receive one-half support from employee.
Proof of parent's age	Always.
Proof of relationship	Always.
Proof of employee's death	Always.
Proof of employee's age	In "A" cases POA is required only if the employee's DOB has not been previously verified Effective 03-01-2004 POA of deceased employee is required in all "D" cases when a survivor recurring application is filed.
Proof of parent's marriage	If claimant is stepparent.
Proof of adoption	If claimant is an adopting parent or is a stepparent through marriage to an adopting parent of the employee.
Application for substitute payee (Form AA-5)	If a representative payee is to be appointed.
Proof of military service	If employee's M/S after 1936 would be credited either as compensation under the Railroad Retirement Act or wages under the Social Security Act.

425.21 Time Limit For Filing Proof Of Support

425.21.1 Parent Eligible for Both a Tier I and a Tier II

There is no time limit for filing proof of support.

425.21.2 Parent Eligible for a Tier I Only

Proof of support must be filed within two years after:

A. The month in which the employee filed an application for a period of disability if support is being established at the beginning of a disability period; or

B. The date of the employee's death if support is being established at that point.

The proof of support must be filed within the appropriate period even though the parent may not be immediately entitled, i.e., he or she has not attained age 60. Therefore, obtain proof of support upon the employee's death if it appears that a parent will meet the other eligibility requirements upon attainment of age 60.

NOTE: It will still be the parent's responsibility to file a timely application for an annuity upon attainment of age 60.

Proof of support which was not filed within the prescribed 2-year period may be filed at any time thereafter, provided there is "good cause" for the applicant's failure to file timely.

"Good cause" for failure to file within the specified period may be found when the parent establishes that such failure was caused by:

A. Circumstances beyond the individual's control; or

B. Incorrect or incomplete information furnished by the RRB; or

C. Unusual or unavoidable circumstances under which the individual could not reasonably be expected to have been aware of the need to file timely.

If you are developing a parent's proof of support outside the specified 2-year period, also develop a statement from the parent regarding the reason(s) for untimely filing proof of support.

425.25 Annuity Beginning Date

The beginning date of a parent's insurance annuity (PIA) is explained in FOM-I-111.20. FOM-I-111.51 and FOM-I-112.9.4.

425.30 Parent Entitled On Record Of More Than One Deceased Employee

When a parent of an insured employee is also entitled to another parent's insurance annuity or a WIA based on the earnings record of another employee, (s)he will normally receive the higher of the two annuities. However, at the parent's election, s(he) may receive benefits on the record that results in a LOWER monthly annuity rate. For example, it may be to a parent's advantage to elect to receive the lesser annuity because of an RLS that would be payable on the other record if such an election were made. When it does not appear to be to the parent's advantage to receive the smaller annuity, the higher annuity will be paid and the current lower annuity will be terminated.

425.30.1 Election of Lesser Annuity

The election to receive a smaller annuity is revocable and may be made on a month-by-month basis. A signed statement by the applicant is sufficient proof of election. This differs from an election to receive an RLS, which is an irrevocable election.

If it appears that it would be to a parent's advantage to receive the lesser annuity, BRC will release a memo to the D/O with the facts of the case and request that the office contact the annuitant. If the parent wants the smaller annuity, secure a signed statement establishing that the parent is aware that (s)he is electing the smaller benefit.

If the parent wishes to elect the smaller annuity in order to receive an RLS on another account, the statement should include the fact that the election of the smaller annuity is made in order to receive the RLS and that the applicant does not intend to revoke it. A Form G-126 election is not needed.

425.30.2 Revocation of Election

If the annuitant later changes his mind and withdraws his election of the smaller annuity, the RLS previously paid on the other account must be recovered from the larger annuity. No annuity would be payable until the RLS is recovered.

425.30.3 LSDP Entitlement

An LSDP is not payable on the account that the annuity is not paid on because there is eligibility to a monthly benefit, whether or not it is paid.

425.35 Work Restrictions

425.35.1 Restricted Employment

A parent's insurance annuity is not payable for any month a parent works for an employer covered by the Railroad Retirement Act, regardless of the amount of earnings.

425.35.2 Earnings Restrictions

The annuity of parent under age 70 (under age 72 prior to 1-1983) is subject to the regular survivor earnings restrictions. In general, $1 of annuity is deducted for every $2 in earnings the parent has over the annual exempt amount. Refer to Article 11, Work Deductions, for more specific information.

425.40 When Entitlement To A Parent's Insurance Annuity Ends

A parent's insurance annuity ends with the month before the month in which the parent:

- Dies, or

- Remarries, except if marriage is to an individual with certain entitlement under the RRA or SSA (see FOM-I-425.45); or

- Becomes entitled to another insurance annuity under the railroad Retirement Act which exceeds the current parent's insurance annuity; or

- Becomes entitled to an RIB which equals or exceeds the amount of the parent's tier I before reduction for the family maximum, if the parent is entitled to a tier I annuity only.

425.45 Effect Of Marriage On Parent's Annuity

425.45.1 Marriage Before Entitlement to a Parent's Annuity

There is no future entitlement to a parent's annuity if a parent marries after the employee's death but before (s)he becomes entitled to a parent's annuity.

A parent who marries after the employee's death may, however, be entitled to a parent's annuity for some months before the marriage took place. The number of months the annuity would be payable depends on when the marriage occurred and how long after the marriage the parent files an application.

EXAMPLE: A parent meets all the requirements for a parent's annuity in 9/83. The parent marries in 11/83 and files an application for a parent's annuity in 1/84. Because a parent's annuity application can retroact up to 6 months, the parent's annuity can be paid for the months of 9/83 and 10/83, the months before the marriage took place.

425.45.2 Marriage After Entitlement to a Parent's Annuity

If a parent marries after entitlement to a parent's annuity, the annuity will terminate unless the marriage is to an individual entitled as a divorced spouse, widow(er), mother, father, parent or disabled child under the Social Security Act or the Railroad Retirement Act.

If the parent's marriage is to a qualifying individual, the parent will be entitled to a tier I only. If the parent is receiving a tier I and tier II, the tier II portion of the annuity will be terminated. If the parent is receiving a tier I only, the tier I annuity will continue.

425.45.3 Parent's Marriage Annulled

When a marriage that terminated a parent's entitlement is annulled, payment of the parent's annuity is possible if the annulled marriage was a void or voidable marriage and no alimony is actually awarded.

425.45.4 Field Actions

A. Parent reports marriage - Notify the adjudication unit immediately when a parent in receipt of an RR annuity reports marriage. Additional information as indicated

below may be required; however, do not delay notification pending completion of additional development.

1. If a parent's marriage causes entitlement to terminate, advise the parent that (s)he no longer qualifies for an annuity and should return any annuity payments received after the date of marriage.

2. If a parent marries an SS beneficiary that permits tier I entitlement to continue, develop as follows:

   - Secure proof of marriage;
   - Secure the SS number of the spouse;
   - Secure the SS number and type of benefit the spouse receives at SSA;
   - Forward all information on Form G-115;
   - Advise a parent who is receiving both a tier I and tier II annuity to return any annuity payments received after the date of marriage; an adjustment is required in the annuity rate since now only a tier I is payable. A parent who is only receiving a tier I annuity does not have to return any payments since there will not be a change in the annuity rate.

B. Parent reports annulment - When a parent, whose annuity was terminated because of marriage, reports that the marriage was annulled, secure a copy of the annulment decree. If the decree does not state the grounds on which annulment was based, obtain a copy of the complaint filed in the proceedings. A new application is not required.

430.5 General

Prior to the enactment of the 1946 Amendment which provided for payment of monthly survivor annuities, an employee could elect to receive a reduced annuity during his lifetime in order to provide for the payment of an annuity to his widow(er) after his death. An employee's right to such an election, referred to as a joint and survivor (J&S) election, ended on 7-31-46. However, elections made prior to 7-31-46 are still effective if:

- An employee annuity reduced for a J&S election was awarded before 7-31-46, or
- An employee annuity reduced for a J&S election began to accrue before 1-1-47 and the J&S election was not revoked before 8-1-47, or
- An employee annuity reduced for a J&S election began to accrue after 12-31-46 and the employee reaffirmed his election sometime between 7-31-46 and 12-31-47.

  NOTE: As of August 1980, only two employees were receiving annuities reduced because of a joint and survivor section.

430.10 Eligibility And Entitlement

When there is a valid J&S election in effect at the time of an employee's death, a joint and survivor annuity is payable to the widow immediately unless:

- The employee revoked his election, or
- A divorce occurred before the employee's death.

A widow need not meet any age or "living with" requirement and the employee need not be insured under the Railroad Retirement Act at death for a joint and survivor annuity to be payable.

To establish entitlement to a joint and survivor annuity, a widow must file an application.

430.15 Amount Of Joint And Survivor Annuity

A joint and survivor annuity is equal to 100%, 75% or 50% of the employee's annuity rate, after reduction for the joint and survivor election, in the month before death occurs. The percentage is determined by the election option selected by the employee.

430.20 Evidence Requirements

The following evidence is required before a joint and survivor annuity can be paid:

Evidence	When Required
Application	Always. Develop AA-21 unless widow is eligible for any other survivor benefit; then the application filed for the other RR benefit can be used for the joint and survivor annuity also.
Proof of employee's death	Always.

430.25 Annuity Beginning Date

A joint and survivor annuity begins on the later of the first day of the month in which the employee annuitant's death occurs or the day designated by the applicant as the ABD, regardless of when the surviving widow files an application.

430.30 Effect Of Joint And Survivor Annuity On Other RR Benefits

Entitlement to a joint and survivor annuity in no way affects a widow's eligibility for an insurance annuity, LSDP or RLS.

430.35 Events That Do Not Affect A Joint And Survivor Annuity

430.35.1 Entitlement to other Railroad Retirement Act benefits

A joint and survivor annuity is not affected by entitlement to other types of benefits under the Railroad Retirement Act.

430.35.2 Widow's Employment

A joint and survivor annuity is not subject to deduction for RR employment or excess earnings.

430.35.3 Widow's Remarriage

A joint and survivor annuity continues to be payable after a widow remarries even when remarriage occurs before the annuity is awarded.

430.40 When Entitlement To A Joint And Survivor Annuity Ends

A joint and survivor annuity ends with the month before the death of the widow. There are no other terminating events.

Joint and survivor annuity payments due but unpaid at death are payable in the same manner as any other accrued survivor annuity.

505.5 General

This chapter includes the current procedure for full-time student (FTS) benefits. Refer to Appendix E for a description of the provisions in effect prior to August 1982.

505.5.1 Definition of Employee's Student Child

The term "child" means the employee's natural child, adopted child, dependent stepchild or, under certain conditions, grandchild whose parents are deceased or disabled. This definition is the same as the definition of "child" under the Social Security Act (SS Act). Children age 18-19 qualify as students if they are in full-time attendance at elementary or secondary schools, as explained inFOM-I-505.5.3.

505.5.2 Student Must Be Unmarried

To qualify as an FTS, the child must be unmarried. See FOM-I-420.10.2 if the child has ever been married.

505.5.3 Full-Time Student Defined

Under the Railroad Retirement Act (RRA), children qualify as full-time students if they are age 18 through age 19 and in full-time attendance at an elementary or secondary school. For RRA purposes, students are generally considered to be in full-time attendance if the program is at least 13 weeks duration and is in accordance with the law of the State or other jurisdiction in which they reside. This includes:

A. Enrollment in a public, private or religious elementary or secondary school course at least 13 weeks duration with minimum attendance of 20 hours per week; or,

B. Enrollment in an independent study elementary or secondary education program administered by the school district in which the student resides; or,

C. Home school elementary or secondary education in accordance with the standards and practices for home schooling in the State or other jurisdiction in which the student resides. This should be at least 20 hours a week in a course of study lasting at least 13 weeks.

D. On-Line study that is in accordance with the standards in the State in which the student lives. The on-line study must be at least 13 week duration with a minimum of 20 hour per week study.

A child cannot be entitled as a student if the child's employer asks or requires the child to attend school and pays the child for doing so.

A child can meet the definition of an FTS for some months in and after age 19 is attained. See FOM-I-535.10.3 for details.

505.5.4 What is required for payment of student benefits

An eligible child of the employee can be included as a student in the Retirement O/M computation when the Retirement O/M rate applies (see FOM-I-325.40 and FOM-I-325.45) and the employee completes the required forms and submits any evidence requested by the RRB.

An eligible child of the deceased employee is entitled to a survivor student annuity upon applying therefore, and submitting any evidence requested by the RRB, as explained in FOM-I-510.5.

The RRB field office should assist the applicant/annuitant to the extent possible. However, the burden of proof is on the applicant/annuitant.

505.5.5 One Application Concept

An application for a child's annuity filed by, or on behalf of, a minor child protects the child's rights to an RRB annuity as a disabled or student child when they attain age 18, provided there is no break in entitlement between the minor child annuity and the full-time student or disabled child annuity.

A. If a child is disabled before age 18, they to need only submit an informational supplement (Form AA-19a) and furnish the RRB with evidence of disability in order to receive their child disability benefits at age 18.

B. If a child is in an elementary or high school students at an educational institution in the month they attain age 18, need only submit a Form G-315 and furnish the RRB with verification of their full-time attendance in order to receive student benefits at age 18.

C. Children who are elementary or high school students in home schooling in the month they attain age 18, need only submit a Form G-315 and furnish the RRB with documentation of the home schooling described in FOM-I-525.10.2 in order to receive their student benefits at age 18.

505.5.6 Special Retroactivity Provisions For Students

Payments to the child will end with the month before the month that the children attained age 18 if the RRB does not receive evidence that they are full-time students. Provided the required proofs are submitted within 12 months of the month the child attained age 18, annuity payments may be reinstated from the month the child attained age 18.

EXAMPLE: Roger attained age 18 in 9-2008 and his child's annuity payments ended as of 8-31-2008. Roger was attending Central Catholic High School full-time but he failed to submit proof to the RRB of his status. He continued attending school full-time and filed a G-315 on 3-29-2009. Since he was in verified full-time attendance in 9-2008, the month he attained age 18, a new AA-19 application was not required to continue his entitlement. His annuity can be reinstated retroactive to 9-1-2008.

505.5.7 Payee for Student

Students are normally considered legally competent adults. All development will be with the students and payments will be made directly to them.

505.15 Paid Students

505.15.1 Part-Time Jobs

Students who work part-time in a business while going to school and receiving pay for actual work done (e.g., working part-time in a business establishment and being paid by the hour) are considered Full-Time Student. This is true even though the employer hires only students of a particular school, or students taking a particular type of course, for a particular job. However, the usual work deductions are applicable.

505.15.2 Work-study programs

A student registered in a work-study program is a FTS as long as the Educational Institution (EI) considers the student to be in FTA. A student in such a program is considered to be in FTA while he is working at a job assigned to or obtained for him by the school, as an integral part of his instruction. In these cases, work deductions are applicable.

505.15.3 Work Incentive Program (WIN)

AFDC (Aid to Families with Dependent Children) recipients who enroll in the Work Incentive Program may receive a monthly incentive payment. They are not employees of the Federal government. They may meet the definition of an FTS if their training for employment requires full-time attendance at an EI.

505.15.4 High School ROTC programs

No allowances are made under a high school ROTC program. The participant is not on active duty and is not an employee of the Armed Forces while attending school. Therefore, the participant is included in the definition of an FTS. 505.15.5 Job Corps

Persons enrolled in the Job Corps are excluded from the definition of a FTS. This is true even if they are attending school under this program. They are deemed to be employees of the Federal government.

505.15.5 Job Corps

Persons enrolled in the Job Corps are excluded from the definition of a FTS. This is true even if they are attending school under this program. They are deemed to be employees of the Federal government.

505.15.6 Other Economic and Human Development Programs

The most recent major piece of job training legislation enacted by Congress was the Workforce Investment Act (WIA), which was enacted in 1998. WIA consolidated a number of Labor Department job training programs and created one-stop-centers in every state to help job seekers negotiate their way through the system of federal job training programs.

Students attending an EI under these programs are excluded from the definition of a FTS if an employee-employer relationship exists and the student is paid by his employer for attending school.

510.5 Educational Institution (EI)

510.5.1 Definition of an Educational Institution (EI)

An Educational Institution (EI) is defined as a school which provides elementary or secondary education, respectively, as determined under the law of the state or other jurisdiction in which it is located. Accordingly, if the applicable jurisdiction has determined that the school provides a secondary level or below education, then that school is an EI.

Almost all secondary schools in the 50 states, the District of Columbia, Canada, Puerto Rico, the U.S. Virgin Islands and America Samoa are EIs, as are those secondary schools operated by the Department of Defense. Unless there is evidence to the contrary, schools such as high schools, junior high schools, middle schools, preparatory schools and elementary schools can be assumed to be EIs.

Accept any elementary and most high school or secondary schools in Canada as EIs. Although Canadian high schools are considered educational institutions, attendance beyond the 12th grade level (13th grade-college prep) is considered to be post-secondary FTA.

Certain post-secondary type schools might qualify as secondary schools if they meet the definition stated above. However, FTA at such post-secondary schools would be determined without consideration for courses taken beyond the 12th grade level as outlined in FOM-I-515.10.3.

Home schooling, although not conducted in an EI, is usually done with the approval of the school district that has jurisdiction of the area in which the home schooling is done. See FOM-I-510.5.3.

510.5.2 Qualifying Secondary Schools

A secondary school, trade or vocational school is an EI if it meets one of the following three requirements:

A. Public School - A public school in the U.S. (including the District of Columbia, Puerto Rico, the Virgin Islands, Guam, or American Samoa), or an elementary or secondary school operated by the Department of Defense is always “accredited.”

B. Accredited or State Approved School - A non-public school must be approved by a state or accredited by a state-recognized accrediting agency. A state-recognized accrediting agency is one designated or recognized by a state as proper authority for accrediting a school meeting educational standards. Accreditation of a subdivision of an institution is considered to extend to the institution as a whole.

Approval can be granted by a state agency or by a local governmental unit and may take many forms.

For example:

- Attendance at the school meets the state's compulsory attendance provisions.
- The school is approved or licensed as a school by a state agency (e.g., a board of education, a board of barber examiners, a board of cosmetology, etc.). A license granted by a health department based on meeting health standards and not standards as a school is not enough, nor is an ordinary business license sufficient.
- A state agency approved the school, or courses at the school for vocational rehabilitation purposes or for VA purposes. If this test is met, the school qualifies as an EI and a student may qualify even if he takes a different course at the school.
- The school has been granted a state or local governmental exemption from taxes as a school.

A good place to find the legal requirements about accredited or state approved non-public schools for your field office service area is the state government web page.

For example: https://www.isbe.net/ lists the non-public high schools recognized by the State of Illinois.

If nothing is available online, develop the information from the state by telephone.

C. A School Whose Credits are Accepted by Other Schools - A school whose credits are accepted, on transfer, by not less than three institutions which have been accredited by a state or nationally recognized accrediting agency, for credit on the same basis as if transferred from an accredited institution. This includes credits transferred laterally between similar schools, the acceptance of high school credits for college entrance, admission of students to advanced standing at the accredited school based on courses completed at the school in question, etc.

510.5.3 Documentation Required for Home School

The documentation required for home school is based on the laws of the state in which the student resides. A good place to find the legal requirements regarding home schooling for your field office service area is the state government web page; in the "Search" box on the state's Home Page type in "home school." Any home school documentation available online for that state should be listed. If nothing is available online, develop the information from the state by telephone.

In some states, home schools are referred to as “exempt schools” and are considered non-approved or non-accredited schools. By filing for exempt status, parents are electing not to meet State approval or accreditation requirements and are complying with the compulsory school attendance law. However, to qualify for RRB benefits, the student must meet the attendance requirements in FOM-I-505.5.3. This must be in a course of study at least 20 hours a week lasting at least 13 weeks.

Most of the documentation needed for the child should already have been assembled by the home school teacher for approval by the school district. Request the home school teacher to provide a copy of the required documentation for RRB records. Forward the G-315H to Headquarters for denial or termination of student benefits.

Documentation	When Required
A written notice to the superintendent of the school district, including: • name, age, and grade level of the student, • the address at which the instruction is done, • the source of instruction materials, • the basic core curriculum, • the proposed schedule; and, • the credentials of the teacher.	Always. If the state law does not require such a letter, we still prefer that a letter be sent to help the RRB adjudication of the student benefit. Request the home school teacher to write the letter and send it to the superintendent of the school district, with a cc: to the RRB.
Written approval of the home schooling by the superintendent of the school district in which the student resides.	Always. We prefer to always have a copy of this letter for each school year. If the school does not provide such a letter, please explain that in a short memorandum to RBD or SBD.
Maintenance of attendance records for the school year.	Always. If the state law does not require these records, they should still be maintained for the RRB. These records should be kept up-to-date and reviewed as part of the student benefit monitoring.
Use of nationally recognized standardized achievement tests (including reading,	Should be planned, but results may not be available at initial entitlement. These records should

mathematics, language arts, science and social studies) by the end of the school year.	be updated, as available, when the student benefit is monitored.
Visits to the site of the home schooling by the Home school Evaluator.	Should be planned, but results may not be available at initial entitlement. These records should be updated when the student benefit is monitored.
A teacher with at least a high school diploma.	Required by most states, but not all states.
Instruction for the General Educational Development (GED) test for a high school equivalency diploma.	Should be planned if the student is studying at the 12th grade level.

510.5.4 Determining Whether A School Is An Educational Institution

A. Domestic Schools - Unless there is reason to believe otherwise, assume that any high school, junior high school or elementary school in the 50 states, the District of Columbia, Canada, Puerto Rico, the U.S. Virgin Islands and America Samoa is approved by a state as either a public or private secondary school. The field office will indicate on the AA-19 or G-315 if the school is approved by a state.

B. Home Schools - The documentation requested in FOM1 525.10.2 should be sufficient to determine if the home schooling is actually elementary or secondary level of education. Refer any questionable cases to P&S -RAC.

C. School in Foreign Countries - If a school in a foreign country meets the definition of an educational institution; it is determined to be an educational institution. See Appendix B.)(See Appendix B)

510.10 Confinement Institutions as EIs

Since these institutions are agencies of the U.S. or the states, "schools" operated by the institutions are Educational Institutions (EIs).

510.10.1 Confinement Facility

A confinement facility is a school and an EI with respect to a program of instruction, if:

A. The program is conducted by the State Department of Education; or

B. The State Department of Education grants diplomas or certificates, or recognizes diplomas or certificates granted by the institution upon completion of the course; or

C. Other schools in the state's public school system grant credit toward graduation for work completed in the program; or

D. The institution:

1. Maintains a program which is directed toward a specific educational objective (e.g., the granting of a diploma or certificate); and

2. Employs teachers holding state teaching certificates or has personnel who were hired or assigned solely or primarily to teach; and

3. Uses formal teaching materials and facilities.

510.10.2 Effect of Confinement

O/M benefits are suspended or Tier 1 benefits are converted to all Non-Social Security Equivalent Benefit (NSSEB) effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense is confined in an institution at public expense for more than 30 continuous days or is one of the categories of individuals defined in FOM1 150.

510.15 Foreign Educational Institutions

The criteria for determining whether or not a foreign school is an educational institution is the same as for domestic schools.

A foreign educational institution (EI) school is defined as one which is:

- Outside the 50 states and the District of Columbia; and
- Not operated by the U.S. Government or a domestic school.

An EI in the Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa are considered to be foreign schools because they are not in any RRB field office's territory.

Students attending any EI operated abroad by the U.S. Government are considered to be attending a domestic EI.

Students attending foreign EI under programs sponsored by domestic EI (e.g., Junior Year Abroad programs) are considered to be attending the domestic EI which is sponsoring the program.

The basic difference in handling foreign student cases involves the use of SSA's foreign student forms. The procedure for their usage is contained in the following sections. Each case must be handled on its own merit.

510.15.1 Canadian Schools and Mexican Schools

Canadian schools and Mexican schools are educational institutions if the conditions in FOM-I-510.5.1 are met. The RRB field office closest to the Canadian school or Mexican school develops the forms and proofs required for the students. Guidelines are provided in Appendix A.

510.15.2 Foreign Schools Outside of Canada and Mexico

A. Program Sponsored by Domestic EI - If the student is attending an EI in a foreign country under a program sponsored by a domestic EI (e.g., Junior Year Abroad programs), develop the FTA through the domestic EI.

B. Program Not Sponsored by Domestic EI - If the student is attending a foreign EI with no sponsorship by a domestic EI, refer the case to the adjudication unit in Headquarters. Do not attempt to develop more than an annuity application, Form G-315/Form G-320 and proofs from the beneficiary or any other source. Examiners will control the case as long as the student is in attendance at a foreign school.

C. Home schooling - Do not attempt to develop home schooling from foreign students. Refer the case to Headquarters.

510.15.3 Verifying EI Status And FTA In Foreign Cases

In all cases in which a foreign student is involved the EI status and FTA must be verified. This can be done using Form SSA-1371-BK- FC. Follow the instructions below:

A. Release of the Form - Always release a typed Form SSA-1371-BK-FC to verify the EI status and FTA for every foreign student case. Complete the identifying data. In the block labeled "Social Security Claim Number" line out "Social Security" and type in the RRB claim number. In the block labeled "Attendance" types the dates for the period of attendance to be verified.

B. Action Upon Receipt of a Completed Form SSA-1371-BK-FC - Examine the form for proper completion, then make an EI determination.

C. Once a school is determined to be an EI, determine if FTA can be established. For all schools, FTA can be established only if the student is scheduled to attend classes for at least 20 hours per week.

D. Tracing Action - If either the Form SSA-1371- BK-FC or an acceptable statement from the school is received within 45 days from the date the SSA-1371-BK-FC was released, trace the form through the Foreign Service post nearest the school. At the same time advise the employee by letter that unless the school returns a completed SSA-1371- BK -FC or an acceptable statement within the next 45 days, a decision will be made based on the evidence in file. Failure of

the school to complete the SSA-1371- BK -FC will be considered as failure to establish FTA.

NOTE: See SSA POMS for the SSA-1371-BK-FC form and instructions.

515.5 Full-Time Attendance (FTA) Defined

Full-time attendance at an EI means enrollment in a day or evening non-correspondence course at least 13 weeks in duration, carrying a subject load which is considered full time under the school's standards and practices for day students, with a scheduled rate of attendance of at least 20 hours per week. The 13 school weeks duration requirement refers to the entire year of study (e.g., a senior year of high school), and not a semester, trimester, summer school session or other segment of the course.

Attendance includes time spent in regularly scheduled laboratory work, supervised study which is available to all students taking the particular course, required changes in student or teacher stations and work which is an integral part of the program of study.

Home schooling cases (see FOM-I-510.5.3) generally are required to meet the same standard. The home study course should be at least 13-weeks duration and at least 20 hours of study per week.

515.5.1 School Registration Period

A student, who registers for classes in one month and begins classes in the following month, is considered to be in FTA beginning with the month of registration if the school considers the student to be in FTA during registration and there is no break between the end of the registration period and the beginning of classes.

Example 1: A student's registration period runs from August 26 to August 31. The school's classes begin on September 1, and the student's first class is on September 3. The school considers the student in FTA during the registration period. The student is considered to be in FTA for the month of August.

Example 2: A student's registration period runs from August 26 to August 29. The school's classes begin on September 3 and the student's first class is on September 3. The student cannot be considered to be in FTA for the month of August because there was a break between the end of the registration period and the first day of classes (August 30 to September 2).

515.5.2 Attendance Stops Before End of 13 Weeks

If a student is attending a course at least 13 school-weeks' duration, but drops out, or is dropped before completing 13 school weeks, he may still receive an annuity or be included in the O/M computation of the employee's annuity for the months of full time attendance.

515.5.3 Student in Last Part of Course of Study

In some cases, a student who is in the last part of his course of study may need fewer hours or credits than the number of hours or credits required by the school to be in full-time attendance. When such a student is also engaged in study or related activity for which no credit is given (e.g., independent study), he can be considered as being in full-time attendance.

515.5.4 Exceptional Situations

Effective August 1, 1991, student may be considered in full-time attendance with less than 20 hours as long as the student is in full-time attendance pursuant to the school's standards and practices in exceptional situations. Examiners will accept a reasonable explanation of why the student is enrolled for less than 20 hours weekly classroom attendance. Examples of acceptable and unacceptable situations are shown below.

Example 1: John stopped attending school at age 16. At age 18 he enrolled for 16 1/2 hours scheduled classroom attendance in an evening high school program. John explained that he had stopped attending school at age 16 because of illness and now at age 18 was too old to attend a conventional high school. He added that he had enrolled for the maximum number of hours available at the evening high school and that the school considers the evening program equivalent to the day program. John is considered to be in FTA if the school verifies him to be full-time according to its standards and practices. This is an exceptional situation and John has provided a reasonable explanation for his scheduled classroom attendance of less than 20 hours weekly.

Example 2: Patty stopped attending Central High School at age 17. After attaining age 18 she enrolled for 16 1/2 hours scheduled classroom attendance in an evening high school program. Patty explained that she was pregnant and was embarrassed to return to Central High. She added that she had considered enrolling for 20 hours weekly classroom attendance at the evening high school but did not because the school considered 16 1/2 hours to be full-time and she could then have more time to pursue her other interests. Patty is not considered to be in FTA. This is not an exceptional situation and she did not provide a reasonable explanation for her scheduled classroom attendance of less than 20 hours weekly.

However, if Patty enrolls for less than 20 hours scheduled attendance for medical reasons based on her physician's advice, this is an exceptional situation and she has provided a reasonable explanation.

515.5.5 Student in Work-study Program

A student registered in a work-study program is considered to be in full-time attendance during a period in which he is working at a job assigned to him or obtained for him by the school as an integral part of his schooling.

515.5.6 Post-Secondary Level Courses

If the student is attending a post-secondary school which also provides elementary or secondary education, FTA at such a school must be determined without consideration of courses taken beyond the 12th grade level.

515.5.7 School Registration Period

A student is in FTA at an EI during a school registration period if:

- The school considers the student in FTA during registration, and
- There is no break between the end of the registration period and the period during which the school begins classes.

515.5.8 Student in Last Part of Course of Study

In some cases, a student who is in the last part of his course of study may need fewer hours or credits than the number of hours or credits required by the school to be in full-time attendance. When such a student is also engaged in study or related activity for which no credit is given (e.g., independent study), he can be considered as being in full-time attendance.

515.5.9 Month of Graduation

If information is received that a student ceased FTA in a month and returned to school in the following month to attend graduation ceremonies only, the student will be considered in FTA for the month of graduation.

If the student completes graduation requirements and attains age 19 in the same month, the student is in FTA that month. If the student then participates in a graduation ceremony in the following month, student would also be in FTA in the month of graduation.

However, if there is an interval of one or more calendar months between the cessation of FTA and graduation, the student is not entitled after the month of FTA cessation.

515.10 Determining Full-Time Attendance (FTA)

515.10.1 High Schools, Vocational High Schools, Technical, Trade, Business Schools, etc.)

The student is not in FTA if the course study is less than 13 weeks. FTA is established if the school officially states that the student is in FTA according to the school's standards and practices for day students AND the student's SCHEDULED rate of attendance is at least 20 hours per week. Attendance includes time spent in regularly scheduled laboratory work, supervised study which is available to all students taking the particular

course, required changes in student or teacher stations and work which is an integral part of the program of study.

Refer to FOM-510.15 for foreign schools.

515.10.2 General Educational Development (GED) Programs

A GED program is considered a high school-level program regardless of the type of school offering the program if, under the law of the state or other jurisdiction where it is located, the GED program is determined to be an approved elementary or secondary program. A student enrolled in a GED or high school level program (12th grade or below) in a college, community college or a vocational/technical school is a secondary student if the program is approved as such by the state or by a local board of education.

Four known states, Missouri, Iowa, Nebraska and Kansas require state approval for all GED programs. Therefore, all GED programs offered in these states would be considered secondary school FTA.

GED programs offered by post-secondary schools in states other than the states listed above may or may not be approved by the state or local board of education. When necessary to determine if the student is eligible, contact the post-secondary school offering the GED program to determine whether the program has state or local approval.

The rules in FOM-I-515.10.1 apply to determine if a student is in FTA. However, because of the unique nature of GED programs, special adaptations of the rules may be necessary in some cases.

A. GED Course of indefinite length - Many GED programs are of an indefinite length, i.e., they continue until the student is able to pass a high school equivalency examination. In these instances, the actual length of time the student is in FTA determines whether the 13-week duration requirement is met. In meeting the 13-week duration requirement when the course is of an indefinite length, the student must attend 13 consecutive weeks (allowing for official school breaks) at the scheduled or actual rate of at least 20 hours per week or at a higher rate if the school's standard is higher.

   The student will be paid benefits before the expiration of the 13-week period if the student intends to attend for 13 weeks or more. It is immaterial whether the school believes the student could finish the course in less than 13 weeks. When filing for benefits before the 13 weeks has expired, the student should be informed of the 13-week requirement and that failure to be in FTA for this period would result in an overpayment.

B. School has no FTA standards - In the unusual instance where a school indicates that it has no standards for FTA in a GED program, the district office should document the file to this effect. In these instances, the 20-hour rule discussed in

A above becomes the school's standards for purposes of FTA and, assuming the course is 13 weeks duration (either scheduled or of an indefinite length) and that all other requirements are met, student benefits can be paid.

C. School does not operate on scheduled attendance - When the school indicates that the GED program does not operate on scheduled attendance, the student may be paid if actual attendance is at the rate of at least 20 hours per week or the school's standards, if higher.

515.10.3 Simultaneous Attendance at More Than One EI

When a student is simultaneously attending more than one EI, the work at the schools may be combined in determining FTA. If one of the EIs would consider the student in FTA if he were taking all of his courses there, consider the student in FTA. When investigating to determine whether the student is in FTA, do not restrict consideration to the confines of one school's program (e.g., if the school contacted does not offer the course for which the student is enrolled at the other school, talk in terms of time spent in any similar course which is offered at that school). If the EI is not a junior college, college or university, the 20-hour per week requirement must be met by combining attendance. Courses taken at a post-secondary school beyond the 12th grade level cannot be considered in determining FTA for other than 1981 Amendment survivor students.

515.10.4 Radio or TV Courses

Some schools, because of a lack of teachers and space, offer as a part of their curriculum courses broadcast by radio or TV. In addition to receiving credits for classroom attendance courses, the student receives credit (if he passes the required examination) toward his diploma for the radio or TV course completed. A student enrolled in a course broadcast by radio or TV is considered in FTA if the school considers him to be in FTA.

515.10.5 Correspondence Courses

Normally FTA cannot be based on correspondence courses even if the school meets the definition of an EI. However, there may be exceptions as in the following example:

EXAMPLE: Susan completed the first semester at the Talbot High School of Illinois, but was unable to attend the second semester due to injuries caused by an accident. Since she expected to recover from her injuries in time to resume FTA at the beginning of the next school year, she arranged to take high school correspondence courses through Indiana University covering the subjects needed to complete her sophomore year. A Talbot high school official stated that full credit would be given for these courses and that Susan was taking sufficient credits to be considered full time. Under these conditions, she is considered in FTA for the second semester and through the summer period of non-attendance.

When a period of "resident training" is part of a correspondence course, the months during which the student is in such resident training may be months of FTA if the student's attendance meets the "20-hours per week test" referred to in FOM-1-515.10.1. The period of resident training need not be of 13 weeks' duration; however, the entire course (correspondence period and resident training) must be scheduled to last at least 13 weeks.

515.10.6 Confinement in Institutions at Public Expense due to Criminal Activity

O/M benefits may be suspended or Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense and is confined in an institution at public expense for more than 30 continuous days or is one of the categories of cases defined in FOM1 150.

515.10.7 On-line Courses

Cases involving students taking on-line courses should be referred to P&S-RAC for handling. Before sending the case to P&S-RAC for handling the following information **must** be secured:

- Verification that the school is accredited by the state
- The length of the course study,
- The amount of time the student spends each week performing on-line study.
- Verification of time spent for on-line study. Secure a statement from the school official or the parent, if home schooled,
- The name of the educational institution that will administer the final exam,
- The type of certification that the student will receive (GED or Diploma),
- Name of Educational Institution that will issue the high school diploma or GED.
- A statement from the Educational Institution verifying that they will issue the high school diploma or GED

515.10.8 Home Schooling

Home schooling is a private educational program in which the student is taught within the home by a parent/teacher. It is a program of study completely by choice. A student schooled at home meets the FTA requirements if:

- The student meets the Federal standards for full-time attendance (FTA);

- The law of the State in which the home school is located recognizes home school as an educational institution (EI);
- The home school the student attends meets the requirements of State law in which the home school is located; and
- The student meets all the other requirements for benefits.
- The school considers the student to be FTA based on home visits by a teacher and individual assigned study; and
- The student is expected to complete the course at the same time as student in actual students in actual physical attendance; and
- The student is expected to spend at least 20 hours per week consisting of tutoring by a visiting teacher and individual assigned study.

515.15 Deemed Full-Time Attendance During A Period Of Non-Attendance

A period of non-attendance is any period, in which a student is not attending school, attending less than full-time, or attending a school that is not an EI. The period begins on the first day of the month after the last month in which the student was in FTA and ends on the last day of the month BEFORE the month in which he resumes FTA.

A student who has been in FTA at an EI is deemed to be in FTA during a period of non-attendance if:

- The period of non-attendance is 4 calendar months or less; and
- The student shows intent to continue to be, or is in FTA at an EI immediately following the period of non-attendance.

515.15.1 Establishing Intent to Resume FTA After Period of Non-Attendance

A period of non-attendance is any period in which a student is not attending school, attending less than full-time, or attending a school that is not an EI. The period begins on the first day of the month after the last month in which the student was in FTA and ends on the last day of the month BEFORE the month in which he resumes FTA. Therefore, a student's entitlement can continue during summer vacation and other between-term periods even if he is actually out of school longer than 4 months.

A student's intent to resume FTA is established if the student indicates plans to continue in FTA at the same school, unless there is evidence in file to contradict this. If he plans to attend a different school, and the school is an EI, payments can be made for the period of non-attendance.

If the student has applied or plans to apply for admission to a different school and it is not known whether the school is an EI, develop as explained in FOM-I-530.25.

Do not deem a student in FTA for a period of non-attendance if he has no plans to resume FTA at an EI. If later notice is received that he has applied for admission, plans to apply for admission, or has resumed FTA at an EI, refer to FOM-I-530. If a child attains age 18 in a month which is in a period of non-attendance, you can deem FTA only if you obtain verification of FTA from the school he is currently attending or last attended on a Form G-315a even if he will attend a new school after the period of non-attendance.

515.15.2 Effect of Suspension and Expulsion

A student is considered to have been suspended for other than academic reasons or expelled when, as a result of any action on his part, he is barred from further class attendance. A student is not deemed to be in FTA during a period of non-attendance caused by his expulsion or suspension from school, even if he intends to, and actually does, resume FTA.

The last month the student ordinarily is entitled is the month in which he was suspended or expelled. A student may become entitled again beginning with the month in which he resumes FTA at an EI.

If the suspension was for academic reasons, the student is treated the same as one who has withdrawn from school. See FOM-I-515.15.3 immediately below.

515.15.3 Deemed School Attendance

If a school does not open on schedule at the start of the term or closes before completion of a term, the student may be deemed to be in FTS during the period of non-attendance if he has not been suspended or expelled and intended to be in FTA had the school been on schedule.

515.15.4 Effect of Withdrawal

A student who intends to resume FTA at an EI, but does not do so, may be deemed to be in full time attendance THROUGH THE MONTH IN WHICH HE CHANGES HIS INTENT. However, a student cannot be entitled for more than 4 months AFTER the last month he was in FTA.

515.15.5 Terminating Event in Period of Non-Attendance

If a termination event occurs during a period of non-attendance and the requirements for deemed attendance are met, the student is entitled for only the months PRIOR to the month in which the terminating event occurred.

Example 1 A retirement O/M student's high school classes ended on May 15. He will attain age 19 on August 3 and resume full-time attendance at the same high school on September 6. He is entitled through the month of July.

Example 2 A survivor student's classes ended on May 15. He graduated on June 3. He is entitled through the month of June.

520.5 Jurisdiction and Responsibilities

520.5.1 Student is in a U.S., Canadian, or Mexican School

In a survivor case, jurisdiction is assigned to the field office that services the student's or his (her) payee's mailing address even though the student monitoring forms are sent direct to the student. In a retirement case, jurisdiction is assigned to the field office which services the employee's mailing address.

Example 1: Fred Smith is attending school in San Francisco. He is having his check sent direct deposit to a bank in Oakland. On the Form SF-1199a he completed, he listed his mother's address in Chicago as the address to which he wanted the RRB to send his mail. Jurisdiction is assigned to the Chicago field office. The Chicago field office will be responsible for monitoring the student, contacting the school, etc.

Example 2: Retirement O/M IPI Fred Jones lives with his mother in Phoenix AZ and attends school there. The employee's address is in Detroit. Jurisdiction is assigned to the Detroit field office. The Detroit field office will be responsible for monitoring the student, contacting the school, etc.

520.5.2 Student Is in a Foreign (Except Canadian or Mexican) School

RBD and SBD examiners have responsibility for eligibility determination and benefit monitoring actions for cases in which the student is attending a foreign school (except Canadian or Mexican schools and those foreign schools under a program sponsored by a domestic school). This is true regardless of where the check is mailed or the mailing address is located.

520.5.3 Transfer of Jurisdiction Between Field Offices

If a student's payee changes his address, enter the change of address via Fast COA.

If the new address is in another field office area, the first field office will:

A. Furnish the address of the second field office to the student,

B. Instruct the student to contact that field office on any matter relating to student benefits, and,

C. Make a notation on Contact Log.

520.5.4 Transfer of Jurisdiction Between the Field and HQ

A. If a student beneficiary transfers from a U.S., Canadian, or Mexican school to a foreign school (except when the student is attending a foreign school under a program sponsored by a domestic school), process the change of address, if applicable, monitor the student as explained in FOM-1-530.15. If a student beneficiary transfers from a school in a foreign country or in a U.S. possession to a U. S., Canadian or Mexican school, the RBD or SBD examiner will process the change of address, if applicable.

520.10 Field Office Responsibility

Field office responsibilities include:

A. Determining the eligibility of full-time students in domestic, Canadian and Mexican schools, in foreign schools under a program sponsored by a domestic school, and in home schooling.

NOTE: If you need assistance in determining eligibility, call the Bureau of Field Service (BFS), or email P&S-PAS via the P&S Inquiry mailbox . Do not seek direction or guidance from a claims examiner.

B. Contact the student in person, whenever possible or by telephone when they initially become entitled to benefits to explain the reporting responsibilities that accompany student benefits. Give Booklet G-316 *Railroad Retirement Benefits for Students Age 18-19 in Elementary and Secondary School* to the student.

NOTE: When the personal or phone contact with the student has been made, the field office should document the method of contact and the contact date on Contact Log. If phone contact instead of personal contact was made, an explanation should also be provided on Contact Log

C. Enter initial and monitoring Form G-315 or Form G-320 FTA proof on APPLE screen APMU 925 *Proof of Full-Time School Attendance.*

D. Monitoring the student's continuing eligibility for benefits while on the rolls (see FOM1 530.15).

NOTE: Student cases are divided into two groups.

- Active cases - The student is currently being paid an annuity, or included in the O/M computation of the employee's annuity.

- Inactive cases - The student is not currently being paid an annuity, or is not included in the O/M computation of the employee's annuity because either the

FTA development did not prove FTA or the student has a suspension event (see FOM-1-535.5.1). These cases can be reactivated when the student again starts in FTS.

These active and inactive cases should be documented on Apple, Contact Log, or Imaging until a terminating event occurs or attainment of age 19 (as explained in FOM-1-535).

E. Taking the required action on any suspension or termination notice received directly from the student, or a representative of the student. This includes, checking the APPLE screen APMU 925 screen to make sure the FTA proof is up to date, entering a new APMU 925 screen if necessary, modifying or entering terminations of survivor FTS benefits via FAST S/T. For survivor cases in which the student annuity was not terminated timely or other family members had been subject to the family maximum with the student included in the family group, and for Retirement O/M cases, send an Outlook message to SBD or RBD advising them to adjust the annuity.

F. Notifying SBD or RBD if a student who was attending school in the U.S., Canada, or Mexico transfers to a school in a foreign country (other than Canada or Mexico) or a U.S. possession, conducts benefit monitoring up to the date of the transfer, and imaging the student documentation.

G. Conducting final benefit monitoring action two months prior to or at the time of a termination event for students under field office jurisdiction.

520.10.1 Closing Student Cases

The student case is considered to be closed when the student's benefits are terminated (see FOM-I-535.5).

520.10.2 Quality Assurance Responsibility

The field office is responsible for determining the acceptability of evidence submitted to verify school attendance at an EI or home schooling as explained in FOM-1-525.25.

520.15 Examiner Responsibility

The RBD or SBD claims examiner is responsible for:

A. Determining the eligibility of full-time students in foreign (except Canadian and Mexican) schools and in schools in U.S. possessions.

B. Verifying FTA when a student is attending school in a foreign country (except Canada or Mexico) or in a U.S. possession.

C. Notifying the field office if a student, who was attending school in a foreign country (except Canada or Mexico) or a U.S. possession, resumes school attendance in the U.S., Canada or Mexico.

D. Requesting a field office to take appropriate action when an application is filed directly with Headquarters, or when the student notifies Headquarters of a change in schools.

E. Preparing awards and reviewing the FTA Form G-315 or Form G-320 and FTA proof entered on APPLE screen APMU925 (PF15).

F. Preparing any award letter or other letter sent to the FTS, the employee annuitant in a retirement case or the student's payee in a survivor case concerning the student's status. RRAILS letters will automatically be imaged and viewed by the field offices.

G. Notifying the field office if the status of child changes from student to disabled child.

H. Notifying the field office of any information received directly from the student or the school which would affect the student’s case.

525.5 Initial FTA Eligibility Requirements

525.5.1 Special Guaranty (Retirement O/M) Cases

The employee's unmarried child age 18-19, who is a full-time student at an elementary or secondary school, as explained in FOM-I-505.5.3, may be included as an IPI in the Special Guaranty Computation (also referred to as the Retirement O/M) of an employee annuity if the employee's annuity is either:

- being paid under the Special Guaranty in the month the child becomes entitled; or,
- a switch from the RR formula to the Special Guaranty formula is not prohibited.

  NOTE: A spouse cannot qualify for benefits on the basis of having a full-time student in care.

525.5.2 Survivor Cases

The deceased employee's unmarried child age 18-19, who is a full-time student at an elementary or secondary school as explained in FOM-I-505.5.3, can receive a survivor annuity.

NOTE: A widow(er) cannot qualify for benefits on the basis of having a full-time student in care.

525.5.3 Child Eligible Both as an FTS and as a Disabled Child

If a child appears to be eligible both as a FTS and as a disabled child, develop the case for entitlement as a disabled child. If it appears that the development of the child's claim based on disability would be prolonged, the claim may be developed for entitlement as a FTS to permit benefits to be paid while the disability claim is being developed. If the child's disability claim is established, examiners will make the necessary changes to PREH.

The advantages of a child being entitled as a disabled child rather than as a FTS are:

- A widow(er)'s current insurance annuity or a spouse's annuity may be payable if the "child in care" requirements are met;
- Follow-ups (benefit monitoring) to establish continuance of FTA are unnecessary;
- The child's annuity will not automatically be terminated at age 19; and,
- The child can be enrolled for Medicare coverage as a disabled QRRB.

525.10 Evidence Requirements

The following items are required for a student to be included in the Retirement O/M computation of the employee's annuity or to be paid direct a child's insurance annuity because of his or her status as a full-time student, age 18 -19.

525.10.1 Regular Educational Institution

Evidence	When Required
Proof of Age	Always (unless previously submitted).
Proof of Relationship	Always (unless previously submitted).
Proof of Dependency	Always (unless FTS can be deemed to be dependent or dependency was previously established).
Statement Regarding Family and Earnings for the Special Guaranty Computation (Form G-319)	Form G-319 is required if the child is 18 on the earliest date the child can be included in the Special Guaranty. Otherwise, the Form G-319 should already be in the claim file.
Student Questionnaire for Special Guaranty Computation (Form G-320)	Always if FTS age 18-19 can be included in the Special Guaranty computation of the employee's annuity. Give booklet G-316 and Form G-77a to the student.
Application for Child's Insurance Annuity (AA-19)	An application for a child's annuity (AA-19) is required to establish the child's relationship to the employee in survivor cases only if the FTS is 18-19 on the OBD. Otherwise, the application for a child's annuity should already be in the claim file.
Student Questionnaire (Form G-315)	Always in survivor student cases. Give booklet G-316 and Form G-77 to the student.
Statement by School Official (Form G-315A)	In both retirement and survivor student cases, when the student fails to return a monitoring Form G-315/G-320. This form is needed to verify the last day of full-time attendance.

School Official's Notice of Cessation of Full-Time School Attendance (Form G-315A.1).	Always in both retirement and survivor student cases. The form should be released to the student's school (or home school instructor) after FTA has been verified.
Documentation for Home Schooling Listed on Form G-315H *Checklist for Documentation Needed for Student Age 18-19 in Home Schooling*	Always in home schooling cases.

525.10.2 Approved Home-Schooling

The documentation required for home schooling is based on the laws of the state in which the student resides. Most of the documentation needed for the child should already have been assembled by the home-school teacher for approval by the school district. Request the home-school teacher to provide a copy of the required documentation for RRB records. If the field office is not able to obtain the required documentation, they will forward the case to RBD/SBD for denial or termination of student benefits

Documentation	When Required
Documentation for Home Schooling Listed on Form G-315H *Checklist for Documentation Needed for Student Age 18-19 in Home Schooling*	Always in home schooling cases.
Form G-315, " Student Questionnaire" (With Certification from Home School Instructor)	Always. Note - If the child's annuity is in pay status when the child attains age 18, an additional application for a child's annuity is not required.
A written notice to the superintendent of the school district, including: the name, age, and grade level of the student, the address at which the instruction is done, the source of instruction materials, the basic core curriculum, the proposed schedule; and, the credentials of the teacher.	Always. This is required once for each school year. If none exists, requests the home school teacher to write the letter and send it to the superintendent of the school district, with a cc: to the RRB.

Written approval of the home schooling by the superintendent of the school district in which the student resides.	Preferred. Required by most states, but not all states. This should be obtained once for each school year.
Maintenance of attendance records for the school year.	Always. These records should be updated, as available, when the student benefit is monitored.
Use of nationally recognized standardized achievement tests (including reading, mathematics, language arts, science and social studies) by the end of the school year.	Should be planned, but results may not be available at initial entitlement. These records should be updated, as available, when the student benefit is monitored.
Visits to the site of the home schooling by the Home School Evaluator.	Should be planned, but results may not be available at initial entitlement. These records should be updated when the student benefit is monitored.
A teacher with at least a high school diploma.	Required by most states, but not all states.
Instruction for the General Educational Development (GED) test for a high school equivalency diploma.	Should be planned if the student is studying at the 12th grade level.
Form G-315a.1, "Notice of Cessation of Full-Time School Attendance."	If FTS age 18-19 can be included in O/M. This form is released to the home school instructor after the FTA is verified

525.15 Developing Initial FTA Evidence

The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment) restricts release of educational records without the written consent of the students or their parents. However, Section 438(b)(1)(D) authorizes educational institutions to release records without consent when the request is in connection with a student's application for, or receipt of, financial aid. The RRB has a letter from the U. S. Department of Education, which indicates that railroad retirement benefits are considered financial aid.

If any U.S. school quotes the Family Educational Rights and Privacy Act of 1974 as the basis for refusing information, cite the above section and advise that they are authorized to furnish us with information that is necessary to determine the student's initial and continued eligibility for student benefits. Form G-315 and Form G-320 contain a

consent statement so this problem should arise infrequently. Forms G-315A and G-315A.1 include a reference to the RRB's authority for requesting information.

FTA Is defined in FOM-I-505.5.3

525.15.1 RL-175 Letter – Child Attaining Age 18

The MAP program or SURVEA program will release Form Letter RL-175 four months before a child beneficiary attains age 18. SBD and RBD do not control these cases for responses to the RL-175 letters. The letters are designed to prevent an interruption in the payment of benefits to a survivor child, or to a retirement annuitant who is being paid under the Retirement O/M. They advise that the timely filing of a required application or statement will prevent such interruption. The field office will be able to view the imaged letter using Workdesk. No action is required by the field office unless contacted by the employee, child or payee.

NOTE: Although an application can normally be filed only up to three months before eligibility, a Form G-315 or Form G-320 can be developed up to four months before eligibility when it is used to convert a minor child to a student child.

525.15.2 Development for Special Guaranty Computation Student

A. Develop Form G-319 –When the family group includes a child age 18-19 in FTA, at the initial payment of the Special Guaranty rate, develop Form G-319 *Statement Regarding Family and Earnings for the Special Guaranty Computation* from the employee. However, if the Special Guaranty rate is already in force when the child attains age 18, and qualifies as a full-time student, any documentation of the child's relationship to the employee should already be in RRB records. Do not develop a second Form G-319 at age 18.

B. Develop Form G-320 - Form G-320 is available on RRAILS. Always develop a Form G-320 *Student Questionnaire for Special Guaranty Computation* when the employee is claiming a child age 18-19 entitled as a student in FTA. A separate Form G-320 is required for each student and each school year. If the student changes schools in the middle of the school year, a separate Form G-320 is required for each school.

   Use RRAILS Form RL-320 as cover letter whenever releasing Form G-320 to an employee. This letter advises the employee of the six steps necessary to complete and to return the Form G-320 to the field office.

   If home schooling is involved, develop the documentation on Form G-315H *Checklist for Documentation Needed for Student Age 18-19 in Home Schooling* in addition to the Form G-320 (see FOM-I-510.5.3). Form G-315H is available on RRAILS.

C. Provide Student Information - Include informational booklet G-316 Railroad *Retirement Benefits for Students Age 18-19 and in Elementary or Secondary School* only with the Form G-320 at initial entitlement as a student. Otherwise, the booklet is available at any RRB field office or on www.rrb.gov.

Always enclose Form G-77a *How Work Affects Retirement Annuities* and a return envelope. Pend the case for 30 days

525.15.3 Development for Survivor Student

A. Develop Child's Annuity Application on APPLE - Develop a *Child's Annuity Application* on APPLE when the student is age 18-19 on the OBD. The *Child's Annuity Application* obtains the documentation of the student's relationship to the employee. However, if the child's survivor annuity is already in force when the child attains age 18 and qualifies as a full-time student, any documentation of the child's relationship to the employee is in RRB records. Do not develop a second *Child's Annuity Application* at age 18.

B. Develop Form G-315 - Form G-315 is available on RRAILS. Always develop a Form G-315 *Student Annuitant Questionnaire* for a survivor child age 18-19 claiming FTA. A separate Form G-315 is required for each student and each school year. If the student changes schools in the middle of the school year, a separate Form G-315 is required for each school.

Use RRAILS Form RL-315 as the cover letter whenever releasing Form G-315 to a student. This letter advises the student of the five steps necessary to complete and to return the Form G-315 to the field office.

If home schooling is involved, develop the documentation on Form G-315H *Checklist for Documentation Needed for Student Age 18-19 in Home Schooling* in addition to the Form G-315 (see FOM-I-510.5.3). Form G-315H is available on RRAILS.

C. Provide FTA Entitlement Information – Include informational booklet G-316 *Railroad Retirement Benefits for Students Age 18-19 and in Elementary or Secondary School* only with the Form G-315 at initial entitlement as a student. Otherwise, the booklet is available at any RRB field office or on www.rrb.gov.

Always include Form G-77 *How Earnings Affect Survivor Annuities* and a return envelope. Pend the case for 30 days

525.15.4 Developing FTA in Summer Months of Deemed FTA

The Form G-315 or Form G-320 school official certification should be completed by the school (or home school) the student last attended before the period of non-attendance (June monitoring).

1. If the student will resume attendance at the same school, release a second monitoring Form G-315 or Form G-320 to the school in the month the attendance is scheduled to resume (September monitoring).

2. If the student will be attending a new school after the period of non-attendance ends, release the monitoring Form G-315 or Form G-320 to the new school in the month that attendance at the new school is scheduled to begin (September monitoring).

525.15.5 Developing FTA for Student Not in Actual or Deemed FTA

If children are not in actual or deemed FTA in the month they attain age 18, they cannot be paid as students for that month. The children can be entitled effective with the first month of FTA after attaining age 18, provided all other conditions for entitlement are met (as explained in FOM-I-530.5.2).

525.15.6 Direct Deposit for Student

Survivor students do not have the option of authorizing payment of their annuity to a parent. A student is an adult beneficiary and all development in a survivor case will ordinarily be directly with the student.

If parents object to direct payment to students, explain that students are considered and treated as all other adult beneficiaries, and that representative payees will be appointed only if the students are incapable of handling their own funds.

The student may have payments credited to an account at a financial institution through direct deposit. The account can be a personal checking account or a joint account with the parent.

525.20 Student Forms Not Returned Within Thirty Days

525.20.1 Survivor Child Applicant Age 18 on OBD

If the child is age 18 on the OBD and the Form G-315 is not returned within 30 days of the date the form was released, contact the student by telephone to ascertain why it has not been returned. If the student indicates that the school is refusing to verify attendance on Form G-315, develop secondary evidence as explained in FOM-I-525.20.4.

If you are unable to reach the student by telephone, release the RRAILS RL-315f letter and pend the case for an additional 15 days.

525.20.2 Child Age 18 on Special Guaranty Beginning Date

If the child is age 18 on the Special Guaranty begin date and the G-320 is not returned within 30 days, contact the employee by telephone to ascertain why it has not been returned. If the employee indicates that the school is refusing to verify attendance on Form G-320, develop secondary evidence as explained in FOM-I-525.20.4.

If you are unable to reach the employee by telephone, release the RRAILS RL-320F letter and pend the case for an additional 15 days.

525.20.3 IPI Child or Survivor Annuitant Attains Age 18

If the Form G-315 or Form G-320 is requested before the IPI child or survivor child attains age 18 and the form is not returned within 30 days, contact the student or employee by telephone to ascertain why it has not been returned. If the student or employee indicates that the school is refusing to verify attendance on Form G-315 or Form G-320, develop secondary evidence as explained in FOM-I-525.20.4.

If you are unable to reach the student or employee by telephone, release the RRAILS RL-315F letter or RRAILS RL-320F letter and pend the case for an additional 15 days.

525.20.4 Secondary Evidence of FTA

If students or employees allege that the educational institution refuses to complete Form G-315 or Form G-320 or charges students to complete forms, contact the school to verify the allegation (unless you already know this is the school's practice). Maintain a list of such schools in the same notebook that you use to record the names and titles of the school officials who complete RRB student forms. When a school either charges a fee or refused to verify the attendance for the student, you may, at your discretion, develop secondary evidence of FTA.

Acceptable secondary evidence of FTA in an educational institution would be anything that shows the student is carrying a sufficient number of credit hours to be in FTA and some proof of current enrollment at the school. This could include a schedule of classes accompanied by proof of payment for the current semester. The school may be able to advise the field office of what types of documentation the student should be able to produce.

Although secondary evidence is allowed for regular school attendance, there is no corresponding secondary evidence allowed for home schooling.

525.21 Student Form Not Returned Timely

525.21.1 Survivor Child Applicant Age 18 on OBD

If the student cannot be contacted and the Form G-315 is not returned by the end of the 15-day period indicated on the RL-315F, send the case for denial using manual review code 5. Complete an APPLE "Proof of Full-Time Attendance" screen (PF15) to support the SBD denial of the application. Put an "N" in the proof verified box. In "Remarks," indicate that the FTA was not verified because the child failed to return the Form G-315.

525.21.2 Child Age 18 on Special Guaranty Begin Date

If the employee cannot be contacted and the Form G-320 is not returned by the end of the 15-day period indicated on the RL-320F, abandon the development of FTA. Do not complete an APPLE "Proof of Full-Time Attendance" screen (PF15). Instead, send an Outlook message to RBD that the FTA was not verified because the employee failed to return the Form G-320. RBD will release the RRAILS RL-300 to the employee.

525.21.3 Student Form Not Returned Before the Month the Survivor Child Annuitant or IPI Child Attain Age 18

Abandon the development of FTA. Do not complete an APPLE "Proof of Full-Time Attendance" screen (PF15).

525.25 FTA Documentation Problems

525.25.1 Assure FTA Evidence Signed By Proper School Official

The field office is responsible for determining the acceptability of evidence submitted to verify school attendance at an educational institution or home schooling. When Form G-315 or Form G-320 is returned, review the contents and assure that the school certification section is signed by the proper school official.

When evidence for home schooling is received, review the contents and assure that the letter approving the home schooling is signed by the school official designated by the laws of the State in which the student resides

If you discover what may appear to be a forged form (see FOM-I-905.20), or conflicting information is secured, contact the school official in person or by telephone to see if the school official actually completed the form.

1. If students are in FTA at an EI and the school official did not complete the form, contact the students preferably by telephone and advise them that the form they submitted is not acceptable because it was not completed by the school official.

Furnish the students with a new Form G-315 or Form G-320 to verify the FTA by having the form properly signed by the school official.

2. If students are in home schooling and the superintendent of the school district did not sign the letter authorizing the home schooling, contact the student preferably by telephone and advise them that the authorization letter they submitted is not acceptable because it was not signed by the superintendent of the school district. Request a new letter properly signed by the school official.

Advise the student that the FTA documentation properly signed by the school official must be received by the RRB within 15 days to avoid denial or termination of benefits.

525.25.2 Fraud

If you encounter cases where the student has repeatedly submitted Form G-315's or Form G-320's that were forged (not completed by the school or school district), send a memorandum summarizing the occurrences and photocopies of the suspect forms to Office of Programs - Field Service.

If the student is not in FTA and the school official certification was forged (the school official did not complete the Form G-315 or Form G-320), notify the Debt Recovery Division of the apparent forgery by memorandum. Attach a photocopy of the suspect document.

525.30 FTA Evidence Does Not Verify FTA

525.30.1 Field Office Cannot Make Home Schooling Determination

If, at the field office, you cannot determine whether or not the home schooling is FTA for a survivor or Retirement O/M case, enter any FTA information that you have on the APPLE "Proof of Full-Time Attendance" screen (PF15) with an "N" in the proof verified box. Include "FTA determination has not been made." in the "Remarks" section. Enter an "A" on the APPLE Summary screen to indicate that a hard copy of the FTA proof is being sent to Headquarters. Send a copy of the home school documentation to RBD or SBD via Form G-626.

525.30.2 Student Survivor Application Denials

If the child age 18-19 files a survivor *Child's Annuity Application* and claims FTA on the OBD and the child either does not return the Form G-315 timely and properly signed by the school official or the Form G-315 submitted as proof of FTA does not verify FTA, send the application to SBD with manual review code 5 for denial. The field office is to complete the APPLE "Proof of Full-Time Attendance" screen (PF15) to support SBD's denial of the application. Put an "N" in the proof verified box. Include "FTA not verified" in the "Remarks" section of the APPLE "Proof of Full-Time Attendance" screen (PF15).

Image the original copies of any FTA documentation you were able to develop. SBD will deny the application and send a denial letter to the student. The student may reapply for benefits before attaining age 19.

525.30.3 Student Retirement O/M Denials

If the employee files Form G-319 *Statement Regarding Family And Earnings For Special Guaranty Computation* to have a child age18-19 included in the Retirement O/M as a student and either does not return the Form G-320 timely and properly signed by the school official or the forms submitted as proof of FTA do not verify FTA, RBD does not have a pending "application" to close out. Do not enter the FTA information on the APPLE "Proof of Full-Time Attendance" screen (PF-15).

Instead, image the original FTA documentation that you were able to develop. Send an Outlook message to RBD indicating that the FTA was not verified. RBD will release RRAILS Letter RL-300 to the employee stating that the child cannot be included in the Special Guaranty. The employee may reapply for the student benefit before the child attains age 19 as long as the Special Guaranty rate is in force in the month the child becomes entitled as an FTS.

525.30.4 FTA Claimed But Not Verified for Age 18 Attainments

If the survivor or Retirement O/M child claims FTA at age 18 attainment and the child either does not return the G-315 or Form G-320 timely and signed by the proper school official or the forms submitted as proof of FTA do not verify FTA, neither SBD or RBD have a pending application to close out. Do not enter the FTA information on the APPLE "Proof of Full-Time Attendance" screen (PF15). Instead, image the original copies of the FTA documentation that you were able to develop. Send an Outlook message to SBD or RBD to indicate "FTA was not verified."

SURVEA will process the termination of the child's survivor annuity when the child attains age 18. MAP will issue a referral to RBD to adjust the Special Guaranty rate when the child attains age 18.

525.35 Initiating Student Benefits

525.35.1 Field Office Action When FTA Verified on OBD or ABD

As soon as you are satisfied with the authenticity of the school's verification of FTA, or authenticity of the verification of home schooling, enter the verified FTA proof on APPLE. On the APPLE menu, select "proof" and PF-3 "add new." Then select the APPLE (PF15) *Proof of Full-Time Attendance* screen and enter the FTA proof according to APPLE instructions in FOM-I-1581. Image the original Form G-315 or Form G-320, and FTA documentation.

If home schooling documentation is used to verify FTA, the APPLE “Proof of Full-Time Attendance” screen (PF15) should indicate home schooling as the type of school. Image that documentation.

If FTA is verified by using secondary evidence (see FOM-I- 525.20.4), include "verified by secondary evidence (type)" in the “Remarks” section of the APPLE “Proof of Full-Time Attendance” screen (PF15) screen. Image the secondary evidence.

NOTE: When the student beneficiary initially becomes entitled to student benefits, the field office should contact the student in person, whenever possible; to explain the reporting responsibilities that accompany student benefits and make sure the student has received Booklet G-316 *Railroad Retirement Benefits for Students*. If the student cannot be contacted in person, the field office may contact the student by telephone. The field office should document the contact date, the contact method, and an explanation for the telephone contact, (as opposed to the preferred personal contact), on Contact Log.

525.35.2 Notification to SBD and RBD of Initial Entitlement FTA Proof

If the Child’s Annuity Application is pending on the OBD, APPLE will attempt to pay the student annuity when all proofs are present. SBD will receive a referral indicating any problems in paying the annuity. The award notice will be imaged into the claim file.

Note: APPLE creates a STAR referral for SBD when the child's application is filed if the applicant will turn age 18 within three months of the OBD. Enter the FTA proof for these cases as explained in FOM-I-525.35.3 below.

If a child can be included in the Special Guaranty on the ABD, and Form G-320, and any additional FTA documentation, verifies FTA, enter the FTA proof on the APPLE *Proof of Full-Time Attendance* screen (PF15). Put a “Y” the FTA verified box. APPLE will not pay these cases. Send an Outlook message to RBD stating that the FTA proof is on APPLE. RBD will then take steps to pay based on full-time attendance.

Once this the APPLE *Proof of Full-Time Attendance* screen (PF15) proof screen has been used to pay benefits, it cannot be changed.

525.35.3 Minor Child Attains Age 18 and Qualifies as a Full-Time Student

For children who are receiving survivor annuities as minor children prior to attaining age 18, enter the Form G-315 information on APPLE “Proof of Full-Time Attendance” screen (PF15). You must also create an APPLE application type 8 conversion requests. APPLE will code in a Form G-315 for an age 18 child-to-student attainments as a student application in the KOR/STATS program and will create a STAR referral “*Child to Student Application”* for SBD examiner handling.

For children included in the Special Guaranty prior to attaining age 18, the field office should enter the Form G-320 information on APPLE “Proof of Full-Time Attendance” screen (PF15). Send an Outlook message to the RBD mailbox whenever you enter FTA information into the APPLE “Proof of Full-Time Attendance” screen (PF15).

The APPLE “Proof of Full-Time Attendance” screen (PF15) *Proof of Full-Time Attendance* screen must be viewable by RBD or SBD prior to the month the child attains age 18 to prevent interruption in payments.

A. When SURVEA mechanically terminates payments for the survivor child at age 18, SBD will not be able to make a timely reinstatement if the FTA documentation is not entered on the APPLE “Proof of Full-Time Attendance” screen (PF15) timely. If FTA is later verified and there is continuous entitlement, SBD will reinstate the student benefit retroactive to the same date on which the child’s annuity was terminated. However, payments may be interrupted until the reinstatement is made.

B. RBD will need to adjust the employee’s annuity rate to remove a retirement child from the O/M computation if the FTA documentation is not entered on the APPLE “Proof of Full-Time Attendance” screen (PF15) timely. If the FTA is later verified and there is continuous entitlement, RBD needs to adjust the employee annuity again to include the student in the Retirement O/M computation retroactive to the date on which the student was removed from the Retirement O/M computation. These adjustments to the employee annuity can be avoided if the student FTA documentation is entered on the APPLE “Proof of Full-Time Attendance” screen (PF15) timely.

Once the APPLE “Proof of Full-Time Attendance” screen (PF15) has been used to pay or continue student benefits, it cannot be changed.

525.35.4 Minor Child Attains Age 18 and does not Qualify as a FTS

When the information furnished by the student on Form G-315, the home school documentation, or directly from the school, indicates that such student does not qualify as an FTS, deny the student annuity. Give the reason(s) why the student does not qualify (e.g., not considered in FTA, school he is attending is not an educational institution, etc.). Release a copy of the denial letter, image a copy.

525.36 Release Form G-315A.1 To Verify Last Day of FTA

As soon as current FTA is verified for either a survivor or Retirement O/M student, always release Form G-315A.1 to the student's school or home school teacher (see FOM-I-1720, Form G-315a.1).

525.36.1 Release Form G-315A.1

The RRAILS Form RL-315A.1 cover letter explains why the RRB sent the Form G-315A.1 to the school or home school teacher. It includes the definition of full-time school attendance and requests the school or home school teacher to retain the Form G-315A.1 until an event occurs that causes the student to end the full-time school attendance.

Item 8 of Form G-315A.1 allows the field office to select either school registrar or home school teacher for the label for that item before printing the form for release to the school.

525.36.2 No Tracing is Required

No tracing action is required by the field office for return of Form G-315A.1.

525.36.3 School or Home School Teacher Returns Form G-315A.1

If the school or home school teacher returns a Form G-315A.1 to the field office, review the contents and verify that the form was signed by the proper school official or home school teacher, and follow the procedure in FOM-I-535.5.

530.5 Change in FTS Status Under Special Guaranty (Retirement O/M)

530.5.1 Continuing Entitlement

When a student, who was previously included in the Special Guaranty (Retirement O/M) computation of the employee's annuity as an FTS, resumes FTA within four months, benefits are to be reinstated effective with the date on which they were previously suspended.

Example 1: A student attained age 18 in January and dropped out of high school in his junior year on May 15. The student was removed from the Special Guaranty effective June 1 because he did not intend to resume FTA. He changed his mind and resumed FTA in secondary school on September 6. Since his period of non-attendance was 4 months or less. He can be deemed to be in FTA from June 1 through August 31. His entitlement goes back to June 1.

Example 2 - A child was last in FTA in May and attained age 18 in July. He did not intend to return to FTA for his senior year. He was removed from the Special Guaranty rate at attainment of age 18 because he was not in actual or deemed FTA. His plans changed and he did return to high school for the September through June school year. Since he returned to FTA within four months of the last FTA (May), he can be included in the Special Guaranty as a student retroactive to July, if all other entitlement factors are met.

530.5.2 Re-entitlement

A student, whose inclusion as an IPI in the Special Guaranty (Retirement O/M) was terminated, may upon the filing of a new Form G-320 (or home schooling documentation) become re-entitled if the Special Guaranty rate is in effect (without the student) in the month of re-entitlement and the student:

1. Is under age 19 (actual or deemed);

2. Is a full-time student at an elementary or secondary school; and,

3. Has not married since he was last entitled, if the student was married, see FOM-I-420.10.2.

   Example - A child was last in FTA in March and attained age 18 in May. He intends to return to FTA in high school for the September through June school year. He is not entitled to student benefits for May, June, July and August. He can be entitled as a student beginning in September, if all other entitlement factors are met and the Special Guaranty rate (without the student) is in effect in that month.

530.5.3 Verifying FTA

A Form G-320 signed by the employee (and, if applicable, home schooling documentation) is always required with the signature of the school official of the school the child is attending or plans to attend. Release Form G-315A.1 (see FOM-I-1720, Form G-315a.1) to the school after the FTA is verified.

If a period of non-attendance is four months or less, a Form G-320 or Form G-315A for the previous FTA is also required to verify the last date of FTA to establish continued entitlement. This may already be in the student case on USTAR from student monitoring.

530.5.4 Notifying RBD of Return to FTA

Enter the updated FTA data for the student on a new APPLE screen APMU925 (PF15). APPLE will not send a mechanical notification to RBD when an APPLE screen APMU925 (PF15) is completed for re-entitlement. Send an Outlook message to the RBD mailbox to view all the APPLE FTA proof screens for the student and reinstate the student in the employee Special Guaranty rate.

530.5.5 At Death of Employee

When the student is an IPI at the death of the railroad employee, the FAST S/T termination for the employee annuity will also stop the student IPI benefit.

- Employee has a Current Connection – A child's annuity application is needed to pay the student a survivor annuity under the RRA. The field office jurisdiction for the monitoring of the survivor student benefit is explained in FOM-I-520.5. Send an Outlook message to SBD to advise them that the FTA proof is already on APPLE screen APMU925 (PF15).

- Employee Does Not Have a Current Connection – SBD will transfer the case to SSA for payment of the student survivor benefits.

530.10 Change in FTS Status in Survivor Cases

530.10.1 Continuing Entitlement

When a student, who was previously paid an annuity as an FTS, resumes FTA within four months, benefits are to be reinstated effective with the date on which they were previously suspended.

Example 1: A student attained age 18 in January and dropped out of high school after his junior year on May 15. The student annuity was terminated effective June 1 because he did not intend to resume FTA. He changed his mind and resumed FTA in secondary school on September 6. Since his period of non-attendance was 4 months

or less; he can be deemed to be in FTA from June 1 through August 31. His student entitlement goes back to June 1.

Example 2: A child was last in FTA in May and attained age 18 in July. He did not intend to return to FTA for his senior year. His annuity terminated at attainment of age 18 because he was not in actual or deemed FTA. His plans changed and he did return to high school for the September through June school year. Since he returned to FTA within four months of the last FTA (May), he can be entitled as a student retroactive to July, if all other entitlement factors are met.

530.10.2 Re-entitlement

Students may become re-entitled upon the filing of a new Form G-315 (or home schooling documentation) if they:

- Are under age 19 (actual or deemed),
- Are full-time students at an elementary or secondary school, and
- Have not married since last entitled. If the student married, refer to FOM1 420.10.2.

Example - A child was last in FTA in March and attained age 18 in May. He intends to return to FTA in high school for the September through June school year. He is not entitled to student benefits for May, June, July and August. He can be entitled as a student beginning in September, if all other entitlement factors are met.

530.10.3 Verifying FTA

A Form G-315 (or home schooling documentation) is always required with the signature of the school official of the school the child is attending or plans to attend. Release Form G-315A.1 (see FOM-I-1720, Form G-315a.1) to the school after the FTA is verified. If a period of non-attendance is four months or less, a Form G-315 or Form G-315A is also required for the previous FTA to verify the last date of FTA to establish continued entitlement. This may already be in the student case on USTAR from student monitoring.

530.10.4 Notifying SBD of Return to FTA

Enter the verified FTA data on a new APPLE screen APMU925 (PF15). APPLE will not send a mechanical notification to SBD when an APPLE screen APMU925 (PF15) is completed for re-entitlement. Send an Outlook message to the SBD mailbox to view all the APPLE FTA proof screens for the student and reinstate the student annuity when:

- Student benefits have been suspended or terminated and
- Student meets all eligibility requirements; and
- Verification of continuous FTA or a new period of FTA is received before student attains age 19.

530.15 Monitoring Continued Entitlement

530.15.1 Purpose

It is the responsibility of the field office to make entitlement determinations for student beneficiaries. To assure benefit eligibility, the field office having jurisdiction over the student beneficiary will verify the student's attendance by releasing the FTA monitoring.

For those students not facing an annuity terminating event, e.g. age 19 attainment or graduation, field offices should monitor in September, March, and June.

The Payment Analysis and Systems Section in Policy and Systems (P&S-PAS) will run a student selection program in September, March, and June to capture the student cases for monitoring, and upload a referral to the Universal System Tracking and Reporting (USTAR) system. P&S-PAS will notify field offices when the cases are posted on USTAR. Field Office managers will access USTAR to assign the cases for monitoring.

The student cases are identified by a six-digit USTAR category code in the following format: field office number, followed by FT (Full Time), followed by a letter for the month ('S' for September, 'M' for March, and 'J' for June) of the monitoring year. For example, a student monitoring case for the Chicago field office for September will be coded as 296FTS.

Note: A tickler can be used in USTAR when a student turns 19 during the school year, as well as an annuity terminating event occurs in the school year. See FOM1 530.15.1.

- Each student monitoring case on USTAR will contain the same information.

- The claim number, annuitant name, and annuity payee code will be displayed in the **Annuitant Info** section of the USTAR WORK DETAIL screen.

- The survivor student's name, address, and social security number will be displayed in the **Source Details** section of the USTAR WORK DETAIL screen, as shown in the following example:

  JOHNNY DOE |844 N RUSH ST CHICAGO IL 60611 |SS: 123456789

- 'IPI Student', not actual name, will appear for the students included in the O/M, address, and social security number will be displayed in the **Source Details** section of the USTAR WORK DETAIL screen, as shown in the following example:.

  IPI STUDENT |844 N RUSH ST CHICAGO IL 60611 |SS: 123456789

For those students with an annuity terminating event in the school year, field offices can monitor in September, April, and 2 months prior to the terminating event. (If April is 2 months prior to the terminating event, e.g. graduation, a single monitoring contact is acceptable.)

Nothing in this or the following section prohibits an office from verifying entitlement more often if circumstances warrant. Also, if the student attains age 19 before a scheduled monitoring date, refer to FOM-I-535.20.

Verification of FTA serves two purposes:

- to validate payments made to students since the last (or initial) FTA verification was made; and,
- to establish "intent to continue" so that benefits may be paid to eligible students through a period of non-attendance during the summer months not to exceed 4 months.

530.15.2 Release FTA Monitoring Form G-315 in Survivor Cases

The field offices should use the RRAILS RL-315 cover letter for survivor student monitoring cases. This letter lists the five steps needed to complete and return the monitoring Form G-315 to the RRB field office.

The letters have a drop down menu to allow the RRB field office to customize the reference to the school official to print either “school registrar” or “home school teacher.” Form G-315, Form G-77 *How Earnings Affect Survivor Annuities*, and a return envelope will always be enclosed with the RL-315 letter.

In a survivor case in which the student has a payee, send RRAILS Form RL-313 to the student's payee at the same time you release the RL-315 to the student.

In addition to completing the Form G-315, the field office should request a student in home schooling to include the most current home schooling documentation described in FOM-1-510.5.3.

NOTE 1: If the field office secured or will secure Forms G-315 or G-315a for some other reason (e.g., verification of FTA, attainment of age 19, etc.) in the month before or after a monitoring month, the field office may elect not to include the case in the current monitoring program.

NOTE 2: If the field office knows that the school will charge the student to complete the Form G-315, the field office may develop secondary evidence of full-time attendance as explained in FOM-I-525.20.4 and have the student complete Section C of the G-315.

530.15.3 Release FTA Monitoring Form G-320 in Retirement O/M Cases

The field offices should use the RRAILS RL-320 Cover letter for Retirement O/M student monitoring cases. This letter lists the six steps needed to complete and return the Form G-320 to the RRB field office.

The letters have drop down menu to allow the RRB field office to customize the reference to the school official to print either "school registrar" or "home school teacher." Form G-320, Form G-77a *How Work Affects Retirement Annuities*, and a return envelope will always be enclosed with the RL-320 letter.

In addition to completing the Form G-320, the field office should request a student in home schooling to include the most current home schooling documentation described in FOM-1-510.5.3.

NOTE 1: If the field office secured or will secure Forms G-315 or G-315a for some other reason (e.g., verification of FTA, attainment of age 19, etc.) in the month before or after a monitoring month, the field office may elect not to include the case in the current monitoring program.

NOTE 2: If the field office knows that the school will charge the student to complete the Form G-320, the field office may develop secondary evidence of full-time attendance as explained in FOM-I-525.20.4 and have the employee complete Sections C - D of the G-320.

530.15.4 Pend For Thirty Days

Establish a 30-day call-up for return of the monitoring Form G-315 or monitoring Form G-320. If the Form G-315 is not returned within 30 days, contact the student (preferably by telephone; use the mail if you are unable to reach the student by telephone) to ascertain why it has not been returned.

If the Form G-320 is not returned within 30 days, contact the employee (preferably by telephone; use the mail if you are unable to reach the employee by telephone) to ascertain why it has not been returned.

If the school is refusing to verify attendance on Form G-315 or Form G-320, develop secondary evidence as explained in FOM-1-525.25.4.

In all other cases, release the RRAILS RL-315f letter or RRAILS RL-320f letter and pend the case for an additional 15 days.

530.15.5 Monitoring Form Not Returned After 45 Days

If the monitoring Form G-315 or Form G-320 is not returned by the end of the 45 day period or you cannot contact the student, release RRAILS Form G-315a to the school registrar to determine the last date of FTA.

A. Survivor Cases - You can suspend the student's annuity immediately on the FAST-S/T system pending return of the G-315A.

When school returns the Form G-315A indicating that the survivor student stopped FTA, the field office should terminate the student annuity. Send an Outlook message to the SBD mailbox with the last day of FTA only when the student benefit was not terminated timely (there is an overpayment) or if other survivor annuitants are entitled on the same claim number and were subject to the family maximum with the student included in the family group. SBD will make any annuity adjustments needed.

The field office should enter any corrections to the FTA information on a new APPLE “Proof of Full Time Attendance” screen as explained in FOM-1-530.20.2.

If the school returns the Form G-315A indicating that the survivor student is still in FTA, the field office should advise the student that benefits will not be reinstated until the student completes Sections C-D of Form G-315. If the student subsequently returns a properly completed Form G-315, send an Outlook message to the SBD mailbox to reinstate benefits.

B. Retirement O/M Cases -. Do not suspend the employee annuity on FAST-S/T. Send an Outlook message to the RBD mailbox advising them that you released Form G-315A to develop for the last date of FTA directly from the school. They will remove the student from the employee’s Retirement O/M rate.

If the school returns the Form G-315A indicating that the Retirement O/M student has stopped FTA, send an Outlook message to the RBD mailbox with of the last date of FTA. RBD will make any annuity adjustments needed.

The field office should enter any corrected FTA information on a new APPLE (PF-15) “Proof of Full Time Attendance” screen as explained in FOM-1-530.20.2.

If the school returns the Form G-315A indicating that the Retirement O/M student is still in FTA, the field office should advise the employee that benefits will not be recertified until the employee completes Sections C-D of Form G-320. If the employee subsequently returns a properly completed Form G-320, send an Outlook message to the RBD mailbox to recertify benefits, as explained in FOM-I-530.5.10.

530.20 Monitoring Form Returned

When the Form G-315 or Form G-320 is returned, review the contents and verify that the form was signed by the proper school official, as explained in FOM-I- 525.25.1. The RL-315 and RL-320 cover letters instruct the annuitants to return the Form G-315 or Form G-320 to the RRB after the school verifies the FTA information. You may accept the forms returned directly from the school if all of the items on the forms have been satisfactorily completed by the student, or employee in Retirement O/M cases.

Use one of the codes shown below to record the monitoring results, and close out the case on USTAR. The three-digit code is next to drop down list of disposition types on USTAR.

CODE	MEANING
CCA	Age 19 Termination; student age 19
CCG	Graduated termination; student graduated
CCN	Not Eligible Termination; use for any non-entitlement termination event; e.g., marriage, non-attendance, falls short of FTA requirements, death, etc.
CCV	Continued Eligibility Verified
CFR	OIG Fraud Referral

530.20.1 Monitoring Form Indicates No Change in FTA Information

If a September or March monitoring Form G-315 simply verifies the continued FTA as claim on the APPLE screen APMU925 (PF15) already entered on APPLE, it is not necessary to add anything to APPLE. Image the Form G-315. If the case was selected in the monitoring program, close out the USTAR referral using code CCV. If the student entitlement continues, release Form G-315A.1 to the student's school or home school teacher (see FOM-I-1720, Form G-315a.1).

No special action is required by RBD or SBD.

If the monitoring is at end of student entitlement, follow the instructions in FOM-I-535 to close out the student case on USTAR.

530.20.2 Monitoring Updates Current FTA Information

APPLE can store updated FTA information for the same student from monitoring Form G-315's or monitoring Form G-320's as additional *Proof of Full-Time Attendance* (PF-15). This could be necessary when:

- A student changes schools (see FOM-I-530.25),
- A student stops FTA and later returns to FTA (see FOM-I-530.5.10); or,
- A student stops FTA on a date earlier or later than the date previously reported (see FOM-I-535).

On the APPLE menu, select “proof” and PF-3 “add new.” Then select PF15 and complete the new FTA proof screen according to APPLE instructions in FOM-I-1581. Image the original monitoring Form G-315 or Form G-320.

If the FTA monitoring used home schooling documentation to verify continued FTA, the APPLE screen APMU925 (PF15) should indicate home schooling as the type of school. Image that documentation.

If the FTA monitoring used secondary evidence to verify continued FTA, enter "verified by secondary evidence (type)" in the Remarks section of APPLE screen APMU925 (PF15). Image the secondary evidence.

In “Remarks” of this APPLE screen, indicate that this is the most current FTA information based on monitoring (date).”

APPLE will not send a mechanical notification of the updated FTA information to SBD or RBD. Refer to FOM-I-535.15 for field office handling of the suspension or termination of the student benefit.

If the case was selected in the monitoring program, close out the USTAR referral using code CCV.

530.25 Monitoring Changing Schools

Benefit monitoring is necessary each time a student changes schools. We need to verify the last date of FTA at the old school and verify that attendance at the new school is FTA. The school change may actually be graduation from secondary school, which is a terminating event (see FOM-I-535).

530.25.1 School Change Notification During Survivor Student Monitoring Activity

A review of the monitoring Form G-315 may indicate that the student is or will be attending a new school.

A. Currently attending new school – Release Form G-315A to the previous school to verify the last date of FTA, unless no payments were made for months after the last Form G-315 was completed. If the monitoring Form G-315 verifies FTA at the new school, send a Form G-315A.1 to the new school. Continue handling as a regular monitoring procedure.

B. Intent to change to a new elementary or secondary school - If the monitoring Form G-315 indicates that, after the end of the current term, the student plans to change to a new elementary or secondary school, pend your student file for the end of the school term. At that time, send Form G-315A to the old school to verify the last day of FTA. Set another call-up for the first day of the month in which the student is to start at the new elementary or secondary school. Release a Form G-315 to the student at that time and control for response. Release a

Form G-315A.1 to the new school after the Form G-315 is returned with certification of the FTA by the new school. Continue handling as a regular monitoring procedure.

530.25.2 School Change Notification During Retirement O/M Student Monitoring Activity

A review of the monitoring Form G-320 may indicate that the student is or will be attending a new elementary or secondary school.

A. Currently Attending New School

Release Form G-315A to the previous school to verify the last date of FTA, unless no payments were made for months after the last Form G-320 was completed. If the monitoring Form G-320 verifies FTA at the new elementary or secondary school, send a Form G-315A.1 to the new school. Continue handling as a regular monitoring procedure.

B. Intent to Change to a New School

If the monitoring Form G-320 indicates that after the end of the current term, the student plans to change to a new elementary or secondary school, pend your student file for the end of the school term. At that time, send Form G-315A to the old school to verify the last day of FTA. Set another call-up for the first day of the month in which the student is to start at the new elementary or secondary school. Release a Form G-320 to the employee at that time and control for response. Release a Form G-315A.1 to the new school after the Form G-320 is returned with certification of the FTA by the new school. Continue handling as a regular monitoring procedure.

530.25.3 Survivor Student Contacts Field Office Reporting School Change

Any time other than during regular monitoring periods that the survivor student reports a change in elementary or secondary school attended, it may be necessary to release Form G-315 or Form G-315A for old and new schools to the student.

A. School Change Effected

If the student is already attending the new school, send Form G-315A to the old school unless no payments were made for months after the last Form G-315 was completed. Give a Form G-315 to the student with a pre-addressed unfranked envelope for the new school and pend your file for 30 days. Release a Form G-315A.1 to the new school after the student returns the Form G-315 with the certification of the FTA by the new school. Continue handling as a regular monitoring procedure.

B. School Change Intended

If the student is still attending the old school and the intended change will occur after the next monitoring, no special action is required since the student will provide the same (or more current) information on the next monitoring Form G-315.

If the student is still attending the old school and the intended change to the new school will occur before the next monitoring, pend the case for the month the change will occur. At that time, handle the case as explained in A. above.

If the student is in a period of non-attendance and will begin attending the new school after the end of the period of non-attendance, release the Form G-315A to the old school to determine the last day of FTA at that school. Pend the case for release of Form G-315 to the student for the new school in the month the change will occur. Continue handling as a regular monitoring procedure.

530.25.4 Employee or Retirement O/M Student Contacts Field Office Reporting School Change

Any time other than during regular monitoring periods that the employee or Retirement O/M student reports a change in elementary or secondary school attended, it may be necessary to release Form G-320 or Form G-315A for old and new schools to the student.

A. School Change Effected

If the student is already attending the new school, send Form G-315A to the old school unless no payments were made for months after the last Form G-320 was completed. Give a Form G-320 to the employee with a pre-addressed unfranked envelope for the new school and pend your file for 30 days. Release a Form G-315A.1 to the new school after the employee returns the Form G-320 with the certification of the FTA by the new school. Continue handling as a regular monitoring procedure.

B. School Change Intended

If the student is still attending the old school and the intended change will occur after the next monitoring, no special action is required since the employee will provide the same (or more current) information on the next monitoring Form G-320.

If the student is still attending the old school and the intended change to the new elementary or secondary school will occur before the next monitoring, pend the case for the month the change will occur. At that time, handle the case as explained in A. above.

If the student is in a period of non-attendance and will begin attending the new school after the end of the period of non-attendance, release the Form G-315A to the old school to determine the last day of FTA at that school. Pend the case for release of

Form G-320 to the employee for the new elementary or secondary school in the month the change will occur. Continue handling as a regular monitoring procedure.

530.25.5 Transfer to a Foreign School

Even though the student intends to or does transfer to a foreign elementary or secondary school not affiliated with a U.S. elementary or secondary school, it is still the field office's responsibility to verify eligibility for benefits paid because of FTA in the last domestic school.

A. Student currently in the U.S. - If the student has not yet left to attend the new school, mail the monitoring Form G-315 to the student, or monitoring Form G-320 to the employee in Retirement O/M cases, with a pre-addressed unfranked envelope so that attendance can be verified by the last domestic school. Follow regular monitoring procedure for release of other forms, call-ups and signature verification.

B. Student currently in a foreign country - Release a Form G-315A to the last domestic school to verify the last day of FTA at that school.

After verifying FTA in the last domestic school, send an email to SBD or RBD, which will be responsible for verification of entitlement, based on elementary or secondary school attendance at foreign schools.

535.5 Suspension and Termination Events

535.5.1 Suspension Events

Student benefits are suspended in survivor cases if the students work for an employer in the railroad industry, cease FTA or change their intent to resume FTA after a period of non-attendance of 4 months or less.

Student benefits are not payable in Special Guaranty cases, if the students cease FTA or change their intent to resume FTA after a period of non-attendance of 4 months or less.

535.5.2 Termination Events

Student annuities and entitlement to benefits payable under the Special Guaranty are terminated at the end of the month before the month in which a terminating event occurs. A terminating event is:

- A student's attainment of age 19 (actual or deemed),
- The student's marriage (benefits may be reinstated if the marriage is later determined to be void or is annulled), or,
- The student's death.

The student's graduation from secondary school is also a terminating event. However, benefits do not end until the last day of the month of FTA or, in some cases, the graduation month, as explained in FOM-I-535.10.2.

When an employee dies, the student benefits under the Special Guaranty terminate; but a survivor student annuity may be payable. Refer to FOM-I-530.5.5.

535.5.3 Fast S/T Termination of Survivor Student Benefits -

Because the FAST S/T system can accept future termination dates for survivor student annuities, field offices should use the information obtained from periodic monitoring, (see FOM-I-530.15), to ensure that benefits are terminated timely. For example, if an April monitoring contact indicates that a student is scheduled to graduate in the month of May, the field office can enter a FAST S/T transaction in April with a June termination date.

535.10 Determining Months Payable

535.10.1 Student in FTA for Part of Month

A student who meets all other eligibility requirements and whose FTA begins or ends in a month is considered to be in FTA for the entire month. For example, if the student

began FTA on September 30 and ended April 1, the annuity may be paid from September 1 through April 30.

535.10.2 Student Returns to Attend Graduation

Graduation from a secondary school ends a student's entitlement.

Any student who ceased FTA in a month and returned to school in the following month to attend graduation ceremonies only, is considered to be in FTA through the month of graduation.

Example 1: A student whose classes ended on May 15 and graduates on June 25 is in FTA for the month of June.

A student who ceased FTA in a month and returned to school only to attend graduation ceremonies after an interval of one or more months is not considered to be in FTA after the month of class cessation.

Example 2: A student whose classes ended on April 30 and graduates on June 15 is not in FTA for the months of May and June.

535.10.3 Student Attains Age 19

A. General

For benefits to be paid in or after the month a student attains age 19, that student must not have completed the requirements for, or received a diploma (graduated) from a secondary school.

B. School Operates on Yearly Basis

Most elementary and secondary schools operate on a yearly basis. Absent evidence to the contrary, assume that an elementary or secondary school operates on a yearly basis.

The student will be deemed to attain age 19 for termination purposes on the earlier of:

- The first day of the first full month the student is no longer in FTA; or
- The first day of the third month after attainment of age 19 if during actual FTA months; or,
- The first day of the month in which the student attains age 19 if during the deemed FTA non-attendance summer months (see L-2001-8).

Example 1: Ann attained age 19 in May 2001 while in FTA at a high school. She graduates in June. She can be paid through June 30, 2001 (7-1-2001 payment).

Example 2: Bill attained age 19 in January 2001 while in FTA at a high school. He can be paid through March 31, 2001 (4-1-2001 payment).

Example 3: Sarah attained age 19 in July 2001, while in deemed FTA between her Junior and senior year in high school. She can be paid through June 30, 2001 (7-1-2001 payment).

C. School Does Not Operate on Yearly Basis

The use of the words "quarter" or "semester" to denote divisions in the academic year, a change in the student's schedule of classes or short periods of non-attendance between school terms is not sufficient to establish that the school operates on a quarter or semester basis which requires re-enrollment. A school operates under such a system only when the entire academic year, including new selection of class subjects and payment of tuition (where applicable), begins each quarter or semester.

For those few situations where the secondary school operates on a quarter or semester system and requires students to re-enroll for each new quarter or semester, the student is deemed to attain age 19 on the first day of the month following the end of the quarter or semester in progress in the month of actual attainment

Example 1: Joan attained age 19 in March 2001 while in FTA at a high school. The quarter ends March 20, 2001. She can be paid through March 30, 2001 (4-1-2001 payment).

Example 2: Bill attained age 19 in January 2001 while in FTA at a high school. The quarter ends February 10, 2001. He can be paid through February 28, 2001 (3-1-2001 payment).

535.10.4 Terminating Event in Period of Non-Attendance

If a termination event occurs during a period of non-attendance and the requirements for deemed attendance are met, the student is entitled for only the months PRIOR to the month in which the terminating event occurred.

Example: A retirement O/M student's high school classes ended on May 15. He married on August 3 and resume full-time attendance at the same high school on September 6. He is entitled through the month of July.

535.15 Field Office Handling

Benefit monitoring to document and verify the payment of prior FTS benefits is required to support each suspension or termination event. The only exception to this rule is the "suspension for investigation" request to SBD in survivor cases or RBD in Special

Guaranty (Retirement O/M) cases because you cannot contact the student to verify FTA (as explained in FOM-I-530.15.4). Include the source of the information in your Outlook message. Explain your efforts to contact the student or the employee in the Outlook message..

535.15.1 School Reports Last Day of FTA on Form G-315a

FOM-I-530.15.4 instructs the RRB field office to suspend the survivor student annuity on FAST S/T or notify RBD to adjust the employee O/M rate when the student fails to return a student monitoring Form G-315. The RRB field office is to release Form G-315a to the school registrar to verify the last day of FTA.

A. Survivor Annuities - If the school returns the Form G-315a indicating a termination event and the student annuity was not suspended timely or other survivor family members were subject to the family maximum with the student included in the family group, send an Outlook message to SBD with the correct last day of FTA.

B. Retirement O/M Students - If the school returns the Form G-315a indicating a termination event send an Outlook message to RBD with the correct last day of FTA. RBD will make any adjustments needed in the employee's annuity.

If the previously determined "pay through" date was incorrect, enter a new APPLE screen APMU925 (PF15) showing the FTA information with the correct "pay through" date.

535.15.2 First Person Report of Event

Student benefits can be suspended or terminated immediately if the event is reported by the student or by the employee or if the school reports a last day of FTA. If anyone other than the student, the employee or the school, even the payee for a survivor student, reports a suspension or termination event, refer to FOM-I-535.15.3.

A. Survivor Annuities **-**. Use FAST S/T to process the suspension or termination. In survivor cases, age 19 attainments are mechanically passed to FAST S/T for termination 4 months prior to the actual attainment. Therefore, in some cases, you may be modifying an existing pending FAST S/T termination instead of entering a termination initially.

Example: A child born January 5, 1983, will attain age 19 in January 2002. The age 19 termination for the child will appear on the FAST S/T pending screen as early as September 1, 2001, with a termination effective date of January 2002. During the December monitoring process, you determine that the student ceased FTA in December 2001.

The field office would modify the existing termination to show a termination effective date of December 2001. (Refer to FOM-I-1565 for instructions on modifying FAST transactions.)

When student benefits are to be suspended or terminated by the field office and either the suspension/termination is not timely or other survivor family members were subject to the family maximum with the student included in the family group, send an Outlook message to the SBD group mailbox to advise them of the suspension or termination event. SBD will prepare the appropriate overpayment or adjustment letter.

B. Retirement O/M Students **-** Do not suspend the employee annuitant if the student is included in the employee's Special Guaranty (Retirement O/M) rate. When student benefits are to be suspended or terminated, send an Outlook message to the RBD group mailbox to advise them of the suspension or termination event. If it is not a timely suspension/termination, i.e., an overpayment involved, RBD will prepare the appropriate overpayment or adjustment letter**.**

If the previously determined "pay through" date was incorrect, enter a new APPLE screen APMU925 (PF15) showing the FTA information with the correct "pay through" date.

535.15.3 Third-Party Information Report of Event

If someone other than the school, the student, or the employee in a retirement case, reports an event that would cause the suspension or termination of student benefits, attempt to verify the information with the student or the employee annuitant. Because time is essential, attempt to contact the student or the employee by telephone.

A. Able to Verify Information - If you are able to verify the information with the student or the employee, it is considered to be “first-party information.” Follow the procedure in FOM-I-535.15.2. On Contact Log, show the “student” or “employee” who verified the information as the source of the information.

B. Unable to Verify Information - If you are unable to verify the information, in survivor cases, you should NOT suspend or terminate the student annuity on FAST-S/T. Instead, send an Outlook message to the SBD mailbox and request them to send the student annuitant a 30-day advance notice of suspension/termination based on the third-party report. In retirement cases, send an Outlook message to the RBD mailbox requesting them to adjust the employee's annuity. A student may be removed from the O/M computation of an employee's annuity without a 30-day advance notice. Include the name of the third party source of the information in your Outlook message and explain your efforts to contact the student or employee.

If the previously determined "pay through" date was incorrect, enter a new APPLE screen APMU925 (PF15) showing the FTA information with the correct "pay through" date.

535.20 Monitoring Actions Before Benefits Are Terminated

535.20.1 Controlled Monitoring

The field office should establish controls to review and/or monitor a student case two months before the earlier of the month the student:

- Graduates from high school
- Attains age 19 (actual); or
- Attains age 19 (deemed).

Mail a Form G-315 to the student with forms G-77 (survivor) or G77a (retirement) and a pre-addressed unfranked envelope. In a retirement case or a survivor case where the student has a payee, send RRAILS Form RL-313 to the employee annuitant or to the student's payee. Establish a 30-day call-up for return of the Form G-315.

When the G-315 is returned, review it to determine if the previously determined "pay through" date is correct. If the previously determined "pay through" date was incorrect, enter a new APPLE screen APMU925 (PF15) showing the FTA information with the correct "pay through" date.

Note: If the G-315 is not returned, release Form G-315a to the school to obtain the last day of FTA.

535.20.2 Case is Active Two Months before the Termination

If the case is active, review the file and determine the "pay through" date. The "pay through" date is the earlier of the date benefits end because of graduation from high school or because the student is deemed to attain age 19. You can modify existing terminations on the FAST-S/T system as explained in FOM-1-535.15.1.

Send an Outlook message to the RBD mailbox in retirement O/M cases with the "pay through" date based on information on APPLE.. Establish a call-up to monitor the case 2 months before the "pay through" date.

Note: If 2 or fewer months remain before benefits end, monitor the cases immediately as explained in FOM-I-535.20.1 above.

535.20.3 Case is Inactive When Student Attains Age 19 -

If the case is inactive, send an email to RBD in retirement O/M cases. The case should have been monitored at the time benefits were stopped.

.

605.5 General

There are two types of lump-sum death payments (LSDP): a regular LSDP and a deferred LSDP. Both types of lump-sum death payments are based on the combined wage and compensation record of an insured employee. In addition, payment of an LSDP, either regular or deferred, does not affect the future entitlement of survivors to insurance annuities.

605.5.1 Regular LSDP

A regular LSDP is payable when the employee is not survived by a widow(er), surviving divorced spouse, child or parent who could qualify for an insurance annuity for the month in which the employee died. A person qualifies for an insurance annuity if (s)he meets the requirements for eligibility, even though (s)he fails to apply for or cannot receive monthly benefits because of deductions (see FOM1 605.20.2 No Current Annuity Eligibility).

If a widow(er) dies after the employee but in the same month as the employee, the LSDP may be paid if the employee acquired his 120 months of creditable service before 1-1-75 (widow(er) not entitled in the month of death).

NOTE: If the lump-sum was paid before 8-12-83 and the employee acquired his 120th month of railroad service before 1975, the LSDP was payable if a surviving divorced spouse was the only survivor entitled to an annuity in the month of death.

605.5.2 Deferred LSDP

A deferred LSDP is payable 1 year after the insured employee's death to the widow(er) when:

- The widow(er) was:
  - "living with" the employee at the time of his/her death if the employee has at least 120 months of creditable RR service before 1975, or
  - "living in the same household" as the employee at the time of his/her death if (s)he acquired the 120th months of creditable RR service after 1974; and
- Someone qualified for monthly benefits in the month of the employee's death; and
- The total monthly insurance annuities paid to survivors in the first year after death are less than the amount of the regular LSDP that would have been payable if no one qualified for an annuity in the month of the employee's death.

Payment of a deferred LSDP should also be considered when potential entitlement to a monthly annuity exists but cannot be proven. For example, a living-with widow applies for a regular LSDP and indicates a surviving divorced spouse exists, but details

concerning that marriage, the surviving divorced spouse's DOB, etc. are unknown. Because of the surviving divorced spouse's potential entitlement, the living-with widow should be denied and advised that a deferred LSDP may be payable 18 months from the date of the employee's death. A call-up for 18 months should be set by Survivor Benefits to take into consideration the possibility of a 6 month retroactive period.

Detailed information about deferred lump-sum death payments is found in FOM1 605.80

605.10 Amount Of Regular LSDP

The amount of the LSDP depends on when the employee acquires 120 months of RR service and who is eligible to receive payment.

605.10.1 Amount of LSDP If the Employee Acquired 120th Month of Creditable RR Service Before January 1975

The maximum LSDP is 10 times the basic amount. However, in computing the basic amount for an employee who dies after 1974, the 1974 Railroad Retirement Act (RRA) deems the employee to have died on 1-1-75 and any RR and SS earnings after 1974 are disregarded.

The minimum LSDP for an employee with any earnings after 1936 is $181.40. The maximum amount of an LSDP is about $1,400.00 for an employee with maximum earnings through 12-31-74.

NOTE: If the deceased employee did not have any RR compensation or SS earnings after 1936, was not awarded an annuity before 1948 based on at least 10 years of RR service and was not a pensioner, the basic amount would have been zero and the LSDP would have equaled zero.

605.10.2 Amount of LSDP If the Employee Acquires 120th Month of Creditable RR Service After December 1974

The maximum LSDP is equal to the lesser of:

- Three times the PIA; or
- $255 ($255 will always be less).

NOTE: Payment of the $255 LSDP may be affected by SSA nonpayment provisions. Under the 1988 SS Amendments, the LSDP is not payable if the employee has been deported 11-10-89 or later due to association during World War II with the Nazi government of Germany. If there is a question about the possibility of this or another nonpayment provision applying in a specific case, forward the inquiry to Policy and Systems.

605.10.3 Employee Has at Least 60 Months of Creditable RR Service After 1995 and a Current Connection

The maximum LSDP is the lesser of:

- Three times the PIA; or
- $255.00 ($255 will always be less).

If the employee was not insured under the Social Security Act, the amount of the LSDP will be zero since there is no SS PIA. The LSDP application is denied in this case.

NOTE: Payment of the $255 LSDP may be affected by SSA nonpayment provisions. See note in FOM1 605.10.2, above.

605.10.4 Amount of LSDP Payable

The amount of the LSDP actually payable depends, in part, on who receives it.

A. An eligible widow(er) receives the maximum LSDP.

B. A funeral home can receive only the lesser of:

- The amount of the unpaid burial expenses; or
- The maximum LSDP.

C. Equitably entitled persons can receive only the lesser of:

- Full reimbursement for the burial expenses they paid; or
- The remaining maximum LSDP (less any LSDP amount paid to the funeral home).

605.15 Priority Of Payment Of Regular LSDP

605.15.1 Priority of Payment If the Employee Acquired 120th Month of Creditable RR Service Before January 1975

When no one is eligible for an annuity in the month of the employee's death, the LSDP is payable only to the following persons, listed in priority order:

A. Eligible widow(er) - When the employee is survived by an eligible widow(er), (s)he is entitled to the LSDP.

B. Funeral home - When the employee is not survived by an eligible widow(er), the LSDP is used to reimburse any unpaid expenses at the funeral home.

C. Equitably entitled person - When the employee is not survived by an eligible widow(er) and there are no unpaid funeral home expenses, or the unpaid funeral home expenses are less than the maximum LSDP, the payer(s) of other burial expenses (equitably entitled persons) can be reimbursed.

605.15.2 Employee Acquired 120th Month of Creditable RR Service After 1974

If the employee's date of death is September 1, 1981 or later, the LSDP is payable only to a widow(er) who meets the "living in the same household" requirement, providing no one, including the widow(er), is eligible for an annuity in the month of the employee's death.

NOTE: If the employee's date of death was before September 1, 1981, the LSDP was still payable in the same priority as described above in FOM1 605.15.1.

605.20 Eligibility And Entitlement Requirements For Regular LSDP

An applicant is eligible for the LSDP if all the following requirements are met.

605.20.1 Insured Status

The employee must be insured under the Railroad Retirement Act at death.

A. For deaths before 1975, the employee is insured if he had 120 months of creditable RR service, a current connection with the RR industry at death and sufficient quarters of coverage to be insured under the Social Security Act.

B. For deaths after 1974, the employee is insured if he had 120 months of creditable RR service, or at least 60 months of railroad service after 1995, and a current connection with the RR industry.

605.20.2 No Current Annuity Eligibility

The LSDP is payable on the combined wage and compensation record of an insured employee in the following situations:

- There is no surviving widow(er), remarried widow(er), surviving divorced spouse, child or parent eligible for an insurance annuity in the month of the employee's death. A person is considered eligible for an insurance annuity if (s)he meets the requirements for eligibility, even though (s)he fails to apply for or cannot receive monthly benefits at this time because of deductions.

  NOTE: If a widow dies after the employee but in the same month as the employee, the LSDP may be paid if the employee acquired his 120 months of creditable service before 1-1-75 (widow(er) not entitled in the month of death).

- A widow(er) becomes disabled in the month of the employee's death or in the five preceding months and his/her beginning date is after the month of the employee's death because of the waiting period.

- There is a surviving divorced spouse or remarried widow(er) entitled to any social security benefit or combination of social security benefits that reduces the annuity rate to zero, and there is not a possibility of an ARF adjustment that will increase the annuity rate to above zero. (S)he cannot be eligible for a surviving divorced spouse or remarried widow(er) annuity in this case.

The LSDP is not payable in the following situations:

- There is a surviving divorced spouse or remarried widow(er) entitled to any social security benefit or combination of social security benefits that reduces the annuity rate to zero, and there is a possibility of an ARF adjustment that will increase the annuity rate to above zero.

- There is a surviving divorced spouse or remarried widow entitled to an annuity computed to a rate of zero due to an employee annuity or public service pension reduction, regardless if there is or is not the possibility of an ARF adjustment.

- An annuitant would have been entitled in the month of death, but the retroactivity rules prevent the annuity from being payable in that month.

If eligibility exists in the month of death but no annuity is payable, or the annuity that will be payable in the first year after the employee's death is less than the amount of the lump-sum death benefit, a deferred LSDP may be considered.

NOTE: Before 8-12-83, an LSDP could be paid if the employee acquired his 120th month of railroad service before 1975 and a surviving divorced spouse was the only person eligible for monthly benefits in the month of death.

605.20.3 Application

An application must be filed no later than the second anniversary of the employee's death. Refer to FOM1 605.25 for additional information regarding the filing of an application.

Exceptions:

1. The person entitled to the LSDP is in military service for some months after the employee's death. In this instance, the months that the entitled person is in military service may be excluded in determining the 2-year period.

2. A medical school, dental school or anatomical board files for the LSDP. A medical school, dental school or anatomical board may file up to 1 year after the disposition of the remains even if the 2-year limit has expired.

605.20.4 Eligible Persons

The following persons may be eligible for the LSDP:

A. Widow(er) - The applicant must be the employee's legal widow(er) who will not have died before receiving the LSDP. The widow(er) need not meet any duration of marriage requirement. However, (s)he must meet one of the following requirements:

1. If the employee acquired his 120th month of railroad service before 1975, the widow must meet the "living with" requirement at the time of the employee's death.

   The “living with” requirement is met if, at the time of the employee's death:

   - The employee and spouse were members of the same household; or
   - The spouse was receiving regular contributions from the employee; or
   - The employee was under court order to contribute to the spouse's support.

2. If the employee acquired his 120th month of railroad service after 1974, or 60-119 months after 1995, the widow(er) must meet the “living in the same household” requirement at the time of the employee’s death.

   The “living in the same household” requirement is met if, at the time of the employee's death:

   - The employee and spouse were living together as husband and wife in the same abode (in the absence of evidence to the contrary, assume they were living in the same household if they were living at the same address); or
   - The employee and spouse had shared, and again planned to share, the same abode, even though they lived apart temporarily because of circumstances beyond their control (such as financial difficulties, ill health, working away from home, military service, etc.); or they lived apart temporarily because one spouse is in a curative, custodial or penal institution. While temporarily living apart will not defeat living in the same household, the facts must establish that there was an intent to resume living together and that the living apart was temporary in nature.

     If the employee and spouse were separated solely for medical reasons, consider them to be living in the same household, even if the separation was likely to be permanent and there was little or no expectation of them living together again. As long as one spouse

continued to demonstrate strong personal and/or financial concern for the other, assume they would have lived together (absent evidence to the contrary) had the medical reasons not necessitated their separation.

For additional information regarding establishment of “living with” or "living in the same household" refer to FOM1 935.5.

B. Funeral home - If no eligible widow(er) survives the employee, or if the widow(er) dies before receiving the LSDP (or negotiating the LSDP check, if paid by check), a funeral home may be paid the LSDP to the extent of unpaid burial expenses of the employee incurred by or through the funeral home when:

1. A timely application is filed by a person who assumes responsibility for payment of all or any part of the funeral home expenses and authorizes payment of the LSDP to the funeral home; or

2. An application is filed by the funeral home at the expiration of the 90-day period following the death of the employee if, during that 90-day period, no person assumed responsibility for payment of all or any part of the funeral home expenses. If part of the LSDP remains, it may then be payable to the equitably entitled person(s), if any.

C. Equitably entitled person(s) - If no eligible widow(er) survives the employee, or if the widow(er) dies before receiving the LSDP (or negotiating the LSDP check, if paid by check) and there are no unpaid B/E incurred by or through a funeral home, the applicant must be the person equitably entitled to reimbursement for having paid the B/E of the employee.

The term "person equitably entitled" may also include:

- A home for the aged or sick, including one that is affiliated with a fraternal organization when it is entitled to a tax exemption under section 501(c) of the Internal Revenue Code (IRC) of 1954, and pays the B/E or furnishes goods and services in connection with the burial of the employee, even though there was an express (or implied) contractual obligation to pay the B/E of the employee;

- A fraternal organization exempt from the payment of taxes under section 501(c)(8) of the IRC of 1954 may also be the person equitably entitled to reimbursement for having paid the B/E of the employee except to the extent the payment of B/E was (1) made pursuant to a plan or system providing for the payment of a fixed sum upon death of a member (or one of the member's family) or (2) because of an express contract with the member.

Refer to FOM1 Art 6 Appendix B for a list of some tax exempt organizations.

605.25 Application Requirements For Regular LSDP

An eligible person must file an application in order to receive payment of any part of the LSDP.

605.25.1 Acceptable Forms

The usual application form used to apply for a regular LSDP is the Application Form AA-21. The Social Security Administration's Application Form SSA-8-F4 is also acceptable if the record contains all the information necessary for processing the claim under the RRA.

If a funeral home is applying, Form G-273a and a copy of the death certificate is required in addition to the Application Form AA-21.

When an eligible widow(er) will be entitled to an insurance annuity within 3 months, the annuity application can be used to award the LSDP and the monthly annuity. An Application Form AA-21 is not required in this situation.

605.25.2 2-Year Time Limit

An application must be filed on or before the second anniversary of the employee's death unless one of the exceptions listed in FOM1 605.20.3 exists.

605.25.3 Purpose of Form RL-94F

Form RL-94F is used only to secure information about the deceased employee's survivors and to determine who may qualify for the LSDP. A Form RL-94F cannot serve as an application, nor does it protect the filing date of an application filed after the expiration of the 2-year period.

605.30 Evidence And Development Requirements For Regular LSDP

605.30.1 Evidence and Forms

Evidence	When Required
Application	Always. An Application AA-21, SSA's SSA-8-F-4, or any other survivor application form is acceptable. Form G-273a is used as a supplement to Application AA-21 when FH applies directly.
Proof of employee's death	Always. When a funeral home applies, Form G-273a is insufficient as POD.

Assignment of interest (g-131)	When there are multiple potential applicants and one or more desires to assign his share to an eligible applicant and the share does not exceed $500.
Proof of marriage and living with or living in the same household	If the applicant is the widow(er), the statement on the application is sufficient proof of living with unless there is conflicting evidence. If there is a question refer to FOM1 605.35.1.
Proof of payment of B/E	When the applicant has paid any burial expenses. For some burial expenses, listing the paid B/E on the signed application or on a signed statement is acceptable (see FOM1 605.65.4 for details).
Guardianship of applicant (AA-5)	If guardian or other legal representative is selected as representative payee for the applicant.
Proof of appointment of legal representative of an estate	Only when the estate is equitably entitled and payment is to be made to the legal representative on behalf of the estate.
Proof of M/S	When the employee's M/S after 1936 is creditable under the RRA or SSA.
Parent's statement of non-dependency	When the parent is over age 60, has not married since employee’s death and dependency is "unknown".
Summary/certification (G-626)	Always. If paper documentation also needs to be forwarded to headquarters for SBD to adjudicate a case, attach it to the G-626.
Lag Wages and SEI	When claimed by employee or applicant

605.30.2 Assignment of Interest

An eligible person may submit Form G-131 instead of an application if he desires to assign his share of the LSDP to an eligible applicant and the share does not exceed $500. Furnish Form G-131 to an eligible person only when he expresses a desire to assign his share of the benefit. The person must be informed of the approximate amount of his share before he completes the form. Like an LSDP application, Form G-131 must be filed no later than the second anniversary of the employee's death.

605.30.3 Parent's Non-Dependency Statement

A statement of non-dependency is required from a parent when:

- the Application AA-21 shows that the parent's dependency is "unknown"; and

- the parent has not married since the employee's death.

A statement should also be secured if there appears to be a discrepancy. For instance, the parent's address is the same as the deceased employee's, but the applicant says the parent was not dependent.

If the field office is unable to get a statement when one is required, submit a written explanation including an opinion as to the parent's dependency. After your explanation has been received, Survivor Benefits will make a determination whether the LSDP can be paid without the statement of non-dependency.

605.35 Widow(er) Eligible For LSDP By Reason Of Relationship

A widow(er) is eligible for an LSDP if no one is eligible for a survivor annuity for the month in which the employee died, and

- If the employee has at least 120 months of creditable RR service before January 1975 and (s)he meets the "living with" requirement; or

- If the employee acquired his 120th month of creditable RR service after 1974 and(s)he meets the "living in the same household" requirement; or

- If the employee has 60-119 creditable service months, and at least 60 service months were after 1995 and (s)he meet the “living in the same household” requirement.

An LSDP is not payable if a widow(er) could qualify for an annuity in the month of death, but due to delayed filing cannot be paid for the month of death. However, payment of a deferred LSDP may be considered.

605.35.1 Development of Living With and Living in the Same Household

A. General - The fact that the employee died away from the family household is not in itself reason for full development of "living with" or "living in the same household." Many deaths occur away from the family residence. When there is an allegation of "living with" or "living in the same household," but the file indicates that death occurred away from the family residence, an explanation showing that the employee died at a hospital, at work, on a business trip or vacation is usually sufficient. This is not true, of course, when other evidence casts doubt on the allegation. In such case, develop the allegation fully per FOM1 935.5.

B. Whereabouts of widow(er) unknown - If the widow(er) cannot be located through friends, relatives, employers or other sources, questions about "living with" or "living in the same household" and other conditions of entitlement on Form AA-21

must be answered by the applicant. The applicant must also submit statements regarding whether the widow(er) was living-with the employee from two other persons, preferably friends or relatives of the missing widow(er). If the evidence indicates a reasonable probability that the widow(er) is entitled, any claim by a person who paid B/E will be disallowed.

C. Widow(er) will not submit evidence of living with or living in the same household after applying - If the widow(er) has not responded to all attempts to secure evidence regarding "living with" or "living in the same household", inform the widow(er) in writing that (s)he is entitled to the LSDP if (s)he was "living with" the employee at the time of death or was "living in the same household", whichever is applicable. The letter should explain how the widow(er) may establish that (s)he meets the requirement.

If, after a reasonable time (at least 30 days) the widow(er) does not submit sufficient evidence to resolve the issue, release another letter advising the widow(er) that unless proof is submitted within 30 days, a decision on the claim will be made based on the evidence in file.

After 30 days, if no reply is received and no other action has been taken, a decision will be made based on the evidence in file. The widow(er)'s claim will be denied unless (s)he is equitably entitled. If the widow(er) is not equitably entitled, payment will be made to the funeral home and/or the payer(s) of the employee's burial expenses.

605.40 Widow(er) Is Equitably Entitled

If a widow(er) files for the LSDP and the facts do not clearly establish living with or living in the same household, find out whether the widow(er):

- Paid all the employee's burial expenses; or
- Assumed responsibility at the funeral home for paying the employee's burial expenses, will assign LSDP to the funeral home, and unpaid burial expenses exceed the LSDP amount.
- When either of the above conditions apply, it is not necessary to establish living with or living in the same household since future benefits are not affected. However, if someone other than the widow(er) paid any part of the employee's burial expenses and there are no unpaid funeral home expenses, or the balance at the funeral home is less than the LSDP amount, fully develop the question of living with or living in the same household.
- The above rule also applies when development of proof of marriage is prolonged, provided the widow(er) will be entitled to the entire LSDP regardless of the outcome of the development. The rule can be applied when the question pertains to the legality of the marriage and no prior marriage is involved, or the termination of the

surviving spouse's prior marriage is involved. Do not apply this rule when the question concerns a prior marriage of the employee or the residual lump-sum. In such cases, the question must be resolved since the result could bar payment of the LSDP to the claimant.

605.45 Payment Of Regular LSDP To Widow(er) Who May Be Eligible For A DWIA In The Month Of The Employee's Death

The LSDP may be paid to a widow(er) age 50-60 who is disabled but does not wish to file for a disabled widow(er)'s insurance annuity (DWIA). The reasoning behind this policy is that eligibility for a DWIA cannot be presumed unless the widow(er) actually files for a DWIA. This policy applies even if the widow(er) is receiving an SS DIB or a RR disability annuity based on her own employment.

605.45.1 Widow(er) Files for a DWIA and Later Cancels Application

The LSDP can be paid upon cancellation of the DWIA, but any DWIA payments made would have to be refunded before the LSDP can be paid. An Application Form AA-21 is not required to award the LSDP.

605.45.2 Widow(er) Who Receives LSDP Later Files for WIA and Early Medicare and Is Rated Disabled as of the Month of the Employee's Death

As long as the widow(er) is under age 60 in the month of the employee's death and does not file for a DWIA, the LSDP award is correct and will not be affected by subsequent entitlement to any other benefit.

605.45.3 Widow(er) Receives LSDP and Later Files for a DWIA

If a widow(er) receives the LSDP and later files for a DWIA that starts in the 12-month period beginning with the month of death, the LSDP award is considered erroneous if the widow(er) is rated disabled as of the sixth month prior to the month of the employee's death. The LSDP is payable if the DWIA cannot begin in the month of the employee's death solely because the 5-month waiting period has not expired.

NOTE: For DWIA applications that were filed before 9-1-83, the LSDP was considered erroneous if the DWIA began in the 12-month period beginning with the month of death and the widow(er) was rated disabled as of the month of the employee's death.

If the LSDP is considered erroneous, it is recovered from the DWIA award. However, a deferred LSDP can be considered if the DWIA payments made for the year after the employee's death are less than the regular LSDP amount.

An LSDP award is not considered erroneous if a widow(er) becomes disabled in a month after the employee's death, or when the DWIA begins more than a year after the employee's death.

605.50 Payment Of Regular LSDP To Funeral Home

605.50.1 Conditions for Payment

An LSDP is payable to a funeral home (FH) to the extent of unpaid B/E incurred by or through such home when:

A. There is no eligible widow(er); and

B. A timely application is filed by a person who assumes responsibility for payment of all or any part of the FH expenses and authorizes payment of the LSDP to the FH; or

C. An application is filed by a FH at the expiration of the 90 day period following the death of the employee if no one assumed responsibility for payment of all or any part of expenses incurred by the FH during that 90 day period.

After satisfying the unpaid FH expenses, any remaining LSDP is paid to equitably entitled person(s).

605.50.2 Assumption of Responsibility for FH Expenses

The assumption of responsibility for FH expenses generally means that there was a bona fide agreement between a person and FH that the person assumed responsibility for payment of all or part of unpaid FH expenses.

An assumption of responsibility is usually made by the person who makes the funeral home arrangements. A voluntary payment to the FH is also considered an assumption of responsibility.

605.50.3 Authorization of LSDP to FH

A. General - An authorization of payment of the LSDP to a FH is accomplished on the Application AA-21 and Form G-273a as follows:

1. Application AA-21 - By completing the appropriate items on the Application AA-21, the applicant authorizes that the payment of the LSDP to the FH is to be applied to the specified amount of unpaid expenses. The amount specified should correspond to the amount of unpaid expenses shown by the FH on Form G-273a. Any discrepancies must be reconciled, unless it meets the "Exception" as noted in FOM1 605.50.5.

2. Form G-273a - By completing the Form G-273a, the FH not only gives information about the B/E, but also certifies that they will return the LSDP check or refund the excess to RRB if, at the time the check is received, the amount of the check is greater than the unpaid expenses. This form must be completed by the FH whenever payment of the LSDP is being authorized by a person assuming responsibility for unpaid B/E.

B. Eligible widow(er) wishes to authorize payment to FH - An eligible widow(er) who is entitled to the LSDP by right of relationship may authorize payment of all or part of the LSDP to the FH to satisfy all or part of unpaid FH expenses.

The appropriate items on the Application AA-21 referring to authorization must be completed by the widow(er). However, Form G-273a is not required unless the widow(er)'s eligibility based on relationship is questionable, but (s)he assumed responsibility at the FH.

605.50.4 When FH May Apply for LSDP

A. 90-day waiting period - At the end of the 90-day period after the employee's death, the FH may apply for the LSDP if no one has assumed responsibility for payment of any part of the B/E in that period. In addition to the Application Form AA-21, the FH must submit Form G-273a and a separate proof of death.

B. Acceptable POD - Form G-273a is not acceptable as proof of death when a FH files for the LSDP. The funeral home must submit other evidence of death when applying directly for the LSDP.

605.50.5 Proof of FH Expenses

Verify the total burial expenses incurred by or through a FH and the amount still unpaid by comparing the statements on Forms AA-21 and G-273a. Reconcile any discrepancies found to avoid delays and assure proper payments. If the amount of outstanding burial expenses on Forms AA-21 and G-273a are discrepant, a supplemental Form AA-21 and/or another Form G-273a may be requested because the amounts must agree in order for payment to be made.

EXCEPTION: If the Form G-273a shows a balance in excess of $1,400 and the Application Form AA-21 authorizes payment of over $1,400 to the funeral home, a discrepancy will not affect payment since the maximum possible LSDP is about $1,400. A supplemental Application Form AA-21 or new Form G-273a is not required in these cases. Enter the reason for the discrepancy in the remarks section of Form G-626

605.50.6 Amount of LSDP Payable to FH

A. One FH involved - The LSDP is equal to the lesser of:

1. The unpaid amount of B/E incurred by or through that FH; or

2. The maximum LSDP amount.

B. More than one FH involved - Subject to the limitation above, the amount payable to each FH is as follows:

1. If payment has already been made to one FH based on the application of a person who assumed responsibility, the amount of the LSDP remaining is paid to the second FH; or

2. If payment is being made at the same time, the amount designated to each FH by the person who assumed responsibility; or

3. If no one assumed responsibility, the LSDP is paid to each FH to the extent and in proportion to the unpaid B/E each FH incurred.

   EXAMPLE 1: The maximum LSDP is $840 (10 x BA of $84.00) and the total FH expenses are $1,800 incurred by two FHs. The Acme FH incurred expenses of $300 and the Newport FH incurred expenses of $1,500. No one assumed responsibility and after the 90-day period elapsed each FH filed for reimbursement. The proportionate shares are:

   Acme FH 300/1800 x $840 = $140 (LSDP share),

   Newport FH 1500/1800 x $840 = $700 (LSDP share).

   EXAMPLE 2: The maximum LSDP is $752 (10 x BA of $75.20), and payment of $650 has been authorized to the Shady FH. No other B/E are indicated on the Application AA-21 and an LSDP of $650 is paid to the Shady FH. Three months later a claim is received from the Ajax FH for unpaid expenses of $295. The amount now payable is:

   $752 (Maximum LSDP)

   -650 (LSDP prev. pd. To Shady FH)

   $102 (Amount payable to Ajax)

650.50.7 Notifying Person Authorizing Payment to FH

Notify the person who authorized all or part of the LSDP to a funeral home when the award is made, as follows:

A. Entire LSDP Payable to Funeral Home – Send Form Letter RL-24a to the applicant who authorized the payment to the funeral home if (s)he is:

- A representative of government agency, e.g., Department of Public Welfare; or
- The representative of the employee's estate; or
- An applicant who specifically asks to be notified.

B. Part of LSDP Payable to Funeral Home

1. Equitably Entitled Person Authorized Payment to Funeral Home - When an equitably entitled person authorized payment to a funeral home and payment is also being made to that person; include Code Paragraph 537 in the notice of award to the equitably entitled person.

2. Person Not Equitably Entitled Authorized Payment to Funeral Home

   When a person not equitably entitled authorized payment to a funeral home, send Form Letter RL-24a to the applicant who authorized the payment only if he/she is one of the persons listed in "A" above.

Form Letter RL-24a is on RRAILS.

605.50.8 Unpaid Retirement Annuities Not Payable to FH

Unpaid retirement annuities are not payable to a FH, even if the LSDP does not cover all the unpaid funeral home expenses. A FH is not an equitably entitled person, nor is the person authorizing the payment in respect to the amount authorized. However, any other B/E may be reimbursed from accrued retirement annuities.

EXAMPLE: Total LSDP $800.00; Accrued annuity = $100.00; FH expenses = $1,200.00; other B/E = $200.00. Son A authorizes payment of LSDP to FH then pays the remaining $400.00 FH expenses; son B pays the other B/E of $200.00.

$1,400.00 (total B/E) - $800.00 (LSDP) = $600.00 (Unreimbursed B/E).

The accrued annuity is paid as follows:

Son A is paid $66.67 ((400 ÷ 600) x 100 = 66.67)

Son B is paid $33.33 ((200 ÷ 600) x 100 = 33.33)

605.55 Payment Of Regular LSDP To Equitably Entitled Persons

605.55.1 Definition of an Equitably Entitled Person

An equitably entitled person is a person who paid (or whose funds were used to pay) the B/E of a deceased employee because of kinship, friendship, moral obligation, or similar motives.

The word "person" includes an individual, partnership, trust estate, association, corporation, government unit or estate of a deceased individual.

The term "person equitably entitled" includes, but is not limited to, the following:

- Certain tax exempt organizations furnishing goods and services for the deceased's burial; and

- A state or any political subdivision paying the deceased's burial expenses; and
- Certain tax exempt homes for the sick and aged; and
- Certain tax exempt fraternal organizations paying burial expenses of a member, or one of the family of a member, of such an organization; and
- A legal representative of the estate who uses his personal funds to pay burial expenses.

605.55.2 When a Funeral Director Can Be Considered Equitably Entitled

A funeral director can be equitably entitled to the LSDP if (s)he has furnished goods or services for the burial of the following relatives (including relatives by adoption):

- Spouse; or
- Child, stepchild; or
- Grandchild; or
- Parent, stepparent; or
- Grandparent; or
- Brother or sister; or
- Any other relative (by blood, marriage, or adoption) living in the same household with the funeral director at the time of death.

This is an exception to the general rule which prohibits payment to funeral directors as equitably entitled persons.

A funeral director who buries a relative listed above may file immediately as an equitably entitled person or he may wait 90 days after the employee's death and file as an unpaid funeral home.

If the funeral director files as an equitably entitled person, (s)he can be only reimbursed the cost to him or her of goods and services used and only actual out-of-pocket expenditures for services specifically for the funeral. (S)he cannot be reimbursed for his or her own services or those of the members of the funeral home staff unless (s)he separately pays for specific services in connection with the burial.

If the funeral director applies as an unpaid funeral home, (s)he can be reimbursed based on the funeral home's normal charge for the services provided.

605.55.3 When LSDP Can Be Paid to Equitably Entitled Persons

The LSDP can be paid to persons equitably entitled by reason of paying the employee's burial expenses when:

- No eligible widow(er) survives, or the eligible widow(er) dies before receiving the LSDP payment or, if the LSDP was paid by check, negotiating the check; and
- The employee acquired the 120th month of creditable RR service before 1975 (before 9-1-83, also if the employee acquired the 120th month of service after 1975, but died before September 1, 1981); and
- There are no unpaid burial expenses incurred by or through a funeral home, or such expenses are less than the maximum LSDP payable; and
- An application is filed on or before the second anniversary of the employee's death.

A. When there are unpaid FH expenses - The LSDP is first paid to the FH to the extent of unpaid expenses. The remaining LSDP, if any, is paid to the person(s) equitably entitled.

B. Priority of payment - The LSDP, or any part of the LSDP remaining after the unpaid FH expenses are paid, is paid to equitably entitled persons to the extent and in proportion to the amount of the burial expenses each paid, in the following order of priority:

- Funeral home expenses (see NOTE below).
- Grave opening and closing expenses, if not included on the funeral home bill.
- Expense of providing burial plot, if not included on the funeral home bill.
- Any remaining B/E not included on the funeral home bill.

NOTE: In many cases, the funeral home will make most of the burial arrangements, such as arranging for the opening and closing of the grave, and include the cost on their final bill. Any funeral expense on the above priority list included on the final funeral home bill is part of the total funeral home expenses and not considered a separate burial expense.

C. Equitably Entitled Person(s) Paid FH Expenses - If the funeral home expenses exceed the maximum LSDP, and only one person paid those expenses, that person is paid the entire LSDP. If more than one person paid the funeral home expenses, each person who paid part of the FH expenses is reimbursed in proportion to the amount (s)he paid. Persons who paid any other burial expenses cannot be reimbursed.

EXAMPLE: The FH expenses of $4,500 were paid by the employee's two brothers. Frank paid $3,000 and Robert paid $1500. The maximum LSDP in this case is $1,000 (10 x BA of $100.00) The proportionate shares are as shown below:

Frank 3000/4500 x $1000 = $666.67 (LSDP share);

Robert 1500/4500 x $1000 = $333.33 (LSDP share).

D. Equitably Entitled Person(s) Paid Non-Funeral Home B/E - If the FH expenses are less than the maximum LSDP, the person(s) who paid the remaining B/E can be reimbursed up to the lesser of the remaining B/E or remaining LSDP. If the payer of both the FH expenses and remaining B/E is the same person, (s)he is paid the entire LSDP due. If more than one person contributed to the payment of the total B/E and no shares are assigned, the LSDP is paid as follows:

- If all persons contributed to the entire combined B/E, each person is reimbursed in the proportion (s)he contributed.

  EXAMPLE: Total LSDP = $1,000.00; FH expenses = $3,500.00; remaining B/E = $375.00; total combined B/E = $3875.00. The EE's 4 children agree to split the entire cost of burying their father based on what each one can afford.

  1. Child A contributes $1,700.00. She is reimbursed $438.71 ((1700 ÷ 3875) x 1000 = 438.71).

  2. Child B contributes $1,200.00. He is reimbursed $309.68 ((1200 ÷ 3875) x 1000 = 309.68).

  3. Child C contributes $600.00. He is reimbursed $154.84 ((600 ÷ 3875) x 1000 = 154.84).

  4. Child D contributes $375.00. She is reimbursed $96.77 ((375 ÷ 3875) x 1000 = 96.77).

  NOTE: Since each child's share is less than $500.00, any of them can complete Form G-131 to assign his or her share to another PB/E.

- If one person paid the FH expenses and another the remaining B/E, the person who paid the FH expenses is fully reimbursed and the person who paid the remaining B/E is paid the remaining LSDP due.

  EXAMPLE: Total LSDP = $1,000.00; FH expenses = $950.00; remaining B/E = $250.00. EE's daughter paid all of the FH expenses and his son paid the remaining B/E. The LSDP is paid as follows:

  1. EE's daughter is reimbursed the total $950.00 she paid for the FH expenses.

2. EE's son is reimbursed $50.00 of the $250.00 he paid for the remaining B/E.

NOTE: If there were 2 payers of the remaining B/E in this case, each would be reimbursed in proportion to how much of the $250.00 (s)he paid.

- In the event that more than one person paid the B/E and each person paid a separate type of B/E, as listed above in item B, the B/E are reimbursed in priority order.

  EXAMPLE: Total LSDP = $1,000.00; FH bill = $750.00 and includes opening and closing of grave; burial plot = $300.00; remaining B/E = $250.00. EE's 3 children agree that each will pay for one type of B/E.

  1. Child A paid the FH expenses and is reimbursed all of the $750.00 he paid.

  2. Child B paid for the burial plot and is reimbursed $250.00 of the $300.00 he paid.

  3. Child C paid the remaining B/E, but is not reimbursed for any of those B/E.

605.55.4 Payer of B/E Expects Reimbursement From Estate or Other Sources

The following subsections explain how to handle cases in which either the payer of B/E expects to be reimbursed in the future or a legal representative has been appointed but payer of B/E does not expect to be reimbursed.

A. Person Expects Reimbursement From Funds of Estate - If the person who files as payer of B/E is not the legal representative of the employee's estate, but expects to be reimbursed by the representative from estate funds, pay the applicant (if otherwise in order) and release Form Letter RL-59 to the legal representative of the estate.

B. Payer of B/E Does Not Expect Reimbursement From Estate Funds - If the applicant (payer of B/E) is NOT the legal representative of the estate and does NOT expect to be reimbursed by the legal representative, pay the applicant (if otherwise in order) and release Form Letter RL-59 to the legal representative of the estate.

C. Payer of B/E Expects Reimbursement From Other Sources - If reimbursement is expected from a source other than estate funds (e.g., from a relative of the deceased employee), pay the applicant and release Form Letter RL-59 to the person who is expected to reimburse the payer of B/E.

Form Letter RL-59 is on RRRAILS.

605.55.5 Contractual Obligations

A. General - Any person NOT contractually obligated under a plan, system, or general practice to pay B/E, furnish the employee's burial, or supply the funds used to pay B/E IS equitably entitled.

A contractual obligation may exist when a person paid dues, premiums, or other consideration in return for which an employer, insurance company, fraternal organization, burial society, undertaker, home for the aged, etc., agreed to pay money or provide the employee a burial. However, a home for the sick and aged that is tax exempt under Section 501c of the Internal Revenue Code is always considered to be equitably entitled.

B. Determining if a plan or system exists - A plan or system exists when the person has established rules, programs, and procedures regarding:

- Maintenance of a fund from which the benefits are paid; or
- Eligibility requirements; or
- Amount of benefits and method of payment.

C. Determining if an express contract exists - There is an express contract for burial only if the organization, as part of the consideration for initiation or payment of the member's dues or assessments, definitely promises to bury the member. Such promise may be a provision in the constitution or by-laws, or may be incorporated in a contract between the employee and the organization. While the promise to bury need not be in writing, it must be definite. A statement by the organization that it never allows its members to be buried at public expense is not a definite promise to bury.

D. Determining if a general practice exists - A general practice exists when the person has rather consistently paid B/E or benefits in similar cases in the recent past.

605.55.6 Development of Plan, System or General Practice

A. Information required from organization or employer - Assume that a plan, system or general practice exists when the organization so states. When it is necessary to find out whether a plan, system or general practice exists, obtain all the following information from the organization or employer:

1. The conditions under which a member's or employee's B/E is paid;
2. If members or employees contribute to the fund from which payment is made, either directly or through dues, assessments, or attendance at events conducted for the benefit of the fund;

3. If there is a plan, particularly one that the members or employees could reasonably be expected to know about. The plan may be shown by provisions of the constitution of by-laws, posters, fraternal insurance contracts, oral statements, etc.;

4. How often the organization pays the B/E of its members or employees in similar cases;

5. How payment is made, e.g., whether directly to the funeral home, to the named beneficiary, to the next of kin, or to the person who pays the funeral home, and whether there are any rules or customs for making payment;

6. What discretion the organization or employer can exercise in regard to payment, i.e., can the organization or employer decide whether payment will be made, in what amounts, and to whom it is payable.

B Membership test - A member is a person who:

1. Has some voice in the maintenance or operation of the fund or in the affairs of the organization that maintains the plan, system, or general practice; or

2. Contributes something of value, i.e., property, income, dues, assessments, service, etc., to the organization or fund in reliance upon an express or implied promise to pay a death benefit or B/E.

   A person who contributes to the Red Cross, Community Chest, Army or Navy Emergency Relief, etc., does not meet the membership test. When an employee was not a member of the organization and his B/E are paid merely because he was a member of the same faith or belongs to the same profession as members of the organization, the organization may be equitably entitled.

C. Employment test - When the employee had rendered services for an organization, assume that the status of employee existed at the time of death. However, if the organization contends its plan, system or general practice does not cover an employee who was fired or resigned, or was not working because of illness at the time of death, find out whether the organization previously made payments in similar cases.

605.55.7 When Equitably Entitled Person's Estate Is Entitled

If the equitably entitled person dies before receiving the LSDP (or negotiating the check, if the LSDP was paid by check), his right to the LSDP passes to his estate. An equitably entitled person need not have filed an application for reimbursement before his death.

When the equitably entitled person filed a timely application prior to death, a claim on behalf of equitably entitled person's estate may be filed at any time. If an application was not filed by the equitably entitled person before death, the equitably entitled person's estate must file an application within 2 years of the employee's death. Refer to FOM1 620 for information about payment of benefits to an estate.

605.55.8 When Medical School or Anatomical Board Claims to Be Equitably Entitled

A medical school, dental school or anatomical board that claims to be equitably entitled on the basis of expenses directly related to the final disposition of the remains of the deceased employee may file a claim for the LSDP. A claim may be filed up to 1 year after the final disposition of the remains even if the 2-year time limit has expired.

If the school or anatomical board uses and pays for the services of a funeral home for final disposition of the remains, it can be reimbursed as a PB/E in the same way any other equitably entitled PB/E would be reimbursed. Form G-273a is sufficient as proof of payment of B/E.

If the school or anatomical board uses its own resources and not a funeral home for the final disposition of the remains, secure all of the following before submitting the claim to SURVIVOR BENEFITS:

A. Application Form AA-21 - This form should be signed by a representative of the medical school, dental school or anatomical board claiming reimbursement. Rubber stamped signatures are not acceptable.

B. Evidence of burial expenses - Each claim should include an itemized statement of burial expenses indicating what goods and services are included in the total claimed expenses.

   If the total expenses are less than $160, the claimant's itemized statement may be accepted without developing a detailed breakdown of each item, unless it appears that a particular item may not be reimbursable. This total includes transportation, embalming and cremation costs.

   If the total expenses exceed $160, the claimant's itemized statement should include a detailed breakdown of each item. When a detailed breakdown is required, it should include the cost of each item for which reimbursement is claimed. If the breakdown is for the disposition of more than one body, HQ will prorate the expenses to determine the appropriate reimbursement due.

C. Date of the final disposition - Each claim should include the date final disposition of the body was made.

605.55.9 Church Cemetery Organization Claims Reimbursement

A church cemetery organization is equitably entitled if it qualifies in its own right as a nonprofit religious organization under the following conditions:

- It is organized under the jurisdiction or control of a recognized church; and
- It is subject to the supervision of the church; and
- It is maintained mainly for burial of members of the church in accordance with church rites and ceremonies; and
- Its officers and board of directors are restricted to the clergy and lay officers of the church; and
- Its net income goes to the church.

605.55.10 Home for Sick and Aged Claims Reimbursement

A home for the sick and aged is equitably entitled even when a formal contract to bury a resident exists if:

- The home is entitled to a tax exemption under section 501(c) of the IRC of 1954; and
- It pays B/E or furnishes goods and services in connection with the burial of an inmate or guest.

Section 501(c) provides tax exemptions for nonprofit organizations. We will accept the statement of a home that it has a tax exemption under this section if it is operated by a recognized religious denomination.

If the home is not operated by a recognized religious denomination or there is a question whether it has a tax exemption, ask whether the home applied to IRS for a ruling on its tax exemption. If there has been a ruling, request the date of the ruling and the section of the Code under which the exemption was granted.

If no ruling has been made, secure the exact legal name and address of the home and its reasons for believing it has a tax exempt status. Submit the information to Survivor Benefits along with the necessary proof. A determination on their equitable entitlement will be made by Survivor Benefits.

605.55.11 Fraternal Organization Claims Reimbursement

A fraternal organization is equitably entitled if:

- The organization is entitled to a tax exemption under section 501(c)(8) of the IRC of 1954 (see FOM1 Art 6 App B for a partial list of such organizations); and

- It pays B/E or furnishes goods and services in connection with the burial of the member; and

- Such payment was neither made pursuant to a plan or system providing for the payment of a fixed sum upon the death of a member nor because of an express contract with the member.

605.55.12 Determining Tax Exempt Status of Organization

A. General - Section 501(c) of the Internal Revenue Code (IRC) of 1954 provides tax exemptions for nonprofit organizations. Accept the statement of a nonprofit organization that it has a tax exemption under this section. A declaration to that effect by the accredited representative of such organization is sufficient. The following sections explain specific types of tax exemptions.

B. Exemption under section 501(c)(3) - This exemption applies to a religious, charitable, scientific, literary, or educational organization and community chest if it meets all these conditions.

1. It is organized and operated exclusively for one or more of the purposes specified above. That such an organization incidentally engages in other activities to raise money to carry out its primary purpose does not necessarily deprive it of exemption.

2. Its net income does not accrue in whole or in part to the benefit of any private shareholder or person.

3. It does not, by any substantial part of its activities, try to influence legislation by propaganda or otherwise.

4. It does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

If the organization is not listed in FOM1 Art 6 App B, or is not a church cemetery organization, or there is doubt about the exemption, but it states that it has a section 501 exemption, fully develop the claim and submit to SURVIVOR BENEFITS for a determination whether the organization has been ruled exempt from income tax under section 501(c) of the IRC.

C. Exemption under section 501(c)(8) - Nationally known and recognized fraternal beneficiary societies and their local lodges, chapters, etc., are exempt from income tax under section 501(c)(8). See FOM1 Art 6 App B for a partial list of such organizations.

D. Exemption under section 501(c)(13) - This exemption applies to cemetery companies. According to IRS regulations, a cemetery company may be entitled to the 501(c)(13) exemption if it is owned by and operated exclusively for the

benefit of its lot owners who hold such lots for bona fide burial purposes and not for purposes of resale, or if the company is not operated for profit.

E. State or local government units - State or local government units tax exempt status ordinarily can be determined without difficulty. The unit's connection with the state or local government is usually known or easily ascertained.

605.55.13 Development When Organization Furnishes Goods, Services or Burial Plot, But Has Not Filed Claim

When a claimant states on his application, or it is otherwise known, that a tax exempt organization furnished goods, services, or burial plot but has not filed an application, take action as follows:

- Determine the organizations eligibility for reimbursement; and
- Develop the value of goods, services or burial plot furnished by the organization; and
- Secure an application on behalf of the organization. If they do not wish to file, secure a signed statement on the organization's letterhead advising that they waive reimbursement. This may permit payment of their share to other equitably entitled persons.

605.55.14 Determining Value of Goods, Services, or Burial Plots If Tax-Exempt Organization Is Involved

A. General - Develop the value of goods or services furnished by an organization only if the organization says it has a 501(c)(3) or (13) tax exemption or that a request for an exemption is pending. In the latter case, when application is transmitted, advise on transmittal that tax exemption is pending. HQ will then make a decision on the organization's tax exempt status.

To develop the value of items furnished, ask the organization for a signed statement of their value. When one unit of the organization furnishes goods, services or a burial plot, and bills another unit of the same organization, accept without question the receipted bill as evidence of value.

B. Goods - Advise the organization to base the value of the cost of the goods at the time furnished on the basis of the organization's going to its regular source of supply and replacing the goods furnished.

C. Services - If services are performed by an employee of the organization, gauge the value by the employee's wage scale and the length of time devoted to such services. When the organization contracts for such services with an outsider, e.g., a funeral home, local grave digger, etc., the amount the organization pays for such services should be reimbursable on a "payment" basis.

D. Burial plot - If an organization furnishes a burial plot, it may be equitably entitled to the extent of the reasonable value of the plot. What is a reasonable value depends upon the type and location of the space furnished.

A municipality may be equitably entitled with respect to space furnished in a potter's field. Also, a cemetery company which has a 501(c)(3) or (13) exemption may be equitably entitled with respect to a plot furnished even though it is in the business of selling lots.

NOTE: When one of these organizations pays ALL of the B/E, and the amount of such expenses clearly exceeds the amount of the LSDP, it is not necessary to be precise as to the actual cost of the items furnished. When the LSDP is prorated, however, and the organization's stated value raises a question regarding its reasonableness, the other claimant(s) should be asked about the accuracy of the organization's stated value. If they consider it reasonable, we will accept the stated value. If the other claimants question the expenses claimed by the organization, inform Survivor Benefits. Survivor Benefits will make a decision regarding the appropriate share of the LSDP due each claimant.

605.55.15 State or Local Government Unit Pays B/E

A. General - A state or local governmental unit (including the District of Columbia) paying the B/E of an insured employee may be equitably entitled. For example, a welfare department may pay the B/E of an indigent individual from old age assistance funds or a government unit (other than a county in Indiana or Montana) may make an allowance toward the B/E of a veteran. It is not the RRB's policy to solicit applications from such governmental units unless an RLS is payable and there are other beneficiaries involved or unless part of the B/E are paid by the employee's estate and we may make payment to the estate under "No Administration" procedure. However, if any such unit is equitably entitled and voluntarily indicates a desire to file, obtain an application.

A political subdivision of Indiana or Montana may not file for reimbursement of an allowance toward the B/E of a veteran.

Any authorized official of such unit may file an application on its behalf. A statement by the official on the application under "Remarks" that he is authorized is ordinarily acceptable evidence of his authority; in case of doubt, secure more formal evidence.

B. Entitlement when state reimburses county - Various state welfare programs provide for reimbursing a county that pays the B/E of an indigent individual. When this is done, the state is entitled to all or a proportionate share of the LSDP depending upon the extent of reimbursement. However, when the state has authorized the county to make application for the state's share of the LSDP, the full amount can be paid to the county even though it has been, or expects to be reimbursed by the state.

C. Entitlement when government unit pays B/E from funds placed in its care pursuant to a trust agreement - When an employee transfers his assets, including personal funds, property or proceeds from insurance policies, to a governmental unit under a trust agreement whereby such unit assumes the obligation of defraying the B/E from the funds entrusted to its care, award the LSDP to such unit. Handle as if developing from an executor or administrator who pays the decedent's B/E from assets of the employee's estate in his custody.

605.60 Persons Not Equitably Entitled

605.60.1 Persons Not Equitably Entitled

The following persons are not considered equitably entitled. Any B/E paid by these persons must be subtracted from the total reimbursable B/E.

A. The United States Government or its wholly-owned agency or a foreign government.

NOTE: The U.S. Government recognizes Indian tribes as sovereign nations. Therefore, Indian tribes also are not equitably entitled.

B. A person contractually obligated to pay the employee's B/E.

C. A person who pays the B/E of the employee under a plan, system or a general practice if the employee was a member or an employee of such person (effective 9-15-67, this does not apply to fraternal organizations and nursing homes paying B/E under a general practice).

D. A person who has been wholly reimbursed from other sources. A person who has been PARTIALLY reimbursed from other sources is not equitably entitled to the extent of such partial reimbursement. If the payer of B/E expects reimbursement from the estate or other sources, see FOM1 605.55.4.

E. A person finally convicted of the felonious homicide of the employee.

F. A person who for any other reason has no equity with regard to the payment of the employee's B/E.

605.60.2 B/E Paid Under Workman's Compensation Law

No one is equitably entitled to reimbursement for B/E paid under a burial benefit provision of a workmen's compensation statute, EXCEPT for payments in Kentucky, South Carolina and Texas.

A. Kentucky - The person entitled to compensation or, if none, the employee's estate is equitably entitled when B/E are paid under the Kentucky Workman's Compensation Act.

B. South Carolina - Dependents entitled to compensation, if any, are equitably entitled to the extent compensation is withheld from the dependent.

C. Texas - Dependents entitled to compensation, if any, are equitably entitled when B/E are paid under the Texas Workman's Compensation Act. When there are no dependents, no one is equitably entitled.

605.65 Burial Expenses

605.65.1 What Constitutes Burial Expenses

A. General - Burial expenses (B/E) mean expenses in connection with the actual burial or other disposition of the remains of a deceased person. They include the burial plot, casket, clothing, cremation, urn, death certificates, embalming, flowers, hearse and car for funeral procession, minister, monument, newspaper notices, niche, opening and closing of grave, permits, perpetual care of grave, preparation of body for burial, religious services, shoes, telegrams, telephone calls, transportation of the body, traveling expenses (round trip) of person escorting the corpse or completing burial arrangements, expenses of scattering decedent's ashes, etc.

Expenses such as a luncheon after the funeral, travel expenses of close relatives not involved in making the funeral arrangements, etc., are not B/E.

When there is some question whether an item is a B/E and its exclusion will not change the amount of the LSDP or the share due the person, exclude it in computing total reimbursable B/E.

B. Burial plots - When a person is equitably entitled because he paid for or furnished a burial plot, use the value of the plot at the time of the employee's burial in computing the person's share of the total reimbursable B/E and the LSDP. A receipted bill or a signed statement by a responsible official of the cemetery about the value of the plot proves its value.

When a multiple plot is bought or furnished for the burial of two or more persons, (one of whom is the employee) a proportionate part of its value is used in computing the reimbursable expenses. The burial plot is not a reimbursable item if the employee owned or had an interest in the plot in which he was buried.

605.65.2 When Burial Expenses Must Be Paid

There is no time limit when B/E must be paid. However, an applicant must file a timely application and pay such expenses to qualify for all or part of the LSDP. B/E still unpaid after the time for filing elapses must still be included in reimbursable B/E.

It is not necessary that B/E be paid before the application is filed; if an application is filed before B/E are paid, or additional B/E are paid after the application is filed, a

supplemental application will be required to update payment and reimbursement information.

If the application is not timely filed, the applicant cannot qualify for all or part of the LSDP, even if he pays B/E before the period for filing elapses.

NOTE: If an application was timely filed but denied because of failure to submit proof of B/E, the application can be reopened if the proof is submitted within one year of the denial notice, even if submitted after the two year filing period has expired (see below for handling instructions). However, if there is a discrepancy between the proof and the application that affects the payment of the LSDP, a new application must be filed. The two year filing limit does apply to the new application. Proof of B/E can also be submitted one year or more after the denial notice, but only if the applicant can prove it was not due to his or her negligence or lack of effort in obtaining the proof.

When the proof is submitted, compare the B/E information on the proof with the B/E information on the imaged original application. If there is no discrepancy that affects payment of the LSDP, complete the proofs screen. Enter in Remarks that the application was previously denied because proof of payment of B/E was not submitted, it is being reopened because the proof has been submitted and that the proof is online. Also send an email to SBD advising that the proof is online.

605.65.3 Inquiry About LSDP Before Burial Expenses Are Paid

A. FH expenses are unpaid - If someone inquires about the LSDP before FH expenses are paid, advise the person about the provisions of the law. If the person has assumed responsibility for the payment of FH expenses, he has the option of:

- Paying the FH and filing as an equitably entitled person; or
- Filing an application to authorize payment to the FH.

The decision must be his; do not recommend any course of action. In explaining the provisions of the law, point out the time limit for filing an application.

B. Burial expenses other than FH expenses are unpaid - If other B/E are involved and the person inquiring wants to file an application in advance of paying such expenses, tell him:

- FH expenses have first priority for reimbursement; and
- An application must be filed within 2 years of the date the employee died; and
- Such B/E must be paid before we can reimburse; payment cannot be assigned to cover any expenses that are not incurred by or through a FH.

605.65.4 Proof That Burial Expenses Have Been Paid

A. General - To prove payment of B/E, the applicant must ordinarily furnish either a fully completed Form G-273a or an itemized, receipted statement from the funeral director and other persons furnishing goods or services. If a receipt is furnished, it must identify the deceased person and must show:

1. The total amount of the ordinary B/E. This includes professional services, casket, embalming, certificates and permits. The cost of the individual items included in the ordinary B/E need not be shown.

2. The amount of other B/E not included in 1 above. This may include additional services and goods provided such as: burial plot, opening and closing grave, transportation of body, etc. When cash was advanced for any such items, the itemized statement should be noted to this effect.

3. The total amount of all B/E.

4. The name of each person who paid part of the B/E.

5. The amount and date of each payment.

6. The amount of B/E unpaid, if any.

If it is established, or it is a known fact, that it is not the funeral director's practice to give itemized bills or Form SSA-2872 is submitted, waive the requirement that the bill be itemized.

If there is a discrepancy between the amount alleged by the applicant and the amount shown by the receipts, do not reconcile it unless it will affect the amount payable to the funeral home or to the equitably entitled person(s). If it is necessary to reconcile a discrepancy, secure:

- A new Form G-273a or proof of B/E from the funeral home if the previous one submitted was incorrect; or

- A signed statement from the applicant if the Application AA-21 previously submitted was incorrect. The signed statement is acceptable in lieu of a Supp. AA-21.

Be sure that all B/E are accounted for, especially when the file shows that the employee died in one locality and was buried in another one.

B. Acceptable proofs - Acceptable proofs that B/E were paid are:

1. The original receipted bill or certified copy; or

2. Form G-273a, "Statement of Burial Expenses" (may also be used as POD); (NOTE: The signature on a G-273a received by facsimile is acceptable if the LSDP is to be paid to someone other than the funeral home or if the payer of the burial expenses has assigned the LSDP to the funeral home. If the LSDP is to be paid to the funeral home and it has not been assigned by the payer of the burial expenses, a hard copy of the signed G-273a is required; or

3. Form SSA-2872, SSA's "Statement of Burial Expenses."

C. Signature on funeral home bill - When the bill carries the words "received payment," "paid in full," "paid," or a phrase with the same meaning, accept it if it is initialed, signed or contains a rubber stamp imprint that includes the name of the funeral director or other person furnishing burial goods or services.

D. When receipt not required – Although securing a receipt for any B/E is always preferred, a receipt is not required for flowers, telegrams, phone calls, payment for religious ceremony, traveling expenses of person escorting the body during shipment or any other item for which a receipt may not be usually given. Listing these expenses and their respective amounts on the signed application or in a signed statement is acceptable.

605.65.5 All Burial Expenses Not Accounted For

When all expenses usually necessary for burial are not accounted for, additional development must be done. For example, if a proof shows an item of expense for sending the body from one city to another, but the statement of expenses does not include any item for goods or services in one of the cities, ask the applicant whether there were any expenses in that city.

605.65.6 Deduction For Allowances By VA For Burial, Plot, Etc.

A burial allowance of as much as $300 is payable by the VA towards the B/E of a veteran in non-service connected cases. Unless the veteran is buried in a national cemetery, a plot or interment allowance of up to $150.00 towards such costs is also payable. If the veteran died in a VA hospital or other Veteran's facility, the VA may also pay the cost of moving the body to the place of burial.

A larger burial allowance is payable by the VA when the veteran's death is service connected. In such a case, reasonable burial and funeral expenses up to a maximum of $1100 are payable (the maximum payable when the death of a Federal employee is the result of an injury incurred in the course of his employment.)

When a burial allowance, a plot allowance and/or the cost of transporting a body is paid by the VA or when a claim for such allowance(s) has been or will be filed, deduct the amount of such allowance(s) from:

- The total burial expenses; and

- The amount paid by the person who filed or expects to file a claim for the allowance(s).

605.65.7 B/E Paid By Department Of Defense

A. General - When a member of the Armed Forces dies while at his post of duty or at a service hospital, the appropriate service department provides for the preparation, embalming, encasement, and shipment of the body. The necessary burial goods and services are furnished by the Armed Forces or by an undertaker under contract with the Department of Defense.

If the serviceman dies while temporarily away from his duty station, the Department of Defense pays the person who furnishes the burial, or reimburses the person who pays B/E. When the body is buried in a national cemetery, the Department of Defense ordinarily furnishes all services.

B. Deductions From Reimbursable B/E When Serviceman Dies on Active Duty - If the applicant pays or assumes responsibility for payment of B/E and files or will file a claim for payment or reimbursement from the Department of Defense or a service department, deduct the amount indicated in 1 or 2 below.

If no claim has been or will be filed, do not make a deduction.

1. Service Department Makes Initial Arrangements - The amount the Department of Defense reimburses private persons depends upon the type of cemetery in which the serviceperson is interred or reinterred. Make deductions from B/E as follows:

a. Civilian Cemetery - If interment is in a private or civilian cemetery make the following deductions:

Date of Interment	Deduction
7/1/74 or later	$700
7/1/71 - 6/30/74	$625
2/1/68 - 6/30/71	$500
7/1/66 - 1/31/68	$300
6/30/66 or earlier	$200

b. Government Cemetery - If the serviceperson's remains were consigned to a funeral home and interment is made in a national or post cemetery, make the following deductions:

Date of Interment	Deduction
7/1/74 or later	$450
7/1/71 - 6/30/74	$375
2/1/68 - 6/30/71	$250
7/1/66 - 1/31/68	$150
6/30/66 or earlier	$125

When the serviceperson's remains are consigned direct to the superintendent of a national or post cemetery for interment, deduct $75.

Interment expenses include undertaker's fees, obituary notices, flowers, hearse, transportation for immediate relatives to and from the cemetery, minister's fees, vault, grave spaces, and preparation of the grave.

2. Private Person Makes All Arrangements - Occasionally, private persons make all arrangements, including preparation and shipment of the remains. The amount the Department of Defense reimburses such persons varies, but it never exceeds the amount given in 1 above.

   If the applicant does not know the amount of reimbursement, assume that B/E will be paid in full. When the applicant alleges that less than the full amount of B/E was paid, ask him to submit evidence of the amount of reimbursement.

605.65.8 Computing Total Reimbursable B/E

After determining the total amount of B/E claimed, compute the total reimbursable B/E by subtracting the following non-reimbursable B/E:

A. B/E paid or reimbursed by the U.S. Government or a Foreign Government; and

B. B/E paid by a person convicted of the employee's felonious homicide; and

C. Questionable items of B/E which, if omitted, will not affect payment of the LSDP in any way; and

D. B/E to which no one is equitably entitled; and

E. Small amounts contributed to a fund by numerous unidentified persons, providing it is ascertained from the custodian or another person with knowledge that:

1. The amount contributed by each person is small (not more than $2.00 each); and

2. A list of the contributors with the amount each gave cannot be furnished; and

3. The contributors have not asked to have their names and the amount given recorded nor have they shown any intention of seeking reimbursement.

NOTE: If the names of some of the contributors and the amounts given (even though small) can be furnished, such contributions are reimbursable.

605.70 Types Of Funds Used To Pay Burial Expenses

605.70.1 Personal Funds

The following may all be considered personal funds for the purpose of determining who is equitably entitled to reimbursement for having paid B/E:

A. An individual's own personal funds.

B. Funds owned jointly with the employee or a person equitably entitled who died before negotiating the LSDP check. This category includes proceeds of a bank account owned jointly with the deceased person. You may assume that the survivor or the person who withdrew the money has a right to the proceeds. When a question arises as to the person's right to withdraw funds from a joint account, ask him to furnish the following information:

- A copy of the application for a joint account made when the account was opened; and

- A statement by the bank as to who has the right to the proceeds.

Submit the above information and other proofs to Survivor Benefits. Survivor Benefits will make a final decision as to whether the funds may be considered personal funds.

C. Contributions of several persons into a pooled fund

1. Contributions - When burial expenses are paid by contributions, each contributor is equitably entitled to the extent of his contribution. Each contributor may file for the share of the LSDP to which he is entitled or assign his interest in the LSDP to another equitably entitled person by completing a Form G-131.

2. Pooled funds When burial expenses are paid by pooled contributions, the LSDP can be paid to the custodian of the fund if:

   - The custodian pays the funeral director with the pooled funds; and
   - Each contributor asks in writing that the entire LSDP be paid to the custodian (this statement is not required when each contributor gave only a small amount); and
   - The custodian files for the LSDP and furnishes a signed statement which lists the contributors, the amounts given, and includes a statement similar to the following:

   "I agree to distribute the lump-sum payment proportionately to the contributors of the fund used to pay the burial expenses. I am applying for all the persons listed herein."

   Develop from the custodian of funds only when a large number of persons contributed various amounts and it would be impractical to secure applications from everyone who contributed. If the number of contributors is not large, develop fully from each person or secure "Assignment of Interest" Forms G-131.

D. Promissory notes - A negotiable promissory note given by an applicant and accepted by the FH is considered payment of FH expenses. Consider the note as the applicant's personal funds in determining equitable entitlement to reimbursement for having paid B/E. The fact that the money for that purpose was secured by a negotiable promissory note is immaterial.

   Do not suggest this method of paying B/E to an applicant, funeral director or other interested person; however, upon specific inquiry refer applicant to an attorney.

E. Funds received pursuant to a contract or under a plan, system, or general practice - When the proceeds of an insurance contract, plan, system or general practice are used to pay B/E, determine whether there is a named beneficiary to such proceeds and whether he survived the employee. If there is a named beneficiary who survived the employee, the proceeds are considered his personal funds and as such make him equitably entitled unless he is acting as the agent or employee of the "person" who provides the money for the burial. The named beneficiary's estate is equitably entitled if he dies before negotiating the LSDP check.

605.70.2 Estate Funds

The following are all considered estate funds for the purpose of determining who is equitably entitled to reimbursement for having paid B/E:

A. Money found among the deceased's effects.

B. Funds obtained by selling the deceased's real or personal property.

C. Money on deposit in a bank account held only by the deceased. Money from a joint account is the personal property of the survivor.

D. Unpaid wages that the deceased's employer was holding for him.

E. Funds paid under a contract, plan, system or general practice. When the proceeds of contract, plan, system or general practice are used to pay B/E, determine whether there is a named beneficiary to such proceeds and whether he survived the employee. The proceeds are estate funds only if:

- No beneficiary was named; or
- The named beneficiary died before the employee; or
- The named beneficiary is the funeral home or director; or
- The named beneficiary is acting as the agent or employee of the "person" who provided the money for the burial.

If the claimant does not know whether a beneficiary was named or there is reason to doubt his statement that no beneficiary was named or survived the employee, ask him to submit a statement from the "person" who furnished the money for the burial or from two close relatives of the employee.

F. Money from a trust fund - When money from a trust fund is used to pay B/E, the lump-sum death payment can be paid to the Trust Officer for the estate of the deceased employee under the following conditions:

- The trust remains in force up to the employee's death, and
- The trust agreement provides for disposition of the residue of the fund.

If there is a question concerning any of these conditions or there is conflicting information, ask the Trust Officer to submit a certified copy of the trust agreement.

G. Burial expenses paid by a guardian or conservator from the deceased employee's funds - A guardianship or conservatorship ceases upon the ward's death. However, some states have statutes which authorize a guardian to contract for and pay burial expenses from guardianship funds following the death of the ward.

When information indicates that burial expenses were paid from guardianship or conservatorship funds, and the guardian indicates that he had statutory authority to pay burial expenses with the deceased's funds, develop as follows:

1. Secure an Application AA-21, proof of the employee's death, and proof of payment of burial expenses from the guardian or conservator; and

2. Ask the guardian to submit a statement from the court that indicates the guardian or conservator had the authority to pay burial expenses with guardianship funds.

   If the guardian or conservator submits proof of court authority to pay burial expenses from the deceased's funds, the LSDP can be paid to the guardian or conservator. Otherwise, the LSDP will be adjudicated under "No Administration" procedure in FOM1 620.45.

H. Burial contracted for by employee prior to death - If the employee pays for his burial before his death, consider his estate equitably entitled. The employee may prepay his B/E by one of the following methods:

- He may give a stipulated amount to a Funeral Home in return for a promise to bury; or
- He may pay premiums to a burial insurance company under a form of burial insurance contract, or he may pay dues to an organization that maintains a burial benefit plan; or
- He may contract for his burial with a home for the aged which is NOT tax exempt; or
- He may work for an employer who is under a contractual obligation to pay his B/E or who has a definitely established plan or system for the payment of B/E.

605.75 Payment Of LSDP To An Estate

When estate funds are used to pay burial expenses, the estate is equitably entitled. Payment due an estate can be made to the legal representative for the estate. When a legal representative has not or will not be appointed, the amount due the estate may not be payable.

605.75.1 Payment to Estate When Administrator or Executor Has Been Appointed and Paid B/E

A. Burial expenses paid from estate funds and an administrator has been appointed

Develop an Application AA-21 from the administrator. The application must be accompanied by one of the following:

- A certified copy of letters of appointment;
- A "short form" certificate;
- A certified copy of the order of appointment;
- Any official document issued by the clerk or other proper official of the appointing court confirming the administrator's appointment.

Certification of appointment made more than one year before filing an application, and transcriptions or certifications by anyone other than the proper court official are not acceptable. In such cases, have the administrator furnish a certified statement from the clerk of court showing that the appointment is still in full force and effect.

When payment is made to an administrator, any part of the amount due the estate which, if paid, would escheat to the state is withheld. Escheat occurs when there are no survivors legally entitled by reason of relationship to share in the estate, and the assets of the estate exceed the liabilities. The probability of escheat exists mostly in those cases in which a public administrator is appointed to represent the estate. When an administrator shows no relatives on the Application AA-21 be sure to ask him whether any relatives survive. Note in the remarks section of the Application AA-21 or the Form G-626 whether or not any relatives survive who could inherit the employee's estate. When there are relatives, secure the name and relationship of at least one of them.

B. Burial expenses paid from estate funds and an executor has been appointed

Develop an Application AA-21 from the executor. The application must be accompanied by a certified copy of letters testamentary. Letters testamentary issued more than 1 year before filing are not acceptable unless a certified statement from the clerk of the court is furnished showing that the letters testamentary is still in full force and effect.

When the deceased leaves a will and an executor is appointed, the fact that the will is submitted for probate is sufficient basis to assume that there are persons legally entitled to share in the estate and that there will be no escheat to the state.

NOTE: If the legal representative states that he used his own funds to pay B/E, he is paid as an equitably entitled person in his own right instead of as the legal representative and letters testamentary are not required.

605.75.2 Payment to Estate When There Is No Legal Representative

When an estate is equitably entitled to any part of an LSDP and no legal representative is to be appointed, the estate has already been closed or the estate will be handled under a state's "small estate statutes," payment may be made under "No

Administration" procedure. All or part of the LSDP may not be paid when "No Administration" is involved. Refer to FOM1 620 for detailed information about handling ”Small Estate” and “No Administration” cases.

605.80 Deferred Lump Sum Death Payment

605.80.1 General

A deferred LSDP is payable on the wage and/or compensation record of an insured employee if, after all current deductions required (e.g., work, child not in care), the total amount of the insurance annuities paid to survivors within 1 year after the employee's death is less than the LSDP that would have been paid if an insurance annuity had not been payable to any person for the month in which the employee died.

The deferred LSDP is payable at the expiration of 1 year after the employee's death. For example if the employee died on 3-23-2005, the deferred LSDP is payable after 3-23-2006.

Payment of the deferred LSDP is handled by Survivor Benefits.

605.80.2 Priority of Payment

A deferred LSDP is payable only to the widow(er) "living with" or “living in the same household with” the employee at the time of his death. Children and parents of the deceased employee cannot qualify for a deferred LSDP.

605.80.3 Entitlement Requirements

To be entitled to the deferred LSDP, a person must:

A. Be the widow(er) of the employee. The widow(er) is not disqualified because of remarriage on or before the first anniversary of the employee's death.

B. Have been "living with" the employee at the time of his death if the employee acquired his 120th month of railroad service before 1975.

C. Have been "living in the same household" with the employee at the time of his death if the employee acquired his 120th month of railroad service after 1974.

D. Be alive on the first anniversary of the employee's death.

E. Have filed a timely application. Refer to FOM1 605.80.5 for detailed information about when a deferred LSDP application is considered timely filed.

If the widow(er) meets the stated conditions and dies before receiving the deferred LSDP or negotiating the check, if the deferred LSDP was paid by check, the amount is not payable to anyone.

605.80.4 Amount of Payment

The deferred LSDP is equal to the amount by which the regular LSDP exceeds the total amount of the insurance annuities accruing (after all deductions due to work or child not in care) to the survivors of an employee in the 12-month period beginning with the month in which the employee died.

605.80.5 Application Requirement

An application for a deferred LSDP must be filed no later than the second anniversary of the employee's death.

An application filed for any type of survivor payment in the same case protects eligibility for the deferred LSDP.

If a widow(er) cancels an application for an insurance annuity, the application continues to be effective as an application for a deferred lump-sum payment.

The failure of the widow(er) to file an application in time to receive insurance annuities within the 1-year period following the employee's death does not prevent payment of the deferred LSDP. However, some type of survivor application must have been filed timely for the widow(er) to be entitled to the deferred LSDP.

EXAMPLE 1: The employee died on 1-15-2004. The L/W widow attained age 60 prior to the employee's death; however, because she was currently employed she did not want to file for an annuity. She is advised by the field office that a deferred LSDP may be payable a year after the employee's death if no monthly benefits are paid. She is also told to contact the field office before the second anniversary of the employee's death to file for payment of the deferred LSDP. The widow contacts the field office on 1-14-2006 and files for a WIA. The widow will be paid the deferred LSDP based on her WIA application filed within 2 years of the employee's death.

EXAMPLE 2: The employee died 7-5-2004. The L/W widow's DOB is 10-3-1941; however, she does not wish to file for a reduced age annuity. She is advised by the field office that a deferred LSDP may be payable if the monthly benefits paid in the year after the employee's death are less than the LSDP that would have been payable. She is further advised to contact the field office before the second anniversary of the employee's death to file for the deferred LSDP. The widow contacts the field office and files for a WIA on October 1, 2006. The widow would not qualify for a deferred LSDP because an application was not filed within 2 years of the employee's death. However, if widow had filed an Application AA-21 before 7/6/2006 she would have qualified for a deferred LSDP.

605.85 Foreign Deaths

605.85.1 General

Survivor Benefits handles the payment of the LSDP in foreign death cases. Development in Canadian and Mexican cases should be handled by the field offices assigned to the provinces, states or territories of those countries. Development in other foreign cases should be handled by the Chicago field office, often with the assistance of the local U.S. Foreign Service Office.

Cases involving deaths in foreign countries are handled the same way as any other lump sum case, except if the death occurred in Cape Verde Islands, Greece, Lebanon, Turkey and Norway. For these areas it is necessary to limit the amount of lump-sum awards since the expenses claimed do not always represent the actual cost of a burial. Refer to FOM1 605.85.3 for the dollar limits of reimbursable B/E for these areas.

Special procedures have also been included in FOM1 605.85.4 for handling deaths in Norway due to the fact that the Norwegian government has designated its probate courts to administer all estates for which an executor was not named.

605.85.2 B/E Paid In Foreign Currency

When burial expenses are paid in foreign currency, reimburse the claimant who is equitably entitled in an amount of U.S. currency equal to the exchange value of the foreign currency on the day that the B/E are paid by the claimant. To determine that amount, complete Form G-310, Conversion of Foreign Currency, and forward it to your lead or supervisor. (S)he will obtain the exchange rate and return the form to you.

605.85.3 Foreign Claims

A. Limitations on Reimbursable B/E - For the areas listed below, the maximum reimbursable B/E are given. Approval of B/E exceeding these limits is left to the discretion of the claims examiner depending on the particulars of the case. For example, the cost of transporting the body over a great distance or the cost of embalming the body in an area where it is not normally done (as in Greece) may increase the B/E.

   The place where the B/E were incurred will determine the amount of the lump sum. If B/E were incurred in more than one place, the higher allowance may be used if 25 percent or more of the B/E were incurred in the place with the higher allowance. If the place where the B/E were incurred cannot be determined, assume that they were incurred in the place of burial.

   If more than one claimant has established entitlement, pay each a prorated share of the allowance for the area. If there is a discrepancy as to the total B/E claimed, develop to reconcile the discrepancies.

   The areas and limitations are as follows:

1. Cape Verde Islands

   In the Cape Verde Islands the limitation is $70.

2. Greece

   In Greece the amount of lump sum payable is determined by the locale where the burial expenses were incurred.

   a. No Limitation - There is no limit on the lump sum payable where the burial expenses were incurred in the areas listed below. In those areas starred, however, there was a limitation of $230 for burial expenses incurred after April 1975 and before April 1977. Questions about the limitations in any areas listed prior to May 1975 should be referred to P&S – RAC.

*Acharnon	Kalamata	*Orestias
Argrinion	*Kalymnos	Patras
*Aigion	*Karditsa	*Preveza
*Alexandroupolis	*Karlovasi	*Ptolemais
*Amalias	*Kastoria	*Pyrgos
*Argos	Katerini	*Rethymnon
*Argostoli	Kavala	Rhodes
*Arta	*Kilkis metropolitan area (see following)	*Salamis
Athens-Pireaus metropolitan area (see following)	Komotini	Salonika (also known as Thessaloniki)
Canea	*Kos	Serrai
Chalkis	*Kozani	*Siderokastron
*Chios	*Kyparissia	*Sparti
Corfu (Kerkyra)	Lamia	*Syros (Ermoupolis)
*Corinthos	Larisa	*Trikala

Drama	*Lefkas	*Tripolis
*Edessa	*Livadia	*Tyrnavos
*Elefsis	*Megara	*Vathi (Samos)
*Filiatra	*Mesologion	*Veria
*Fiorina	*Messini	Volos
*Gianitsa	Mytilene	*Xanthi
*Grevena	*Nafpactos	*Zakvnthos (Zante)
*Gythion	Nafplion	
Ioannina	*Naoussa	
Iraklion	*Nigrita	

Included in the Athens-Pireaus area are the following municipalities:

Aeglaeo	Kallithea	Nea Penteli
Agia Barbara	Kalamaki	Nea Smyrna
Agia Parashevi	Kematero	Neo Faliro
Agion Anargyron	Keratsini	Neo Psychico
Agios Demetrios	Kesariani	Nikea
Agios Ioannis Rentis	Kifisia	Palco Faliro
Amarousi	Korydalos	Penteli
Argyroupolis	Koakouvaoones	Perama
Byron (Vyron)	Lykovrysi	Persisteri
Chaidari	Mangoufana	Petroupolis
Chalandri	Melissia	Psychiko
Cholargos	Moschato	Tavrou

Dafni (Ag. Demetrios)	Nea Chalkidon	Voula
Drapetsona	Nea Erythrea	Vrilissia
Filothe	Nea Filadelfia	Ymettos
Galatsi	Nea Tonia	Zographou
Glyfada (Evriali)	Nea Liosia	

Included in the Salonikvriali a metropolitan area are the following:

Ambelokepon	Koufalion	Salonika
Kalamaria	Neapolis	Sykeon

b. Limitation of $206

The limit for any area not specified in (a) above is $206 for expenses incurred after March 1977. During the period after April 1975 and before April 1977, the limit for these areas was $160. Questions involving the limits in effect prior to May 1975 should be referred to P&S – RAC.

3. LEBANON

In Lebanon, similar schedules have been established. If the burial expenses were incurred in Beirut, the maximum allowable LSDP is $200. If the burial expenses were incurred in Jouniye (Jounieh), Sidon, Tripoli, or Zanle, the maximum allowable LSDP is $150. For any other area, the maximum allowable LSDP is $125.

4. TURKEY

In Turkey, the maximum allowable LSDP is $175 if the burial expenses were incurred in Ankara, Istanbul, or Izmir. In any other locale, the maximum allowable amount is $100.

B. Initial Action on Protests and Complaints - If a beneficiary objects to our limitation of the LSDP when we pay the maximum reimbursable B/E, request the foreign service post having jurisdiction to investigate the validity of the claim. Use Code Letter 603 for this purpose; enclose photocopies of the letter(s) of complaint, the application(s) the death certificate, the funeral bills, and the translations of these documents. Contact P&S – RAC for the foreign service post that has jurisdiction of the area in which the beneficiary lives.

Acknowledge the beneficiary's inquiry and tell him/her that there will be a delay in providing him/her with a complete answer because we are investigating the matter. Make no reference in the letter that we are investigating through the State Department.

C. Concluding Action on Protests and Complaints - Following its investigation, the foreign service post sends us a report of its findings. Base your actions essentially on the facts and recommendations contained in the report, but also consider the opinions and judgments expressed by the investigator when evaluating each case. Take one of the conclusive actions outlined in 1 through 3 below when the circumstances described apply in a case.

1. Actual B/E Equal the Amount of LSDP Already Paid - Explain to the beneficiary why no additional payment will be made when:

   - The investigative report indicates that the B/E equal the amount already paid; or

   - The investigator was unable to establish the exact amount, but recommends that reimbursement should not exceed the established schedules.

2. Actual B/E Exceed the Amount of LSDP Already Paid - When the investigative report verifies that the funeral expenses exceeded the maximum reimbursable amount already paid, reopen the case in accordance with RCM 6.2 “Reopenings” and recertify the award. The total payment, of course, may not exceed the total LSDP payable.

3. Foreign Service Post Fails to Establish That an Inflated Claim Was Filed - If the foreign service post fails to establish that an inflated claim was filed and does not recommend a limitation on the amount of reimbursement, allow the full amount of the claimed funeral expenses when supported by an itemized receipt. The total payment, of course, may not exceed the total LSDP payable.

605.85.4 Burial In Norway

A. Norwegian Burial Allowance - A burial allowance of 300 crowns (Kroner) is paid under the Norwegian Health and Medical Insurance Plan (Trygdekasse) in the case of a deceased member. However, since no one is considered equitably entitled on the basis of this payment, deduct it from the total B/E. If payment is to be made to the employee's estate, see chapter 2.10 for information about the administration of estates in Norway.

B. Validity of Statements Issued by a Norwegian Probate Court - When submitted as evidence in the place of receipts, accept statements of a Norwegian Probate Court relating to death and B/E. The probate court is usually required to retain the original receipts covering payments made by the court (or by the authorized representative)

on behalf of the estate. Accept such statements, if submitted, as just and correct proof of payment.

C. Corresponding With a Norwegian Probate Court - When writing to a Norwegian Probate Court, address the correspondence to the court and NOT to the judge of the court.

When designating the court as payee on an award form or notification letter, show the following: "The Probate Court of . . . . . as administrator of the Estate of . . . . . deceased".

605.90 Employee Died Before 10-1965

605.90.1 Conditions For Payment When Employee Died Before 10-1965

This section is included as a historical reference.

A. Entitlement Requirements When Employee Died After 9-1958 and Before 10-1965 - To be entitled to the deferred LSDP, a person had to file a timely application and:

1. Be the widow(er), child, or parent of the deceased employee; and

2. Be entitled to an insurance annuity on the first anniversary of the employee's death; and

3. Be the person(s) to whom the deferred LSDP was payable in the order of priority given in sec. B, below.

When a survivor of the employee met the conditions stated above but died before negotiating his/her check in payment of the deferred LSDP, the amount (s)he would have received became due and payable (in equal shares) to other entitled survivors in his/her same class. If there were no other entitled survivors in his/her same class, the amount was payable to entitled survivors in the next class. If there were no entitled survivors in the next class, the amount was not payable to anyone.

B. Priority of Payment When Employee Died After 9-1958 and Before 10-1965

A deferred LSDP was payable in the following order of priority and in the amount indicated:

1. Widow(er): Full amount.

2. Child(ren) of the deceased employee: Equal shares if more than one entitled child survived; full amount to a sole entitled child.

3. Parent(s) of the deceased employee: One-half to each parent if both were entitled to payment; full amount to a sole entitled parent.

If an insurance annuitant's entitlement ceased IN or BEFORE the anniversary month of the employee's death, (s)he could not receive any portion of the deferred LSDP.

C. Two-Year Period for Filing Application When Employee Died After 9-1958 and Before 10-1965 - An application for a deferred LSDP has to be filed no later than the second anniversary of the employee's death.

An application previously filed for any type of survivor payment in the same case was considered an application for a deferred LSDP.

A survivor's failure to file for and become entitled to an insurance annuity ON the first anniversary of the employee's death prevented that survivor from receiving any part of a deferred LSDP that otherwise was payable.

610.5 Definition

Railroad employees and their survivors are guaranteed to receive at least as much in regular retirement and survivor benefits as the employee paid in railroad retirement taxes for the years 1937 through 1974. Any money not previously paid out in benefits is considered to be the RLS.

610.10 Residual Amount

Only employees who have creditable railroad service prior to 1975 can have an RLS.

610.10.1 Gross RLS Amount

The gross RLS is equal to the following percentages of the employee's creditable compensation including any creditable military service (M/S). The percentages include an additional amount which is figured in lieu of interest:

Period	Percent
1-1937 through 12-1946	4%
1-1947 through 12-1958 (or through 5-1959, if employee died before 6-1959)	7%
1-1959 through 12-1961 (for deaths after 5-1959)	7 1/2%
1-1962 through 12-1965 (or through 10-1966, if employee died before 10-30-66)	8%
1-1966 through 12-1966 (for deaths after 10-29-66)	8.1%
1-1967 through 12-1967	8.65%
1-1968 through 12-1968	8.8%
1-1969 through 12-1970	9.45%
1-1971 through 12-1972	9.85%
1-1973 through 9-1973 (or until their moratorium on change in pay rates expires for employees covered by a negotiated pension plan)	10.1%
10-1973 through 12-1973	5.35%

1-1974 through 12-1974	5.45%

NOTE: A period of creditable M/S performed before 1957 may be included in the gross residual regardless of the number of years of railroad service the employee had; but a period of creditable M/S performed after 1956 may be included in the gross residual only if the employee's creditable service, including M/S, total 10 years or more.

The maximum compensation which may be credited per month for computing the RLS:

Period	**Compensation**
1-1937 through 6-1954	$300
7-1954 through 5-1959	$350
6-1959 through 10-1963	$400
11-1963 through 12-1965	$450
1-1966 through 12-1967	$550
1-1968 through 12-1971	$650
1-1972 through 12-1972	$750
1-1973 through 12-1973	$900
1-1974 through 12-1974	$1100

The maximum gross RLS for an employee with maximum earnings since 1937 would be $14,699.15 if the 10.1% rate applied through December 1974; it would be $13,943.60 when the 5.35% rate applied through December 1974.

610.10.2 Net RLS Amount

When benefits were paid to the employee and others after his death, the amount of the RLS is equal to the gross RLS minus the sum of all deductible benefits paid.

A Deductible benefits

- All regular retirement annuities payable through 12-31-74 to an employee and his spouse, in a 1937 Act case.
- Regular retirement annuities payable to an employee and his spouse from 1-1-75 in a 1937 Act conversion case and from the ABD in a 1974 Act case,

excluding amounts based on Social Security Act wages and the Vested Dual Benefit (VDB) component. When the O/M applies, the full annuity rate is deductible.

- The portion of any SS benefits paid during the employee's life based on his RR compensation.

- Any benefits paid to his survivors after his death, based on combined RR and SS earnings.

  NOTE: The full amount of <u>any</u> survivor benefits paid under the Social Security Act is deductible even though no RR compensation is actually used in the computation of such benefits.

- The tax refund.

- Any supplemental payment of a lump-sum death payment not awarded because the adjustment due was under $4.00, as long as the person(s) not awarded the lump-sum payment will not be eligible for the RLS.

B. <u>Non-deductible benefits</u>

- The tier I portion based on Social Security Act wages only of regular retirement annuities payable to an employee and his spouse from 1-1-75 in a 1937 Act conversion case and from the ABD in a 1974 Act case.

- The vested dual benefit component.

- Pensions under section 6 of the 1937 Railroad Retirement Act.

- Supplemental annuities.

- Any insurance benefits paid under the Social Security Act to the employee and others during his life, based solely on his SS employment.

610.10.3 Waived Annuity Payments

A person's right to waive all or part of his annuity does not affect the amount of the RLS. The full amount of the deductible benefits that would have been payable had a waiver not been filed must be deducted from the gross RLS.

610.10.4 Survivor Benefits Paid on Combined RR and SS Act Earnings

The full amount of all survivor benefits payable under either the Social Security Act or RR Act must be deducted from the gross RLS amount regardless whether use of RR compensation affects the amount of benefits payable.

610.10.5 Deductible SS Benefits Paid During Employee's Lifetime

When compensation credits were transferred to Social Security Administration and benefits under the Social Security Act were paid to the employee and others during his lifetime, i.e., the employee had less than 120 months of RR service (Form G-80 case), any portion of the SS benefits paid based solely on the employee's compensation must be deducted from the gross RLS amount.

610.10.6 Erroneous Payments

Recovered overpayments are not deductible from the RLS. However, if an overpayment has been or is being recovered by actuarial adjustment, the total amount of the overpayment is deducted from the RLS. Waived or unrecovered overpayments are also deductible from the RLS.

610.15 Payment Of RLS

610.15.1 Conditions for Payment of RLS

An RLS is payable when all the following conditions exist:

- The employee died on or after 1-1-47;
- The gross RLS amount exceeds the total deductible benefits;
- No deductible benefits are currently payable;
- No benefits may be payable to anyone in the future. The RRB assumes that anyone currently ineligible because of marriage will continue to be ineligible; however, unmarried children under age 22 prevent the RLS from being paid because they could become disabled before age 22.

NOTE: If an insurance annuity applicant is denied for failure to submit evidence required to make an award, a decision on any RLS claim is withheld for 1 year from the date of the formal denial.

A widow(er), including a surviving divorced spouse or remarried widow(er) or parent who may be entitled to future monthly survivor benefits from either RRB or Social Security Administration, based in whole or in part on the employee's RR compensation, may elect to waive rights to those benefits so that the RLS may be paid. Such a waiver must be executed before the month of initial annuity eligibility. In addition, if the person to whom the RLS would be paid is other than the person entitled to future monthly benefits, a waiver may be secured if the person entitled to future monthly benefits contacts the field office and asks to file a waiver so that the RLS can be paid.

A child under age 22 cannot elect to waive rights to monthly benefits so that the RLS can be paid to himself or another because of the possible entitlement of that child to a disabled child's annuity.

610.15.2 Effect of Payment of RLS on Future Monthly Benefits

Only a person who elects the RLS (files a Form G-126) is precluded from receiving future monthly benefits. A widow(er) who filed a modified election upon remarriage, before passage of the 1981 RR amendments, may qualify for an annuity as a remarried widow(er). However, any RLS paid to the widow(er) would have to be recovered from the annuity accrual.

Note: The Bureau of Law has determined that if a widow(er) elected the RLS in anticipation of remarriage, (s)he can under certain circumstances be eligible for an annuity. In such cases submit a statement over the widow(er)'s signature explaining why (s)he elected the RLS. Submit the statement along with the annuity application.

When an RLS is paid without an election, annuity entitlement may be established later. However, any RLS paid to the person qualifying for the annuity would be recovered from any annuity for which that person later qualifies. If the RLS was paid to a person other than the person qualifying for an annuity, the RLS would not generally be recovered.

Example: Widow remarries at age 55. Because a remarriage before age 60 precludes the widow from qualifying for an annuity, the RLS is paid without an election upon notice of the widow's remarriage. The widow receives the RLS. The widow's remarriage terminates when she is 63 and the widow files for a WIA. The widow can be entitled to an annuity (a tier I amount only); however, the amount of the RLS would be recovered from her annuity.

610.20 Priority Of Payments For RLS

The RLS is paid to an employee's survivors in the following order of precedence:

- Designated beneficiaries;
- Relatives in the classes and order provided by law;
- The employee's estate.

610.25 Designated Beneficiaries

An employee who has railroad service prior to 1975 may file a designation of RLS beneficiary or beneficiaries with the RRB. He may designate one or more persons as beneficiaries and specify the share that each designee is to receive. He may also designate alternate beneficiaries in the event the primary beneficiary is not living on the date the residual becomes payable.

610.25.1 Forms of Designation

A designation of beneficiary ordinarily must be made on a Form AA-11a. A written statement signed by the employee in which an unambiguous designation is made may be given the same effect as a Form AA-11a if:

- The designation is made in basically the same manner as if a Form AA-11a had been used; and
- The employee died without executing a Form AA-11a.

610.25.2 Acceptability of Designation

To be acceptable, a designation of beneficiary must have been filed with the RRB on or after 6-23-48 and on or before the date of the employee's death. If an acceptable designation was filed with an employer prior to the employee's death, consider it to have been filed with the RRB on the date it was filed with the employer.

A designation of beneficiary which does not bear the signature of two witnesses (neither of whom is named as beneficiary) is not effective unless the execution of the designation is proven to the satisfaction of the RRB.

610.25.3 Payment of RLS to Designated Beneficiary

To be entitled to an RLS, a designated beneficiary must survive the employee and be alive on the date the RLS becomes payable. If a designated beneficiary is alive when the RLS becomes payable, but dies before payment is made, the RLS is payable to the designated beneficiary's estate. An RLS becomes payable upon the employee's death when no one is or will ever be entitled to monthly benefits based on the employee's earning's record. If at the time of employee's death he is survived by one or more persons who are or will be entitled to monthly benefits, the RLS becomes payable when no current or future entitlement to monthly benefits exists.

EXAMPLE: Employee filed a Form AA-11a naming a son as primary beneficiary for the RLS. The employee dies before retiring and is survived by a widow who may be entitled to monthly benefits in the future. The widow subsequently dies. The RLS becomes payable at the widow's death; so, if the son who was the designated beneficiary is alive when the widow dies, he is entitled to the RLS. If the son survives the widow but dies before receiving or negotiating the RLS payment, the RLS is payable to the son's estate.

If a surviving primary designated beneficiary dies before the date on which the RLS becomes payable, his share of the RLS is then payable to the other primary beneficiaries. If only alternate beneficiaries, as named in section 2 of the Form AA-11a survive, the RLS payment is handled as though they had been named primary beneficiaries.

If a primary beneficiary dies before the employee, his share is distributed among any other primary beneficiaries who survive the employee. If all primary beneficiaries predeceased the employee, entitlement passes to any alternate beneficiaries named in Section 2 of the Form AA-11a. If neither primary nor secondary beneficiaries survive, entitlement passes to relatives in order of Railroad Retirement Act precedence.

610.25.4 Amount Payable

The residual is paid in the following manner:

A. Primary beneficiaries - If only one primary beneficiary has been designated, the full amount is payable to that one.

   If more than one primary beneficiary has been designated, each beneficiary who survived the employee shares equally, unless the employee specified the percentage or amount to be paid each primary beneficiary. When such amounts or portions are shown, the residual is distributed as indicated on the Form AA-11a. A sole surviving primary beneficiary receives the full amount.

B. Alternate beneficiaries - When no primary beneficiaries survive the employee, the same rules for distribution are applied to alternate beneficiaries as for primary beneficiaries.

610.30 Relatives As Beneficiaries Of The RLS

610.30.1 Relatives Defined

If the employee did not designate a beneficiary, or if none of the designated beneficiaries survived him, entitlement to the residual passes to the employee's relatives. To qualify as a relative, an individual must:

1. Have the required relationship status under applicable state law. "Relative" includes one who has acquired the relationship by legal adoption and who can inherit personal property of the deceased under state law. Stepchildren, stepparents, stepbrothers or step-sisters cannot be eligible for a residual on the basis of that relationship; and

2. Not have been finally convicted of the felonious homicide of the employee; and

3. Not be disqualified from inheriting the employee's intestate personal property under the intestacy law of the state in which the employee was last domiciled (i.e., in some states if a child is adopted before the death of the natural parent he may not inherit from the natural parent).

610.30.2 Entitlement of Relatives

The residual is payable to relatives of the deceased employee in the following order of priority:

A. Widow or widower if living with the employee at the time of the employee's death. Remarriage of a widow or widower does not bar entitlement to the residual if otherwise eligible.

B. Children of the deceased employee.

C. Grandchildren of the deceased employee.

D. Parent or parents of the deceased employee.

E. Brothers and sisters of the deceased employee.

If a person entitled to an RLS on the basis of relationship to the deceased employee dies before negotiating the check for payment, the amount to which he would have been entitled becomes payable to other survivors in the same class, if any, or to persons in the next class.

610.30.3 Amount Payable

If the employee did not designate any beneficiaries, or if no designated beneficiary survived the employee, the residual is payable as follows:

1. Widow or widower if living with the employee at the time of the employee's death: Full amount.

2. Children: Equal shares if more than one survivor; full amount to a sole survivor.

3. Grandchildren: Equal shares if more than one survivor; full amount to sole survivor.

4. Parents of the deceased employee: One-half to each parent if both survive; full amount to sole survivor.

5. Brothers and sisters: Equal shares if more than one survive; full amount to sole survivor. Half-blood brothers and sisters share equally with full-blood brothers and sisters.

610.30.4 When Relationship Is Questionable

There are some cases in which an RLS is payable to a class of relatives, such as children of the deceased employee, and the legal relationship of one of the potential applicants is questionable or cannot be established. Do not develop the questionable relationship and eligibility of that person if:

- All eligible persons agree that the person with the questionable relationship is in the same degree of relationship to the deceased employee and is entitled to share in the benefit; and

- The person with the questionable relationship files a Form G-131 assigning his share (the amount which would be payable to him if his relationship was established) to an eligible applicant.

If the above requirements are met, the appropriate shares can be paid to the eligible applicants including the share assigned.

NOTE: This method CANNOT be used if an eligible person claims that the person with questionable relationship is not a relative in the same degree of relationship or if the individual shares exceed $500. In such cases, relationship will have to be developed and either established or disallowed before we can pay the questionable share.

610.30.5 Assignment of Interest (Form G-131)

An eligible person may submit a Form G-131 instead of an application if he wishes to assign his share of the RLS to another eligible applicant, providing the share does not exceed $500. If an eligible person expresses a desire to make an assignment, furnish that person with a Form G-131 and inform him of the amount of his share. If a beneficiary whose share exceeds $500 requests permission to assign his share, have him complete the Form G-131 but inform him that Headquarters will have to make a decision on whether the assignment can be recognized.

610.30.6 Requesting Court Order for Support

When the employee is survived by a widow(er) who was not living with him/her, or receiving regular contributions for support at the time of death determine whether a court order for support was issued and in affect at the time of death. If such an order has been issued, request the widow(er) to furnish a copy of the order with a certification that the order was still in full force and effect at the time the employee died.

610.35 Estate as Beneficiary

610.35.1 General

The deceased employee's estate is entitled to the RLS under the following conditions:

A. The employee designated his estate as the beneficiary; or

B. In the case of an employee who died before 10-1958, the employee did not designate a beneficiary, and no relative who could qualify is living on the date his relationship is determined by RRB; or

C. In the case of an employee who died after 9-1958, the employee did not designate a beneficiary, and no qualified relative survived or each surviving relative who could qualify died before negotiating his check for the RLS.

610.35.2 Payment to Deceased Employee's Estate

When the deceased employee's estate is entitled to the RLS, payment may be made only if the employee's estate is administered. The administration of the estate may be formal (executor or administrator appointed) or informal (small estate procedures).

A. Through legal representative - If a legal representative of the employee's estate has been appointed and has not been discharged, the residual is paid to the legal representative. If an executor has been or will be appointed, he is paid the full amount of all benefits due the estate. If an administrator or personal representative is or will be appointed as the legal representative of the employee's estate, and no relatives of the employee survive, payment is restricted to the amount needed to satisfy debts that would otherwise remain unpaid because of insufficient assets. This is to avoid having proceeds from the RR fund escheat (i.e., revert) to the state. The probability of escheat exists mostly in cases where a public administrator is appointed to represent the estate. When a public administrator lists no relatives on the Form AA-21, secure a statement from the administrator advising whether any relatives exist who could inherit from the employee's estate under state law. The administrator should also furnish us with the name of at least one person who can inherit from the employee.

B. After legal representative has been discharged - Payment of an RLS under $1,000.00 can be made directly to heirs of the estate providing the estate is solvent (i.e., there was sufficient estate funds to satisfy all debts and bequests).

The estate must be reopened to permit payment of an RLS which exceeds $1,000.00. However, when no heirs exist, reopening the estate is not necessary because payment of the RLS cannot be made due to the possibility of escheat. For additional information about payment to an estate refer to FOM1 620.

610.35.3 Payment to a Deceased Beneficiary's Estate

When the estate of a deceased beneficiary is entitled to a share of the RLS, payment is made to that estate in the same manner as to the deceased employee's estate.

610.40 Evidence Requirements

Evidence	When Required

Application (AA-21)	Always. However, if the entitled person previously filed an RR application for a lump-sum death benefit or a survivor annuity on the deceased employee's record, that application can be used for payment of the RLS. Examiners may ask you to secure a Form AA-21 if additional information is required.
Proof of employee's death	Always.
Proof of marriage to the employee	When the residual exceeds $25 and the employee applicant is the widow(er) who is not the designated beneficiary.
Proof of living with	When the residual exceeds $25 and the applicant is the widow or widower who is not designated beneficiary. Unless there is conflicting information, the widow(er)'s statement on the application is sufficient evidence.
Proof of relationship	When the applicant is a (1) relative of the deceased employee either by blood or adoption; and (2) is not the designated beneficiary; and (3) his share of the RLS exceeds $25; or (4) relationship is questionable (see FOM1 610.30.4). See Witkovich, ThomasFOM1 940.5.2 when there is more than one eligible applicant.
Guardianship (Form AA-5)	If a representative payee will be selected to receive payment on behalf of an entitled person.
Assignment of interest	When an eligible survivor whose share of (Form G-131) the RLS is less than $500 wishes to waive his share in favor of another eligible survivor.
Election to receive an RLS instead of future monthly benefits (Form G-126)	If a widow(er) or parent who has eligibility wishes to give up those rights so the residual can be paid (see FOM1 610.50).
Proof of appointment of legal representative	If an estate is entitled.

Proof of M/S	If the employee's M/S after 1936 would be creditable under the RR Act.

610.45 Developing For RLS

610.45.1 RRB Jurisdiction Cases

A. When an RLS inquiry is received by the field office

1. Inquiry made at time of filing for LSDP. Write in the remarks section of the Form AA-21 that RLS information is requested. Also note on the Form G-659a that the applicant requests RLS information. Do not secure an election (Form G-126) at this time. Advise inquirer that a response will be made as soon as all applicable information is available.

2. Inquiry made after LSDP paid or after current monthly benefit entitlement has ended. If inquiry is from a person who would have to elect to receive the RLS, secure a signed statement requesting RLS information. Send a memo to Survivor Benefits requesting RLS information. Attach a copy of the signed statement (where applicable) to the memo. Do not secure an application or election at this time. Advise inquirer that a response will be made as soon as the necessary information is available.

B. Action by Survivor Benefits - HQ (Survivor Benefits) computes the net RLS amount. If an RLS remains, the file is checked to see if the employee filed a designation of beneficiary (AA-11a). If the inquirer is a person eligible for the RLS, HQ will request appropriate development and furnish the field office with the amount of the RLS and the names and relationship of all persons eligible for the RLS. When the inquirer has potential entitlement to monthly benefits, HQ will furnish the field office with a Form G-64 showing the potential annuity rate payable at retirement age and advising what information is required for RLS to be paid. If the inquirer would not be eligible for the RLS, or if a person other than the inquirer has future entitlement to monthly benefits, HQ will reply by memo to the field office and provide information for response to the inquirer.

610.45.2 SSA Jurisdiction Cases

A residual lump-sum (RLS) may be payable even when the Social Security Administration (SSA) has jurisdiction over payment of survivor benefits on a deceased employee's account. To determine the benefits that must be deducted from the gross residual when compensation credits have been transferred to SSA, we must know the amount of any benefits paid to an employee's survivors by SSA, based on combined railroad and social security earnings. Form G-80 (Residual Lump-Sum Data from SSA Records) is used to obtain information from SSA on payments made and eligibility for benefits.

A. When an RLS inquiry is received by the F/O - Complete information is needed before HQ may request Form G-80 information. When you receive an inquiry about the RLS in an SSA jurisdiction case, secure the following information to be included in a memo to Survivor Benefits requesting RLS information:

1. The name and address of the widow(er) or inquirer.

2. The employee's date of death.

3. The widow(er)'s date of birth.

4. The widow(er)'s social security number if she is age 60 or over. This is needed to obtain information on the widow(er)'s entitlement to a retirement or disability insurance benefit on her own account number.

5. Whether an application for benefits has been filed at SSA. This is needed to determine if SSA has established a file and if payments have been made.

If an inquiry is received within 2 years of the employee's death and an application has not been filed at SSA, advise the applicant (if eligible) to file at SSA for the LSDP and inform Survivor Benefits of the action.

Do not develop an application upon initial inquiry regarding the RLS unless the inquirer insists. Advise inquirer that response may take several months.

Do not trace with HQ on an inquiry involving an RLS when SSA has jurisdiction of survivor benefits until the later of:

- 7 months after the employee's death; or

- 90 days after the date of the initial inquiry.

B. Action by Survivor Benefits - HQ cannot request Form G-80 information until at least 4 months after the employee's DOD. This allows time for any initial claims to be filed at SSA and for adjudication to be made. HQ sends Form G-80 to the appropriate SSA Program Service Center for completion. Upon receipt of the completed Form G-80 from SSA, HQ reviews the information furnished. If there are omissions or inconsistencies, HQ calls SSA for clarification.

Once all necessary information has been furnished by SSA, HQ determines whether an RLS is payable. HQ will then forward a Form G-64, a memo, or Form G-659a providing information regarding the RLS to the field office. If an RLS is payable HQ advises the RLS amount and what information is needed to permit payment. If an RLS is not payable, HQ furnishes the field office with reason why an RLS cannot be paid; the field office then informs the inquirer of HQ's determination. If an application is developed by a field office before HQ has secured a Form G-80 from SSA, the application will be paid or denied after

receipt of Form G-80 information from SSA. A copy of the award or denial notice will be sent to the field office.

C. SSA indicates file has been lost, destroyed, or cannot be located - HQ should notify the inquirer that there will be a delay in furnishing the RLS information. You may be requested by HQ to secure information from the widow(er) regarding the amount and duration of any previous SS payment on the employee's account, if that information has not already been furnished. HQ will use this information to determine the amount of benefits to be deducted from the gross RLS. If the inquirer is a person other than the widow(er), HQ will determine the amount of deductible benefits from information already in the file, without requesting additional development.

D. SSA indicates that the employee was insured but a claim has not been filed - HQ will release a Form RL-142a to the inquirer, informing him that benefits may be payable by SSA and that an application should be filed at SSA. A second Form G-80 request will be made to SSA 90 days after Form Letter RL-142a is released.

If a widow(er) is involved and an application has not been filed when HQ traces the second Form G-80, she will be advised by HQ that the RLS may not be paid until a claim has been filed and processed to a conclusion; HQ will take no further action. If the employee was not survived by a widow(er), information in the file will be used to determine if any other survivor could be entitled. If it appears that the SSA lump-sum death payment payable to the payer of burial expenses is the only benefit payable, HQ will initiate development for payment of the RLS and deduct the SSA lump-sum death payment from the RLS.

610.50 Election To Have RLS Paid In Lieu Of Future Monthly Benefits

610.50.1 When an Election Is Required

An RLS election is required when an employee who died insured under the Railroad Retirement Act, the Social Security Act or both, is survived by a widow(er), remarried widow(er), surviving divorced spouse or parent who may be entitled to future monthly benefits under either act upon attaining the qualifying age, and that potential beneficiary wishes to waive rights to future monthly benefits to permit payment of the RLS.

610.50.2 Who May File an Election

An election may be filed by a widow(er), remarried widow(er), surviving divorced spouse, or parent not currently eligible for benefits, but with eligibility to future monthly benefits under either the Railroad Retirement Act or the Social Security Act based on the employee's earnings record. A child may not file a valid election.

EXCEPTION: A disabled widow(er) currently eligible for benefits may, at any time prior to attaining age 60, cancel the annuity application and elect to receive the RLS. However, all annuity payments must be refunded before the RLS can be paid.

A widow(er) or surviving divorced spouse who remarries before age 60 is considered not to be eligible for future monthly benefits unless remarriage is after entitlement to a disabled widow(er)'s or disabled surviving divorced spouse's annuity, since termination of the marriage cannot be presumed. Consequently, an election would not be required from such a widow(er) or surviving divorced spouse.

The 1983 Railroad Retirement Act amendments changed the eligibility requirements for a parent's insurance annuity. Beginning 9-1-83, a parent may be eligible for a tier I payment, even if the employee was survived by a widow(er) or child who could qualify for a monthly annuity. Therefore, an RLS cannot be paid unless a parent submits either an election or a statement of non-dependency, as shown on the following chart. When a statement of non-dependency is required, the statement should be developed by the field office directly with the parent(s), and not through the applicant for the RLS.

When an RLS exists but the person(s) eligible for the payment is not the person with future eligibility to monthly benefits, or there are other persons with future eligibility, do not solicit elections. The person(s) eligible for the RLS may be informed that person(s) with future eligibility would have to file an election for the RLS to be paid. The field office may not initiate contact with the person(s) who would have to file an election.

NOTE: If a widow(er) elects to receive an RLS, (s)he cannot qualify for an annuity even though evidence may show the widow(er) was disabled at the time the election was filed.

The following chart outlines who must file an election before the RLS can be paid.

SEE FOM 610.50.2 EXHIBIT 1

610.50.3 When Election Not Required

The RLS may be paid without an election only when there is no current or potential entitlement to monthly benefits on the deceased employee's account. This situation may exist because no eligible relatives survived the employee, because he was not insured at death, or because entitlement of any eligible survivors to monthly benefits has ceased. An election is not required to pay the RLS in any of the following circumstances when the employee's eligible widow(er), surviving divorced spouse, or parent survived and all entitlement ceases:

A. RRB jurisdiction

- The widow(er) or parent annuitant becomes entitled to a higher railroad survivor annuity on the earnings record of another employee.

- The widow(er), surviving divorced spouse or parent dies.

- The widow(er) is 60 or older and the public pension reduction in tier I causes the annuity rate to be zero.

- The only eligible survivor is a surviving divorced spouse or remarried widow(er) who becomes entitled to an SS RIB which equals or exceeds the employee's PIA, or a parent who becomes entitled to an SS RIB which equals or exceeds the parent's annuity.

- The widow(er) remarries before attaining age 60 (unless she was entitled to a disabled widow(er)'s annuity before the marriage occurred), and there is no eligible surviving divorced spouse or parent.

- The surviving divorced spouse remarries before attaining age 60 (unless she was entitled to a disabled surviving divorced spouse's annuity before the marriage occurred), and there is no eligible legal or de facto widow(er) or parent.

- The parent remarries (unless the marriage is to certain SS beneficiaries), and there is no eligible widow(er) or surviving divorced spouse.

B. SSA jurisdiction

- The widow(er) age 65 or over becomes entitled or potentially entitled to an SSA RIB or auxiliary benefit that equals or exceeds the SSA widow(er)'s insurance benefit payable on the employee's account.

- The widow(er) under age 65 becomes actually entitled to an SSA RIB or auxiliary benefit that equals or exceeds the SSA widow(er)'s insurance benefit payable on the employee's account.

- The surviving parent:

1. Remarries before attaining age 62. If the parent remarries at or after age 62, it is possible that entitlement to the parent's benefit may continue, depending on the SS benefit status of the parent's new spouse; or

2. Becomes entitled or potentially entitled at age 65 or over to an SSA RIB or auxiliary benefit that equals or exceeds the SSA parent's insurance benefit payable on the employee's account.

3. Becomes actually entitled before age 65 to an SSA RIB or auxiliary benefit that equals or exceeds the SSA parent's insurance benefit payable on the employee's account.

NOTE: If future entitlement to a monthly survivor benefit of either the eligible widow(er) or eligible parent terminates because of entitlement to a DIB, an election must be obtained before the RLS is paid.

610.50.4 When a Valid Election Cannot Be Made

A valid election cannot be made when any of the following conditions exist:

- A widow(er) or parent desiring to make the election has attained retirement age and is eligible for or potentially entitled to monthly annuities under the Railroad Retirement Act (RRA) or monthly benefits under the Social Security Act (SSA).
- A widow and/or child of an employee is currently entitled to either a WCIA or CIA under the RRA, or a Mother's Insurance Benefit or a Child's Insurance Benefit under the SSA.
- There is a posthumous child of the deceased employee expected.
- A widow(er) is receiving a survivor annuity deriving from a J&S annuity under the RRA.
- There is a surviving child under age 22, unless the child can never qualify for benefits under the RRA or the SSA; for instance, the child is married. An election cannot be made when a child age 18-21 survives because the child may become entitled to benefits under the RRA or the SSA if he attends school full time or becomes disabled.

610.50.5 Determining a Valid Election

An election to have the RLS awarded instead of future monthly benefits must be made on a Form G-126.

Generally, to be valid, a Form G-126 must be filed before the widow(er) or parent attains age 60 in RRB jurisdiction cases. In SSA jurisdiction cases, the election must be filed before the widow(er) attains age 60 or the parent attains age 62.

If a widow(er) or parent files an election after attaining the age of eligibility, the election is considered timely filed if:

- Prior to attaining the age of eligibility, the person notifies the RRB in writing of his intention or desire to file an election and files the election within 90 days after he is furnished with the Form G-126, or
- The person had not been informed by the RRB at least 90 days before the end of the period in which a timely election can be filed that an election must be filed on a Form G-126 but filed the election before the award of monthly benefits and within 90 days after being furnished the Form G-126.

610.50.6 Effect of Election

Payment of the RLS based on an election serves to deprive a widow(er) or parent of any future benefits (s)he would have become entitled to, from the employee's death, under the RRA or SSA on the basis of combined compensation and wage credits. However, an election does not deprive a widow(er) or parent of any future benefits to which (s)he may become entitled under the SSA, based solely on the employee's SS earnings.

Generally, after an election has been made and filed with the RRB and payment has been made, the election cannot be revoked or changed in any way. The date on which "payment is made" is the date the check is cashed. Thus, the withdrawal or cancellation of an election may be permitted at any time before the check is cashed.

610.50.7 Furnishing Election Information

Before a widow(er) or parent(s) with future eligibility to monthly benefits can elect to receive an RLS, monthly benefit information must be made available. Consequently, DO NOT secure a Form G-126 from a widow(er) or parent until you have received a Form G-64.

When a widow(er) or parent(s) with future eligibility to monthly benefits inquires about the RLS through a field office, secure a written request from the inquirer. An inquiry in the remarks section of a Form AA-21 filed for the LSDP or an accrued annuity is acceptable. Transmit the inquiry to SBD, and advise the inquirer you will contact her when RLS information is available. If an RLS is not payable, or another beneficiary has been designated, SBD will inform the field office by memo with information for response to the inquirer. If the RLS would be payable to the inquirer upon election, SBD will prepare and release Form G-64, in duplicate, to the servicing field office. Upon receipt of the Form G-64, take action as follows:

A. Select the appropriate RLS form letter:

- RL-38-F RRB jurisdiction; no insured status under SSA based on wages only.
- RL-38a-F RRB jurisdiction; insured status under SSA based on wages only.
- RL-39-F SSA jurisdiction; no insured status based on wages only,
- RL-39a-F SSA jurisdiction; insured status under SS Act based on wages only; but benefit based on wages alone is less than benefit based on combined wages and compensation.
- RL-39b-F SSA jurisdiction; insured status under SS Act based on wages only; but benefit based on wages alone is equal to the benefit based on combined wages and compensation.

B. Prepare and release the appropriate RL-38 or RL-39 series form letter indicated in item 1 of the Form G-64.

- Enter the RLS amount in the first paragraph of the form letter.
- Monthly benefit information need not be furnished in the letter, but such information should be furnished if requested.
- Release letter and do not pend for tracing action.

C. If the widow(er) or parent(s) wishes to elect the residual after being sent an RL-38 or RL-39 series letter, thoroughly explain the effect and irrevocability of an election. If the eligible person still wishes to receive the RLS, secure a Form G-126, necessary proofs and a Form AA-21 only if the elector had not previously filed a RR survivor application, and submit via Form G-659a.

615.5 Employee Regular And Supplemental Annuities Due But Unpaid At Death

For there to be employee annuities due but unpaid at death, the employee must have filed an annuity application on or before the date of death. A survivor cannot file an annuity application on behalf of a deceased employee for any purpose other than to establish a disability freeze period which may increase the amount of monthly survivor benefits payable.

NOTE: When Form AA-1d is completed, signed, and filed by an employee who dies without filing an AA-1, the AA-1d meets the application filing requirement. The employee's survivors as listed in FOM1 615.5.2, may file an AA-1 so that a disability determination may be made. Use the date the AA-1d is received as the official filing date for the application. If the employee is found to be disabled prior to death and death did not occur during the waiting period or the first month after the waiting period, annuity entitlement is established. Survivors may then file Form AA-21 for annuities due but unpaid at death, as outlined in FOM1 615.5.5.

615.5.1 When Existence of Employee Annuities Unpaid at Death Is Indicated

Employee annuities (regular or supplemental) due but unpaid at death may exist whenever:

- The date of the employee's death is after the ABD month but before the final annuity is awarded.
- There are uncashed checks covering payment before the month of death.
- An amendment or annuity recomputation increase is payable for month(s) before the month of death.

615.5.2 Persons to Whom Unpaid Employee Annuities Are Payable and Amount of Payment

Employee retirement annuities unpaid at death are payable in the following amounts and order of priority. The exception is payment of Survivor Tax Refunds.(See FOM1 615.5.6 for priority of payment of Survivor Tax Refunds.)

A. Widow(er) if living with the employee at the time of the employee's death: Full amount.

B. Person(s) who paid the employee's B/E: Each shares in the unpaid annuities to the extent and in the proportions that he paid the employee's B/E, but ONLY to the extent he is not reimbursed by the LSDP under the Railroad Retirement Act (RRA) for having paid such expenses. Unlike the LSDP, annuities due but unpaid at death are payable to payers of burial expenses without regard to the

category of expenses they paid. The estate of a payer of burial expenses who dies before receiving or filing for annuities due but unpaid at death is equitably entitled.

NOTE: Since unpaid retirement annuities are payable only to the extent that the payer of the B/E has not been reimbursed by the LSDP, the LSDP must be paid BEFORE paying the unpaid retirement annuities. However, this does not mean that the payer of B/E cannot receive the unpaid retirement annuities when an LSDP is not awarded. (Example: An LSDP is not payable due to a child's entitlement to an insurance annuity for the month of the employee's death. That fact does NOT prevent payment of the unpaid annuities to the payer of the employee's B/E.)

When determining the extent and proportion that the payer of B/E paid the employee's burial expenses, disregard the amount of the LSDP paid to a funeral home as authorized by the payer of B/E. Consider only the amount actually paid by the payer of B/E in determining his eligibility for unpaid annuities.

If there is no person entitled to reimbursement, or if the unpaid annuities exceed the reimbursable B/E, the annuity unpaid at death or such remainder can be paid to relatives of the deceased in the order listed below.

C. Child(ren) of the employee: Equal shares if more than one survive; full amount to a sole survivor.

D. Grandchild(ren) of the employee: Equal shares if more than one survive; full amount to a sole survivor.

E. Parent(s) of the employee: One-half to each parent if both survive; full amount to sole survivor.

F. Brothers and sisters of the employee: Equal shares if more than one survive; full amount to a sole survivor. Half-blood brothers and sisters share equally with full-blood brothers and sisters. However, stepbrothers and stepsisters cannot qualify for annuities unpaid at death on the basis of relationship.

If no eligible survivors as listed in A through F exist, the annuities due but unpaid at death are not payable.

615.5.3 Relationship Requirements

A. Claimant is widow(er) or child - A claimant for unpaid annuities as the widow(er) or child of a deceased employee must:

- Not be disqualified from inheriting personal property of the employee; and
- Have the claimed relationship status under the laws of the state in which the employee was last domiciled; or

- Be the de facto widow(er) or deemed child under the RRA; and
- Not be convicted of the felonious homicide of the deceased employee.

B. Claimant is grandchild or parent - A claimant for unpaid annuities as the grandchild or parent of a deceased employee must:

- Not be disqualified from inheriting personal property of the employee; and
- Have the claimed relationship status under the laws of the state in which the employee was last domiciled; and
- Not be convicted of the felonious homicide of the deceased employee.

C. Claimant is brother or sister - A claimant for unpaid annuities as the brother or sister of a deceased employee is entitled if (s)he is the employee's blood brother or sister or half blood brother or sister. A stepbrother or stepsister is not entitled to receive unpaid annuities on the basis of relationship to the employee. A brother or sister convicted of the felonious homicide of the deceased employee is not entitled to benefits.

D. Claimant is stepparent or stepchild - A stepparent cannot receive any unpaid annuities by virtue of relationship to a deceased employee because a stepparent may not inherit annuities on the basis of relationship to the employee.

NOTE: A stepbrother, stepsister or stepparent may receive unpaid annuities (other than survivor annuities) by virtue of being "equitably entitled" to reimbursement for having paid the B/E of the employee.

615.5.4 Equitable Entitlement Requirements

When entitlement exists by reason of a person's having paid all or part of an employee's burial expenses refer to FOM1 605.55 for information regarding equitable entitlement.

615.5.5 Application Requirements

An application for unpaid employee annuities must be filed no later than the second anniversary of the employee's death. The same types of applications and proofs used for a regular retirement annuity unpaid at death are used for a SUPP ANN unpaid at death. However, when SUPP ANN payments are due but unpaid the social security number of the applicant is required because SUPP ANN payments are taxable.

Generally, an Application AA-21 is used to file for retirement annuities due but unpaid at death. If the accrued annuities are payable to person(s) also entitled to monthly survivor benefits, the annuity application(s) can be used to pay the annuities unpaid at death. Also, if an Application AA-21 is filed for the LSDP and the person filing is eligible for unpaid employee annuities, another AA-21 is not required. However, a

supplemental application may be required if information about payment of burial expenses has changed since the LSDP was paid.

615.5.6 Paying Tax Refund In Survivor Cases

If the employee died after 1974, whether or not (s)he had retired, and the tax refund was not paid, the employee's survivors, or estate can receive the tax refund. An AA-21 is required from each survivor for payment of the tax refund.

Priority of Payment - The tax refund is paid to an employee's survivors in the following order of precedence:

1. Widow(er). If living with the employee at the time of the employee's death. (Full amount.)

2. Children. (Equal shares if more than one survives. Full amount to sole survivor.)

3. Grandchildren. (Equal shares if more than one survives. Full amount to sole survivor.)

4. Parents of deceased employee. (One-half to each if both survive. Full amount to sole survivor.)

5. Brothers and sisters, including half-blood brothers and sisters. (Equal shares if more than one survives. Full amount to sole survivor.)

6. Estate of deceased employee. (Full amount.)

615.10 Spouse And Divorced Spouse Annuities Due But Unpaid At Death

For there to be spouse or divorced spouse annuities due but unpaid at death, the spouse must have filed an annuity application on or before the date of death. A survivor (including the employee) cannot file an annuity application on behalf of a deceased spouse.

615.10.1 When Existence of Spouse or Divorced Spouse Annuities Due But Unpaid at Death Is Indicated

Spouse or divorced spouse annuities due but unpaid at death may exist whenever:

- The date of the spouse's death is after the ABD month but before the final annuity is awarded; or

- There are uncashed checks covering payment before the month of death; or

- An amendment or annuity recomputation increase is payable for month(s) before the month of death.

615.10.2 Persons to Whom Unpaid Spouse or Divorced Spouse Annuities Are Payable and Amount of Payment

Spouse or divorced spouse annuities unpaid at death are payable in the following amounts and order of priority:

A. The employee: full amount.

B. Person(s) who paid the EMPLOYEE'S B/E. Each shares in the unpaid annuities to the extent and in the proportions that he paid any of the employee's B/E, but ONLY to the extent he is not reimbursed by the LSDP under the Railroad Retirement Act for having paid such expenses.

NOTE: Since unpaid spouse annuities are payable only to the extent that the payer of B/E has not been reimbursed by the LSDP, the LSDP must be paid before paying the unpaid spouse annuities. However, this does not mean that the payer of B/E cannot receive the unpaid spouse annuities when an LSDP is not awarded. Example: An LSDP is not payable due to a child's entitlement to an insurance annuity for the month of the employee's death. That fact does NOT prevent payment of the unpaid spouse annuities to the payer of the employee's B/E.

When determining the extent and proportion that the payer of B/E paid the employee's burial expenses, disregard the amount of the LSDP paid to a funeral home as authorized by the payer of B/E. Consider only the amount actually paid by the payer of B/E in determining his eligibility for unpaid annuities.

If there is no person entitled to reimbursement, or if the unpaid annuities exceed the reimbursable B/E, unpaid spouse annuities or such remainder can be paid to relatives of the deceased employee in the following order of priority:

C. Child(ren) of the deceased employee: Equal shares if more than one survive; full amount to a sole survivor.

D. Grandchild(ren) of the deceased employee: Equal shares if more than one survive; full amount to a sole survivor.

E. Parent(s) of the deceased employee: One-half to each parent if both survive; full amount to sole survivor.

F. Brothers and sisters of the deceased employee: Equal shares if more than one survive; full amount to a sole survivor. Half-blood brothers and sisters share equally with full-blood brothers and sisters. Stepbrothers and stepsisters cannot qualify for annuities unpaid at death based on relationship.

If no eligible survivors as listed in A. through F. exist, the spouse annuities due but unpaid at death are not payable.

615.10.3 Relationship Requirements

A. Employee - An employee need not meet any special requirements to receive spouse annuities unpaid at death. Use the previously filed employee annuity application, AA-1, for any accrued annuity provided all proofs necessary to establish the spouse's entitlement were submitted before the spouse's death.

B. Claimant is child - A claimant for unpaid annuities as the child of a deceased employee must:

- Not be disqualified from inheriting personal property of the employee; and
- Have the claimed relationship status under the laws of the state in which the employee was last domiciled; or
- Be the employee's deemed child under the Railroad Retirement Board.

C. Claimant is grandchild or parent. A claimant for unpaid annuities as the grandchild or parent of the deceased employee must:

- Not be disqualified from inheriting personal property of the deceased employee; and
- Have the claimed relationship under laws of the state in which the employee was last domiciled.
- Not be convicted of the felonious homicide of the deceased employee.

D. Claimant is brother or sister - A claimant for unpaid annuities as the brother or sister of a deceased employee is entitled if (s)he is the adopted or blood relation (including half-blood relation) of the deceased employee. A stepbrother or stepsister is not entitled to receive unpaid annuities on the basis of relationship to the deceased employee. A brother or sister convicted of the felonious homicide of the deceased employee cannot be entitled to benefits.

E. Claimant is stepparent or stepchild - A stepparent or stepchild cannot receive any unpaid annuities by reason of relationship to the deceased employee because neither a stepparent nor a stepchild may inherit intestate personal property under state law.

NOTE: A step relation may receive unpaid spouse annuities on the basis of "equitable entitlement" for having paid burial expenses of the deceased employee.

615.10.4 Equitable Entitlement Requirements

When entitlement exists by reason of a person having paid all or part of an employee's burial expenses, refer to FOM1 605, "Lump Sum Death Payments," for information regarding equitable entitlement.

615.10.5 Application Requirements

An application for unpaid spouse annuities must be filed no later than the second anniversary of the spouse's death. If the employee is the applicant, the previously filed Application AA-1 serves as the application for any accrued annuity payable. An Application AA-21 is the appropriate application for persons other than the employee to file for unpaid spouse annuities.

615.15 Survivor Annuities Due But Unpaid At Death

Generally, for there to be survivor annuities due but unpaid at death, the survivor must have filed an annuity application on or before the date of death.

EXCEPTION:A widow(er) who was in receipt of a spouse annuity in the month before the employee's death, but dies before filing a widow(er)'s annuity application, is deemed to have filed a valid application.

615.15.1 When Existence of Survivor Annuities Unpaid at Death Are Indicated

The existence of survivor annuities due but unpaid at death may be indicated when:

- The date of the survivor's death is after the ABD month but before the final annuity is awarded; or
- There are uncashed checks covering payment before the month of the survivor's death; or
- An amendment increase is payable for a month(s) before the month of death.

615.15.2 Persons to Whom Unpaid Survivor Annuities Are Payable and Amount of Payment

Annuities unpaid at the death of a survivor applicant or annuitant are payable to survivors of the deceased employee in the order and amount indicated below. No persons other than those listed can be entitled to survivor annuities due but unpaid at death.

A. Widow(er) if living with the employee at the time of the employee's death: Full amount.

B. Child(ren) of the deceased employee: Equal shares if more than one survive; full amount to a sole survivor.

C. Grandchild(ren) of the deceased employee: Equal shares if more than one survive; full amount to a sole survivor.

D. Parent(s) of the deceased employee: One-half to each parent if both survive; full amount to sole survivor.

E. Brothers and sisters of the deceased employee: Equal shares if more than one survive; full amount to a sole survivor. Half-blood brothers and sisters share equally with full-blood brothers and sisters.

NOTE 1: Unpaid survivor annuities CANNOT be paid to the payer of the employee's B/E.

NOTE 2: As with all other accrued annuities, an annuity due but unpaid at death is payable based on the relationship to the railroad employee and not the deceased survivor annuitant. Therefore, accrued annuities due but unpaid at the death of a surviving divorced spouse are payable as shown above starting with the employee's living with widow.

If no eligible survivors as listed in A through E exist, the survivor annuities due but unpaid at death are not payable.

615.15.3 Relationship

A. Claimant is widow(er) or child - A claimant for unpaid annuities as the widow(er) or child of a deceased employee must:

- Not be disqualified from inheriting personal property of the employee, and
- Have the claimed relationship under the laws of the state in which the employee was last domiciled; or
- Be the de facto widow(er) or deemed child under the Railroad Retirement Act.
- Not be convicted of the felonious homicide of the deceased employee.

B. Claimant is grandchild or parent - A claimant for unpaid annuities as the grandchild or parent of a deceased employee must:

- Not be disqualified from inheriting personal property of the employee, and
- Have the claimed relationship under the laws of the state in which the employee was last domiciled.
- Not be convicted of the felonious homicide of the deceased employee.

C. Claimant is brother or sister - A claimant for unpaid annuities as the brother or sister of a deceased employee is entitled if (s)he is the employee's adopted or blood relation (including half-blood relation) of the deceased employee. A stepbrother or stepsister is not entitled to receive unpaid survivor annuities. A brother or sister convicted of the felonious homicide of the employee cannot be entitled to benefits.

D. Claimant is stepparent, stepbrother, stepsister or stepchild - A step relation cannot receive unpaid survivor annuities because they may not inherit personal property under state law.

615.15.4 Application Requirements

Each applicant for survivor annuities due but unpaid at death must file an application no later than the second anniversary of the survivor's death. Generally, an Application AA-21 is used for this purpose. If at the time a survivor is filing for an insurance annuity, annuities unpaid at death are due, a second application is not required. However, if survivor annuity due but unpaid at death becomes payable after an annuitant is in receipt of an annuity, an Application AA-21 is required.

615.15.5 Widow(er)'s Annuity Due But Unpaid at Death Payable, No Application Filed

When spouse annuity payments are in force at the time of an employee's death, and it appears the spouse will qualify for a widow(er)'s annuity, spouse payments are usually continued until appropriate development is completed. When a spouse dies before filing the necessary application to permit conversion of the spouse annuity to a widow(er)'s annuity, any difference between the spouse rate and the final computed widow(er)'s annuity rate is an accrued annuity due but unpaid at death. Such annuities accrue through the month before the month the widow(er) dies providing the widow(er) met all requirements for entitlement to an annuity.

615.20 Development Of Claims For Annuities Due But Unpaid At Death

615.20.1 General

Development of a claim for annuities due but unpaid at death should be taken only when there is definite information that an annuity payment is due but unpaid. Prepare and release Form RL-94-F to determine the person(s) to whom such benefit may be payable.

If eligible survivors are outside the originating office area, send Form RL-94-F to the F/O serving the area where the survivors reside and advise SBD.

If there is no survivor who can be paid the accrued survivor annuity, forward Form RL-94-F to SBD explaining why the case was not developed further.

If a reply to Form RL-94-F is not received in 15 calendar days, the case should be traced. If no reply is received in an additional 15 calendar days, close the case out.

EXCEPTION: If the claims examiner has requested the DOD, the case cannot be closed out or abandoned until the correct DOD has been developed and forwarded.

If first notice of death is received in Headquarters, the examiner will use Form G-659a to request development of a claim for any survivor annuities due and payable.

615.20.2 Questionable Relationships

If unpaid annuities are payable to a class of relatives (such as brothers and sisters) of the deceased employee, and the legal relationship of one of the potential applicants is questionable or cannot be established, do not question the relationship and eligibility of that person IF:

A. All eligible persons agree that the person with the questionable relationship is in the same degree of relationship to the deceased employee and is entitled to share in the benefit; AND

B. The person with questionable relationship files Form G-131 assigning his share (the amount which would be payable to him if his relationship were established) to an eligible applicant.

If the requirements in A. and B. are met, pay the appropriate shares to the applicant(s), including the share assigned by the person with questionable relationship.

This method CANNOT be used if an eligible person claims that the person with questionable relationship is not a relative in the same degree of relationship, or if the individual shares exceed $500. In such cases, relationship has to be established or denied before paying the share in question.

615.25 Assignment Of Interest

An eligible person may complete Form G-131 instead of filing an application if he desires to assign his share of unpaid annuities to another eligible applicant providing the share does not exceed $500. If an eligible person wishes to assign a share that exceeds $500, a Form G-131 can be developed; however, the general counsel will determine whether the assignment can be accepted. Develop a Form G-131 when an eligible person expresses a desire to assign his share of the benefit. Encourage assignments of interest in cases where a small adjustment or accrual is due and several eligible persons are entitled. Use the general rule that if individual shares of an annuity due but unpaid at death are less than $10, encourage assignments. The person must be informed of the approximate amount of his share before he completes the form. Like

an application, a Form G-131 must be filed no later than the second anniversary of the annuitant's death. Whenever possible, submit all assignments being developed with the application and proofs or advise Headquarters that assignments are being developed. This will allow Headquarters to make a single award instead of numerous small awards.

615.30 Evidence Requirements

Evidence	When Required
Proof of annuitant's (or applicant's) death	Always.
Proof of relationship	Always, except when the applicant is equitably entitled or if entitled by virtue of relationship, and his share is $25 or less. When two or more applicants survive, only one need establish his relationship provided none's relationship is questionable.
Proof of marriage and living with	If the applicant is the widow(er) and will qualify based on relationship. Widow(er)'s statement on the application is sufficient unless there is conflicting information. Form G-476c does not request living with information. We do not assume the former spouse annuitant was living with the employee, since it is no longer a requirement for the spouse annuity. If the information in file is sufficient to establish a living with relationship, examiners will award accrued annuities to the widow(er). If the file information is not sufficient, development is necessary.
Payment of B/E	When applicant is equitably entitled.
Proof of legal representative of estate	When estate is equitably entitled and a legal representative has been appointed.
Application for substitute payee (Application AA-5)	A representative payee is filing for a beneficiary.
SS number of applicant	Always. Request development unless the applicant does not reside in the U.S.

Proof of guardianship	When a representative payee is a court appointed guardian and the share is more than $25.
Form G-88p	In unpaid SUPP ANN cases in which the employee's last employer has a pension plan covering his occupation.

615.35 Person's Rights Of Entitlement To Unpaid Annuities Pass To Another

If a person entitled to unpaid annuities by virtue of relationship to the deceased employee dies before negotiating the check in payment of such annuities, the amount to which he was entitled becomes payable to other survivors in the same class. When there are no other survivors in the same class, entitlement passes to persons in the next class.

When the entitled person who dies is the payer of the employee's B/E, entitlement passes to that person's estate. Any amount remaining after reimbursing the payer of B/E (or his estate if he dies) is payable to the next priority of relatives.

620.5 Introduction

Under the RRB's regulations, when determining if a benefit is payable and an estate is involved, designated personnel in the Office of Programs have the authority to:

- Require formal administration of an estate; or
- Require reopening of an estate; or
- Make certification of payment using informal or no administration procedures, if allowed by the statutes of the state of the last domicile of the decedent.

This chapter describes what is required for an estate to be payable, when an estate is not payable, and how cases involving estates should be handled. These instructions apply to estates of beneficiaries as well as employees.

620.10 When Railroad Retirement Act Benefits Are Payable To An Estate

620.10.1 When an LSDP Is Payable to an Estate

All or part of a Lump-Sum Death Payment (LSDP) is payable to an estate when any of the following conditions exist:

A. The LSDP is payable to payers of burial expenses and estate funds were used to pay those expenses; or

B. The LSDP is payable to payers of burial expenses and a person who paid part of those expenses with personal funds dies before receiving his share of the LSDP as an equitably entitled person.

620.10.2 When an Annuity Due but Unpaid at Death Is Payable to an Estate

All or part of annuities due but unpaid at death, except survivor annuities, are payable to an estate when any of the following conditions exist:

A. The annuity unpaid at death is payable to payers of the employee's burial expenses not previously reimbursed in full by any LSDP and estate funds are involved; or

B. The annuity unpaid at death is payable to payers of the employee's burial expenses not previously reimbursed in full by any LSDP, and an eligible person dies before receiving his share of the annuity due but unpaid at death as an equitably entitled person.

620.10.3 When an RLS Is Payable to an Estate

A residual lump-sum (RLS) is payable to an estate when any of the following conditions exist:

A. The employee designated his estate as beneficiary to receive the RLS; or

B. The employee died before 10-1958 and he either did not designate a beneficiary, or if he designated one, the beneficiary is not living at the time the RLS is to be paid, and no qualified relative survives who is living on the date his relationship is determined by the RRB; or

C. The employee died after 9-1958 and he either did not designate a beneficiary, or if he designated one, the beneficiary is not living at the time the RLS is to be paid, and no qualified relative survives or each surviving relative who can qualify dies before negotiating his check for the RLS.

NOTE: In B and C above, if the designated beneficiary survives the employee, but dies before receiving the RLS payment, entitlement passes to the estate of the designated beneficiary.

620.15 How Benefits Are Paid To An Estate

When benefits are payable to an estate, payment can be made under one of the following procedures:

- Formal administration (legal representative appointed).
- Informal administration (court order under small estate statutes).
- No administration (no legal representative appointed or court order secured).

620.20 Definition Of Terms

The following is a list of terms most commonly used in the administration of estates.

- Administrator - The person appointed by a law court to settle an estate under state probate proceedings when the decedent died without a will. The property of the decedent is vested in the administrator only from the time of the appointment.
- Administrator Cum Testamento Annexo - Performs the same function as an administrator, except that the decedent died testate.
- Assets (of an Estate) - Any possessions, property, goods, capital, etc., owned by the decedent at the time of his death. Included among a decedent's assets are:

  1. Money found among his effects.

2. Funds obtained by selling real or personal property.

3. Money on deposit to his credit at a bank (except monies in a joint account and the joint owner survives the decedent).

4. Unpaid wages his employer was holding for him.

- Decedent - A person who has died.

- Distributee - A person or persons related to the deceased who may inherit his personal property under the intestacy laws of the state of his last legal residence.

- Domicile - The location accepted as the last legal residence of a deceased person.

- Escheat - The reversion of an estate to the state government because there is no legal heir.

- Estate - The property, possessions and funds of the deceased person.

- Executor - The person named in a will to settle an estate. The property of the decedent is vested in the executor from the moment of the testator's death.

- Formal Administration - The settlement of an estate under probate proceedings of the state of the decedent's legal residence at death.

- General Creditor - The person to whom the decedent is indebted to at death for such items as board, rent, laundry, personal loans, balance remaining on installment purchases, etc. [NOTE: This is no longer a factor in determining entitlement when an estate is involved].

- Heir - One who is entitled to receive all or part of the property of a deceased person.

- Informal Administration - The settlement of an estate without formal probate procedures.

- Intestate - Absence of a will.

- No Administration – An administrator of the estate has not been appointed, either formally or informally.

- Personal Representative - A title given a person appointed to settle an estate whether under the provisions of the deceased person's will or under the provisions of the State's intestacy laws. Maryland has done away with both of the titles "executor" and "administrator" and now uses only "personal representative" to designate a person charged with performing the duties associated with either of the former titles.

- Primary Estate - The estate of the deceased employee.

- Priority Creditor - One whose claim against an estate has rights superior to those of general creditors. In most states, a claim by the PB/E has rights superior to those of other priority creditors. In No Administration cases, a priority creditor is a person who paid part of the B/E when estate funds were also used to pay part of the B/E and a legal representative has not been appointed (see FOM1 620.45.2 item B.).

- Secondary Estate - The estate of a deceased priority creditor or distributor.

- Small Estates Statutes - The laws of a state which permit settlement of an estate without the usual formal probate procedures.

- Testate - Having a will.

- Testator - Person making a will.

620.25 Evidence Requirements

In addition to any other proofs needed to pay either an LSDP, RLS or accrued annuity, the following evidence is also required when an estate is involved:

Evidence	**When Required**
Application (AA-21)	Always. Only one AA-21 is needed when co-executors are filing on behalf of the estate.
Proof of Death	Always (for each person whose estate is to be distributed).
Proof of Relationship	If payment of more than $25 is being made to distributees or if the relationship of a distributee is questionable.
Proof of Payment of B/E	When applicant has paid any burial expenses. In some cases, listing the paid B/E on the signed application or in a signed statement is acceptable (see FOM1 605.65.4)
Affidavit or Certified Copy of Court Order Dispensing with Administration. Only one or the other is needed. The small estate statutes of the state of the employee's last domicile determines which of the two is required.	If payment will be made without formal administration under a state's small estate statutes.

Certified Copy of Appointment as Legal Representative	If formal administration is required for payment to an estate. NOTE: If the proof of appointment of legal representative was issued more than 1 year prior to the date it is submitted to the RRB, inform the applicant that the certification must show that the appointment is still in full force and effect.
Certified Copy of Final Accounting	If the estate has been closed and payment is to be made without reopening.

620.30 Formal Administration

620.30.1 When Formal Administration Is Required

A. Amount of Each Type of Benefit Exceeds $1,000 - Formal administration of an estate is required when each type of benefit, considered separately, exceeds $1,000 and:

1. The applicant does NOT request that payment be made under the "Small Estate" statutes of the state of the decedent's domicile at death; or

2. The applicant requests application of the "Small Estate" statutes but the state has adopted no "Small Estate" statutes (see FOM1 Art 6 App C), or the amount of the benefit payable exceeds the limit specified in the "Small Estate" statutes; or

3. The decedent is survived by relatives entitled to inherit his personal property under the intestacy laws of the state of his domicile at death (seeFOM1 Art 6 App D); or

4. The decedent was NOT survived by a relative entitled to inherit his personal property but there are unpaid creditors of his estate and:

   a. The creditors are other than priority creditors, or

   b. The sole creditors are priority creditors whose claims exceed $1,000.

B. Amount of Benefit Less Than $1,000 - Formal administration is required when each type of benefit, considered separately, is less than $1,000 and:

1. There is a creditor of the estate who possesses the rights superior to those of the surviving spouse or kindred and has not waived their claims against the estate (see FOM1 Art 6 App C); or

2. Heirs of the deceased reside in a foreign country and, although their whereabouts are unknown, there is no definite proof that they are dead.

620.30.2 Development

When benefits are payable to an estate and a legal representative is required to effect the payment, secure the following from the executor or administrator (including public administrators):

A. An application Form AA-21; and

B. Certified copy of:

1. Letters testamentary if there is a executor named in the decedent's will; or

2. Letters of administration if there is or will be an administrator appointed.

NOTE: If the proof of appointment of legal representative was issued more than 1 year prior to the date it is submitted to the RRB, inform the applicant that the certification must show that the appointment is still in full force and effect.

C. Remaining information necessary for payment of benefits.

620.30.3 Escheat

Escheat occurs when no heirs of an estate exist and any assets remaining, after the debts of an estate have been paid, would revert to the state of the deceased's domicile at death. Escheat is not possible when a will is involved. Advise the potential applicant that any part of a Railroad Retirement Act benefit due an estate which would escheat to the state cannot be paid.

A. When Escheat Is Possible - The probability of escheat strongly exists in cases in which:

1. A public administrator has been appointed to represent the estate; and

2. The decedent was not survived by a relative who could be considered an heir of his estate.

B. When Development for Escheat Is Not Necessary - If the decedent left a will and an executor or administrator has been appointed, there can be no escheat. The fact that the will has been submitted for probate is sufficient basis to assume that there are persons legally entitled to share in the estate. The total amount due the estate may be paid to the executor or administrator cum-testamento annexo (CTA) without developing for escheat. The proof of legal appointment serves as evidence a will exists.

620.30.4 Amount Payable to Estate

If there is an executor, the examiner will pay the full amount of benefit to him/her. If there is an administrator, the possibility of escheat must be considered. Advise the potential applicant that, if escheat is possible, the application will be denied unless he voluntarily furnishes the information in B below.

A. Escheat Is Not Possible - The examiner will pay the full amount of the benefit to the administrator.

B. Escheat Is Possible - The examiner will deny the application unless the administrator shows that the benefit will not escheat, by:

1 Providing the name and address of an heir; or

2. Showing that the liabilities of the estate are greater than the assets and the total benefit payable. This information must be submitted voluntarily by the administrator either when the application is filed or after the denial letter is released. In no way can the administrator be requested to submit this information. The administrator must submit this information on his own.

620.35 Reopening Of Estate

620.35.1 Employee or Beneficiary Died Intestate

When an administrator was previously appointed and the estate has been closed, the estate may have to be reopened.

A. When Estate Need Not Be Reopened - Reopening of an estate is not required when the applicant voluntarily advises that:

1. The employee's estate was solvent (i.e., there were sufficient assets of the estate to pay all creditors) and the amount of each type of benefit payable, if considered separately, does not exceed $1,000; or

2. The employee's estate was insolvent and:

a. The only creditors having claims against the estate are priority creditors and the amount of each type of benefit, when considered separately, does not exceed $1,000, or

b. The amount of each type of benefit exceeds $1,000 but there are no heirs, the total of the priority creditor claims against the estate are $1,000 or less, and reopening would result in an escheat of the balance of the amount payable; or

3. The beneficiary's estate was solvent.

B. When Estate Must Be Reopened - The employee's estate must be reopened when conditions 1 and 2, above, are not met. A beneficiary's estate must be reopened when condition 3 is not met.

620.35.2 Employee or Beneficiary Died Testate

A. When Estate Need Not Be Reopened - The estate need not be reopened when the applicant voluntarily advises that:

1. The estate was solvent; and

2. Sufficient assets were available to fulfill the bequests of the testator; and

3. The amount of each type of benefit is less than $1,000.

B. When Estate Must Be Reopened - An estate must be reopened when the conditions listed in "A" are not met. When reopening is required but the heirs, or their attorneys, insist that it is not required under the probate laws of the state in question, notify Survivor Benefits. They will refer the case informally to the deputy general counsel.

620.35.3 Development When Reopening of Estate Not Required

A. Decedent Died Intestate - Secure the following from the heir:

1. Application Form AA-21; and

2. A certified copy of the final accounting.

B. Decedent Died Testate - Secure the following from the heir:

1. Application Form AA-21; and

2. A certified copy of the will; and

3. A certified copy of the final accounting.

NOTE: When a primary and secondary estate are involved, and neither will be reopened, the same development is required for each estate.

620.35.4 Development When Reopening of Estate Is Required

Secure the following from the legal representative:

A. Application Form AA-21; and

B. Copy of the court order reopening the estate.

620.40 Small Estate Statutes (Informal Administration)

620.40.1 General

Some states have statutes which permit the settlement of estates without the usual formal probate procedures. Such statutes authorize a court to either appoint some person who is considered the legal representative to collect and receive all assets of the estate, or to designate who shall share in the distribution of the estate (see FOM1 Art 6 App C).

The court may appoint some person in an order dispensing with formal administration or in an order refusing letters of credit. In an order refusing letters of credit, a creditor may be named by the probate court. The creditor so named would then have the same powers as if appointed as an executor or administrator of the estate. Such an order may be considered the same as letters of administration. The following states have adopted statutes under the Model Small Estates Act which dispense with formal administration of an estate by way of an order refusing letters of credit.

- Arkansas
- Delaware
- Florida
- Missouri
- Texas

620.40.2 Court Order Dispensing With Formal Administration

The order dispensing with formal administration is acceptable, even though the amount of the Railroad Retirement Act benefit exceeds $1,000, if:

- The Deputy General Counsel has previously ruled on the statute of the state (see FOM1 Art 6 App C); and
- The statutory requirements of the state have been met.

When these conditions have not been met, submit a copy of the court order to Survivor Benefits. They will consult the attorney advisor.

620.40.3 Providing Information About Small Estates

When the estate can be handled under a small estate statute, advise the inquirer, applicant or estate's representative that this option is available and that (s)he should

contact the local probate court, or other court with jurisdiction over probate issues, for more information. Do not solicit any detailed information about the estate.

620.40.4 Development

When a benefit is to be paid under the small estate statutes, secure the following:

- The court order or other document which permits settlement of an estate without formal administration; and

- An application from the legal representative or each distributee of the estate, whichever is appropriate.

When a public administrator has been assigned by the court to settle an estate under the small estate statutes, the administrator must submit letters of administration specifically covering the estate in question. These cases are not to be considered under the "no administration" procedure.

620.45 No Administration

620.45.1 General

When an LSDP, RLS or accrued annuity is due an estate and there is no formal or informal administration of the entitled estate, payment of the benefit may not be possible. The following sections explain when a benefit is or is not be payable to the estate in these cases and how they should be handled.

HISTORICAL NOTE: Until 1980, the RRB was able to pay benefits in no administration cases because, at the time, Part 236 of the Code of Federal Regulations (CFR) gave it the authority to act as the administrator of the estate when none was appointed. Form AA-21a (obsolete) was used to obtain the detailed information necessary (i.e. last illness expenses, distributees of estate, etc.) for the RRB to determine the entitlement of claimants against the estate or the estate's distributees according to the laws of the state of the decedent's legal residence at death, and pay benefits accordingly. In June 1980, OMB rescinded its approval of the continued use of the AA-21a because that agency determined that the RRB did not have the statutory authority "to ask detailed questions of a sensitive nature which are inessential to determine eligibility or amount payable", nor did the form meet "The President's Paperwork Reduction Guidelines" limiting questions on applications "to those necessary to determine eligibility or amount of benefit". In other words, the RRB was no longer allowed to solicit the type of detailed information it needed to determine how a benefit should be distributed. In effect, it could no longer act as administrator and, therefore, determine how benefits should be paid in these cases. Part 236 was eventually removed from the CFR.

620.45.2 Payment of Lump-Sum Death Benefit (LSDP)

When an LSDP is payable to payers of the employee's burial expenses (PB/E), and any portion of the reimbursable burial expenses (B/E) were paid from estate funds, and a legal representative for the estate has not or will not be appointed, payment of the LSDP is determined by SURVIVOR BENEFITS.

A. All the burial expenses, including all non-funeral home expenses, were paid from estate funds and a legal representative has not been appointed:

1. Provide the inquirer with the amount of the LSDP. When available, base the LSDP on the lump-sum basic amount figure on the MARC file. If information is not available in the office, send an e-mail to SURVIVOR BENEFITS requesting the LSDP amount.

2. Advise that no payment can be made unless a legal representative for the estate is appointed.

3. If a person insists on filing, take a Form AA-21 application. Do not develop any proofs. If payment cannot be made to a funeral home, PB/E or priority creditor as described in section B below, SURVIVOR BENEFITS will deny the application, incorporating code paragraphs 571 and 571.1 in the denial letter.

B. Part of the burial expenses were paid from estate funds and a legal representative has not been appointed:

1. Develop a Form AA-21 application and necessary proofs from the person who paid a portion of the burial expenses or who is authorizing payment of an outstanding balance to the funeral home.

2. If the state of the decedent's domicile is one of those listed below, the PB/E can be paid the estate's portion (until fully reimbursed) of the LSDP or accrued annuity as a priority creditor. The probate laws of these states give first consideration to reimbursing payers of burial expenses before satisfying other priority creditors. RRB benefits can be paid to PB/E as a priority creditor only in cases involving the states listed. In all other states, RRB benefits due the estate cannot be paid unless a legal representative for the estate is appointed.

Alabama
Alaska
Arizona
California
Colorado
Connecticut
Delaware
Nebraska
(limited to $300 if
estate insolvent)
Nevada
New Hampshire
New Jersey
New York

District of Columbia
(limited to $600)
Florida
Hawaii
Idaho
(Limited to $100
if estate insolvent)
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
(limited to $500
if estate insolvent)
Maine
Maryland
(limited to $1200
if estate insolvent)
Michigan
Minnesota
Missouri
Montana
North Carolina
North Dakota
Ohio
(limited to $800)
Oklahoma
Oregon
Rhode Island
South Dakota
Tennessee
Utah
Vermont
(Funeral not over $1000,
headstone not over $150
where estate is insolvent)
Virginia
(limited to $500)
Washington
West Virginia
(limited to $600)
Wisconsin
(effective April 1, 1971)
Wyoming

NOTE: Limitation on Priorities - This listing contains limitations as to amounts opposite some of the items. These limitations apply, generally speaking, only as against other items of priorities, and not against full reimbursement for any particular item.

3. Pay any amount due the funeral home before paying any prorated share due to a PB/E.

4. Use the following examples as guides in determining the amount payable to a priority creditor.

EXAMPLE 1 – FH expenses paid by estate and non-FH expenses paid by other PB/E

LSDP = $1,000.00; total FH expenses = $2,500.00; EE pre-paid all of the FH expenses; EE's brother paid $250.00 for flowers and $50.00 for long distance phone calls to make the funeral arrangements. If the estate was payable, it would be paid the entire LSDP and the brother would not be reimbursed for any of his expenses. However, since the estate is not payable because no legal representative has been appointed, we can use $300.00 of the estate's share to fully reimburse the brother the amount he paid for the flowers and phone calls. He later submits another claim for reimbursement of $75.00 for additional long distance calls that were not on

his previous phone bill. Because $700.00 of the estate's share remains, we can also reimburse him for the additional $75.00 in long distance phone calls.

EXAMPLE 2 – Both estate and other PB/E paid FH expenses

Use the following formula to determine the share due each PB/E:

(AMT PD BY PB/E ÷ TOTAL B/E PD BY ALL PB/E) X TOTAL LSDP PAYABLE TO PB/E = SHARE DUE PB/E

LSDP = $1,000.00; total FH expenses = $ 3,500.00; EE's estate paid $3000.00 of the FH expenses; EE's son paid the remaining $ 500.00. Using the above formula, if the estate was payable, its share of the LSDP would be $857.14 and the son's share would be $142.86. Since the estate is not payable, $357.14 of its share can be used to reimburse the son for all $500.00 of the FH he paid. If there are also any non-FH expenses, the payer(s) of those expenses can be reimbursed up to a total of $500.00, the remaining amount of the estate's share.

620.45.3 Payment of Accrued Annuity

A situation may arise in which an accrued annuity is payable and the first priority of payment is an estate without a legal representative.

A. If the reimbursable burial expenses exceed the accrued annuity, do not take an application. Should someone insist on filing, take a Form AA-21. No proofs need be developed. The application is denied.

B. If the reimbursable burial expenses are less than the accrued annuity:

1. Secure proof of payment of the burial expenses; and

2. Take the necessary development action with the relative(s) who are entitled according to the established priorities.

If a Form AA-21 is filed for the estate by a person who is not entitled as a relative, the application is denied.

620.45.4 Payment of the Residual Lump-Sum (RLS)

The RLS may be due the employee's estate if the employee designated his/her estate as beneficiary, or the employee did not designate a beneficiary and either was not survived by a qualified relative, or each surviving relative who could qualify died before receiving the RLS.

If an application is received and a legal representative has not been appointed, the application is denied.

620.45.5 Development

Normally, it can be determined from information furnished on either a submitted Form AA-21 or Form Letter RL-94F that part of the B/E was paid from estate funds. If no administrator is apparent, Form AA-21 should be developed from any person who paid burial expenses and appears to be entitled as PB/E or priority creditor. Do not take any action to develop from the estate.

620.50 Foreign Estates

620.50.1 General

When the decedent who died lived in a foreign country, administration of his estate is governed by the laws of that country. In some countries individual administrators or executors are appointed to administer an estate, while in others the courts are authorized to act as administrator.

620.50.2 Development

Development in Canadian or Mexican cases should be handled by the field offices assigned to the provinces, states or territories of those countries. Development in other foreign cases should be handled by the Chicago field office, often with the assistance of the local U.S. Foreign Service Office.

Attempt to determine from the information available (i.e., inquiry from a relative, RL-94F, AA-21, etc.) whether the estate of the deceased will be entitled to benefits and take action as follows:

A. Estate Will Be Formally Administered - Have an application, AA-21, completed by the administrator or executor of the estate and request him to submit:

   1. A certified copy of the letter of appointment; or

   2. A similar document which may be issued by a foreign government; and

   3. Proof of the employee's death and any other proofs required to process the claim.

B. Estate Will Not Be Formally Administered - Have the nearest surviving relative complete and return the application AA-21 and submit proof of death. Payment can be made without formal administration if the laws of the country in which the deceased lived allows for payment to the payer of B/E as priority creditor. Refer these cases to the attorney advisor.

620.50.3 Administration Of Estates In Norway

The Norwegian Government has designated its probate courts to act as administrators of all estates, except where a valid will or testament has named a person as an executor. In these cases, the court and not the judge is the administrator of the estate. When a person dies in Norway, the attending physician or hospital notifies the probate court in the area where death occurred. The probate court, itself, records the notice of death. An estate may then be handled by formal or informal administration.

A. Formal Administration of an Estate - Formal administration of an estate is accomplished in one of the following ways:

1. The probate court will act as administrator in accordance with Norwegian Law; or

2. An executor named in the will of the deceased will act as administrator. As verification such person will furnish a statement from a court that he is the executor; or

3. The probate court will appoint an administrator of an estate. In this instance the person so named is to furnish a copy of the court's certificate designating him as the administrator.

B. Informal Administration of an Estate - Informal administration of an estate may be effected if all the heirs agree to the private handling of an estate. To do this they must all sign a statement assuming full responsibility for the liabilities of the deceased. The probate court will issue a statement that such handling has been approved. Usually, the heirs will appoint one of their own group or an attorney to act for them. In this instance, the certification of the probate court is to be furnished as well as the statements of the heirs agreeing to the appointment of one heir or an attorney to represent them.

C. Validity of Statements Issued by a Norwegian Probate Court - Statements of a Norwegian probate court relating to death and burial expenses are acceptable as evidence in the place of receipts. The probate court is usually required to retain the original receipts covering payments made by the court, or by the authorized representative, on behalf of the estate. Such statements, if submitted, are acceptable as just and correct proofs of payment.

D. Corresponding With a Norwegian Probate Court - When writing to a Norwegian probate court, address the correspondence to the court and not the judge of the court by name.

620.55 Certification of Payments to an Estate

620.55.1 Estate Formally Administered

When an executor named in a will or an administrator has been appointed as legal representative of an estate and has not been discharged, make payment only to the executor or administrator.

620.55.2 Estate Need Not Be Reopened

A. Employee or Beneficiary Died Intestate - If the employee's estate was solvent, make the payments to the same persons in the same proportions as shown in the final accounting.

B. Employee or Beneficiary Died Testate - Consider benefits under the RR Act as residue of the employee's estate if residuary legatees are named in the will. Make payments to the same persons in the same proportions as provided in the will and in the final accounting.

NOTE: Certified copies of the will and the final accounting are required because in some instances the final accounting does not list distributees and the shares paid them.

620.55.3 Probate Of Will Not Contemplated

When the employee died testate and probate of the will is not contemplated, disregard the existence of the will and pay the case under the "No Administration" procedure.

620.55.4 Small Estate Statutes

When the RR Act benefit can be paid under small estate statute, the court has appointed one person to collect and receive all assets of the estate. If an order dispensing with administration is received and the summary in FOM1 Art 6 App C requires a listing of the assets and the RR Act benefit is not listed, it is not an acceptable order. Secure a new order with the RR Act benefit listed. If the summary in Appendix C does not require a listing of the assets, it is not necessary to list the RR Act benefit.

Pay the entire amount due the estate to the person named in the order as representative.

620.55.5 No Administration

Survivor Benefits handles payments in No Administration cases, as described in FOM1 620.45.

705.5 Social Security Certification

Refer to RCM – SSC for Social Security Certification Procedure.

710.5 Types Of SS Benefits Paid By RRB

The Social Security Administration (SSA) will certify to the RRB any retirement or survivor insurance benefit for which the RRB has jurisdiction. Types of SS benefits that could possibly be certified to the RRB include a wife's benefit, divorced wife's benefit, remarried widow's benefit, father's benefit, etc. For a complete list of the types of SS benefits, see the SSA Beneficiary Identification Codes (BIC) appendix in FOM I-1615.5.

Any SS benefit underpayments (accruals) due at the death of a beneficiary whose benefits were paid by the RRB will be certified to the RRB after SSA determines the proper payee.

There are certain cases which SSA deems "critical." Generally, this means that SSA received a Congressional inquiry in the case. The RRB agreed to expedite these cases if SSA makes a "critical case" call to the Congressional Inquiry Section (CIS) in the Office of Administration/Public Affairs.

710.10 SS Benefits Not Paid By RRB

SSA has sole authority over all Title XVI Supplemental Security Income (SSI) payments; they are not paid by the RRB.

Also, SSA will pay all SS lump-sum death payments and any attorney's fees which result from the beneficiary's attempt to establish entitlement to SS benefits. The attorney's fees will be paid by SSA and SSA will tell the RRB the amount to withhold from the beneficiary's SS accrual.

710.15 RRB Claim Numbers

All SS benefit payments will be maintained under the RRB claim number. Checks will bear the RRB claim number only.

A. Individuals who are already on our rolls or have previously been assigned an RRB claim number - Their SS benefits will be processed under the RRB claim number already assigned to them.

B. Individuals who are not on our rolls or have previously been assigned an RRB claim number - Their benefits will be processed under the RR employee's social security number which will be the RRB claim number.

710.20 Claim Number Prefixes

RRB claim number prefixes will be determined as follows:

A.	The railroad employee:	"A".
B.	The employee's spouse:	"MA".
C.	The divorced spouse:	"XA".
D.	The aged or disabled widow of the employee:	"WA" or "WD".
E.	All others (includes children, etc.):	"WCA" or "WCD".

710.25 Date Of Payment

SS benefits paid by the RRB are payable on the first day of the month following the month in which they accrue. The same rule applies to all RR annuities. However, this differs from SS benefits paid by SSA which are paid on the third day of the month following the month in which they accrue.

710.30 Trust Funds

SSA has two trust funds from which SS benefits are paid. Retirement and survivor benefits are paid from the Retirement and Survivors Insurance (RSI) trust fund. Disability benefits are paid from the Disability Insurance (DI) trust fund. An auxiliary beneficiary, i.e., wife, child, etc., is paid from the same trust fund as the primary beneficiary, i.e., the wage earner.

The RRB must make SS payments from the proper trust fund. This information does not appear on the benefit check; it is noted on the checkwriting tapes in Headquarters for accounting purposes.

710.35 Combining RR And SS Benefits

RR and SS accruals paid after an initial award, adjustment or reinstatement will always be issued in separate checks. After the accrual is paid, the RR and SS payments will be combined in the next regular recurring check.

Once the benefits are combined, if one of the benefits is suspended or terminated, a check will be issued for the benefit which continues to be paid.

When two SS benefits are certified to the RRB for payment to the same person:

A. We will combine them into one check, with any RR annuity payable, if both SS benefits are being paid from the same trust fund.

   Example: A spouse is entitled to a retirement benefit based on her own earnings and a wife's benefit based on her husband's earnings.

B. If one SS benefit is paid from the RSI trust fund and the other is paid from the DI trust fund, we will combine the SS retirement or survivor benefit with any RR annuity payable and pay it in one check while paying the SS disability benefit in a second check.

Example: A spouse is entitled to a disability benefit based on her own earnings and a wife's benefit based on her husband's earnings.

710.40 Check Legends

Beneficiaries receiving RR annuities and/or SS benefits will have an indication on their benefit checks showing the type of payment(s) they are receiving.

A. The legend "RR SS BEN" will be shown on the face of the check below the check amount in SS payment only cases.

B. In dual RR/SS payment cases, the legend "RR COMB BEN" will be shown below the check amount. If for any reason either benefit is suspended or terminated, a check will be issued for the benefit which continues to be paid. The legend on the check will be either "RR REG ANN," if the RR annuity remains payable, or "RR SS BEN," if the SS benefit remains payable.

710.45 Notices Released By RRB

The letters to be used in various SS benefit payment situations are shown below:

Letter	Use
RL-130A	Used as an initial award letter when no RR annuity is payable to the SS beneficiary or when an RR annuity application is pending but has not been awarded. (Initial SS Award/No RR Annuity Payable) See exhibit 2.
RL-130B	Used as an initial award letter when the RR annuity is in pay status and has already been correctly reduced for the SS benefit. (Initial SS Award) See exhibit 3.
RL-130C	Used when initial payments are one-payment-only awards. (Initial SS Award) See exhibit 4.
RL-130E	Used to inform the beneficiary that the SS payment material was returned to SSA. See exhibit 5.

RL-130R	Used with initial awards when the full accrual is being withheld to be applied towards the RR annuity overpayment. (Initial SS Award) See exhibit 6.
RL-130T	Used with initial awards when part of the accrual is paid and the other part is withheld to offset the RR overpayment. (Initial SS Award) See exhibit 7.
RL-130TC	Used with initial awards when part of the accrual is being withheld to be applied towards the RR annuity overpayment. (Initial SS Award/RR Adjustment Involved) See exhibit 8.
RL-130U	Used to explain post-entitlement adjustments. (SS Reinstatement or SS Reinst/Recert Awards) See exhibit 9.
RL-130UC	Used to explain post-entitlement adjustments. (RR/SS Adjustment) See exhibit 10.
RL-130XC	Used to explain post-entitlement one-payment-only awards or to refund an over-withheld accrual. (RR/SS Adjustment) See exhibit 11.
RL-130Z	Used as an award/adjustment letter for cases paid by PAM. The computer will print appropriate award data and code paragraphs on stationery with "Social Security Benefit Information" heading. See exhibit 12. Also used as a "stall" letter for beneficiaries whose SS benefits could not be paid by PAM but will be referred to an examiner for manual handling. See exhibit 12.
RL130EZ	Stall letter. Used to inform the beneficiary that we had received payment information from the Social Security to process their benefit award. See exhibit 13.
RL-177	Used as an award/adjustment letter for cases paid by the System to Automate Zero Accrual (STAZA) program. See exhibits 14 and 15. NOTE: (District office copy of the letter will be RL-177b.)

710.50 Limits On RRB Adjudication Authority

SSA is solely responsible for adjudicating claims for entitlement under the Social Security Act even though the RRB is paying the benefits. The adjudication responsibility includes determining initial entitlement, the effect of post-entitlement actions and Medicare entitlement. The RRB merely acts as the payment agent for SSA.

710.55 Actions Authorized By SSA

The following is a list of actions that must be authorized by SSA:

A. Initial awards;

B. All adjustments, i.e., cost of living increases, recomputations, etc.;

C. Suspensions;

D. Terminations, except death terminations;

E. Overpayment recovery; and

F. Awarding of underpayments.

When the RRB receives a notice of a death or a change of address for an SS beneficiary, immediate action can be taken without authorization from SSA. However, SSA is subsequently notified of our action.

710.60 SSA On-Site Representative

SSA's Great Lakes Program Service Center in Chicago has agreed to provide the RRB with one person daily who is authorized to adjudicate SS claims. (S)he is called an on-site representative.

If the RRB receives direct notice of a post-entitlement event which requires immediate suspension or termination for a reason other than death, the on-site representative may be able to authorize such action when necessary. When dire need is involved, the representative may take SS benefit information over the telephone to provide for an initial award or a reinstatement award.

710.65 Recovery Of SS Overpayments

Social security overpayments may be detected by SSA or RRB in the course of policing actions, correcting erroneous rates or by direct contact from the beneficiary. If the RRB becomes aware of an overpayment situation, we will contact SSA, state the reason for the suspected overpayment and provide an actual payment summary. SSA will take all adjudicative actions with one exception: RRB may request the return or refund of outstanding SS benefit checks without adjudication by SSA when a social security benefit has terminated by death.

Social security overpayments of $1.00 or more are now subject to recovery action. Previously, tolerance was applied to overpayments of $15.00 or less unless the overpayment could be recovered from SSA's LSDP.

710.65.1 SSA Actions

Upon receipt of RRB's overpayment notice, SSA will determine the overpayment amount and notify the beneficiary of the overpayment, possible recovery methods and appeal rights. For sample wording of an SSA overpayment letter, see exhibits 15 and 15A.

SSA will initiate and pursue overpayment collection efforts for overpaid beneficiaries no longer entitled to SS benefits.

If the overpaid beneficiary has continuing SS entitlement, SSA will request full repayment within 30 days or full withholding will be instituted. Beneficiaries are advised to contact the SSA district office if they want partial withholding, a different rate of adjustment, reconsideration or waiver.

SSA will inform the RRB of the overpayment amount and the selected method of recovery for each overpaid beneficiary with continuing SS entitlement.

710.65.2 RRB Actions

When the RRB receives overpayment information from SSA, Headquarters will notify the beneficiary of the recovery action and the date recovery will begin. Next, we will adjust the SS benefit to effect recovery. We will properly control the case so that the benefit can be adjusted to the proper rate after the overpayment is recovered.

The RRB district office will only become involved in SS overpayments when:

1. The beneficiary comes in with an appeal of the overpayment, see FOM I 715.55; or

2. The beneficiary wishes to make a cash refund directly to the RRB, see FOM I 715.30.

710.70 Recovery Of RR Overpayments Due To SS Entitlement

A railroad overpayment due to SS entitlement may be recovered from a beneficiary's SS accrual. That is the only type of RR overpayment that can be recovered from SS benefits.

If the SS accrual is insufficient to recover the overpayment, the remaining overpayment will be recovered from the RR annuity under current overpayment procedure.

705.5 Social Security Certification

Refer to RCM – SSC for Social Security Certification Procedure.

720.5 Jurisdiction

The RRB assumes Medicare jurisdiction for all persons whose SS benefits are certified to the RRB for payment. This includes people who would not be considered qualified railroad retirement beneficiaries (QRRBs). These beneficiaries are "deemed" QRRBs for Medicare purposes.

720.10 RRB Responsibilities

The RRB is responsible for setting up a Health Insurance (HI) record, issuing the Medicare ID card and collecting supplementary medical insurance (SMI) premiums from beneficiaries whose SS benefits are paid by the RRB. Palmetto GBA will process the Part B Medicare claims.

720.15 SMI Premium Collection

720.15.1 Social Security Entitlement Only

A. SS benefit payable - SMI premiums will be deducted from the monthly benefit payable unless the rate is lower than the premium amount. If the monthly SS rate is lower than the premium amount, the beneficiary will be billed directly for the SMI premiums by the RRB.

B. SS benefit not payable due to work deductions, etc., for an indefinite period of time - SMI premiums will be collected by the RRB through direct billing.

C. SS benefit not payable for a short time (e.g., for recovery of an overpayment) - SMI premiums will be deducted at the time of reinstatement.

720.15.2 Combined Railroad and Social Security Entitlement

If a beneficiary is receiving a combined RR/SS benefit, the premiums will always be deducted from the RR portion due to current processing limitations. If the RR portion is lower than the premium amount, the beneficiary will be billed directly for the premiums, even though the SS benefit is large enough for premium deductions.

720.15.3 Combined RR/SS Entitlement - RR Rate Equals Zero

If an RR annuity rate equals zero due to reductions in tier I for SS benefits, worker's compensation, etc., the SMI premiums will be collected as follows:

A. RR annuity in suspense - The annuitant will be billed directly for SMI premiums.

B. RR annuity terminated or constructive award made - SMI premiums will be deducted from the SS benefit.

720.20 SMI Premium Arrearages

SMI premium arrearages occur when premiums are due but unpaid for months in which the railroad annuity or SS benefit has not been paid.

Sometimes the RRB receives an SS benefit from the Social Security Administration (SSA) with a Medicare entitlement date that is in the past. This happens frequently in disability cases. When this occurs, past premiums must be deducted from the benefits payable.

720.20.1 Entitlement to Social Security Benefits Only

A. Premium arrearage less than 6 months or 50% of benefit accrual - The entire arrearage will be deducted from the SS accrual. The award notice released by the RRB will explain the amount of the premiums deducted and the months for which they are due.

B. Premium arrearage more than 6 months or 50% of benefit accrual - Medicare coverage and premium deductions will be effective with the month of examiner handling. The enrollee will be notified of the start of premium deductions but not the retroactive premiums. Medicare examiners will determine if the equitable relief provisions apply and will implement recovery for the premium arrearage.

   If the beneficiary is offered equitable relief but subsequently asks for waiver or protests the arrearage amount, it is SSA's responsibility to determine a final method of recovery and notify the RRB.

   If the equitable relief provisions do not apply, Medicare coverage will remain effective with the month of examiner handling.

720.20.2 Entitlement to Railroad and Social Security Benefits

The premium arrearage will be recovered from the railroad annuity according to current instructions.

720.25 Transfers Of Medicare Jurisdiction

Whenever the SS payment jurisdiction changes from RRB to the Social Security Administration (SSA), Medicare jurisdiction will also be transferred for entitled beneficiaries. Headquarters will transfer the benefit and Medicare jurisdiction at the same time and will advise SSA of the paid-through dates. Also, see FOMI 705.50.

805.5 Introduction

A national health insurance program, better known as Medicare, was enacted in 1965 (Title XVIII of the Social Security Act) for individuals age 65 and over who are insured under the Social Security Act or the Railroad Retirement Act. Subsequent legislation has included disabled beneficiaries, individuals with chronic renal disease and uninsured individuals.

The basic Medicare program is divided into two parts - hospital insurance and medical insurance. Hospital insurance, also called HIB or Part A, provides coverage for hospital and other medically necessary services, i.e., skilled nursing facility care, hospice care and respite care. Individuals insured under the Social Security Act, deemed insured for Medicare under the Social Security Act or insured under the Railroad Retirement Act are entitled to HIB. Uninsured individuals may file an application during an enrollment period and pay a monthly premium. This program is called Premium HI and is only available through the Social Security Administration (SSA).

Supplementary medical insurance, also called SMI or Part B, provides coverage for doctor's services, outpatient services and other medical services. Individuals who want coverage must file an application or have an annuity application deemed filed during an enrollment period and pay a monthly premium.

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 added a prescription drug benefit to Medicare effective January 2006. The prescription drug benefit is referred to as Part D. Refer to FOM-I-860 for additional information about Part D benefits.

805.10 Program Administration

Refer to Article 3 of the RCM for information about the administration of the Medicare program and the responsibilities of various organizations. Here are links to the pertinent sections:

3.1.3	General Assignment of Responsibility
3.1.4	Role of CMS
3.1.5	Role of RRB
3.1.6	Role of Operations' Medicare Section
3.1.7	Role of the Field Offices
3.1.17	Intermediaries and Carriers

3.1.18	State Health Agencies

805.15 Financing

Refer to RCM 3.1.8 for information about Part A financing and RCM 3.1.9 for information about Part B financing.

805.20 Hospital Insurance Benefits (HIB)

Refer to RCM 3.1.60 through 3.1.72 for information about the services covered by Part A of Medicare and how Part A payments are made. Here are links to those sections:

3.1.60	General
3.1.61	Benefit Periods
3.1.62	How Medicare Pays for Part A Services
3.1.63	Inpatient Hospital Services
3.1.64	Hospital Inpatient Reserve Days
3.1.65	Coverage of Blood Under Part A
3.1.66	Care in a Psychiatric Hospital
3.1.67	Care Outside the United States
3.1.68	Care in a Christian Science Sanatorium
3.1.69	Prospective Payment System
3.1.70	Skilled Nursing Facility Care
3.1.71	Home Health Care
3.1.72	Hospice Care

805.25 Supplementary Medical Insurance Benefits

Refer to RCM 3.1.80 through RCM 3.1.89 for information about the services covered by Part B of Medicare and how Part B payments are made. Here are links to those sections:

805.30 Medicare Advantage Plans (Part C)

Medicare Advantage Plans, also referred to as Part C of Medicare, are health plan options, like Health Maintenance Organizations (HMOs) and Preferred Provider Organizations (PPOs), that are approved by the Centers for Medicare & Medicaid Services (CMS), but are run by private companies. Medicare Advantage Plans (or MA plans) combine Part A and Part B benefits. They must cover at least all of the medically-necessary services that the Original Medicare plan, i.e. the traditional fee-for-service plan, provides. Some Medicare Advantage plans also include Part D prescription drug coverage. Medicare Advantage plans first became available as an option for receiving Medicare benefits on February 1, 1985 (Public Law 97-248). The plans were originally referred to as Health Maintenance Organizations or HMOs, then as Medicare + Choice plans, and beginning in 2004 as Medicare Advantage plans.

805.30.1 Election of Medicare Advantage Plan

A beneficiary enrolls in a Medicare Advantage Plan directly with the plan or provider; district offices are not involved. A beneficiary must meet these requirements:

- Have Part A and Part B.
- Live in the service area of the plan.
- Not have end-stage renal disease (except when special circumstances exist.)

Beneficiaries usually compare plans that provide services near their residence, then choose the one which best satisfies their needs. It is not necessary that a beneficiary notify the RRB regarding such enrollments, since there is NO change in the RRB's Medicare record or in the collection of Medicare premiums.

805.30.2 Medicare Advantage Election Periods

The Balanced Budget Act of 1997 provides for Coverage Election Periods. During Coverage Election Periods, eligible beneficiaries may enroll in Medicare Advantage health plans.

Do not confuse Medicare Advantage Coverage Election Periods with the Initial Enrollment Period (IEP), General Enrollment Period (GEP), and Special Enrollment Period (SEP) of Medicare Part B. IEPs, GEPs, and SEPs are still in effect for beneficiaries who enroll only in Medicare Part B.

There are four types of Medicare Advantage Coverage Election Periods.

1. Initial Coverage Election Period (ICEP)

   The ICEP is the period during which an individual newly eligible for MA may make an initial enrollment request to enroll in a MA plan. This period begins three months before a beneficiary becomes entitled to coverage under Medicare Parts A and B. An ICEP ends the last day of the month preceding the month of the beneficiary's entitlement.

   Once an ICEP enrollment request is made and enrollment takes effect, the ICEP election has been used.

   Coverage under the health plan starts the first day of the month in which the beneficiary is entitled to Medicare Parts A and B.

2. Annual Election Period (AEP)

   The Annual Enrollment Period runs from November 15 through December 31 each year. During this time beneficiaries can choose to enroll in a stand-alone Medicare Prescription Drug Plan (PDP), a Medicare Advantage Plan (MA), a Medicare Advantage Plan with Prescription Drug Coverage (MA-PD), or other Medicare Health Plan, or switch to another plan. Coverage under the health plan starts January 1 of the following calendar year.

   No action is required by beneficiaries during the AEP who are currently enrolled in a plan and do not want to change plans.

3. Open Enrollment Period (OEP)

   Beginning in 2007, the OEP is from January 1 through March 31. The following limitations apply to the OEP:

- Only one election is allowed during the OEP.

- An individual who is enrolled in an MA-PD plan may elect another MA-PD plan, or disenroll from the MA-PD plan by enrolling in a PDP. (A Special Election Period allows the individual to enroll in a PDP under these circumstances.) Either action will generate an automatic disenrollment from the current MA-PD plan.

- An individual enrolled in a PDP may elect an MA-PD during the OEP. Such an individual may **not** elect an MA plan that does not provide qualified prescription drug coverage.

- An individual who is enrolled in an MA plan and who does not have qualified prescription drug coverage may elect another MA plan that does not provide drug coverage or may elect to disenroll from the MA plan during the OEP.

- An individual enrolled in Original Medicare but not a PDP may elect an MA plan that does not provide qualified prescription drug coverage during the OEP. Such an individual cannot elect an MA-PD plan during this period. (**Note:** The Tax Relief and Health Care Act of 2006 allows people with Original Medicare to join a Medicare Advantage plan that doesn't include Medicare prescription drug coverage at any time in 2007 or 2008. If they want to join a Medicare Advantage plan that offers prescription drug coverage, they must enroll during the Annual Enrollment Period from November 15 through December 31.)

The following chart summarizes the OEP limitations.

If current coverage is	**Can use OEP to get**	**Cannot use OEP to get**
Medicare Advantage with prescription drug coverage (MA-PD)	MA-PD or Original Medicare + PDP	MA-only or Original Medicare only
Medicare Advantage with no prescription drug coverage (MA-only)	MA-only or Original Medicare only	MA-PD or A different PDP to use with Original Medicare
Original Medicare and a prescription drug plan (PDP)	MA-PD	MA-only or Original Medicare only
Original Medicare only	MA-only	MA-PD or Original Medicare + PDP

Coverage under the health plan starts the first day of the month following the election.

4. Medicare Advantage Special Election Period (MA SEP)

- During a Medicare Advantage SEP, a beneficiary may discontinue the election of a MA plan and enroll in Original Medicare, switch from Original Medicare to a MA plan, or change from one MA plan to another MA plan, except for Medicare Medical Savings Account (MSA) plan enrollees.

- A MA SEP may occur at any time, other than an Initial, Annual or Open Election Period, for the following reasons:

- The health plan terminates service in the area in which the beneficiary resides.

- The beneficiary moves out of the service area of the health plan.

- The beneficiary shows a provision of the Medicare Advantage contract was violated by the plan or the marketing of the plan materially misrepresented the provisions of the plan.

- The beneficiary or a group of beneficiaries meets exceptional conditions specified by CMS, including on a case-by-case basis. A few examples of some SEPs that CMS has established include:

- Beneficiaries making MA enrollment requests into or out of employer sponsored MA plans.

- Beneficiaries may disenroll from an MA plan at any time in order to enroll in the Program of All-inclusive Care for the Elderly (PACE).

- Beneficiaries that become entitled to Medicare Parts A and B, and also receive any type of Medicaid assistance, or who lose their dual-eligibility.

- Beneficiaries with ESRD whose entitlement determination is made retroactively.

- Beneficiary whose Medicare entitlement determination is made retroactively.

The Centers for Medicare & Medicaid Services will determine the beginning and ending dates of the MA SEP on a case-by-case basis.

The Medicare health plan is not required to accept the beneficiary's enrollment. However, if a plan is open to new enrollees, the plan may then accept a beneficiary's enrollment. Coverage under the new health plan starts at such a time as to avoid any disruption in benefits.

805.30.2.1 Special Rules for Medical Savings Account (MSA) Plans

There are special enrollment rules for a beneficiary who elects a Medicare Medical Savings Account (MSA) Plan.

1. A beneficiary may elect a MSA Plan ONLY during:

   - an Initial Coverage Election Period (ICEP) or
   - the Annual Election Period (AEP).

2. A beneficiary who elects an MSA Plan during an ICEP MUST STAY in the plan through the last day of the calendar year in which he or she made the election.

3. A beneficiary may disenroll from an MSA Plan ONLY between November 15 and December 31 of each year during the AEP. Disenrollment will be effective January 1 of the next year.

   EXCEPTION: A beneficiary who never previously elected an MSA Plan and who elects one during an AEP may revoke the election no later than December 15 following the date of the election.

805.30.3 Disenrollment from a Medicare Advantage Plan

The Centers for Medicare & Medicaid Services' 1-800-MEDICARE customer service representatives (CSRs) process requests for disenrollment from Medicare Advantage plans. CMS requires that all disenrollments be made by calling a 1-800-MEDICARE CSR, or by submitting a request to the Medicare Advantage (MA) plan, either in writing, by fax, or if the plan allows, by Internet.

Field Office Procedures

Field office claims representatives should direct all beneficiaries requesting disenrollment, including requests received by telephone, mail and walk-in, to call Medicare directly at 1-800-MEDICARE (1-800-633-4227). TTY users should be instructed to call 1-877-486-2048 to request disenrollment.

RRB claims representative may assist walk-in requests by calling 1-800-MEDICARE for the beneficiary while he or she is in the office. It is important that the claims representative advise the beneficiary that he or she does not have to place the call from the RRB office; the beneficiary may call 1-800-MEDICARE on their own.

Refer all disenrollment inquiries (e.g., individual requesting to disenroll from a MA plan, individuals following up on a disenrollment request, etc.) to 1-800-MEDICARE.

Beneficiary Disenrollment Process

Beneficiaries will need the following information when they call 1-800-MEDICARE to disenroll:

- Name
- Medicare Claim Number
- Date of Birth

In addition, for the protection of their identity, beneficiaries will need to provide at least 3 of the following pieces of information:

- Telephone number
- SSN
- Street Address
- City, State, Zip
- Part A/Part B coverage
- Part A/Part B effective

Here is a description of the process beneficiaries follow when calling 1-800-MEDICARE to disenroll from a Medicare Advantage plan. (Beneficiaries will hear an automated introduction before being connected to a CSR after saying the word “Agent.”)

- The beneficiary will select English or Spanish
- The beneficiary should wait for the introduction to finish and then say “Agent.”
- When an agent answers, the beneficiary should state that he or she wants to disenroll from a Medicare Health Plan.
- The agent will transfer the beneficiary to a disenrollment customer service representative.
- The customer service representative will ask questions (e.g. name, Medicare number, date of birth, etc) as described above to verify the beneficiary’s identity.

  Note: If the individual does not have this information at the time of the call, the individual will be asked to call back when he or she has the information available.

- After identifying information is provided, the CSR will verify the plan that the beneficiary is currently enrolled in (and would like to disenroll from).
- The CSR will input the disenrollment.

- Once the Medicare systems confirm the disenrollment, which takes approximately 1 week, a confirmation letter will be mailed to the beneficiary.

Status Inquiries/Congressional Inquiries

Instruct beneficiaries who inquire to follow up on a disenrollment request to call 1-800-MEDICARE.

Congressional inquiries on behalf of constituents with disenrollment questions should be referred to the appropriate CMS regional office. Here is a list of the CMS regional offices with telephone numbers:

Region 1 Boston	(617) 565-1188	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont
Region 2 New York	(212) 616-2205	New Jersey, New York, Puerto Rico, Virginia Islands
Region 3 Philadelphia	(215) 861-4140	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
Region 4 Atlanta	(404) 562-7500	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Region 5 Chicago	(312) 886-6432	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Region 6 Dallas	(214) 767-6423	Arkansas, Louisiana, New Mexico, Oklahoma, Texas
Region 7 Kansas City	(816) 426-5233	Iowa, Kansas, Missouri, Nebraska
Region 8 Denver	(303) 844-2111	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Region 9 San Francisco	(415) 744-3501	American Somoa, California, Commonwealth of Northern Mariana Islands, Guam, Hawaii, Nevada
Region 10 Seattle	(206) 615-2306	Alaska, Idaho, Oregon, Washington

805.30.4 Disenrollment Effective Date

The effective date of disenrollment is the first day of the month after the month in which the beneficiary requests disenrollment.

805.30.5 Resolving Beneficiary Problems with Medicare Advantage Plans

If a beneficiary in a Medicare Advantage plan is unhappy with the quality of the care he or she is receiving or needs to resolve differences with his or her plan, the beneficiary can:

- follow the Medicare Advantage plan's grievance procedure, or
- contact the local Quality Improvement Organization (QIO). The beneficiary can call 1-800-MEDCARE to get the telephone number of the local QIO.

If a person believes that the MA plan made an incorrect decision on the coverage of benefits or payment of a claim, the person can exercise their appeal rights. Those rights are similar to those provided under traditional Medicare. See CMS Publication No. 10112 and RCM 3.1.115 for more information about appeals.

A. Possible MA Plan Problems - Some of the problems that could develop because of MA plan involvement are:

- beneficiary should be enrolled in an MA plan, but the Entitlement Database (EDB) and Medicare Beneficiary Database (MBD) do not indicate MA plan involvement;
- beneficiary should be disenrolled from an MA plan but the EDB and MBD still indicate MA plan involvement;
- beneficiary was never enrolled in an MA plan but EDB and MBD indicate MA plan involvement;
- beneficiary should not be disenrolled from an MA plan but the EDB and MBD indicate the beneficiary is disenrolled;
- beneficiary complains about an incorrect MA plan effective date on the EDB and MBD;
- beneficiary complains about an incorrect disenrollment date on the EDB and MBD.

B. Resolving MA Plan Problems - Problems with MA plans are generally resolved in CMS's Regional Offices. However, the following steps should be taken first to try to resolve the problem:

- MS or the field office should determine if the inquiry or letter contains enough information to determine what the problem is. If not, secure a statement and whatever other proof the beneficiary may have.

- When enough information is obtained, it should be determined what is on the EDB and MBD. Check BERT to see what is on EDB. Based on what is on the EDB and MBD, take one of the following actions:

- If the EDB and MBD have recently been updated to show correct information, advise the beneficiary accordingly. No further action is necessary.

- If the EDB and MBD have not been updated, MS will call CMS's Regional Office about the problem. The field office should forward the inquiry to MS. MS will discuss the problem with CMS. If it cannot be resolved over the phone, MS will refer the inquiry and other related material to CMS's Regional Office to resolve. The beneficiary will be advised with a short letter, with a copy to CMS's Regional Office, of the referral. In the letter, explain that CMS's Regional Office will contact them about the problem. A copy of the letter should be included with the package being referred to CMS's Regional Office. See FOM-I-805.30.3 and Exhibit 17 of RCM 3.1 for a listing of CMS's Regional Offices and the States they service. See Exhibit 16 of RCM 3.1 for a sample letter.

If MS receives a manual payment/account correction from the Part B carrier when there is MA involvement, a manual payment should not be authorized. The package should be returned to the Part B carrier to verify their records. The Part B carrier should process the claim in accordance with the instruction in their carriers manual. The Part B carrier should either pay, deny, or transfer the claim to the MA plan.

If the beneficiary still protests or complains and the necessary information and proofs are submitted, MS will call CMS's Regional Office to see if the problem can be resolved.

810.5 General Health Insurance Eligibility Requirements

Individuals may participate in the Medicare program if they meet the requirements in one of the following categories.

810.5.1 Regular Insured Provision

Individuals who are residents of the United States are eligible for hospital and medical insurance if they have attained age 65 and are either entitled to a monthly retirement-survivor insurance (RSI) benefit or are not receiving benefits, but would qualify if they filed an application. In addition, an individual must not be convicted of certain crimes against the U.S. to be eligible for medical insurance.

810.5.2 Disability Provision

Individuals who are residents of the United States, under age 65, and have been entitled or deemed entitled to a disability benefit under the Social Security Act for 24 months are eligible for hospital and medical insurance. In addition, an individual must not have been convicted of certain crimes against the U.S. to be eligible for medical insurance.

Note: Effective July 1, 2001, a disability beneficiary diagnosed with Amyotrophic Lateral Sclerosis (ALS) is not required to serve the 24-month waiting period for Medicare coverage. See section 810.15.

A disabled individual who is entitled to worker's compensation or public disability benefits may have medical insurance coverage based on this entitlement. Although such coverage does not affect an employee's eligibility for Medicare, the Part B Medicare contractor is notified of such additional coverage to prevent duplicate reimbursement.

810.5.3 Transitionally Insured Provision

Individuals who have attained age 65 and are not regularly insured are eligible for hospital and medical insurance if they are U.S. citizens or lawfully admitted aliens and U.S. residents. In addition, if age 65 was attained after 1967, an individual must have not less than three quarters of coverage, whenever acquired, for each calendar year after 1966 and before the year age 65 was attained.

The Social Security Administration (SSA) is responsible for coverage under this provision.

810.5.4 Uninsured Provision

Individuals who have attained age 65 and are not regularly or deemed insured are eligible for medical insurance if they are U.S. citizens or lawfully admitted aliens and U.S. residents. Such individuals may also qualify for hospital insurance, called Premium HI, if they enroll or are already enrolled under Part B-SMI. In addition, to be eligible for medical insurance, an individual must not have been convicted of certain crimes against the U.S.; to be eligible for Premium HI, an individual must already be enrolled for medical insurance or be eligible and file for medical insurance.

The enrollment periods for medical insurance apply to Premium HI. Eligibility, entitlement and collection of premiums for hospital insurance and medical insurance under this provision are made by SSA.

810.5.5 End Stage Renal Disease (ESRD) Provision

Individuals of any age with irreversible damage to their kidneys requiring dialysis or a kidney transplant may qualify for hospital and medical insurance. Such individuals must be entitled to, or be the spouse or dependent child of someone entitled to a monthly benefit under title II of the Social Security Act or under the Railroad Retirement Act, or be fully or currently insured.

If the above requirements for entitlement are met, coverage based on end-stage renal disease (ESRD) begins the earlier of the first day of:

1. the 3rd month after the month in which dialysis begins (This is the most common situation.); or

2. the month dialysis begins, if the individual begins a self-dialysis training program in a renal Medicare-approved center before the fourth month of dialysis, has completed or is expected to complete the program, and can reasonably be expected to self-dialyze after the training, or

3. the month dialysis is resumed following a previously terminated period of Medicare coverage based on ESRD, or

4. the month of kidney transplant surgery; or

5. the month a decision of transplant surgery is made, provided:

    a. the individual is an inpatient in a renal Medicare-approved hospital when the decision is made, and

    b. surgery is performed no later than 2 months after the month of that decision; or

6. two months prior to the month of transplant surgery. This provision is applicable should surgery be postponed.

Eligibility and entitlement determinations under this provision are made by SSA. RR annuitants should be referred to SSA to file for Medicare under this provision. SSA will retain jurisdiction of Medicare in these cases until the beneficiary qualifies for coverage based on age or disability.

Exception: If the RRB is paying a Social Security benefit (LAF E case) and SSA determines that the beneficiary is eligible for Medicare on the basis of ESRD, the RRB will establish the Medicare record with the information provided by SSA. See FOM-810.20.

810.5.6 Federal Employment Provision

Federal employees pay the hospital insurance portion of the FICA tax on all wages paid after December 31, 1982. Federal employees earn quarters of coverage for all Federal employment after 1982 for Medicare purposes only and require the same number of quarters of coverage and regular eligibility requirements as other beneficiaries. Any Federal employees who are in an employer-employee relationship with a Federal agency at any time during January 1983 and were employed before January 1983 may receive deemed Federal quarters of coverage for their Federal service prior to January 1983, if they are required for an insured status for Medicare purposes. Federal quarters of coverage can be used alone or in combination with SS wage and/or RR compensation quarters to meet the insured status requirements for Medicare purposes. Survivors, spouses and children of individuals insured on the basis of Federal quarters of coverage are also eligible for Medicare coverage.

Eligibility and entitlement determinations under this provision are generally made by SSA. However, a disabled RR employee may use creditable Federal quarters of coverage to meet the disability freeze 20/40 test requirement for Medicare purposes at the RRB. Federal service may not be used to establish entitlement to or increase the amount of any other type of benefit.

810.10 Medicare Eligibility at RRB Based On Age

A beneficiary who meets the requirements in this section is referred to as a QRRB (qualified railroad retirement beneficiary) for Medicare purposes.

810.10.1 Employee

To be entitled to Medicare on the basis of age, an employee must:

A. Have attained age 65, and

B. Have at least 120 months of service, or if less than 120 have at least 60 months of RR service after 1995, and

C. File an application for HI or for an RR annuity as described in FOM-1-810.25.

810.10.2 Spouse

To be entitled to Medicare on the basis of age:

A. The spouse must:

1. Have attained age 65, and

2. Be eligible for a spouse's annuity or be eligible for inclusion in the O/M, and

3. File an application for HI alone or for an RR annuity, or to be included in the O/M; and

B. The employee must:

1. Be age 60-61, with 30 years of railroad service, or

2. Be at least age 62 with 120 months of service, or if less than 120 months must have 60 months of service after 1995, or

3. Have a disability freeze and be entitled to an annuity from the RRB.

NOTE: When a spouse attains age 65 before the employee meets any of the above requirements, and the spouse is not eligible for Medicare on any other earnings record, she or he should file at SSA for uninsured beneficiary Medicare (see FOM-1-810.5.4). If the spouse does not do this, she or he will be charged a penalty SMI premium rate and the SMI effective date will be determined under GEP rules, unless the spouse enrolls in a SEP, when she or he becomes eligible for Medicare based on the employee's earnings record.

810.10.3 Divorced Spouse

To be entitled to Medicare on the basis of age:

A. The divorced spouse must:

1. Have attained age 65, and

2. Be eligible for a divorced spouse's annuity, and

3. File an application for HI alone or for an RR annuity; and

B. The employee must:

1. Have attained age 62, and

2. Have at least 120 months of RR service, or if less than 120 months have at least 60 months after 1995, but not necessarily receiving an annuity.

NOTE: When a divorced spouse attains age 65 before the employee meets the above requirements, and the divorced spouse is not eligible for Medicare on any other earnings record, she or he should file at SSA for uninsured beneficiary Medicare (see FOM-1-810.5.4). If the divorced spouse does not do this, when she or he becomes eligible for Medicare based on the employee's earnings record, she or he will be charged a penalty SMI premium rate and the SMI effective date will be determined under GEP rules, unless the divorced spouse enrolls in a SEP.

810.10.4 Widow(er), Surviving Divorced Spouse and Remarried Widow(er)

To be entitled to Medicare on the basis of age, a widow(er), a surviving divorced spouse or a remarried widow(er) must:

A. Have attained age 65, and

B. Be eligible for a widow(er)'s annuity, a surviving divorced spouse's annuity or a remarried widow(er)'s annuity, and

C. File an application for Medicare alone or for an RR annuity.

NOTE: A widow(er), surviving divorced spouse, or remarried widow(er) who is paid the RLS without an election (i.e., zero annuity rate) is still considered to be a QRRB.

810.10.5 Child

To be entitled to Medicare on the basis of age, a child must:

A. Have attained age 65,

B. Be eligible for a child's annuity or be eligible for inclusion in the O/M as the child of the employee, and

C. File an application as described in FOM-1-810.25.

810.10.6 Parent

To be entitled to Medicare on the basis of age, a parent must:

A. Have attained age 65, and

B. Be eligible for a parent's insurance annuity, and

C. File an application as described in FOM-1-810.25.

810.15 Medicare Eligibility At RRB Based On Disability

A beneficiary who meets the requirements in this section is referred to as a DQRRB (disabled qualified railroad retirement beneficiary) for Medicare purposes.

810.15.1 Employee

To be entitled to disability Medicare, an employee must:

A. Be under age 65;

B. File an application and be entitled to an RR disability annuity, or file or have filed an application and be entitled to an RR age and service annuity and file an application for disability Medicare. Refer to FOM-1-810.25 for information about application requirements;

C. Meet SSA disability freeze requirements which include:

1. SSA disability medical criteria; and

2. Disability insured status requirements.

a. To have a regular DIB insured status, the employee must meet the 20/40 earnings requirement in the quarter of disability onset or in a following quarter while the employee is continuously disabled.

b. To have a health insurance only DIB insured status, the employee's disability onset date must be after the ABD and the 20/40 earnings requirement is not met on the disability onset date, but is met on the ABD; and

3. Fulfill the waiting period requirement. The waiting period is a specified period of time after the disability freeze before SSA will begin paying a disability annuity.

a. If the annuity began January 1, 1973 or later, the waiting period consists of 5 full months after the disability freeze date.

b. If the annuity began before January 1, 1973, the waiting period consists of 6 full months after the disability freeze date; and

D. Complete the qualifying period requirement. The qualifying period is a specified period of annuity entitlement following the disability freeze onset date and the waiting period when one is required.

1. Effective December 1, 1980:

a. An individual must be entitled to or deemed entitled to a disability annuity for 24 months.

b. The months of annuity entitlement do not have to be consecutive as long as any interruption in disability entitlement is less than 5 years for employees or less than 7 years for a widow or child.

Note: Effective July 1, 2001, persons who are diagnosed with Amyotrophic Lateral Sclerosis (ALS) do not have to serve the 24-month waiting period. ALS is also known as Lou Gehrig's disease. The date of entitlement to Medicare is the month following completion of the 5-month waiting period or July 1, 2001, whichever is later. The 5-month waiting period is not waived.

Example: An individual diagnosed with ALS has a disability freeze onset date is February 4, 2001. His Medicare effective date is August 1, 2001.

2. Prior to December 1, 1980:

a. An individual had to be entitled or deemed entitled to disability annuity for 24 consecutive months; or

b. An individual had to be included or could have been included in the O/M for 24 consecutive months.

810.15.2 Spouse, Divorced Spouse

A spouse or a divorced spouse may only establish entitlement to Medicare on the basis of age at the RRB. An individual who is entitled to only a spouse or divorced spouse annuity at the RRB may qualify for disability Medicare at SSA.

If the RRB is paying the spouse's Social Security disability benefits (LAF E case), RRB will establish the Medicare record with the information provided by SSA. See FOM-1-810.20.

810.15.3 Widow(er), Surviving Divorced Spouse and Remarried Widow(er)

To be entitled to disability Medicare, a widow, a surviving divorced spouse or a remarried widow must:

A. Be age at least 52, but under age 65;

B. File an application and be entitled to an RR disability annuity, or file an application and be entitled to a widow's insurance annuity, a surviving divorced spouse annuity, a remarried widow(er)'s annuity or a widow's current annuity and file an application for disability Medicare. Refer to FOM-1-810.25 for information on application requirements;

C. Meet SSA disability medical criteria, and become disabled within 7 years after the month the employee died or within 7 years after the last month of previous entitlement to monthly benefits on the employee's record; Note that while an annuity under the RRA can be granted based solely on alcohol or drug addiction without other medical impairments, that type of claim would be denied under the SS Act. Therefore, effective with applications filed January 1, 2008 or later, a disabled widow will be entitled to a disability annuity without being entitled to early Medicare if the disability decision is based solely on alcohol or drug addiction. Such cases would not be eligible for SSEB status.

D. Meet the waiting period requirements. The waiting period is a specified period of time after the applicant meets the disability requirements before SSA will begin paying a disability benefit.

   1. If the annuity began January 1, 1973 or later, the waiting period consists of 5 full months after the SS disability onset date.

   2. If the annuity began before January 1, 1973, the waiting period consists of 6 full months after the SS disability onset date.

E. Complete the qualifying period requirement. The qualifying period is a specified period of annuity entitlement following the date the applicant meets SSA disability benefit requirements and the waiting period.

   1. Effective December 1, 1980, an individual must be entitled to or deemed entitled to a disability annuity for 24 months. The months of annuity entitlement do not have to be consecutive as long as any interruption in disability entitlement is less than 7 years.

      Note: Effective July 1, 2001, persons who are diagnosed with Amyotrophic Lateral Sclerosis (ALS) do not have to serve the 24-month waiting period. ALS is also known as Lou Gehrig's disease. The date of entitlement to Medicare is the first day of the month following the 5-month waiting period or July 1, 2001, whichever is later.

   2. Prior to December 1, 1980, an individual had to be entitled or deemed entitled to disability annuity for 24 consecutive months.

Note: Months of prior entitlement to Supplemental Security Income (SSI) under the Social Security Act can be used to satisfy the 5-month waiting period for annuity entitlement and the 24-month qualifying period for Medicare for disabled widow(er)s and disabled divorced spouses. See RCM 3.2.23.

810.15.4 Child

To be entitled to disability Medicare, a child must:

A. Be at least age 20, but under age 65,

B. Must file an application (AA-19a) and meet one of the following criteria:

1. Be entitled to a RR survivor disability annuity;

2. Be eligible for inclusion in the O/M if the O/M were payable. Actual payment of the O/M rate is not necessary for the child's Medicare entitlement;

3. Qualify a spouse for an annuity. The spouse does not have to be in pay status but just eligible to receive the benefit. A disabled child may potentially allow a spouse to be eligible for an annuity. For more information, see FOM1 1310.5.3.

   Example: Leslie Bailey is a 62-year-old railroad employee who currently receives an occupational disability. However, he was denied a disability freeze for early Medicare. His wife, Erica, is 61 years old, but has not yet filed for benefits. However, she is eligible to receive an annuity because she has a minor child in her care. Their disabled daughter, Sandra, can file an application because she qualifies the spouse to receive an annuity even though she is not in pay status.

   Note: The youngest age at which a child is eligible to be included in the O/M based on disability is age 18. The youngest age at which a disabled child can qualify a spouse annuity for SSEB consideration is age 16. For these reasons, a Form AA-19a should not be developed prior to the child's attainment of age 18 in O/M cases, or age 16 in spouse cases. Actual Medicare enrollment will not occur prior to age 20.

C. Meet SSA disability medical criteria and become disabled before attaining age 22. Note that while an annuity under the RRA can be granted based solely on alcohol or drug addiction without other medical impairments, the claim would be denied under the SS Act. Therefore, effective with applications filed January 1, 2008 or later, a disabled child can be entitled to a disability annuity, or used to qualify a spouse for an annuity, without being

entitled to early Medicare if the disability decision is based solely on alcohol or drug addiction. Such cases would not be eligible for SSEB status.

D. Complete the qualifying period requirement. The qualifying period is a specified period of annuity entitlement, including cases in which there is eligibility under the O/M even if the O/M rate is not paid following the date the child meets SSA disability annuity requirements.

1. Effective December 1, 1980:

   a. The child must be entitled to or deemed entitled to a survivor disability annuity for 24 months, or

   b. The child must be included or could have been included in the O/M for 24 months.

      Note: A child does not have to complete a 5-month waiting period. However, the O/M for a disabled employee does not apply until the employee completes a waiting period. Therefore, the child 24-month qualifying period cannot begin until the employee has completed his or her waiting period. The 24-month waiting period begins the later of the employee's annuity beginning date or the date the employee attained age 62, or in the case of a disabled annuitant, five months after his or her disability freeze date.

      Note: Effective July 1, 2001, persons who are diagnosed with Amyotrophic Lateral Sclerosis (ALS) do not have to serve the 24-month waiting period. ALS is also known as Lou Gehrig's disease. The date of entitlement to Medicare is the actual or deemed disability annuity beginning date or July 1, 2001, whichever is later.

   c. The months of annuity entitlement do not have to be consecutive as long as any interruption in disability entitlement is less than 7 years.

2. Prior to December 1, 1980:

   a. The child had to be entitled or deemed entitled to a disability annuity for 24 consecutive months or,

   b. The child had to be included or could have been included in the O/M for 24 consecutive months.

810.15.5 Parent

A parent may establish entitlement to aged Medicare only.

810.20 Deemed RR Beneficiaries - Social Security Certifications

When Social Security certifies a benefit to the RRB for payment, the certification includes an entitlement determination to Part B and/or Part A of Medicare. These beneficiaries are deemed QRRBs (qualified railroad retirement beneficiaries) for Medicare purposes. If the beneficiary is currently entitled to Medicare, SSA furnishes the effective date(s) and the Part B premium rate. The RRB will then establish and maintain the beneficiary's Medicare records and will collect the Part B premium.

If the beneficiary will be entitled to Medicare in the future, the RRB will automatically enroll the beneficiary for Part A and Part B at the appropriate time. If the beneficiary does not want medical insurance coverage, (s)he may refuse the coverage by notifying the RRB when (s)he receives the notice of the entitlement effective dates.

810.25 Enrollment Requirements And Effective Date Of Coverage

To establish entitlement to Medicare coverage, an individual who is a QRRB (meets the requirements in FOM-1-810.10), a DQRRB (meets the requirements in FOM-1-810.15) or a deemed QRRB (meets the requirements in FOM-1-810.20) must file an application or be deemed to have filed an application for Medicare. The effective date of coverage is dependent on when the application is filed or deemed filed.

Enrollment for Part B is possible only during specified enrollment periods. Those periods include:

- An individual's **initial enrollment period** (IEP) is the 7-month period that begins 3 full calendar months before and ends 3 full calendar months after the month in which the individual first meets all the requirements for enrollment.

- A **general enrollment period** (GEP) occurs each year from January 1 through March 31, with coverage effective the following July 1. These periods afford enrollment opportunities to those who failed to enroll during their IEPs and to those whose enrollment was terminated.

- A **special enrollment period** (SEP) is available for individuals age 65 or over who did not enroll for Part B when first eligible or who terminated Part B enrollment because of coverage under a group health plan (GHP) based on his or her own or a spouse's current employment status. These individuals may enroll in Part B anytime while covered under the GHP or during the 8-month period immediately following the last month of GHP coverage based on current employment status.

A SEP is also available to disabled beneficiaries under age 65 who did not enroll for Part B when first eligible or who terminated Part B enrollment because of coverage under a GHP based on his or her own or spouse's current employment status or coverage under a large group health plan (LGHP) based on his or her own or a family member's current employment status. These individuals may enroll in Part B anytime while covered under the GHP/LGHP or during the 8-month period immediately following the last month of GHP/LGHP coverage based on current employment status.

In addition, Section 5115 of the Deficit Reduction Act of 2005, provides a 6-month SEP beginning January 1, 2007, for Part B and Premium Part A for an individual who:

- Is serving as a volunteer outside of the United States through a program that is sponsored by a tax-exempt organization; and

- Has (or had) health insurance that provided coverage to the individual while he/she was outside of the United States for the duration of the volunteer service.

The individual will be eligible for the SEP once he or she returns to the States.

EXCEPTION: Individuals who are entitled to Premium-HI under the Premium-HI for the Working Disabled provision are not eligible to enroll during the SEP for International Volunteers

810.25.1 Aged Medicare - Part A

A. Application Requirements - An individual must file an application at SSA or RRB for Medicare only, or for a retirement, survivor or disability annuity.

1. Annuity Application - If an individual files an annuity application, this application is also considered an application for Medicare Part A. This application can be filed at any time. If the application is filed when the individual is age 64 and 5 months or older, enrollment will take place and the Part A effective date will be established as shown in section B. If the application is filed prior to when the individual is age 64 and 5 months, enrollment will be automatically done when the individual attains age 65 and Part A will be effective at age 65.

2. Medicare Only Application - An individual who has not yet filed for an annuity must file a Medicare only application for Part A. The application may be filed at any time as long as it is no sooner than 3 months prior to age 65. The Part A effective date will be based on when the application is filed. See Section B.

B. Effective Date - Based on when the application is filed, the effective date will be the latest of the following:

1. The first of the month in which age 65 is attained, or

   Note: An individual whose birthday is on the first day of the month is considered to have attained age 65 on the day preceding the anniversary of his/her 65th birthday. The Medicare effective date will be the first day of the month before the 65th birthday.

   Example: If the date of birth is January 1, 1927, the individual attains age 65 on December 31, 1991, and the Medicare effective date is December 1, 1991.

2. The first of the month in which the applicant attains status as a QRRB or insured status at SSA, or

3. Six months before the month an application is filed at the RRB or SSA. The effective date for the divorced spouse of a disabled employee may be 12 months before the application is filed.

   Note: Prior to September 1, 1983, applications filed at RRB could have 12 months retroactivity. Prior to March 1, 1981, applications filed at SSA could have 12 months retroactivity.

810.25.2 Disability Medicare - Part A

A. Application Requirements - An individual must file an application for a disability annuity or for an aged annuity and disability Medicare and be granted a disability freeze or meet SSA disability requirements for Medicare. Once the disability freeze or the SSA disability requirements are met, the beneficiary will be automatically enrolled for Part A after any required waiting period and qualifying period is met.

B. Effective Dates - The effective date will be the latest of the following:

1. July 1, 1973, or

2. The first day of the 25th month from the employee's RRA ABD, or the first day of the 30th month after the employee's disability freeze date.

810.25.3 Aged and Disabled Medicare - Part B Initial Enrollment Period (IEP)

A. Enrollment Period - The IEP is a 7-month period that begins with the first day of the third month before the month of age 65 attainment or the disability Medicare effective date, and ends on the last day of the third

month following the month of age 65 attainment or the disability Medicare effective date.

Deemed Initial Enrollment Period - If a person has relied on documentary evidence which indicated a date of birth later than his or her correct date of birth, a deemed IEP may be established based on that documentary evidence. A deemed IEP may also be established for a person who was born on the first day of a month and mistakenly believed that he or she attained age 65 on the anniversary of his or her date of birth when age 65 was actually attained in the preceding month.

When a deemed IEP is established for a person, all provisions of law and instructions relating to enrollment, re-enrollment, premiums and coverage will be applied as if the person's alleged date of birth, based on documentary evidence, was the actual date of birth.

B. Application Requirements - If a retirement or survivor application is filed prior to when the applicant attains age 64 and 5 months, or a disability application is filed and a disability freeze was granted, a separate application is not necessary. The individual will be automatically enrolled for Part B when enrolled for Part A. A Form G-41 will be issued. If the individual does not want Part B, the Form G-41 must be returned before the effective date on the card.

If the individual is not a resident of the United States, a Form G-44f will be sent with the Part A enrollment package which must be signed and returned if the individual wants Part B coverage.

Otherwise, an application must be filed. The application may be an annuity application or a Medicare only application. If an annuity application is filed when the individual is age 64 and 5 months and less than age 65 and 3 months, the application is considered filed in the IEP. An SMI election must be made on the application in order to receive SMI coverage. The SMI effective date will be established based on the date of filing.

A Medicare only application may not be filed sooner than 3 months before the month of age 65 attainment, or 3 months after age 65 to be considered filed in the IEP. The SMI effective date will be established based on the date of filing.

C. Effective Dates - The effective date of Part B coverage is dependent on the date an application is filed or deemed filed.

1. If the individual files an application or is deemed to have filed an application during the first 3 months of the IEP, Part B will be effective the first day of the month age 65 is attained.

2. If the individual files an application during the fourth month of the IEP (the month of attainment), Part B will be effective the first day of the following month.

3. If the individual files an application during the fifth month of the IEP, Part B will be effective the first day of the second month following the month the application is filed.

4. If the individual files during the sixth or the seventh month of the IEP, Part B will be effective the first day of the third month following the month the application is filed.

EXAMPLE:

Individual attains age 65 in January (or first month of eligibility based on disability is January) - IEP in October, November, December, January, February, March and April.							
Month of Filing or Deemed Filing →	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Coverage Begins →	Jan	Jan	Jan	Feb	Apr	June	July

D. More Than One IEP – An individual under age 65 may have more than one IEP if he or she establishes entitlement to Medicare based on disability or end-stage renal disease (ESRD) more than once.

Example: The benefits and Medicare eligibility of a disabled beneficiary are terminated because the beneficiary recovers from his or her disability. If Medicare eligibility is reestablished based on a second period of disability, the beneficiary has a new IEP beginning 3 months before the new date of entitlement to Medicare.

In addition, no matter how often or under what circumstances, entitlement occurred prior to age 65, every eligible beneficiary has a new IEP at age 65.

Note: Disabled beneficiaries who either declined Part B coverage or whose Part B coverage was terminated are identified in the monthly age 65 attainment processing (FOM-1-810.30.1) and referred to the Medicare Unit. The Medicare Unit enrolls the individuals for Part B, and a new Medicare card (Form G-41) is released. If a beneficiary doesn't want Part B coverage, he or she can decline the coverage by completing the back of the Form G-41.

810.25.4 Aged or Disability Medicare - Part B - General Enrollment Period

An aged or disabled individual whose IEP has passed and who is not enrolled for Part B, or has refused or terminated Part B coverage, may enroll or re-enroll for Part B coverage only in a General Enrollment Period (GEP) (unless a Special Enrollment Period (SEP) is applicable). Since April 1, 1981, there is no limit to the number of times an individual may enroll for Part B coverage. Any individual previously prevented from re-enrolling for Part B because he or she voluntarily terminated coverage may enroll for coverage during a GEP.

Enrollments in a GEP are subject to penalty premium rates. The monthly premium is increased for each 12-month period that an individual could have enrolled for Part B, but did not. However, for any month that the individual is covered under a group health plan (GHP) or large group health plan (LGHP), that month is excluded from the penalty calculation if proof of GHP/LGHP coverage is submitted.

In addition, if a beneficiary enrolled in Part B prior to age 65 during a GEP, any premium surcharges the beneficiary is paying will be rolled back once he or she reaches age 65. The beneficiary will pay the basic rate beginning with the month age 65 is attained. This provision assures that all individuals attaining age 65 are treated the same with respect to Part B premium computation.

A. GEP - Current Requirements

1. Enrollment Period - The GEP is a 3-month period that begins on January 1 and ends on March 31 of each year.

2. Application Requirements - An individual who previously filed for Part A and refused Part B, or elected Part B and terminated Part B, may complete a Form G-44, Form G-44b or submit a signed statement electing Part B.

   An individual who is filing an annuity application or a Medicare only application in January, February or March and his or her IEP has elapsed, must elect Part B coverage on the application.

   An individual who is filing an annuity application or a Medicare only application to establish Part A, in April through December and his or her IEP has elapsed, is deemed to have filed for Part B in the next GEP. This is commonly known as a deemed GEP. The Medicare Unit should be notified via e-mail when the field office recognizes that the application is for a deemed GEP. The Medicare Unit will establish a call-up for the applicant. At the appropriate time, the individual will be enrolled for Part B.

3. Effective Date - The effective date will be July 1 of the year in which the application is filed. If a deemed GEP, the effective date will be July 1 of the following year.

B. GEP - Requirements Prior to October 1, 1981

1. 4-1-81 through 9-30-81 - During this period, individuals whose IEP had ended could apply for Part B coverage at any time. The effective date of Part B coverage was the first day of the third calendar month following the month in which the application was filed.

2. Before 4-1-81 - The first GEP began 10-1-67 and ended 4-1-68. Subsequent GEPs began on January 1 and ended on March 31 of each year. SMI coverage for a person who enrolled in a GEP began on July 1 of the year in which the person enrolled. All individuals were considered eligible to enroll for Part B during the GEP, provided their Part B coverage was not terminated twice. There were two exceptions:

- The terminations were followed by a period of State-Buy In coverage.
- The terminations occurred during entitlement to disability Medicare and the beneficiary became entitled to aged Medicare.

810.25.5 Special Enrollment Period (SEP)

A Special Enrollment Period (SEP) is provided for individuals age 65 or over who did not enroll for Part B when first eligible or who terminated Part B enrollment because of coverage under a group health plan (GHP) based on his or her own or a spouse's current employment status. These individuals may enroll in Part B anytime while covered under the GHP or during the 8-month period immediately following the last month of GHP coverage based on current employment status.

A SEP is also available to disabled beneficiaries under age 65 who did not enroll for Part B when first eligible or who terminated Part B enrollment because of coverage under a GHP based on his or her own or spouse's current employment status, or coverage under a large group health plan (LGHP) based on his or her own or a family member's current employment status. These individuals may enroll in Part B anytime while covered under the GHP/LGHP or during the 8-month period immediately following the last month of GHP/LGHP coverage based on current employment status.

A 6-month SEP is also available for individuals who performed volunteer service outside the U.S. through a program sponsored by a tax-exempt organization and

who have health insurance that provided coverage to the individual while he/she was outside the U.S. for the duration of the volunteer service. Under the SEP provision, qualifying volunteers can delay enrollment in Part B or terminate such coverage for the period of service outside the U.S. and re-enroll without incurring a premium surcharge. **EXCEPTION:** Individuals who are entitled to Premium-HI under the Premium-HI for the Working Disabled provision are not eligible to enroll during the SEP for International Volunteers.

Note: A disabled beneficiary can qualify for a SEP on the basis of GHP coverage based on his or her own **or spouse's** current employment status, **or** LGHP coverage based on his or her own **or a family member's** current employment status. A domestic (or life) partner who is under age 65, entitled to Medicare based on a disability and has coverage under an LGHP based on the partner's enrollment in the plan is considered to be a family member for the purposes of a SEP.

Note: When an individual is notified that his or her GHP or LGHP coverage is being terminated retroactively, he or she may enroll in Part B during the 8-month period that begins the first month following the month of notification.

SEPs were first provided for aged beneficiaries beginning November 1984, and for disabled beneficiaries beginning January 1987. Individuals with end-stage renal disease (ESRD) are not eligible for a SEP.

A. Requirements

To be eligible for a SEP, an individual must meet the following requirements:

1. No previous Part B enrollment. An individual who did not enroll in the Initial Enrollment Period (IEP) had to be covered under a GHP based on his or her own or a spouse's current employment status when first eligible for Part B, i.e., the month of age 65 attainment or the 25th month of disability entitlement. When coverage was under an LGHP, the coverage had to be based on the individual's own or a family member's current employment status.

2. Previous Part B entitlement. If the individual enrolled in Part B during an IEP or General Enrollment Period (GEP), but the Part B coverage terminated, the GHP coverage had to be based on the individual's own or the spouse's current employment status at the time of the Part B termination and for all the months thereafter. When the individual was covered under an LGHP, the coverage had to be based on the individual's own or a family member's current employment status

   Note: If the individual previously enrolled during the GEP, the individual must have been enrolled in Part B or covered under a GHP/LGHP in

the first month of eligibility for Part B, i.e., the month of age 65 attainment or the 25th month of disability entitlement

3. Subsequent SEP. If the individual enrolled in Part B during an SEP, and the Part B coverage was later terminated, the individual had to be covered under a GHP based on his or her own or a spouse's current employment status at the time of the Part B termination. If the individual was covered under a LGHP, the coverage had to based on the individual's own or a family member's current employment status at the time of the Part B termination.

   Note: The SEP provisions allow an 8-month period after the month GHP or LGHP coverage based on current employment status ends to enroll in Part B. When employment or GHP/LGHP coverage ends, but before the 8-month period expires the beneficiary is once again covered under a GHP or LGHP based on current employment status, the SEP is deemed not to have occurred. For example, Employee A was covered under a GHP for many years based on her own employment. She retired in November 2004. However, in March 2005, she begins working again and is once again covered under a GHP. Employee A retains full SEP enrollment rights because less than 8 months elapsed between her retirement and subsequent coverage under a GHP.

   Note: There is no limit to the number of subsequent SEPs. However, to have a subsequent SEP, the individual must have enrolled during the earlier SEPs available to him or her. Enrollment during the GEP that falls within an SEP (with a choice of the July 1 date of entitlement based on the GEP) satisfies the requirement for an earlier SEP.

4. SEP for International Volunteers. The SEP provision for international volunteers allows an individual to enroll during an SEP if he or she qualifies as a volunteer working outside the U.S. for a tax-exempt sponsoring organization, has or had health insurance coverage while outside of the U.S. for the duration of the volunteer service and meets one of the following requirements:

   - If he or she did not enroll in the IEP, the beneficiary had to meet the requirements above in the first month of eligibility for Part B and all months thereafter.

   - If he or she enrolled during the IEP and later terminated coverage, the beneficiary had to meet the requirements in the first paragraph above in the month of the Part B termination and all months thereafter. If he or she previously enrolled during the GEP, he or she must have enrolled in Part B or meet the requirements in the first paragraph above in the first month of eligibility.

See RCM 3.2.131 for additional information.

B. Effective Date

An individual can enroll under the SEP provisions while still working. If an individual enrolls in Part B while still covered under a GHP/LGHP or during the first full month when not enrolled in a GHP/LGHP based on current employment status, the individual has the option of choosing an effective date of:

- the first day of the month of his or her Part B enrollment, or
- the first day of any of the following 3 months.

If the individual enrolls in Part B during any of the remaining 7 months of the SEP, coverage begins with the first day of the month after the month of enrollment.

Examples of How Part B Effective Date is Determined

If an individual's last day of coverage under a GHP/LGHP based on current employment status is March 13, 2005, the following applies:

1. If the individual files for Part B in February 2005, he or she can elect coverage beginning February 1, March 1, April 1, or May 1.
2. If the individual files for Part B in March 2005, he or she can elect coverage beginning March 1, April 1, May 1 or June 1.
3. If the individual files for Part B in April 2005, he or she can elect coverage beginning April 1, May 1, June 1 or July 1.
4. If the beneficiary files for Part B at any time during the period of May 1 through November 30, 2005, i.e. the remaining 7 months of the SEP, the Part B coverage is effective the first day of the month after the month of enrollment.

   SEP for International Volunteers. SEP eligibility for international volunteers became effective January 1, 2007. An individual who qualifies as an international volunteer effective July 1, 2006 or later is eligible to enroll in Part B during the SEP. If the last month of volunteer service was July 2006, then January 2007 was the last month of the SEP. If the last month of volunteer service was August 2006, then February 2007 was the last month of the SEP, etc.

   The SEP for international volunteers is the 6-month period that begins the earlier of the first day of the month following the month for which the:

- Individual was no longer serving as a volunteer outside the U.S.
- Sponsoring organization no longer has tax-exempt status; or
- Individual no longer has health insurance that provides coverage outside the U.S.

NOTE: Enrollment in Medicare Part B may not occur prior to the end of the IEP. For international volunteers, coverage is effective the first day of the month following the month of Part B enrollment.

C. Definitions

The terms described in this section are those used with the SEP. Use the descriptions of these terms to decide:

- If an individual is eligible for a SEP, and
- When the SEP should begin.

Note: The terms may also be used in determining whether a premium surcharge rollback applies and for what months.

Term	Definition
Group Health Plan (GHP)	A GHP is any plan of, or contributed to, by one or more employers to provide health benefits or medical care (directly or otherwise) to current or former employees, the employer, or their families. The term GHP also applies to self-insured plans, plans of governmental entities (Federal, State and local), and employee organizational plans (e.g., union plans or employee health and welfare funds). It also includes employee pay-all plans (i.e., plans under the auspices of an employer or employee organization, but which receive no financial contribution from them.) **Note**: A **self-insured plan** is a health insurance plan that an employer establishes to pay the health care expenses of its employees. Unlike a group health plan that requires the employer to pay premiums to a health insurer, a self-insured plan requires the employer to pay the health care expenses of employees as the expenses are incurred. The employees may or may not be required to contribute to the self-insured plan. **Note**: The term GHP does not include plans that are unavailable to employees, i.e., a plan that only covers **self-employed** individuals. For example, a self-employed individual may be covered under a

	health plan offered by a professional association, lodge, fraternal organization, etc. If the health plan is available to one or more employees of the association, lodge or organization, or one or more employees of the self-employed member of the association, lodge, or organization, then the health plan can be considered a GHP (or LGHP if there are 100 or more such employees). If the health plan is only available to self-employed members and not available to any employees, then the plan is not a GHP or LGHP. The employer does not have to be in the United States, and the employee is not required to be working in the United States. A person working for a foreign employer, who has a plan that meets the definition above, is considered covered under a GHP for purposes of the SEP and/or premium surcharge rollback. For SEP purposes, the GHP can be of **any** size. However, when referring to a GHP for the disabled, the term refers to a plan of any size below 100 employees. **NOTE:** When used in these instructions, the term GHP refers specifically to a **group health plan based on the current employment status of the beneficiary or the beneficiary's spouse.** **NOTE:** COBRA coverage is not a GHP based on current employment status. COBRA coverage does not qualify an individual for a SEP.
Current Employment Status	In general, an individual has "current employment status" if he/she is **actively working** as an employee, is the employer (including a self-employed individual), or is associated with the employer in a business relationship. An individual also has "current employment status" if he or she is **not actively working, but meets all of the following conditions:** retains employment rights in the industry; employment has not been terminated by the employer (if the employer provides the coverage); or membership in the employee organization has not been terminated (if the employee organization provides the coverage); is not receiving disability benefits from an employer for more than 6 months;

is not receiving railroad retirement or Social Security disability benefits; and

has employment based GHP coverage that is **not** COBRA continuation coverage.

Persons who retain **employment rights** include but are not limited to:

those who are on strike, furloughed, temporarily laid off or who are on sick leave;

teachers and seasonal workers who normally do not work throughout the year; and

individuals who have health coverage that extends beyond or between periods of active employment.

The following information further defines “current employment status” for specific situations.

1. Individual Covered Under A Retirement GHP is Rehired

A group health plan based on former employment becomes a GHP based on “current employment status” **if** the employer who is furnishing the retirement GHP rehires the individual **and** the amount of work the individual performs is sufficient to earn coverage from the employer had the individual not retired.

The employment under the GHP is attributed to current employment status. This is true even if the payment for the GHP coverage is deducted from a pension or annuity payment.

If employed by an employer other than the one providing the group health plan coverage however, the GHP is a retirement plan and is **not** based on current employment status.

2. Employment Status of Senior Judges

Senior Federal judges are retired judges of the U.S. court system and the Tax Court. They may continue to adjudicate cases, but they are entitled to full salary as a retirement benefit whether or not they perform judicial services for the Government. The remuneration they receive as senior judges is not regarded as wages for Social Security retirement test purposes. Since they are considered retired for Social Security purposes, they are not considered to have current employment status for purposes of the SEP and premium surcharge rollback.

	3. Clergy and Members of Religious Order Members of religious orders who have not taken a vow of poverty are considered to have current employment status with the order if: the religious order pays FICA taxes on behalf of that member; or the individual receives remuneration from the order for services furnished, regardless of whether the order pays FICA taxes on behalf of that member. Members of religious orders who have taken a vow of poverty are not considered to have current employment status if the services performed as a member of the order are considered employment for social security purposes only because the Order elected social security coverage under 3121(r) of the Internal Revenue Code. **4. Individuals Serving as Volunteers** Volunteers are considered to have current employment status if they perform services or are available to perform services for an employer and receive payment for their services. For example, AmeriCorps (which includes VISTA, the National Civilian Community Corps and State and National volunteers) and Peace Corp volunteers are considered to have current employment status since they receive remuneration from the Federal Government. Payment may be monetary or non-monetary. Benefits (including health benefits) that a volunteer receives are considered as payment if the benefits are subject to FICA taxes under the Internal Revenue Code.
Large Group Health Plan (LGHP)	**The term "LGHP" refers exclusively to the disabled.** An LGHP is a group health plan that is available to employees of one or more employers who normally employed at least 100 employees on at least 50 percent of its business days during the previous calendar year. If a plan is a multi-employer plan, such as a union plan, which covers employees of some small employers and employees of at least one employer that meets the 100 or more employees' requirement, Medicare is secondary payer for all employees enrolled in the plan. In this situation, **all** the employers (large and small) in the multi-employer plan are considered "large," and their plan coverage is considered LGHP coverage.

	NOTE: When used in these instructions, LGHP means specifically a **large group health plan covering a disabled beneficiary.**
LGHP Is No Longer a Large Plan	An LGHP is no longer considered a large plan effective January 1 of the year **following the year** in which the employer no longer employed 100 employees on at least 50 percent of its business days in that year. For purposes of these instructions, it is to be treated as a GHP at that point. The CMS Regional Office should resolve any questions about the size of a plan.
Medicare Secondary Payer (MSP) Provisions	In general, Medicare is secondary payer for services covered under any of the following: Group health plans (GHPs) of employers that employ at least 20 employees and that cover Medicare beneficiaries age 65 or older who are covered under the plan by virtue of the individual's current employment status with an employer or the current employment status of a spouse of any age. Large group health plans of employers that employ 100 or more employees and that cover Medicare beneficiaries who are under age 65, entitled to Medicare on the basis of disability, and covered under the plan by virtue of the individual's or a family member's current employment status with an employer. Medicare is secondary for these individuals even if the employer policy or plan contains a provision stating that its benefits are secondary to Medicare benefits or otherwise excludes or limits its payments to Medicare beneficiaries.
Spouse	An individual is considered a spouse for SEP purposes if he/she is a: Spouse for RRA benefits or Social Security Title II purposes Divorced Spouse – if a divorced spouse is covered under the GHP or LGHP of a former spouse, the divorced spouse is considered to be a “spouse” for purposes of these provisions even though he/she may not otherwise meet this definition. Due to the repeal of the Defense of Marriage Act (DOMA) on June 26, 2013, we are now able to process SEP requests for individuals with

	GHP or LGHP coverage based on the current employment of a same-sex spouse. Same-sex marriages are treated the same as opposite-sex marriages for purposes of the SEP. When considering a spouse for SEP purposes, the following individuals cannot be recognized as a spouse under any circumstances: Domestic (or life) partner age 65 or older and covered under a GHP, and Domestic (or life) partner under age 65, entitled to Medicare based on disability, and covered under a GHP. This provision does not apply to domestic (or life) partners under age 65 who are entitled to Medicare based on disability and have LGHP coverage as a "family member." Under the SEP provisions, a domestic partner who has coverage under an LGHP based on the other partner's enrollment in the plan, is considered a family member. Prior to December 2004, CMS' policy was that the SEP provision applied to a domestic partner if the GHP included the domestic partner within the definition of "spouse," i.e. where domestic partners were given "spousal" coverage by the plan. An individual who refused SMI in the belief that he or she was eligible to enroll during a SEP as a domestic partner, and whose IEP began December 2004 or earlier, may be able to enroll under equitable relief provisions.
Family Member	Family member is defined as "a person who is enrolled in an LGHP based on another person's enrollment." The term encompasses not only individuals who are related (by blood, marriage or adoption), but also individuals who are related provided they are enrolled in the LGHP based on the worker's enrollment. Family members include, but are not limited to a spouse, a natural, adopted, foster or step-child, a parent, or a sibling. Domestic (or life) partner - a domestic partner who is under age 65 and who has coverage under an LGHP based on the other partner's enrollment in the plan, is considered a family member for the purposes of these provisions.

Sponsoring Organization	A sponsoring organization may be a social, religious, educational, scientific, and/or charitable organization as described in section 501(a) and (c)(3) of the Internal Revenue Code of 1986. The sponsoring organization can be a corporation, or any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational purposes, or to foster national or international amateur sports competition. Also included are organizations for the prevention of cruelty to children or animals.

D. Application Requirements

Field office personnel must determine if the requirements for a SEP exist before they secure the necessary application for enrollment and evidence of coverage under a Group Health Plan (GHP) or Large Group Health Plan (LGHP). Field office personnel must determine the following:

- If the health plan is a GHP or LGHP, and
- Whether the individual's GHP coverage was based on his or her own or the spouse's current employment; or if disabled, whether the individual's LGHP was based on his or her own or a family member's current employment status.

  Use the following chart to determine whether the individual needs GHP or LGHP coverage to qualify for a SEP:

Type of Beneficiary	Beneficiary Can Qualify for SEP On Basis Of:	If Coverage is Based on Current Employment Status of:
Aged	GHP	Self or spouse
Disabled	GHP	Self or spouse
	LGHP	Self or family member

Note: Careful questioning is needed to determine whether the GHP or LGHP is based on a current employment status. It is not sufficient to ask "Are you covered by an employer group health plan? You must also determine if the coverage is based on a current work status. Remember that GHP or LGHP coverage based on a retirement plan does not qualify an individual for a SEP. (See FOM-1-810.35.2.1) if an individual does not qualify for a

SEP on the basis of GHP or LGHP based on a current employment status.)

1. Application

- If the individual is filing an application for benefits at the same time he or she is enrolling for Part B during a SEP, a separate application is not required. Instead, answer the appropriate Medicare-related questions on APPLE.

- If the individual is not filing for benefits at the same time he or she is enrolling for Part B, obtain a completed Form G-44b. See FOM-I-1720 for completion instructions.

- Here are the Medicare-related questions on APPLE that may need to be completed when enrolling an individual during a SEP:

  Note: For purposes of items on APPLE, consider that "EGHP" refers either to a GHP or LGHP.

Beginning Dates, Filing Dates, Medicare

- Applicant is 64 years and 5 months of age or older? Y/N

Medicare Part B Enrollment

- Currently entitled to Part B? Y/N
- Recently filed for Part B? Y/N
- I wish to enroll for Part B Medicare? Y/N

Medicare Part B Special Enrollment

- Current EGHP Coverage? Y/N
- Date Last Worked
- EGHP Beginning Date
- EGHP Ending Date
- Previous EGHP Coverage? Y/N
- Special Enrollment Period? Y/N
- Part B Effective Date

Note: If the applicant has GHP coverage, but it is not based on his or her own or the spouse's current employment status (or if disabled, the applicant does not have LGHP coverage based on his or her own or a family member's current employment status), answer the first question "No."

Proof of Employer Group Health Plan Coverage

- Name of Employer
- Name of EGHP
- Date Employment Ended or Will End
- EGHP Beginning Date
- EGHP Ending Date
- Document Type

Notes:

The items on the Proof of Employer Group Health Plan Coverage screen are to be answered with respect to the individual with the "current employment status" on whose GHP or LGHP coverage the beneficiary qualifies for a SEP.

If the name of the GHP or LGHP is not known, enter "Unknown" for name of EGHP.

2. Proof of GHP or LGHP

The preferred proof of GHP or LGHP coverage based on a current employment status is a completed Form RL-311-F. Other acceptable proofs are a letter on stationary from the employer or insurance company (GHP or LGHP) showing the information requested on Form RL-311-F, or Form CMS-L564.

Enter the proof on APPLE by completing the items on the Proof of Employer Group Health Coverage screen. See item 1 above.

SEP for International Volunteers. Under the SEP provision, qualifying volunteers can delay enrollment in Part B or terminate such coverage for the period of service outside the U.S. and re-enroll later after they return to the U.S. without incurring a premium surcharge for late or re-enrollment. If an individual requests termination of Part B because he or she will be serving as a volunteer outside of the U.S., field office personnel will advise the

beneficiary of the eligibility requirements that must be met in order to re-enroll during the SEP for International Volunteers. The Medicare Unit (MU) will handle the Part B termination.

When the beneficiary is ready to enroll or re-enroll, field office personnel is responsible for collecting the required proof and documentation of the volunteer service, tax-exempt status of the sponsoring organization, and health insurance coverage. Field office personnel will image the application and documentation and forward them to the MU enrollment inbox. **The evidence may be in any form, as long as there is no question that the evidence is from the sponsoring organization, health insurance plan, and all required information is present.** If the evidence of volunteer service, tax-exempt status of the sponsoring organization, and health insurance coverage outside of the U.S. is obtained by telephone, field office personnel must record the information on the Contact Log.

- Evidence of Volunteer Service and Tax-Exempt Status of the Sponsoring Organization – The evidence must show that the individual served as a volunteer outside of the U.S. through a program sponsored by a tax-exempt organization.

- Evidence of Health Insurance Coverage Outside of the U.S. – The evidence must show that the individual had health insurance that provided coverage for the individual outside of the U.S. for the duration of the volunteer service.

All Medicare Part B enrollment requests will be processed by the field office. The field office will then image the SEP enrollment package containing the Part B enrollment request, evidence of volunteer service, tax-exempt status of the sponsoring organization, and health insurance coverage outside of the U.S. to the Medicare Unit. Field office personnel may give the individual Form G-93 (found on RRAILS) that requests the information below. It is up to the individual to obtain the information from the necessary parties:

1. For evidence of volunteer service and the tax-exempt status of the sponsoring organization, request the following information:

a. Name, address, and telephone number of the sponsoring organization

b. Is your organization tax exempt as defined in section 501(a) of the Internal Revenue Code of 1986? [ ] YES [ ] NO

c. Does your organization meet the definition in section 501(c)(3) of the Internal Revenue Code of 1986? [ ] YES [ ] NO

d. If yes to either of the above questions, provide your tax identification number.

e. Did the individual serve as a volunteer outside of the United States as a member of your organization? [ ] YES [ ] NO

f. Date volunteer service outside of the United States began:

_____

g. Date volunteer service outside of the United States ended:

_____

2. For evidence of health insurance coverage outside of the United States, request the following information:

a. Name, address, and telephone number of health insurer

b. Does (or did) the individual have any health insurance that provides (or provided) coverage for services outside of the United States? [ ] YES [ ] NO

c. When did the health insurance begin?

_____

d. When did the health insurance end?

_____

If the individual is enrolling in Part B during the GEP, the field office will forward the enrollment request to MU for handling. Field office personnel should notate “Premium Surcharge Relief – INT’L VOLUNTEERS” on the request. All necessary information should be included.

If the individual is already enrolled in Part B and is requesting premium surcharge relief, field office personnel should notate “Premium Surcharge Relief – INT’L VOLUNTEERS” on the request. All necessary evidence should be included and forwarded to MU to re-calculate the penalty rate.

810.25.6 Unique Enrollment Situations - Parts A and B

A. Overlapping Initial and General Enrollment Periods - If an application is filed and an individual's IEP and GEP overlaps the individual will be enrolled for Parts A and B based on the IEP. If an application is filed after

the end of the IEP but before the end of the GEP, the Part B effective date will be July 1 of the year in which the person enrolled.

B. Overlapping IEP/SEP - An individual cannot claim a SEP which is within his/her IEP. An application that is filed after the individual's GHP or LGHP coverage has terminated, but before the end of the IEP must be enrolled for Part B based on the IEP. Regulations do not permit an individual to claim an SEP during an IEP.

C. Overlapping IEP/SEP/GEP - If an application is filed and an individual's IEP, GEP and SEP overlap, the individual will be enrolled for Part B based on the IEP. If an application is filed after the end of the IEP and a GEP and SEP overlap, the individual may choose either a GEP or SEP.

D. Overlapping Disability and Age 65 Enrollment Periods - In some instances, a beneficiary's Part B IEP period for disability Medicare will overlap the Part B IEP period for aged Medicare. In such instances the beneficiary will be enrolled for Parts A and B based on the earliest IEP.

E. Waiver of Part B Enrollment Period Requirements - Relief is available to certain individuals whose SMI enrollment rights were prejudiced due to action, inaction or error of government officers, employees or agents. The RRB is authorized to establish an enrollment and coverage periods and to adjust premium liability if there is evidence or record showing that the individual took reasonable, appropriate and timely measure to assert his rights, and due to administrative fault or other action these rights are likely to be seriously impaired unless relief is given. See section 810.35.

810.25.7 Aged Medicare - Parts A and B - Uninsured Individuals

Those individuals not insured at either the RRB or SSA may enroll for Aged Medicare Part B only or Aged Medicare Parts A and B at SSA. The IEP and GEP enrollment provisions for Part B insured beneficiaries apply to both Parts A and B for uninsured beneficiaries.

810.30 Application Requirements

810.30.1 Beneficiary on the Rolls During IEP

Annuitants and beneficiaries of SS benefits certified by the RRB currently on the rolls (whether payment is in force or in suspense) is not required to submit an application or additional evidence for HI or SMI. The annuity application or supplement previously filed automatically establishes timely Medicare entitlement. The automatic enrollment process begins 6 months prior to attainment of age 65. Individuals who are automatically enrolled through this process are referred to as attainments. A Medicare record is established and a Form G-41 is released before the beginning of the IEP. However, if an individual

is receiving an annuity based on age and wishes to establish earlier Medicare eligibility based on disability, additional information will be required as described later in this section.

IPIs are enrolled through manual call-up and processing in the Medicare Unit. No field office action is generally required to enroll an IPI for Medicare.

If an individual is automatically enrolled for Medicare (Part A and B), he or she may refuse the coverage any time before entitlement begins without penalty.

810.30.2 Beneficiary Files for An Annuity During or After IEP

Providing this is the first application filed and the beneficiary has not previously refused Medicare Part B coverage, a separate application is not required to establish HI or SMI entitlement. However, the applicant in these instances must answer the question on the annuity application referring to whether he or she wants SMI coverage. The HI coverage effective date may be established retroactive for up to 6 months from the filing date (12 months for the divorced spouse of a disabled employee). However, the SMI coverage effective date will be determined as though the beneficiary enrolled in a GEP unless the application is filed during the IEP. Therefore, if the annuity application is filed between January l and March 31, and SMI is elected, SMI coverage begins July 1. Otherwise, the application is used to deem the individual's enrollment in the next GEP unless a "no" election was made on the annuity application. If a "no" election is made, the beneficiary must file Form G-44b or send a signed statement to elect SMI during a GEP or SEP.

If the beneficiary does not answer the question on the annuity application about SMI coverage and is not enrolled in Medicare under another record, SMI coverage would have to be elected during a SEP or GEP. Enrollment in this situation could not be automatic.

810.30.3 Employee Filing For or Entitled to an Annuity Based on Age Wants to Establish Early Medicare Based on Disability

In addition to the annuity application and evidence that is being or has been developed previously, a supplemental Form AA-ld must be developed to establish entitlement to disability Medicare (HI and SMI). The Form AA-ld should be marked "Application for Disability Freeze." In addition, proof of disability, Form G-251 should be developed.

810.30.4 Widow(er), Surviving Divorced Spouse or Remarried Widow(er) Filing for or Entitled to an Annuity Based on Age Wants to Establish Early Medicare Based on Disability

In addition to the annuity application and evidence required for payment of the annuity, a Form AA-17b must be developed to establish entitlement to disability

Medicare (HI and SMI). In addition, proof of disability should be developed. Also develop Form G-251 for a widow(er), but not for a surviving divorced spouse or a remarried widow(er).

810.30.5 Employee Filing for Medicare Only

An employee who does not wish to retire but wants to establish entitlement to Medicare only, must file a Form AA-6 and proof of age. The application will establish entitlement to HI and entitlement to SMI if the employee elects coverage and the application is filed during his or her IEP, GEP, or a SEP.

An employee who previously filed an informational application while age 62 to 64 to qualify his or her spouse for Medicare must complete a new Form AA-6 during an open enrollment period to qualify for Part A coverage and to enroll for Part B coverage.

In addition, the following evidence may be required as indicated:

Evidence	When required
Proof of Military Service	If needed to establish 120 months of RR service; or 60 months of RR service after 1995.
Lag Service statement from employer	If needed to establish 120 months of RR service; or 60 months of RR service after 1995.

In a letter to the RR contact official, request a report of the number of months of lag service through the application filing date. Submit a copy of the letter with the application. The reply should be sent to MU.

810.30.6 Spouse or Divorced Spouse Filing for Medicare Only

A spouse who meets the requirements in section 810.10.2 or a divorced spouse who meets the requirements in section 810.10.3 and wants to establish entitlement to Medicare must file a Form AA-7.

The application will establish entitlement to HI, and entitlement to SMI if the spouse or divorced spouse elects coverage and the application is filed during the IEP, a GEP, or a SEP. In addition, the following evidence is required:

Evidence	When required
Proof of age of spouse or divorced spouse	Always.

Proof of age of employee	Always. (Will already be in file if employee is receiving annuity.)
Proof of marriage to employee	Always.
Proof of divorce from employee	Always from divorced spouse.
Proof of termination of prior marriage	Only if there is reason to doubt that the marriage terminated.
Proof of termination of latest marriage	Always from a divorced spouse who remarried.
Form G-346 completed by employee	Required only when legal spouse is filing and the spouse's application filing date is more than 90 days from the voucher date of the employee's initial award. When the employee and spouse are separated, request the Form G-346 directly from the employee. If the employee refuses to complete Form G-346, the spouse must submit statements concerning the employee's prior marriages from two other persons who know the facts, preferably relatives of the employee. If she cannot do that, she should submit a statement explaining why. The file will be reviewed to determine if additional evidence (e.g., a search of court records) is required. NOTE: When completing Form G-346 that accompanies a spouse Medicare-only application, item 8 of Form G-346 does not need to be completed.
Proof of employee's military service	If needed to establish 120 months of RR service; or 60 months of RR service after 1995.
Employee's lag service (statement from Employer)	If needed to establish 120 months of service; or 60 months of RR service after 1995. In a letter to the RR contact official, request a report of the number of months of lag service through the application filing date. Submit a copy of the letter with the application. The reply should be sent to MU.

810.30.7 Widow(er), Surviving Divorced Spouse or Remarried Widow(er) Filing for Medicare Only

A widow(er), surviving divorced spouse or remarried widow(er) who meets the requirements in section 810.10.4 and wishes to establish entitlement to Medicare must file a Form AA-8.

The application will establish entitlement to HI and entitlement to SMI if the applicant elects coverage and the application is filed during the IEP, a GEP, or a SEP. In addition the following evidence is required:

Evidence	When required
Proof of death of employee	Always.
Proof of age	Always.
Proof of marriage to employee	Always.
Proof of termination of prior marriage	If there is doubt a prior marriage ended.
Proof of divorce	Always from a surviving divorced from employee spouse.
Proof of remarriage(s)	Always from remarried widow or a surviving divorced spouse who remarried.
Proof of military service	If needed to establish 120 months of RR service; or 60 months of RR service after 1995.
Employee's lag (statement from employer)	If needed to establish 120 months of RR service; or 60 months of RR service after 1995. In a letter to the RR contact official, request a report of the number of months of lag service through the month of death. Submit a copy of the letter with the application. The reply should be sent to MU.

810.30.8 Child Filing for Medicare Only

A child who is eligible as described in section 810.15.4 and who meets the relationship, dependency and O/M requirements, but who is not receiving an annuity or considered in the payment of the employee or spouse annuity, must file a Form AA-19a to establish entitlement to Medicare. Since the youngest age at which a child is eligible to be included in the O/M based on disability is age 18, and age 16 is the youngest age at which a disabled child can qualify a spouse

annuity for SSEB consideration, a Form AA-19a should not be developed prior to the child's attainment of age 18 in O/M cases, or age 16 in spouse cases. (To be entitled to Medicare, the child must have been eligible for O/M inclusion for at least 24 months and be at least 20 years of age.)

The application will automatically enroll the child for HI and SMI when all entitlement requirements are met. If the child does not want SMI coverage, refusal of coverage can be made by notifying the RRB upon receipt of the notice informing of the entitlement effective date. In addition, the following evidence is required: proof of relationship, proof of the child's age and medical evidence.

810.30.9 All Beneficiaries, Electing Part B After Part A Established

A. Separate application not required - A separate application to establish Part B coverage is not required, if a beneficiary:

1. Filed an annuity application or a Medicare only application during the previous year, and

2. Part A had not been established prior to that application at either SSA or RRB, and

3. The beneficiary elected Part B coverage on the application.

Beneficiaries meeting the above requirements are deemed to have filed during a GEP.

B. Separate application required - Beneficiaries who do not meet the requirements in A. above may apply for Part B coverage by submitting one of the following during a General Enrollment Period (January l through March 31 of each year):

1. Form G-44 - This form is released by headquarters to beneficiaries in the United States when Part B coverage was refused, withdrawn or terminated in the previous year, or

2. Form G-44b (see FOM-I-1720), or

3. A statement which clearly states the individual wants to enroll for Part B coverage.

The beneficiary will be enrolled for medical insurance effective July of the year in which the Forms G-44, G-44b or a statement is submitted.

810.30.10 All Beneficiaries Filing In A SEP

See FOM-I-810.25.5 for information about the application requirements for individuals filing for Part B during a SEP.

810.35 Equitable Relief

810.35.1 General

The 1972 amendments to the Social Security Act authorized relief when an individual's SMI enrollment, termination or coverage rights are prejudiced because of an error, misrepresentation or inaction of an employee or agent of the Government. In such situations, RRB may take whatever action is necessary to prevent or correct inequity to the individual, including (but not limited to) the designation of an enrollment and coverage periods, and appropriate adjustment of premium liability. The effective date of this amendment was 7-1-66. The equitable relief provisions may be applied to any eligible Part B enrollee.

To be eligible for equitable relief, evidence of the following elements must exist:

- The individual took such appropriate and timely measures to assert his or her rights as could reasonably be expected under the circumstances, and

- Because of administrative fault, delay or erroneous action or inaction by an employee or agent of the RRB or another Federal government agency, the individual's enrollment or premium rights would be impaired unless relief is given. (An "agent" of the Federal government is one who is authorized to act on behalf of the Federal government in matters pertaining to Medicare, such as an employee of the Part B carrier.)

Relief cannot be provided merely because of hardship or because of "good cause" for failure to enroll. There must be some erroneous action or inaction by the Federal government which is prejudicial to the rights of the individual. Whether or not the individual used Medicare coverage is not a factor in determining if equitable relief may be granted.

The elements which must be present in every case where equitable relief is granted are:

A. Government error, misrepresentation, or inaction; and

B. Prejudice to the individual's SMI rights. This may consist of carrying private insurance that the individual did not need, electing surgery in advance of entitlement because he or she was misinformed about their entitlement date, missing an enrollment period, being unable to pay a large premium arrearage which accrued due to government delay, or any other hardship with health care needs that can be traced to government error, misrepresentation or inaction on enrollment, premium collection or termination of entitlement; and

C. Evidence of the error - Usually the headquarters file will show evidence that an error has occurred, e.g., delay in awarding coverage, an erroneous

termination, failure to deduct or bill for premiums. It is also possible that an individual may allege that his or her rights were prejudiced due to misinformation that was received. Such allegations must be substantiated. Equitable relief may not be granted in this situation unless there is documentary evidence in the form of statements from employees, agents or persons in authority that the alleged misinformation, misadvise, misrepresentation, inaction or erroneous action actually occurred, or that there is a strong likelihood based on personal knowledge or prior experience that it occurred.

Note: If equitable relief is being considered because a beneficiary alleges that he or she received incorrect information or advice from an RRB field office or that an RRB field office erred in handling a request, the RRB claims representative identified as having given the misinformation must submit a statement explaining his or recollection of the event. If the employee cannot recall the interview or discussion, he or she should nevertheless report on the probability that she or she gave misinformation or incorrect advice to the individual. If the claims representative cannot be identified for any reason, the district manager should report on the likelihood of such an error. The statement should be submitted to the Medicare Unit.

EXCEPTION: If the individual caused or contributed materially to the government error by fraud or similar fault, equitable relief will not be granted even if the above three factors are present in the case.

810.35.2 Common Situations Involving Equitable Relief

A. Enrollment not processed timely - For a variety of reasons involving government fault or error, an individual's SMI enrollment request may not be processed until several months or years after coverage should have started. Similarly, there may be a delay of several months or years in notifying the enrollee that coverage has been awarded.

Serious inequity is likely to result where such an individual is required to pay for a long period of retroactive coverage which he or she may not have known existed; the individual may have continued to carry nongovernmental health insurance, or the individual may have deferred necessary treatment because he or she did not know they were insured for the cost of such treatment, and/or the individual may be unable to pay the premiums which accumulated over a long period of months or years.

1. Enrollment processed or enrollee notified 6 months or more after coverage should have started - If an enrollment request is filed timely but not processed, or the enrollee is not notified of the start of his coverage within the first 6 months after coverage should have started, the individual is enrolled effective with the month final

action is taken to process the award. Months elapsing after the end of the enrollment period in which the request was filed (or deemed to have been filed) will not be counted in determining the premium rate. The enrollee will be sent a special notice of SMI award, informing him or her of the option of having SMI coverage begin earlier (the date coverage would have started if the enrollment request were handled timely), provided that within 30 days he or she (l) requests the earlier date of coverage, and (2) either pays all back premiums due for months of coverage prior to the month shown on the award notice, authorizes deduction of the back premiums from monthly benefit payments or arranges for an alternate method of payment.

If the individual selects the earlier effective date and arranges to pay all back premiums, the Medicare Unit will adjust the HI record to show the earlier date of coverage. The Medicare Unit should then determine whether it is necessary to alert the enrollee to the need for prompt filing of Part B claims for any covered services he or she may have received during the first months of SMI entitlement. If the time limit for filing claims for services received in the first months of coverage has ended, or will end within 6 months after the beneficiary is informed of the earlier coverage date, the enrollee is advised that claims for such services will be honored if filed within 6 months after the month he or she is notified.

If the enrollee has already made it clear that he or she wants only current coverage or wants (and is willing to pay for) earlier entitlement, SMI coverage is awarded accordingly without providing notice of coverage date options.

These procedures also apply when an application for enrollment was denied initially for any reason, and as a result of reconsideration or a hearing, the original decision is reversed.

2. <u>Enrollment not processed but premium deductions in force - enrollee not notified until 6 or more months after coverage should have started</u> - It is possible, especially in the case where only an SS benefit is being paid, that premium deductions were initiated timely but the necessary enrollment activities were omitted. In such cases, the enrollee may or may not know about the deductions. Since no valid enrollment has been processed, claims for benefits could not be filed. It is possible that the individual is aware that deductions are being made, but that he simply has not yet had a claim to file.

   In such cases, the individual is enrolled effective with the date deductions began. The individual is notified by Headquarters of the

effective date of coverage. If the enrollee spontaneously objects within 2 months after the month in which he is notified of his coverage, the SMI award may be reversed. Any premiums collected should be refunded and the individual will be deemed not to have enrolled or, in automatic enrollment cases, will be deemed to have refused enrollment. If he desires SMI, but does not wish to accept coverage effective with the earlier date when deductions began, Headquarters advises him of the next general enrollment period. The beneficiary cannot accept an intermediate effective date of coverage. If the beneficiary declines coverage effective with when the deductions began, he may suffer a premium penalty if he enrolls in a later GEP.

3. Individual dies before award is made - If a SMI award is delayed so that notice of the choice in A. or B. above could not be made by the individual prior to his death, any of his survivors can be given the option of electing SMI as of the date entitlement should have begun and paying the premiums, or refusing SMI entirely. If an amended award, which would cause earlier SMI entitlement is made to a person who already has SMI but the enrollee dies before he is able to make the choice of having earlier SMI entitlement, the survivors can be given the choice of accepting the new (earlier) SMI entitlement date and paying the additional premiums or refusing earlier entitlement.

B. SMI awarded on later of 2 timely enrollment requests - After a person has been awarded SMI on the basis of an enrollment request, an examiner may discover an earlier, timely enrollment request, still unprocessed. If we revised the existing SMI award to change the effective date to one that would be consistent with the earlier enrollment request, the enrollee could be required to pay for many months of undesired SMI coverage. Such action would likely result in complaints of hardship and inequity.

A case involving an unprocessed earlier request for a person currently enrolled will be handled as follows:

1. The enrollee's premium rate is reduced, if necessary, to be consistent with the enrollment period in which the earlier request was filed. Any excess premium amounts already collected will be refunded or used as a credit against any future premium liability. The enrollee is notified that his prior premium rate had been incorrectly computed, and that the error has been corrected. No field office action is necessary.

2. However, if the file reflects a current or timely protest (filed within 6 months of notice) against the existing SMI award, the Medicare Unit will notify the enrollee that he may have his SMI coverage begin at

the earlier date provided that within 30 days he so elects and pays the retroactive premiums which have accrued, authorizes the deduction of such premiums from his monthly payments or arranges an alternative method of payment.

C. Delayed or incorrect advice frustrates enrollment or termination rights - In some cases, an individual may be prevented from taking timely and appropriate action to enroll for or terminate SMI coverage due to administrative delay or misadvise. For example, an individual may write to the RRB shortly before or during an enrollment period open to him, but be prevented from enrolling because we did not answer his inquiry until most or all of the enrollment period had elapsed. Relief in such cases will be provided to insure that the enrollee's desires are met. Similar relief is provided in cases where an enrollee inquires about SMI termination and a reply is not given in time to permit him to file a voluntary termination request within the same calendar quarter in which he inquired about termination.

Cases of this type are to be handled as follows:

1. Inquiry shows unequivocal desire to enroll - When an individual inquires about SMI during or within 9 months prior to the start of an enrollment period open to him, and from the nature of the inquiry it is clear that he wants SMI, he should be awarded coverage based on filing on the first day of that period. However, if taking action to provide such relief would result in the award of 6 or more months of retroactive coverage, SMI is awarded beginning with the month in which the individual is notified. The individual is informed of his right to obtain earlier coverage by requesting such coverage and paying the accrued premiums.

2. Inquiry does not show unequivocal desire to enroll - If the inquiry does not express a clear and unequivocal desire to enroll, the individual will be mailed an enrollment card (Form G-44) and a letter informing him that he may obtain coverage as of the date his coverage would have started if we had promptly replied to his inquiry. The letter explains that he may only have the earlier date of coverage if within 30 days he completes Form G-44 and returns it with a premium payment, if no benefits are currently payable. If the Form G-44 is returned promptly, he will be deemed to have filed his enrollment request timely. Otherwise, he must file during the next GEP.

D. SMI awarded erroneously - In some cases, after an individual has been enrolled, new evidence may be discovered indicating that SMI should have been disallowed; e.g., the individual had not yet attained age 65, or had not filed his enrollment request during an enrollment period open to

him. Ordinarily, the individual will wish to retain his SMI because he may have given up his non- governmental health insurance or incurred substantial medical expenses in reliance on the SMI award. These erroneous SMI awards are handled in accordance with l and 2 below.

EXCEPTION: If an individual erroneously awarded SMI makes a timely protest against enrollment (i.e., before his SMI entitlement begins, or if later, within 6 months after the month in which he is notified of his SMI entitlement), the erroneous period of SMI coverage is deleted from the health insurance records, and any premiums paid refunded provided he repays any SMI benefits paid pursuant to the erroneous enrollment.

1. Error discovered in or after actual IEP - If the error is discovered after the start of the individual's actual IEP, the SMI award will not be disturbed unless it was procured through fraud or similar fault of the individual. If it is determined that there was fraud or similar fault, equitable relief will not be granted, the SMI award will be annulled, and any Part B payments made during the period of erroneous entitlement will be treated as overpayments.

2. Error discovered before the actual IEP - If fraud is not involved and an individual was enrolled erroneously and the error is discovered before the start of his actual IEP, HI and SMI coverage will be canceled with the last day of the month in which the action is taken. The Medicare Unit will notify the individual of the reason for the cancellation, and of the time when he may again enroll. No refund of premiums or recovery of payments due to utilization is made in this circumstance.

E. SMI terminated erroneously - When an individual's SMI coverage is terminated erroneously, he is in approximately the same situation as the person whose enrollment was not processed timely. That is, he does not know whether he has SMI or not; he may enroll in a nongovernmental health plan to assure some protection for his medical expenses; he may defer necessary treatment because of his uncertainty about being insured against the cost of such treatment, etc. When the error is finally corrected, it would be unfair to reinstate his entitlement retroactively and require him to pay premiums for past SMI coverage that he had been unable to use at the time. Accordingly, the options offered to the individual whose enrollment was not processed timely are also offered to the individual whose SMI was terminated erroneously, if 6 months or more premiums are owed.

1. Error discovered 6 or more months after termination - When 6 months or more premiums are owed, individuals are given the same kind of option for termination as given in late enrollment cases.

If the individual pays in full, authorizes withholding of the full amount from his monthly payments or agrees to monthly installments coverage is reinstated as of the month of the erroneous termination. If necessary, MU alerts the enrollee to the need for filing his claims promptly based on any SMI services on which the ordinary deadline for filing may have passed or be within 6 months of the month of reinstatement.

If the enrollee has already made it clear that he wants only prospective coverage or that he wants (and is willing to pay for) coverage during the retroactive period, SMI is reinstated accordingly without mentioning the option, providing he is willing to pay the premium arrearage.

If the enrollee protests that he does not want SMI coverage and such protest is filed within 2 months after the month in which he is notified that his coverage was reinstated, the SMI reinstatement is reversed (i.e., the original termination is permitted to stand) and any premiums collected are refunded.

2. Error discovered less than 6 months after month of termination - If an erroneous termination is discovered less than 6 months after the effective month of termination, no relief from premium liability may be granted. Action is taken to reinstate SMI coverage and collect past premiums due as soon as possible. If the enrollee spontaneously protests, the Medicare Unit will offer alternative methods of recovery.

F. Inadvertent failure to bill for or deduct premiums - non-buy-in cases - In some cases, long after a person has been awarded SMI and notified of his or her SMI coverage, it is learned that premiums have inadvertently not been billed or deducted from benefit payments for a period of months or years. By the time premium collection is initiated or resumed, the individual may have difficulty in paying the arrearage, especially in a lump-sum. To avoid hardship or the necessity of terminating SMI in cases where premium arrearages accumulated because of administrative error, relief may be provided as follows:

1. Premium arrearage of 6 months or more - When premiums are due for 6 months or more, and monthly RR or SS payments are in current pay status, the Medicare Unit releases a notice to the enrollee explaining the arrearage and the proposed method of recovery (cash refund or full withholding). If the enrollee does not request any relief options offered by the notice within 30 days, the Medicare Unit will take recovery action. However, if a request for relief is received after 30 days, it will still be honored.

2. Premium arrearage of less than 6 months - Where the premium arrearage is not substantial, payment of the amount owed within the usual grace period will not normally create undue hardship for the enrollee. Therefore, no advance offer of waiver is given where SMI premiums are due for 5 or fewer months of coverage.

   Although no mention of waiver is made in the arrearage letter in these situations, if the enrollee spontaneously complains of hardship the Medicare Unit will not recover the arrearage. If payments have already been suspended, they are to be reinstated and waiver development initiated.

3. Premium arrearage due to IRMAA, penalty surcharge, or Medicare Advantage Part B premium reduction – In cases involving a premium arrearage that is the result of retroactive changes in the amount of a Part B premium because of (1) the addition of or a change in an Income Related Monthly Adjustment Amount (IRMAA), (2) the imposition of a premium surcharge, or (3) a change in a Medicare Advantage premium reduction, equitable relief will automatically be considered if the amount of the arrearage exceeds 5 times the current standard Part B premium. Exception: When the premium arrearage is due to IRMAA, the amount must exceed 5 times the current standard Part B premium plus the amount of the individual's IRMAA.

   Note that the determining factor in these situations is the amount of premiums due, not the number of months for which an adjustment to the premium is due. See RCM 3.2.108 and RCM 3.2.109 for additional details and examples of equitable relief for beneficiaries subject to IRMAA and equitable relief in cases involving Medicare Advantage Part B premium reductions.

   Note: Automatic consideration of equitable relief in these types of cases generally means that the initial notice that premiums are due explains the options to pay by installment and to request waiver of payment of the premiums if payment would cause financial hardship. Cancellation of Part B coverage for the months for which additional premiums are due cannot be considered.

4. Collection of current premiums - To prevent a premium arrearage from increasing while development is under way to establish an installment payment schedule, or to determine whether payment of the arrearage can be waived, the enrollee should pay for current coverage.

5. When relief from premium liability will be considered and granted - Many individuals, while willing and able to pay current premiums by

deduction from monthly benefits or by direct remittance, may not have the resources to pay the premium arrearage even in minimum monthly installments of $20.00.

As explained above, if the arrearage is for 6 months or more, upon resumption of billing or premium deductions the individual will be notified about the possibility of waiver. Likewise, waiver will be considered even for individuals with smaller arrearages if they request it or complain that it would be a hardship to pay the arrearage. The same criteria will be applied in determining whether waiver can be granted, regardless of whether the arrearage is 6 months or less.

Where 6 months or more of retroactive premiums are owed, only the premiums for current coverage are deducted or billed immediately. The arrearage is not recovered until 30 days after the enrollee has been notified of the arrearage to give him the opportunity to claim hardship.

If the beneficiary requests waiver, the field office will be requested to obtain a completed Form DR-423.

The individual should be relieved of the obligation to pay an arrearage of premiums caused by governmental fault if payment of the amount would deprive him or her of funds which are reasonably necessary for ordinary living expenses. This is the same test used in determining whether recovery of an annuity overpayment would defeat the purpose of title II of the Social Security Act. The Division of Debt Recovery (DRD) will determine whether the arrearage situation meets the criteria for waiver and will so notify the enrollee. Authority to provide waiver is contained in section 7(d) of the Railroad Retirement Act and section 1837(h) of the Social Security Act. If the waiver request must be denied, DRD advises the individual that installment payments or partial withholding are still permissible.

G. Delayed deletion from state buy-in rolls results in premium arrearage - An individual whose state buy-in coverage terminates is deemed to be individually enrolled with continuing coverage and premium liability from the month after the month in which his buy-in coverage terminates. In some cases, because of program delays, 4 or more months may elapse between the end of the buy-in coverage and initiation of premium collection.

Such individuals are not required to pay more than 3 months of premium arrearage. Most state buy-in deletions are handled mechanically and relief is automatically given to anyone owing 4 or more months of retroactive

premium (i.e., deductions or billing will be made for only 3 retroactive months and the current month).

When a premium arrearage of 2 or 3 months will be recovered, no special advance notice is sent to the beneficiary. However, if the individual spontaneously complains that he or she cannot afford to pay 1, 2 or 3 months retroactive premiums, it is possible to grant relief from even the 3 months arrearage. The district office will be requested to secure Form DR-423 from the beneficiary. "Hardship" cannot be assumed without this development, because the individual's loss of state buy-in presupposes an improvement in the beneficiary's financial status.

The Division of Debt Recovery (DRD) will determine whether the arrearage situation meets the criteria for waiver and will so notify the enrollee. If the waiver request must be denied, DRD will advise that installment payments and partial withholding are still permissible.

H. Delayed deletion from state buy-in rolls prejudices termination rights - Persons who wish to terminate their individual SMI coverage after state buy-in coverage ends, face the same disadvantages if delayed deletion occurs, as those beneficiaries who choose to continue coverage. See FOM-1-810.40.2.

By law, the states may terminate buy-in coverage as early as 2 months prior to the month they actually report to CMS that a specific individual has been deleted from the buy-in rolls. Each month, CMS furnishes RRB a tape of that month's accretion and deletion activity.

Because of administrative delays, several months may have elapsed between the date of the state's deletion and the date the individual is notified of the deletion. Such an individual would technically owe premiums for the elapsed months. The law was not intended to penalize such individuals who had no opportunity to request termination during the last month they were covered by the state. Therefore, if an individual was not advised by the state of the deletion in or before the month of deletion, equitable relief can be granted. This allows an individual's SMI coverage to end effective with the termination of buy-in coverage (thus allowing him or her to avoid entirely any premium liability), if all the following conditions are met:

1. The individual submits a written request to have his or her individual SMI coverage end effective with the end of state buy-in coverage.

2. Such request is filed within 30 days of the date of the notice informing the beneficiary that the state is no longer paying premiums.

3. The individual certifies that he or she has incurred no medical services covered under SMI during the months after buy-in termination.

   If an individual did receive medical services covered under SMI after the end of buy-in coverage, his or her individual entitlement must continue until the end of the month in which the termination request is filed (if the request is filed within 6 months of buy-in termination). No intermediate date may be selected for the termination effective date.

I. SEP enrollment under equitable relief provisions – In certain cases, a disabled beneficiary may decline Part B coverage because his or her Group Health Plan (GHP) or Large Group Health Plan (LGHP) may erroneously assume the role of primary payer, even though the GHP/LGHP coverage is not based on a current employment status. This mistake may not be identified until the GHP/LGHP coverage terminates, or the employer otherwise identifies the mistake. Under the equitable relief provisions, a disabled individual who was misinformed (or not informed) about whether the GHP/LGHP was the primary payer may enroll in Medicare during a disability special enrollment period (D-SEP). The D-SEP, for beneficiaries who qualify under this situation, are entitled to a 7-month period beginning the later of:

- The date of the notice from the employer advising that the GHP/LGHP is no longer the primary payer, or
- The last month for which the GHP/LGHP is the primary payer of benefits.

If there is proof, or the likelihood, that misinformation (including no information) was provided by an employee of the Federal government, the employer, or the GHP/LGHP, equitable relief may be granted to correct the results of the unjust situation. In general, you can consider that the beneficiary was misinformed if the GHP/LGHP continued to provide coverage as the primary payer even though the beneficiary, spouse, or family member no longer had a current employment status. Premium surcharges can be waived or reduced, and a special enrollment period granted.

As a result of the repeal of the Defense of Marriage Act (DOMA) on June 26, 2013, we are now able to process premium surcharge rollback request actions for individuals who enrolled in the GEP, but had GHP or LGHP coverage based on current employment of a same-sex spouse. Same-sex marriages are treated the same as opposite-sex marriages for purposes of the premium surcharge rollback.

Certain SEP requests filed after the 8-month SEP ended may be approved if all of the following criteria are met:

- The individual filed a SEP request for SMI after October 2012 and was denied.
- The SEP for the individual must end within the months of June 2013 through April 2014.
- The second SEP request is received prior to June 2014.
- The first denial was based on the existence of a same-sex marriage due to the application of Defense of Marriage Act (DOMA) rules and all other eligibility criteria were met.

Give the individual the option to have the date of entitlement be based on the month of the first or the second filing.

Beneficiaries age 65 or older or under age 65 and covered under a GHP based on the current employment status of a domestic (or life) partner are not spouses for SEP and premium surcharge rollback purposes. However, under the equitable relief provisions, these beneficiaries are permitted to enroll in Part B as if the SEP provisions still apply. Grant equitable relief to the following individuals who:

- Refused Part B and whose initial enrollment period (IEP) begins 12/2004 or earlier; or

- Enrolled in Part B during the IEP and voluntarily terminated coverage prior to 12/2004.

1. **Background** - An individual may have one or more types of health insurance or coverage in addition to Medicare. The terms “primary payer” and “secondary payer” refer to who pays health insurance costs first. Depending on the circumstances, Medicare may be the primary or secondary payer on a health insurance claim.

   The Omnibus Budget Reconciliation Act of 1993 (OBRA-1993) made Medicare the secondary payer for a disabled beneficiary covered by a LGHP based on the current employment status of the individual or a family member. For individuals who do not have LGHP coverage based on their own current employment status or the current employment status of a family member, OBRA-1993 made Medicare the primary payer of benefits.

   Note: Because individuals may not have previously enrolled in Medicare Part B, OBRA-1993 allowed them to enroll during what was supposed to be a one-time disability special enrollment period (D-SEP).

   A disabled beneficiary might decline enrollment in Medicare Part B when first eligible because his or her GHP/LGHP is the primary payer of benefits. When coverage under the GHP/LGHP ends, the beneficiary

then wants to enroll for Part B during a SEP. In many cases, however, there is a problem. The individual is not eligible for a SEP under the regular provisions because his or her GHP/LGHP coverage is not based on a current employment status.

CMS has a process by which employers are to notify disabled individuals when the GHP/LGHP is no longer the primary payer of benefits. However, many employers continue to provide GHP/LGHP coverage as the primary payer after there is no longer a current employment status

2. **Evidence Requirements** The individual may enroll or re-enroll in SMI under the equitable relief provisions if he or she submits a letter from the employer or other documentation that shows:

   - The GHP/LGHP has been primary payer of benefits for some period of time in or after January 1987;
   - The GHP/LGHP should not have been primary payer; and
   - The GHP/LGHP stopped (or will stop) making primary payments as of a specified date.

   The employer should complete Form RL-311-F, clearly showing the beginning and ending dates of the GHP/LGHP coverage. Form RL-311-F is not required if Form G-44B is submitted with correspondence from the employer of the GHP/LGHP that clearly shows all of the information requested on Form RL-311-F, including the dates that the individual was covered by the GHP/LGHP. If documentation cannot be obtained from the employer concerning the dates of GHP/LGHP coverage and the change in status as primary payer of benefits, the beneficiary must submit a statement providing as much of the information as possible.

3. **Enrollment Requirements** The individual must enroll within 7 months of:

   - The date of the notice from the employer advising that the GHP/LGHP is no longer the primary payer, or
   - The last month for which the GHP/LGHP is the primary payer of benefits.

   Obtain Form G-44B from the individual. In item 7 (Remarks), the applicant should indicate that he or she wants to enroll under the equitable relief provisions, and provide an explanation as to what misinformation he or she received and who provided the misinformation.

   The Form G-44B, Form RL-311-F, and any correspondence that support the applicant's request to file under the equitable relief provisions, should

be imaged. It is no longer necessary to mail the documentation to the Medicare Unit.

NOTE: If Form G-44B is received without Form RL-311-F or supporting correspondence, pend for receipt of the latter two before imaging. When all documents are received, scan them together as a multi-page document. Headquarters staff will index the package as form type, EmployerSEP Ltr.

4. **SMI Effective Date** The SMI effective date for a beneficiary who files for SMI during a D-SEP is:

   - The first day of the month of enrollment in SMI, or

   - The first month the GHP/LGHP is no longer primary payer. The beneficiary must agree to pay all premiums due, if applicable.

5. Examples:

- Employee A last worked for the Patapsco and Back Rivers Railroad in March 1991, and began receiving a disability annuity in September 1991. He was enrolled in Medicare Part A effective September 1993, but declined Part B coverage because he had LGHP coverage through Bethlehem Steel, the railroad's parent company. The LGHP continued to provide coverage as the primary payer even after the change in law (OBRA-1993).

  On March 25, 2003, Employee A was notified that his LGHP coverage would end March 31, 2003, because of the bankruptcy of Bethlehem Steel. Employee A contacted the RRB in July 2003 to apply for Part B coverage effective August 1, 2003. Because he applied within 7 months of the date that his LGHP coverage was terminated and was "misinformed," i.e. not properly informed that his LGHP coverage should have been the secondary payer under the OBRA-1993 provisions, he was granted a special enrollment period.

- Employee B last worked for the Union Pacific Railroad in September 1999, and began receiving a disability annuity effective March 1, 2000. He was enrolled in Medicare Part A effective March 2002, but declined Part B because he was covered under the Union Pacific's Long Term Disability (LTD) Plan, administered by United HealthCare.

  Although Employee B did not have a current employment status, the LTD Plan continued to provide coverage as the primary payer until 2003. On September 9, 2003, Employee B was notified that, because he was eligible for Medicare on the basis of his disability, the LTD Plan would only provide secondary medical coverage effective January

2003. Employee B must contact the RRB within 7 months of the September 9, 2003 notice in order to be granted a special enrollment period to enroll for Medicare Part B coverage.

- Employee C attained age 65 in November 2004. He refused Part B coverage because he was covered under his domestic (or life) partner's group health plan (GHP). His partner, Mr. Smith, is working and the GHP includes domestic partner within the definition of spouse. In October 2011, Employee C contacts a field office about enrolling in Part B because his partner is retiring January 1, 2012. Since a domestic partner, age 65 or older, cannot be recognized as a spouse, the SEP provisions no longer apply. However, under the equitable relief provisions, Employee C may enroll in SMI during any month in which he has coverage under the GHP based on current employment or during the 8-month period that begins with the first full month after the GHP coverage based on current employment ends.

J. Equitable relief and the Affordable Healthcare Act – Individuals who are entitled to Medicare Part B should NOT be enrolled in an individual market health insurance Exchange (also referred to as the Marketplace) plan. However, individuals who were dually enrolled in Medicare Part A and the Exchange and subsequently enrolled in Part B with a penalty may be eligible for an opportunity to request a reduction in their Part B late enrollment penalty.

In March and June of 2017, CMS mailed a notice to all beneficiaries who are entitled to Medicare Part A and enrolled in an individual Exchange plan. This notice advised beneficiaries that they may be able to enroll in Part B without penalty or having to wait for the GEP. This opportunity is available until September 30, 2017.

Individuals eligible under this provision should be directed to enroll in Medicare Part B immediately, and should not wait to enroll during the GEP. Also, proof of enrollment in the Marketplace can be furnished by providing a copy of the letter from CMS notifying the beneficiary of dual enrollment or the beneficiary's insurance card from the marketplace.

Additional information contained in following memo from CMS: Assistance for Individuals with Medicare Part A and Marketplace Coverage Information for SHIPs and Marketplace Assisters.

K. Equitable Relief and the Weather-Related Emergencies of 2017 – Extreme weather events in 2017 caused disruption to mail delivery and affected operations at local field offices. This affected our ability to notify some beneficiaries of their Medicare enrollment or process their enrollment request timely.

As a result, some beneficiaries were not able to make their Medicare Part A or Part B enrollment or refusal request during their Initial Enrollment Period (IEP) or Special Enrollment Period (SEP). As such, CMS is providing equitable relief to beneficiaries who could not submit their Part A or Part B enrollment, or Part B refusal requests timely.

Equitable relief is to be considered on a case-by-case basis for beneficiaries who had difficulties submitting timely:

- IEP enrollment requests,
- IEP refusals, or
- SEP enrollment requests

These considerations are for beneficiaries who, at the start of the incident period, were:

- In their IEP or SEP, and
- who resided in areas for which the Federal Emergency Management Agency (FEMA) declared a weather-related emergency or a major disaster

This consideration of equitable relief is only for the period of September 1, 2017 through May 31, 2018.

Processing Instructions – Process these cases following the normal rules for equitable relief as outlined in RCM 3.2.95. Medicare examiners and Field Office representatives are encouraged to be as responsive and flexible as possible when a current or new beneficiary affected by a weather-related emergency or major disaster contacts us for any of the following reasons:

- Non-receipt of his or her Medicare award notice or Initial Enrollment Period package; or
- Inability to file an enrollment request or refusal timely.

When a favorable equitable relief determination is made, consider the late IEP or SEP enrollment request as filed timely. Limit the Part A or Part B effective date to a month granted under normal processing procedures for timely IEP and SEP filing.

Field Office Actions – Follow these steps:

1. Consider whether the case meets the requirements above.

2. Document the beneficiary's statement identifying him or her as a resident of an area affected by a weather-related emergency or major disaster.

3. For beneficiaries requesting Part B enrollment, complete Form G-44B and annotate "Resident of the Federal Emergency Management Agency (FEMA) declared disaster areas" in the remarks area of the form.

4. For beneficiaries requesting a Part B refusal, obtain a written statement from the beneficiary requesting SMI refusal as a resident of the FEMA declared disaster areas.

5. Make an entry on the Contact Log with your analysis of the information, and your decision as to whether we should provide relief. Include the reasons for approval or disapproval based on your review. Annotate that the beneficiary requesting a Medicare enrollment or SMI refusal is a resident of the Federal Emergency Management Agency (FEMA) declared disaster areas.

6. Forward the case to the Medicare Unit following normal procedures.

MU Actions – Follow these steps:

1. Review the written statement and available evidence in support of enrollment or refusal.

2. For enrollments, process approved equitable relief cases following normal Equitable Relief procedures.

3. For refusals, process approved SMI refusals by following normal business procedure.

810.40 Termination

810.40.1 Termination of HI Coverage

A. Beneficiary under age 65 - Disability HI coverage, other than for end-stage renal disease ends the earlier of:

1. The day of death; or

2. The month before the month age 65 is attained; or

3. For a beneficiary who is not eligible for a trial work period (TWP), the month in which the disability benefit ends or if later the month after the month in which the notice of termination is mailed.

   Example: A determination is made that disability benefits are no longer payable to a beneficiary effective April 30, 2005 because his impairment is no longer disabling. If notice of the termination is mailed in February or March 2005, HI coverage ends at the same time the disability benefits end. If notice of the termination is not mailed until May 2005, HI coverage ends June 30, 2005.

   If disability benefits stop because the beneficiary has substantial gainful activity (SGA) following a TWP, coverage may continue after

the beneficiary's disability entitlement ends. In cases where disability benefits end because of SGA following a TWP, HI coverage ends as follows:

- If the beneficiary's disability ceases (the first month of SGA following the end of the TWP) prior to the 14th month of his or her re-entitlement period, also referred to as an extended period of eligibility (EPE), and he or she engaged in SGA in the 16th month of the EPE, HI coverage ends the last day of the 57th month following the end of the 36 month disability re-entitlement period or, if later, the end of the month following the disability termination notice.

  Example: A beneficiary has been entitled to HI based on disability since May 2000. Although he continues to be severely impaired, he completed a TWP in a sheltered workshop on September 30, 2001. He continues working at SGA levels, and his disability benefits are terminated effective December 31, 2001 (the end of the second month following the month his disability ceased) and his disability entitlement ends October 1, 2004 (the first month of SGA after the 36-month re-entitlement period ends). His HI coverage, however, continues through June 30, 2009, the last day of the 57th month following the end of his 36 month re-entitlement period.

- If the beneficiary's disability ceases prior to the 14th month of the EPE, but he or she does not engage in SGA in the 16th month of the EPE, HI coverage ends the last day of the 77th month following the first month of SGA occurring after the 16th month or, if later, the end of the month following the disability benefit termination notice.

  Example: A beneficiary has been entitled to HI based on disability since May 2000. He completes a TWP in a sheltered workshop on September 30, 2001. He continues working at SGA levels for 12 months, stops working until May 2003, and then resumes working at SGA levels. His disability benefits are terminated effective December 31, 2001 (the end of the second month following the month his disability ceased). His disability entitlement ends October 1, 2004 (the first month of SGA after his 36-month re-entitlement period ends). His HI coverage, however, continues through October 31, 2009, the last day of the 77th month following the first month of SGA after the 16th month of his re-entitlement period.

- If the beneficiary's disability ceases after the 13th month of the EPE, HI coverage ends with the last day of the 80th month

following the month the disability ceases or, if later, with the end of the month following the disability benefit termination notice.

Example: A beneficiary has been entitled to HI based on disability since May 2000. He completes a TWP on September 30, 2001, and begins a 36-month period of re-entitlement on October 1, 2001. His disability ceases in February 2003, when he is determined to have performed SGA in that month. Because his disability ceased after the 13th month of his re-entitlement period, his HI coverage continues through October 31, 2009, the last day of the 80th month following the month his disability ceased.

Note: If medical improvement or some other non-SGA terminating event occurs prior to the dates provided above, HI coverage ends the later of (1) the month in which disability benefits are terminated, or (2) the month after the month in which the benefit termination is mailed to the beneficiary.

Note: A beneficiary cannot voluntarily terminate HI (Part A) coverage. In order to withdraw from Part A, the beneficiary must withdraw his or her application for an annuity and repay all benefits received, including RRA and SSA payments and any benefits paid under Medicare.

B. Beneficiary age 65 or over - HI coverage ends with the day of death or when the person's eligibility for benefits under the Railroad Retirement Act and/or the Social Security Act ends. In case of death, protection continues through the month of death. However, a person over age 65 who no longer qualifies for benefits under either of the Acts may reinstate the HI protection if either of the following requirements are met.

1. Qualifies under the special transitional provision (FOM-1-810.5.3); or

2. Qualifies under the uninsured HI provision (FOM-1-810.5.4).

C. Premium HI beneficiary - Coverage under premium HI ends:

1. With the day of death;

2. The last day of the month following the month the beneficiary files a notice of voluntary termination with SSA;

3. The last day of the second month following the due date for premium payment if the premium is not paid;

4. On the date of termination of SMI coverage;

5. With the first month of eligibility for HI as an insured or deemed insured person at RRB or SSA.

810.40.2 Termination of SMI Coverage

SMI coverage may terminate for any of the following reasons: death of the enrollee, recovery from disability for persons under age 65, nonpayment of SMI premiums, voluntary termination. The effective date of termination in each instance is discussed below.

A. Death of enrollee - SMI coverage extends through the date of death.

B. Recovery from disability - SMI coverage ends with the later of:

- The last month of entitlement to a monthly disability benefit, or if later the month after the month in which the notice of termination is mailed. If disability benefits stop because the beneficiary is working, but the person has not recovered from his or her disability, coverage may continue after monthly disability benefits stop. See FOM-1-810.40.1.A.3).

- The month after the month the beneficiary is notified of the termination of benefits.

C. Non-payment of premiums - SMI coverage terminates at the end of the grace period provided for the payment of overdue premiums. Normally, the grace period for payment of premiums is the 90-day period following the month in which the bill is issued. The grace period may be extended for another 90 days if there was good cause for failure to pay the overdue premiums within the initial 90-day period.

D. Voluntary termination - Any beneficiary not covered under a state buy-in agreement may request termination of his or her SMI coverage at any time. A request for termination must be made in writing, unequivocally stating a desire to end SMI coverage, and signed by the enrollee. In lieu of a handwritten statement, the beneficiary may sign form G-795, Request for Termination of Medicare Part B, Medicare Insurance.

Termination in these cases is effective with the last day of the month after the month in which the written notice is officially filed. (Prior to July 1, 1987, the effective date for dis-enrollment was the end of the quarter after the quarter the request was filed.) Premiums must be paid through the effective month of termination.

A signed statement or form G-795 from the beneficiary must be submitted to confirm the request to terminate Part B coverage. Be sure to stamp the date of receipt on the statement. Image the signed statement or form to the Medicare Unit (do not use the RRA FILE ONLY cover sheet). The

Medicare Unit will terminate SMI coverage and release a confirmation letter to the beneficiary.

Note: Do not submit e-mails to the Medicare Unit requesting Part B election changes for beneficiaries. The Medicare Unit can take no action without the beneficiary's signed statement or form G-795. The Medicare Unit will, however, initiate action to terminate coverage based on a facsimile of the signed statement or form.

E. Voluntary termination following state buy-in deletion - If an individual's state buy-in coverage ends, the enrollee's SMI coverage continues as if he or she had filed in an IEP. If an individual desires to end SMI coverage after state buy-in deletion, he or she may do so by filing a written request or form G-795 as described above. See FOM-1-810.35.2).

Prior to 4-1-81, termination for those in current pay status was effective with the third month after the last month of buy-in coverage if the termination request was filed within that 3-month period. Those not in current pay status were terminated according to the rules for regular "voluntary termination;" i.e., termination was effective the last day of the calendar quarter after the quarter in which the written notice was officially filed.

Effective April 1, 1981, any individual whose state buy-in coverage has been terminated and who files a notice requesting termination of his individual SMI during the last month of buy-in coverage or during the 6 succeeding months will have his or her individual SMI terminated at the end of the month in which the notice was filed. Refer to FOM-1-810.35.2H for a further discussion of relief that may be offered.

810.45 Jurisdiction Of Coverage

The term "jurisdiction" is used in the Medicare program to indicate whether RRB or SSA is responsible for enrolling a person, issuing an ID card, and collecting premiums.

810.45.1 How Jurisdiction Is Determined

RRB has jurisdiction of the health insurance of all QRRBs and all persons whose SS benefits are paid by RRB ("deemed" QRRBs). However, an HI record will not be established until a QRRB or "deemed" QRRB files a railroad retirement or social security application. If SSA has jurisdiction when an HI record is initially established, that agency will continue to have jurisdiction until the QRRB files a railroad retirement application or an inquiry is received and HI clearance is requested by RRB. At that time, HI jurisdiction is automatically transferred to RRB.

If an individual does not meet the definition of a QRRB and SS benefits are not payable at RRB, the RRB does not have jurisdiction. For example, SSA has jurisdiction over the health insurance of an employee with less than 120 service months or less than 60 service months after 1995, the disabled child of an employee who is under age 62 and not under a DF, or a survivor who elected an RLS. Once established at RRB, HI jurisdiction will generally not change as long as the person is a QRRB or SS benefits are payable at RRB.

810.45.2 Situations Which Cause Jurisdiction to Change from SSA to RRB

Medicare jurisdiction will be transferred from SSA to RRB when:

- A beneficiary who filed for and was entitled to Medicare coverage at SSA, files for and becomes entitled to an RR annuity.

  Exception: If Medicare coverage is based on the End Stage Renal Disease (ESRD) provision, coverage will not be transferred to RRB until the annuitant qualifies for coverage based on disability or a regular insured status

- A spouse, widow(er), surviving divorced spouse or remarried widow(er) receiving a DIB benefit and Medicare coverage at SSA attains age 65.

- An annuitant who had Medicare coverage at SSA based on one DOB, attains age 65 based on a later DOB established at RRB.

Although RRB has jurisdiction of Medicare coverage for all QRRBs, no special attempt will be made to obtain jurisdiction of QRRBs with Medicare coverage at SSA until an annuity is payable at RRB or until the attainment of age 65.

Note: In cases in which the RRB is paying the beneficiary's social security benefits (LAF E cases), Medicare jurisdiction will be established on RRB records based on information provided by SSA. This includes disabled spouses and cases involving ESRD.

810.45.3 Situations Which Cause Jurisdiction to Change from RRB to SSA

Medicare jurisdiction will be transferred from RRB to SSA when:

- A non-disabled applicant is at least 64 years and 9 months old but is not a QRRB or "deemed" QRRB;

- An annuitant, IPI or Medicare only enrollee who is not a "deemed" QRRB loses QRRB status (included are cases in which the employee dies and SSA has jurisdiction of survivor benefits, or a disabled child marries);

- A "deemed" QRRB is no longer entitled to SSA benefits; or

- A "deemed" QRRB is no longer entitled or potentially entitled to a railroad retirement annuity.

810.45.4 Where and What Type of Application to File

An individual who meets the eligibility requirements must file an application for Medicare alone or for retirement, survivor or disability benefits at the RRB or SSA or for inclusion as an IPI at the RRB. The following chart summarizes the type of application that may be filed and where it should be filed.

BENEFICIARY'S STATUS	ACTION REQUIRED TO ESTABLISH ENTITLEMENT TO MEDICARE
Not QRRB. Not insured at SSA.	Must file an application for Medicare only at SSA. Premiums will be paid directly to SSA.
Not QRRB. Insured at SSA.	Must file an application for Medicare only or for a benefit at SSA.
QRRB - Non-annuitant. Insured at SSA, but has not filed.	Must file an application for Medicare only or an application for benefits at SSA or at RRB.
QRRB - Non- annuitant. Insured at SSA and benefit certified to RRB (may be in suspense).	An application for Medicare only is not required. The beneficiary should be enrolled automatically by RRB. SSA certifies Medicare coverage to RRB when they transmit payment to us.
QRRB - Annuitant (may be in suspense) SSA status immaterial.	An application for Medicare only is not required. The beneficiary should be enrolled automatically.
QRRB - Filing for annuity in IEP, GEP or SEP, and not previously enrolled for Medicare; SSA status immaterial.	An application for Medicare only is not required. If the beneficiary is at least 64 years and 5 months of age and has not received an ID card, the question on the annuity application concerning SSA SMIB must be answered.
Victim of Chronic Renal Disease – QRRB status immaterial.	Must file an application for Medicare at SSA.

815.5 Situations That Initiate Enrollment Process

815.5.1 Medicare Only Application

The application initiates manual or computer action to determine the applicant's entitlement to Part A and, when appropriate, to Part B.

815.5.2 Annuity Application

The application initiates manual or computer action to determine the applicant's entitlement to an annuity and, when appropriate, to Parts A and B.

815.5.3 SS Certifications

RRB assumes Medicare jurisdiction for individuals whose SS benefits are certified to the RRB. The certification includes a determination of the beneficiary's entitlement to Part A and Part B and the effective dates of coverage. Based on this information, the RRB initiates manual or computer action to enroll the beneficiary.

815.10 Enrollments During The Initial Enrollment Period (IEP)

815.10.1 Automatic Enrollment - Attainments

Individuals who are entitled to a RR annuity, a SS benefit certified to the RRB, or for inclusion in the O/M for at least 6 months before becoming eligible for Medicare are enrolled for coverage automatically. Such enrollments are referred to as "attainments." The chart below indicates the month by which an individual must be on the rolls in order to be enrolled automatically.

If HI Is Effective In	**Beneficiary Must Be On The Rolls In The Previous**
January	June
February	July
March	August
April	September
May	October
June	November

July	December
August	January
September	February
October	March
November	April
December	May

These individuals will be enrolled for Part A and, if a resident of the U.S., will be automatically enrolled for Part B. Premium deductions are generally done timely and begin with the check paid on the first day of the month Medicare coverage begins. Little or no delay in receipt of the annuity or SS benefit should occur.

815.10.2 Accretions

Individuals who are not on the rolls as annuitants, IPIs, or SS beneficiaries at least 6 months before their Medicare coverage can begin must file a benefit annuity or health insurance application at RRB or SSA. Such enrollments are referred to as accretions. Manual action is generally required in the processing of accretion enrollments; premium deductions will not be initiated until after an annuity is put in payment status. Examiners may deduct SMI premiums from initial SS benefit certifications. Individuals enrolled as accretions will be enrolled for Part A coverage, and if residents of the U.S., Part B coverage, unless SMI was refused on the application.

815.15 Enrollments After The Initial Enrollment Period

815.15.1 General Enrollment Period (GEP) Enrollment

Individuals who have Part A coverage only may enroll for Part B by submitting a statement requesting Part B coverage, a completed Form G-44 or a completed Form G-44b during any GEP.

At the beginning of each year, enrollment kits consisting of a Form G-44, Form RB-20, Form G-860 and a return envelope addressed to P.O. Box 10794 are released to the following U.S. residents:

A. Beneficiaries who refused Part B coverage in the previous year,

B. Beneficiaries who withdrew from Part B coverage in the previous year, and

C. Beneficiaries whose Part B coverage terminated in the previous year for failure to pay premiums.

815.15.2 Deemed GEP Enrollment

Part A entitlement will be established for a beneficiary who files a Medicare only, annuity, or O/M application after his/her IEP. If the application establishes Medicare entitlement for the first time, the beneficiary does not have to file an application electing Part B in the next GEP. An application is deemed filed in the next GEP and the beneficiary will be automatically enrolled for Part B unless the person refused Part B on the application.

815.20 Medicare Claim Numbers

815.20.1 General

A Medicare claim number is the prefix and number established on the Health Insurance Master (HIM) to identify a beneficiary. Once a prefix and claim number is used for a beneficiary, it cannot be used to identify another beneficiary. If a beneficiary's RRB claim number (prefix + number) was previously used as another individual's Medicare claim number, another number, called a pseudo number, must be assigned to the beneficiary for his/her Medicare claim number. Refer to FOM-1-815.20.4 for further information about pseudo numbers.

815.20.2 Beneficiary Entitled to Annuity

An annuitant's RRB claim number (RR annuity or SS annuity certified to the RRB) will be used as his/her Medicare claim number as long as a Medicare record was not previously established on the claim number.

If a beneficiary is entitled to benefits under two RRB claim numbers, the primary number, employee or joint and survivor, will be used as his/her Medicare claim number.

815.20.3 Beneficiary Not Entitled to Annuity

A. Medicare Alone - A beneficiary who has filed for Medicare alone will be assigned a Medicare claim number as if he/she is entitled to an annuity.

B. Included in O/M - Beneficiaries included in the O/M will be assigned a Medicare claim number using the employee's number and a prefix as follows:

Spouse - MA

Child - CA

However, if this number was previously used as another individual's Medicare claim number, a pseudo number must be assigned for Medicare purposes.

815.20.4 Pseudo Number - Entitled or Not Entitled to Annuity

The HIM only accepts a prefix and number to identify each individual. In addition, the HIM considers the MA prefix plus a number and the WA prefix plus the same number to be identical Medicare claim numbers. However, RRB records use a prefix, number and payee code to identify each individual; the same prefix and claim number with a separate payee code is used to identify each individual when there is more than one beneficiary in the same category.

Whenever a beneficiary is enrolled for Medicare and his/her RRB claim number (prefix + number) was previously used as a Medicare claim number for another individual, a pseudo claim number must be assigned for Medicare purposes. The situations in which a pseudo number is required include:

A. A second or later disabled child is enrolled for Medicare,

B. A second or later wife is enrolled for Medicare,

C. A widow, if a previous wife was enrolled for Medicare, and

D. A second dependent parent is enrolled for Medicare.

The Medicare Unit (MU) will assign and process all pseudo numbers. The pseudo number will be the beneficiary's prefix plus his/her own SS number. Prior to December 1, 1974, the beneficiary's prefix plus a six-digit number from 995001 through 999995 was assigned as the pseudo number. MS will advise the beneficiary in a letter that a pseudo number is required, and provide the number that has been assigned.

815.25 Basis for Determining Effective Dates Of Coverage

815.25.1 Application Filing Date

When an individual files an application for Medicare only, for an annuity, or for inclusion in the O/M and is eligible for Part A coverage in or before the month of filing, the filing date will be used to establish the Part A effective date. If it is during the individual's Part B IEP or GEP, the same filing date will also be used to establish the Part B effective date.

815.25.2 Application Deemed Filed

A. Annuity or O/M application filed prior to Part A enrollment period and prior to Part B IEP - An application for Part A and for an automatic election of Part B is deemed filed during the first 3 months of the Part A and B enrollment periods and is used to establish the earliest possible effective dates for Parts A and B.

B. Application filed during Part A enrollment period, but after Part B IEP - The application filing date will be used to establish the Part A effective date. If this is

the first time Medicare coverage is established for the individual, an application for Part B coverage will be deemed filed during the next GEP and will be used to establish the Part B effective date. Otherwise, the individual must actually file an election for Part B coverage during a GEP.

815.25.3 Date of Birth on First Day of the Month

An individual whose birthday is on the first day of the month attains age 65 on the last day of the previous month and the earliest effective date for Medicare coverage would be the first day of the month prior to the month of his or her birthday. If such an individual files an application in the month of his or her birthday, Part B coverage would not be effective until the first of the second month following the beneficiary's month of birth.

When developing an application, determine if the individual thought he or she had attained age 65 on the actual date of birth, or the day before. If so, and if the applicant wants the earliest Part B effective date, submit a statement from the applicant. MS will review the statement and determine the earliest effective date.

815.25.4 Discrepant Date of Birth - Applicant Older Than Originally Thought

An individual who has relied on particular evidence for his or her DOB and subsequently locates better evidence that establishes an earlier DOB, may fail to file an application during the correct IEP, which may have already passed.

A. Applicant files during IEP based on erroneous younger DOB - A statement should be submitted from the applicant explaining why he or she did not file in the IEP.

MS will review the statement and may establish a deemed IEP based on the erroneous younger DOB. The applicant's Part B effective date and premium rate will be based on the deemed IEP.

The Part A effective date will be established based on the actual application filing date and correct DOB.

B. Applicant files after IEP based on correct DOB - A statement should be submitted from the applicant explaining why he or she did not file in the IEP. MS will review the statement and establish the Part A effective date based on the actual application filing date and correct DOB. Part B will be determined as follows:

1. If the application was filed during a GEP, the applicant is enrolled for Part B in the GEP without a premium increase; or

2. If the application is not filed during a GEP, the applicant is advised to file during the next GEP or in the deemed IEP (based on the erroneous younger DOB), whichever will result in the earlier effective date.

815.25.5 Discrepant Date of Birth - Applicant Younger than Originally Thought

An individual who has relied on particular evidence for his or her DOB and subsequently locates better evidence which establishes a later DOB may be enrolled for Medicare erroneously. Refer to item D of FOM-1-810.35.2, FOM-I-915.20.1, and FOM-I-915.20.3 for an explanation of how such a situation is handled.

Submit proof of the new alleged DOB to APPLE and image any documentation. Prepare an e-mail to Medicare Unit (MU) and Retirement and Survivor Benefits Division (RSBD) explaining how and when the applicant discovered the new DOB evidence. On the e-mail, advise that the new DOB could affect Medicare coverage.

Refer to FOM-I-845.5.6 for additional information about date of birth discrepancies.

815.30 Establishing a Medicare Record

Action to establish a Medicare record for an individual involves the Railroad Retirement Board, the Social Security Administration and the Centers for Medicare & Medicaid Services (CMS).

815.30.1 Eligibility Determination

A determination of Medicare eligibility can be made mechanically or manually. At the RRB, the eligibility determination for most retirement applications, Medicare only applications, and attainments are made mechanically using retirement and research computer programs. These determinations are subsequently passed to the Medicare computer programs. Eligibility determinations for survivor applications, accretions, some retirement applications, some Medicare only applications, and some attainments are made by examiners. The examiner completes an input form and enters the information into the Medicare computer programs.

815.30.2 RRB Initial Computer Processing

Information about eligible aged and disabled Medicare beneficiaries is entered into the Medicare computer system MIRTEL - Medicare Information Recorded, Transmitted, Edited and Logged. MIRTEL edits the information, sets up a pending record for the beneficiary, and transmits the information to the Master Benefit Record (MBR) at SSA. The purpose of this action is to see if SSA has already established a Medicare record or has conflicting information. We are, in other words, getting clearance from SSA that there is no conflict.

815.30.3 SSA Computer Processing

The MBR is the computer system at SSA that contains information about all beneficiaries entitled to SS benefits. The MBR is also earmarked when we transmit information from MIRTEL as indicated in FOM-1-815.30.2 to show that RRB has jurisdiction of Medicare. If SMI premiums are being collected by SSA, SSA will stop

deducting premiums and transfer jurisdiction to RRB. The information from MIRTEL is updated with any Medicare information from the MBR. The MBR then transmits a record to the Health Insurance Master record (HIM) and, at the same time, a reply to the RRB's MIRTEL system.

815.30.4 Health Insurance Master (HIM) Record Processing

Although the RRB establishes entitlement, enrolls, collects premiums and maintains a record for all QRRBs and deemed QRRBs, SSA in Baltimore maintains the HIM that permits and records payment of HI-SMI benefits. The information transmitted from the MBR is edited and a record is established on the RR portion of the HIM. If a record was previously established on the SS portion of the HIM, it is cross-referenced to the RR number.

If a problem is encountered during the editing or cross-referencing process, or in establishing the HIM record, a reject will be transmitted to the RRB and a HIM record will not be established.

815.30.5 RRB Final Processing

When MIRTEL receives the reply from SSA, it assumes a record will be established on the HIM. The pending record on MIRTEL is cleared and updated with any information from the MBR, a Medicare identification card is released and collection of SMI premiums is initiated.

815.35 Medicare Identification Card

Medicare cards are produced from two separate data processing programs. One of the programs processes replacement Medicare card requests entered using the MEDCOR Activity 62 (Duplicate Medicare Card Request) screen. The other program, which is part of the MIRTEL processing, generates (1) Medicare cards for individuals on the rolls who attain Medicare eligibility, (2) initial Medicare cards for new enrollments during an Initial Enrollment Period (IEP), and (3) revised replacement cards for individuals whose coverage changes, e.g. the beneficiary declines Part B coverage, Part B coverage is terminated due to non-payment of premiums, jurisdiction for Medicare is transferred from SSA to RRB, the beneficiary enrolls in Part B during a General Enrollment Period or Special Enrollment Period, or whose Health Insurance Claim Number changes, e.g. spouse-to-widow conversions.

In October 2007, we began revising the two data processing programs to allow printing of all Medicare cards on tear and water resistant paper affixed to the bottom, center of a full page (8½ x 11) document. A Form RL-860 series letter is printed above the peel-off Medicare card. The revised forms are printed using a digital imaging system, rather than an impact printer. The revised format improves the print quality on the cards, safeguards personally identifiable information displayed on the cards, and streamlines the mailing process. The form number for all Medicare cards issued using the revised programs is Form G-41, with a 12-2006 version date.

815.35.1 Initial ID Card

A Medicare identification (ID) card is automatically released to the beneficiary after MIRTEL's pending record is cleared. The card serves as a notice to the beneficiary of his or her coverage and the identifying information established on the HIM. A Booklet RB-12, *Welcome to Medicare*, is mailed with the initial Medicare card to beneficiaries residing in the United States. A *Medicare and You* handbook is also mailed to the beneficiary separately by CMS.

The Medicare ID card will show the beneficiary's name in a specific format. The card will be formatted to match the name format of the Medicare master records. The card will show the beneficiary's first name or initial, middle initial only, and the surname. The system will **not** allow for the following:

- First initial and middle name (i.e. J. Alexander Hamilton)
- Hyphenated last names (i.e. Patricia William-Jones)
- Suffixes (i.e. Michael Luther Sr. or Len Washington III)

Medicare ID card Form G-41 (version 04-1973) is released to beneficiaries enrolled for Part B under the automatic enrollment (attainment) provisions. The back of the card can be used by the beneficiary to decline Part B coverage. (**Note**: Changes to the program to print initial Medicare ID cards in attainment cases are targeted for completion in late 2008. When completed, the program changes will enable printing of the ID cards on the 12/2006 version of Form G-41.)

815.35.2 Temporary Notice of HI Eligibility

A. General - An applicant for Medicare will normally receive an HI card within 30 to 60 days after filing. If the applicant will need medical care before receipt of the HI card, the D/O may issue a temporary notice of HI eligibility (Form Letter RL-345) if all of the following criteria are met:

1. An application has been filed. (It may be filed at the time the notice is issued.)

2. The applicant's eligibility as a QRRB is apparent or has been determined.

3. Health insurance services are needed immediately or will be needed before an HI card can be issued in normal operations.

4. MS has been notified of the D/O's intention to issue the notice or the D/O has been authorized by MS to do so.

Since the applicant will make early use of the temporary notice, MS must immediately establish the HI record so that it is available when an intermediary queries SSA for eligibility information. To do this, MS will initiate clearance with

SSA based on data provided by the D/O or, if clearance has already been initiated but is pending, take any action needed to expedite or force clearance.

B. Action by D/O to determine eligibility - Before issuing a temporary notice, the following information should be considered.

1. Need for temporary notice - The applicant must be able to give reasonable assurance that he or she will be using covered services in the immediate future and before he or she could normally receive the HI card.

2. Proofs - The applicant must submit acceptable proof of age and other proofs required to substantiate the claim.

3. 120 months of RR service, or 60 months of service after 1995 (employee/spouse applicant) - The employee must have 120 railroad service months, or at least 60 months of service after 1995. Verify that the employee has sufficient service months from his or her Form BA-6, or by checking EDMA.

4. Insured status (survivor applicant) - The D/O will make an insured status determination of whether RRB has jurisdiction of the survivor claim.

5. Jurisdiction - SSA has a similar procedure to provide temporary notices of HI eligibility. Therefore, refer the applicant to SSA if:

   a. SSA has jurisdiction of survivor benefits, or

   b. The employee has less than 120 months of RR service, or fewer than 60 months of RR service after 1995.

C. Telephone notice to MS - When it is determined that an apparently eligible applicant needs a temporary notice of HI eligibility, call MS and furnish the data required as follows:

1. RRB claim number, symbol, and prefix - Check EDMA to determine that no 6-digit claim number was previously established; furnish the employee's SS number with the appropriate symbol and prefix. If there is a known prior claim number, furnish it.

2. Date of birth

3. Beneficiary SS number - If the applicant is other than an employee, his or her own SS number is required.

4. Employee's SS number - This is required for any type of beneficiary.

5. Status of annuity - Furnish the type of application filed, i.e., Form AA-1, AA-6, AA-17, etc. If the applicant is a survivor, indicate if annuity payments cannot be made because of work deductions.

6. SMI effective date - Furnish this date only if a timely election is made. Do not provide a date if the applicant is not in an enrollment period.

7. HI effective date - The earliest date the applicant became a QRRB, or 6 months prior to the filing date of an HI or annuity application, whichever is later. The effective date for the divorced spouse of a disabled employee may be 12 months before the HI or annuity application filing date.

D. Temporary notice of HI eligibility - Issue Form Letter RL-345 to an employee, spouse or widow applicant as evidence of entitlement to health insurance benefits. Forward a copy of the notice to MS.

815.35.3 Replacement Medicare ID Cards

Field offices may generate a replacement Medicare card for release to a beneficiary who reports his or her card lost, stolen, misplaced or destroyed. Field offices should prepare a MEDCOR Activity 62 to generate the replacement Medicare card. The card will be printed with Form RL-865. Access the MEDCOR Duplicate Medicare Card Request screen by entering 62 in the Activity Input field on the main MEDCOR MENU screen. Here are step-by-step instructions.

<table>
<tr><th>Step</th><th>Action</th></tr>
<tr><td>1</td><td>Select MEDCOR (27) from the RRAPID Main Menu.</td></tr>
<tr><td>2</td><td>Complete the following fields on the MEDCOR Menu screen:
<table>
<tr><td>Unit</td><td>Enter “BFS”</td></tr>
<tr><td>Claim Number</td><td>Enter the beneficiary’s RRB claim number, including symbol and prefix.</td></tr>
<tr><td>Ben SSA Number</td><td>If the beneficiary is other than an employee and does <u>not</u> have a pseudo number, enter the beneficiary’s SS number. Otherwise, leave blank.</td></tr>
</table></td></tr>
</table>

		Pseudo Number	**If the beneficiary is other than an employee and has a pseudo number,** enter the beneficiary's pseudo number. Otherwise, leave blank.
		Activity Input	Enter "62"
	Press Enter.		
3	Review the information on the Activity 62, Duplicate Medicare Card Request screen, to ensure it is correct. If okay, press PF2. The message "To Add, Press PF2 Again" will appear. Press PF2 again to complete the request. If the address on record is incorrect or the annuitant requests that the duplicate Medicare card be mailed to a temporary address, you can replace the prefilled address with the new or temporary address before pressing PF2 twice to complete the transaction. Keep in mind that this only changes the address for purposes of mailing the card. If a permanent address change is needed, you must complete a FAST-COA and/or MEDCOR Activity 22L.		

Note: Do **not** enter 62L in the Activity Input field; enter 62. The L refers to the type of 62 activity. All activity screens that are accessed directly from the main MEDCOR Menu are "long" form versions. If you enter an "11" in the Activity Input field on the main MEDCOR MENU screen, you access the MEDCOR Miscellaneous Input Screen. This screen is referred to as the "short" form version. Various activities can be created using the MEDCOR Miscellaneous Input Screen. If you request a 62 activity from the MEDCOR Miscellaneous Input Screen, the system generates a 62S, or the "short" form version. The Pending Activities List screen and the Completed Activities List screen on MEDCOR will show either a 62L or 62S depending on which screen was added to generate the duplicate Medicare card. Requests for Medicare cards using the activity 62L are generated daily. Instructions for using the MEDCOR Pending Activities List Screen (Screen MCMU017) can be found in RCM 3.13.19. Instructions for using the MEDCOR Completed Activities List screen (Screen MCMI018) can be found in RCM 3.13.20.

Field offices should use the MEDCOR Duplicate Medicare Card Request screen to process all requests for replacement Medicare cards, except in cases involving emergency situations. In emergency situations, the field office may generate a replacement Medicare card using RRAILS Form RL-865-F. See FOM-I-1745, Form RL-865 for complete instructions on preparing replacement Medicare cards in emergency situations.

815.35.4 Automated Internet Requests for Replacement Medicare ID Cards -

Requests for replacement Medicare cards received from beneficiaries using the Benefit Online Services and from customer service representatives using the Palmetto GBA application are sent to MEDCOR each night via the Automated Internet Request (AIR) application.

The transactions will be shown as 'completed' in their respective database, once the transaction has been processed for handling. If a transaction does not pass one or more edits, a referral will be generated to USTAR.

Field offices have responsibility for handling the referrals and therefore, will need to access USTAR each business day in order to review all requests for Medicare cards that rejected from the AIR processing.

The chart below provides a list of the AIR referral codes, a description of each referral code, and the action needed to resolve the referral.

Record Status Code	Referral Code	Referral Description	Action Needed
	M00	No record found under this SSN.	Contact beneficiary for correct number
01	M01	Annuity APPL filed, screening reply pending.	Contact the Medicare Unit for status.
02	M02	No ANN APPL filed, screening reply pending.	Contact the Medicare Unit for status.
03	M03	ANN in SUSP	Contact the Medicare Unit for status.
04	M04	ANN in SUSP	Contact the Medicare Unit for status.
05	M05	Attainment, screening reply pending.	Contact the Medicare Unit for status.
	M09	Dual Annuitant	Release Medicare card under correct claim number.

90	M90	Cessation of Disability – No longer entitled to Medicare	Contact the beneficiary.
98	M98	No longer QRRB	Contact the beneficiary.
99	M99	BENE deceased	No card should be released. Contact requestor.
	M10	Zip Code reported does not match Zip code on record.	Contact the beneficiary for correct zip code.
	M11	Transaction not allowed. A MEDCOR transaction is already pending for this claim number.	Only one transaction allowed per day. Check to see what is pending, if different transaction, enter request next day.

825.5 Who May Claim Payment for Part A (HI) Benefits - Beneficiary Alive

The provider of Part A services will have the beneficiary sign a claim form or will use the beneficiary's signature on its records and will submit all required admission information and billing copies to its intermediary. The intermediary will process the information and make payment to the provider.

EXCEPTION: If emergency inpatient services were provided by a nonparticipating hospital that does not bill for Medicare patients, the beneficiary will have to file a claim for payment. Such beneficiaries should be referred to the Social Security Administration (SSA) district office for development and filing of a claim.

825.10 Who May Claim Payment for Part B (SMI) Benefits - Beneficiary Alive

825.10.1 Services Performed by Part A Provider in the U.S.

In many instances the beneficiary does not have to file a claim for payment of Part B benefits. The provider will file a claim for payment with its intermediary as it would for Part A services.

825.10.2 Part B Services Performed by Physician or Supplier

When a beneficiary receives Part B services, a claim must be submitted before payment can be made. There are two methods to claim benefits.

A. Beneficiary request payment - The beneficiary submits a claim to the Medicare Part B carrier. The Medicare Part B carrier will process the claim and, after the deductible has been met, will pay 80% of the reasonable charge to the beneficiary.

B. Physician or supplier requests payment - This method is often called the Assignment Method. The physician or supplier files the claim for payment with the Medicare Part B carrier and agrees to accept the approved charge as full payment for services. In addition, the beneficiary must agree on this method of payment. The physician or supplier can only bill the beneficiary for the amount of the deductible and/or 20% of the approved charge, i.e., the amount not paid by Medicare. The Medicare Part B carrier will process the claim and after the deductible has been met will pay 80% of the approved charge to the physician or supplier.

825.10.3 Beneficiary Incapable of Signing Claim Form

The beneficiary ordinarily signs the admissions and/or claims form requesting Medicare payment. If the beneficiary is in such bad physical or mental condition that (s)he cannot or should not transact business, the claim may be submitted and signed by one of the following:

A. Representative payee,

B. Legal representative,

C. Relative,

D. Friend,

E. Governmental agency which provides assistance, or

F. Institution which provides care or support.

825.15 Who May Claim Payment For Benefits - Beneficiary Deceased

825.15.1 Part A Services Not Paid For

If the provider would file for and receive payment for Part A services before the beneficiary's death, the provider will do so after the beneficiary's death and payment will be made to the provider.

If the beneficiary would file for payment of Part A services (emergency inpatient services at a nonparticipating hospital), the services must be paid before payment can be made.

825.15.2 Part B Services Not Paid For

If the physician or supplier had agreed to accept assignment before the beneficiary's death, payment will be made to the physician or supplier.

If the physician or supplier had not agreed to accept assignment before the beneficiary's death, he may file a claim form accepting assignment after the beneficiary's death.

If the physician or supplier refuses to accept assignment, an individual who has paid the bill(s) or who accepts responsibility for payment may file a Form G-740s with the Medicare Part B carrier for payment. If the bill(s) have not been paid, the following will be required in addition to the Form G-740s.

A. A signed statement which should have similar language to the following paragraph:

"I have assumed the legal obligation to pay (name of physician or supplier) for services furnished (name of deceased beneficiary) on (date{s}). I hereby claim any Medicare benefits due for these services."

B. A signed statement by provider or physician indicating he will not accept assignment.

C. An itemized bill identifying "the individual claiming benefits" as the person to whom the physician or supplier looks for payment.

825.15.3 Part A or B, Services Paid by Deceased Beneficiary

If the beneficiary paid for the services before death but had not filed for reimbursement, person(s) as outlined below should contact the Medicare Part B carrier to secure Form HCFA-1660 to file for benefits.

A. If a legal representative has been appointed, he/she should file a claim for benefits.

B. If a legal representative has not been appointed, the beneficiary's survivors in following order of priority are eligible to file a claim for benefits.

1. The surviving spouse who was either living in the same household with the beneficiary at death or entitled to monthly SS or RR benefits on the same earnings record as the beneficiary for the month of death;

2. The child(ren) of the beneficiary who was entitled to monthly SS or RR benefits on the same earnings record as the beneficiary for the month of death;

3. The parent(s) of the beneficiary who was entitled to monthly SS or RR benefits on the same earnings record as the beneficiary for the month of death;

4. The surviving spouse of the beneficiary who was not living in the same household nor entitled to monthly SS or RR benefits on the same earnings record as the beneficiary for the month of death;

5. The child(ren) of the beneficiary who was not entitled to monthly SS or RR benefits on the same earnings record as the beneficiary for the month of death;

6. The parent(s) of the beneficiary who was not entitled to monthly SS or RR benefits on the same earnings record as the beneficiary for the month of death.

825.15.4 Part A or B, Services Paid by Person Other than Deceased Beneficiary

When services have been paid for by a person other than the deceased beneficiary, a claim for benefits should be submitted by the person who paid for the services. If the person who paid for the services dies before payment is made, his/her estate does not become entitled; the surviving relatives of the beneficiary become entitled and should submit a claim.

825.20 When A Claim for Benefits Must Be Filed - Part A Or Part B

The beneficiary's request and the provider's claim must be filed on or before December 31 of the calendar year following the year in which the services were furnished. Services furnished in the last quarter of the year may be considered timely filed if submitted by the end of the calendar year after the year the services were furnished.

825.25 Filing A Claim For Benefits

825.25.1 Part A, Services Furnished in the U.S.

In most instances, the provider of the Part A services will file a claim and submit the required evidence to its intermediary. If emergency inpatient services were provided by a nonparticipating hospital that does not bill for Medicare patients, refer the beneficiary to the SSA district office to file a claim.

825.25.2 Part B, Services Furnished in the U.S.

A. Forms for claiming benefits - There are two forms that should be used to file for Part B benefits for services furnished in the U.S.

1. G-740s should be used by the beneficiary, the person(s) who paid the bill or assumed responsibility for payment, when such person(s) are filing for benefits. The form cannot be used if the physician or supplier will accept assignment. This is an RRB-stocked form and has the Medicare Part B Carrier's address pre-printed on it.

2. HCFA-1500 should be used by the physician, supplier or provider when filing for benefits. This is the same form used for SSA Medicare beneficiaries and may be used whether or not the physician or supplier is accepting assignment. The form is not stocked by the RRB and must be requested from the Centers for Medicare and Medicaid Services.

B. Where a claim must be filed - All beneficiaries receiving benefits from the RRB should submit claims for payment to the Medicare Part B Carrier with the following exceptions:

1. The services are furnished by a General Pre-Payment Plan which deals directly with CMS; or

2. The beneficiary is enrolled under a state buy-in agreement involving a state agency which has entered into an agreement to act as a carrier.

If a beneficiary advises he is unable to contact Palmetto GBA because the toll free number is busy, suggest the call be made early in the morning or late in the afternoon because the volume of calls are lightest at those times. If repeated inquiries are received, contact the assistant manager or supervisor of beneficiary services at Palmetto GBA.

Any inquiries you have on behalf of a beneficiary should be made to the assistant manager or supervisor of beneficiary services.

825.30 General Processing Procedure By The Medicare Part B Carrier For Payment Of Part B Benefits

The Medicare Part B carrier determines the beneficiary's entitlement status based on its own records or by querying the records at CMS.

825.30.1 Beneficiary Has Part B Coverage

If the beneficiary is entitled, the claim is reviewed to determine whether the services and/or supplies are covered and the reasonable charges are determined.

The approved charge is the lowest of the charge actually billed, the customary charge or the prevailing charge. The customary charge is the amount the physician or supplier usually billed his patients for the same service or supplies in the previous calendar year. The prevailing charge is the lowest customary charge which is high enough to include 75 percent of the services billed for the previous year in a particular locality. The yearly increase in the prevailing charge for physician’s services is further limited by the amount of the economic index for each year.

The beneficiary's deductible status is then determined. Each year, the Medicare Part B carrier queries the records at CMS for each claim submitted by or for the beneficiary until the deductible is met.

Once the deductible has been met, The Medicare Part B carrier relies on its own records for the remainder of the year. CMS is notified to update its records.

If payment is being made to the beneficiary, he receives an Explanation of Medicare Benefits (EOMB) with the benefit check. In assignment cases, both the physician or supplier and the beneficiary are sent an EOMB. The physician or supplier receives a composite check covering payment of several claims on a periodic basis, usually once a week or once a month.

825.30.2 Beneficiary Does Not Have Part B Coverage

If the beneficiary is not entitled to benefits, a denial letter will be released.

If the beneficiary advises (s)he is entitled, the Medicare Part B carrier will check its records to determine if accurate data was used in its transmission to CMS. If so, the Medicare Part B carrier will contact MS for verification of coverage. If coverage is verified, MS will be asked to correct the records at CMS. The Medicare Part B carrier will then ask MS for authorization to make a payment manually if:

A. The claim(s) submitted total $100; and

B. The claim is 90 days old.

825.35 Notification Of Payment For Services Furnished In The U.S.

825.35.1 Part A Notification

When the intermediary makes payment to the provider, it notifies CMS. CMS updates its records and sends a notice, RR-100, to the beneficiary explaining the benefits paid.

If the claim is denied, the intermediary sends a letter, HCFA-1533, to the beneficiary. A copy may be sent to the provider.

CMS would prefer that the beneficiary contact the intermediary when requesting information about, or a duplicate of, the notification letter. However, if the beneficiary wishes to request this information directly, they can write to:

Centers for Medicare & Medicaid Services

Correspondence Branch, OMB, RM B3

1717 Equitable Building

6325 Security Boulevard

Baltimore, MD 21207

Any inquiry sent to CMS should contain the beneficiary's full name, address, and Medicare claim number.

825.35.2 Part B Notification, Services Performed by Part A Provider

The Part A intermediary sends a notice, Your Record of Part B Medicare Benefits Used, when payment is made to the provider. When the Part B deductible status was not known at the time the provider collected from the beneficiary for services, the intermediary will refund any excess amount collected to the beneficiary. The refund

check will usually accompany the notice. Duplicates of the notification can be requested as indicated in FOM-I-825.35.1.

825.35.3 Part B Notification, Services Performed by Physician or Supplier

The Medicare Part B carrier sends a notice, Explanation of Medicare Benefits (EOMB), to the beneficiary when it has finished processing a claim. If payment is being made to the beneficiary, the notice will accompany the check. In assignment cases, a copy of the notice is sent to the beneficiary. Any beneficiary needing a duplicate notification should be referred to the Medicare Part B carrier. Written requests to the Medicare Part B carrier should contain the beneficiary's full name, address and Medicare claim number.

830.5 General

A beneficiary who believes that a decision on his claim for benefits is incorrect or who does not fully understand the notice should first seek assistance from the intermediary for Part A benefits, or the durable medical equipment regional carrier (DMERC) for durable medical equipment or Palmetto GBA for other Part B benefits. If a beneficiary contacts a field office regarding a Medicare payment after having contacted the intermediary, the DMERC or Palmetto GBA, attempt to answer his questions. Contact the intermediary or the DMERC or Palmetto GBA if necessary. If the beneficiary is still dissatisfied, he may request further consideration of his claim as explained in this chapter. RCM reference is 3.1.110 through 3.1.114.

If a beneficiary wishes to file for the reconsideration of benefits payable through an HMO/CMP, the field office should accept the written reconsideration request and send it directly to the HMO/CMP. RCM reference is 3.1.115.

Determinations involving eligibility for Medicare - Part A and Part B are considered initial decisions of the Office of Program - Operations and, as such, have the same reconsideration and appeal rights as retirement and survivor benefits under the Railroad Retirement Act. RCM reference is 3.2.140 and 3.2.141. Initial Medicare decisions include:

- Initial determinations of HI/SMI effective dates,
- Changes in HI/SMI effective dates,
- Denial of HI/SMI applications,
- Award of Canadian HI payments,
- Termination of HI/SMI coverage (except death and voluntary terminations).

830.10 Appeals Process - Part A or Part B Eligibility

When a person has questions concerning a Part A or B eligibility decision for coverage, attempt to explain the decision. If the person is not satisfied by the field office explanation, proceed as explained below. RCM reference is 3.2.140 and 3.2.141.

830.10.1 Request for Reconsideration

Secure a written request for reconsideration within 60 days of the notice of the decision when an individual wishes a review. The request should contain an explanation of why the person believes the decision to be incorrect. Forward requests for reconsideration to Assessment and Training (A&T) - Recon Section.

Note: The reconsideration and appeals wording normally used on initial decisions is not currently included on mechanically released Medicare enrollment packages. If a person requests reconsideration in this case, take his statement and send it to A&T - Recon Section A&T - Recon Section will determine if the request is timely.

830.10.2 Request for Appeal

A beneficiary who is not satisfied with a reconsideration decision may appeal to the Bureau of Hearings and Appeals (H&A) within 60 days of the reconsideration by filing Form HA-1. Form HA-1 is available in field offices. A completed Form HA-1 should be directed to H&A. If an individual is dissatisfied with the decision of an appeals referee in response to the filing of a Form HA-1, he may appeal to the three-member Board by filing a Form HA-2 within 60 days of the appeal referee's decision. Form HA-2 should be forwarded to the Office of the Secretary of the Board. For additional information about the appeals process, refer to FOM-1, Article 1.

830.15 Appeals Process - Part a Services

830.15.1 Services Furnished in Canada

Since Canadian claims under Part A are processed and paid by the RRB using funds from the RR account, Railroad Retirement Act appeals procedures apply. To initiate the process, a written statement requesting reconsideration must be submitted within 60 days of the decision notice to the beneficiary on the claim. Forward the statement to Assessment and Training (A&T) - Recon Section. The RCM reference is 3.2.140 and 3.2.141.

830.15.2 Services Furnished in U.S. or Mexico

The appeals procedure consists of three steps: reconsideration, hearing and a court review. The beneficiary must request each step within certain time limits and the amount in controversy must meet certain minimum dollar amount criteria.

A. **Reconsideration by Part A Intermediary (or HMO/CMP) -** A request for reconsideration must be made in writing within 60 days after receipt of the Notice of Utilization, the determination letter released by the intermediary directly to the beneficiary. The claim(s) in question can be for any amount. RCM reference is 3.1.113.

Requests for reconsideration of payment furnished by an HMO/CMP should be sent directly to the HMO/CMP. The RCM reference is 3.1.115.

Any inquiry received from a beneficiary must be stamped to show the receipt date to protect the filing date for reconsideration. A request for reconsideration should include the beneficiary's HI claim number, name, address, a brief reason for dissatisfaction and a copy of the Notice of Utilization. Indicate on the statement that it was prepared in the field office. Forward the request and a copy

of the Notice of Utilization to the intermediary whose address is shown on the Notice of Utilization. If the intermediary cannot be determined, secure the information from the nearest Social Security Administration (SSA) district office. **Do not** send the reconsideration request to A&T - Reconsideration Section.

If the complaint is received by telephone, advise the beneficiary to send a request for reconsideration to the intermediary. If the intermediary cannot be determined, advise the beneficiary to send a request for reconsideration to you. Upon receipt, contact the nearest SSA district office and determine where the request should be sent.

B. **Hearing** - If the beneficiary is dissatisfied with the results of the reconsideration, a hearing may be requested. The request must be made in writing within 60 days after receipt of the reconsideration notice and the amount in controversy must be at least $100.

If you receive an inquiry by telephone or in person and an SSA office is conveniently located, advise the beneficiary to contact the SSA district office. If the beneficiary will contact the SSA district office in person, (s)he should take the reconsideration notice along whenever possible.

If an SSA office is not convenient, or you receive a written inquiry, you may accept a request for a hearing. The request must include the beneficiary's HI claim number, name, address, brief reason for dissatisfaction and a copy of the reconsideration notice. Send the material to the SSA district office. Advise the beneficiary (s)he will receive notification from SSA.

C. **Court Review -** If the beneficiary is still dissatisfied after the hearing examiner's decision and the amount in controversy is at least $1,000, civil action may be initiated to request a judicial review with a U.S. District Court. The action must be initiated within 60 days after the mailing of the notice of the hearing decision.

830.20 Appeals Process - Part B Services

The appeals procedure consists of two steps: informal review and fair hearing. The beneficiary must request each step within certain time limits and meet a minimum dollar amount in controversy before a fair hearing can be held.

830.20.1 Informal Review

A request for a review must be made in writing within 6 months of the date of the "Explanation of Medicare Benefits" notice. The claims in question can be for any amount.

The beneficiary should complete Form G-790 (original only) or submit a statement with the same facts. If the beneficiary has additional evidence, it should be attached to the

Form G-790 or the statement. Send the request to Palmetto GBA or the durable medical equipment regional carrier (DMERC). The RCM reference is 3.1.114.

Requests for reconsideration of payment furnished by an HMO/CMP should be sent directly to the HMO/CMP. The RCM reference is 3.1.115.

A review of the entire claim will be done by someone who was not involved in the original decision. A letter will be sent to the beneficiary with an explanation and the result of the review.

830.20.2 Fair Hearing

If the beneficiary is dissatisfied with the results of the informal review, (s)he may request a Fair Hearing. The request must be made in writing within 6 months of the date of the letter notifying the beneficiary of the result of the informal review and the amount in controversy must be at least $100. The $100 may be accumulated during the last 6 months.

The beneficiary should complete Form G-791 (original only) or submit a statement with the same facts. A copy of the informal review should be attached as should any additional evidence. Send the request to Palmetto GBA or the DMERC that conducted the informal review.

Palmetto GBA or the DMERC will select a person to act as a hearing officer. The person is usually an attorney, but did not have had any previous involvement in the case. The hearing officer notifies the beneficiary of the time and place of the hearing, the specific issues to be resolved, the beneficiary's right to counsel or other representation, the right to bring witnesses, the importance of bringing all evidence and the necessity of promptly notifying the hearing officer in writing if the beneficiary has any objections. After the hearing, the hearing officer will make a decision and a copy will be mailed to the beneficiary.

If the beneficiary does not wish to appear or have a representative appear at the hearing, (s)he must waive this right in writing. The statement of waiver must be sent to the hearing officer. The hearing officer will then make a decision based on the evidence previously submitted. A copy of the decision will be mailed to the beneficiary.

830.20.3 Appeal with the Centers for Medicare & Medicaid Services (CMS)

The Omnibus Budget Reconciliation Act of 1986 expands Part B appeal rights for items or services furnished after January 1, 1987. A claimant must first invoke the established appeal procedures with Palmetto GBA or the DMERC, then they may proceed with the following:

- If Palmetto GBA or the DMERC maintains its original decision and the amount in controversy is $500.00 or more, claimants may request a hearing through CMS before an SSA Administrative Law Judge (ALJ).

- If the ALJ decision is unsatisfactory to the claimant, and the amount in controversy is at least $1,000.00, an appeal may be initiated in the Federal court system.

- Either dollar limit may be reached by combining two or more claims.

A request for an ALJ hearing can be made by submitting a written signed statement within 60 days of the date of receipt of the carrier hearing officer's decision. Requests for Part B ALJ hearings should be forwarded to:

Centers for Medicare & Medicaid Services
Medicare Hearing Work Group
P.O. Box 26683
Baltimore, MD 21207

The Centers for Medicare & Medicaid Services controls requests and forwards them to a designated ALJ through the SSA Office of Hearings and Appeals. Any subsequent development will be handled by the ALJ assigned to the case.

835.5 General

A benefit overpayment occurs when more than the correct amount of Part A or B benefits was paid by the intermediary or carrier. The process of recovering the overpayment does not involve the district office unless you are asked to deliver an overpayment letter by OPR. This section provides a brief summary of the process to help you answer any general questions you may be asked.

All benefit overpayments are handled in the same general manner except for Part A benefit overpayments made to Canadian residents. These are treated as railroad retirement annuity overpayments.

835.10 Liability For Medicare Overpayments

835.10.1 Provider of Services, Physician or Supplier Liable

A provider of services, physician, or supplier is deemed to have knowledge of the laws and regulations which apply to the payment of Medicare benefits. Therefore, the provider or other person is liable for an overpayment made to him if:

A. The overpayment was caused by a mathematical or clerical error;

B. The overpayment was due to a duplicate payment which was retained by the provider or other person;

C. The beneficiary did not receive the services (or items) paid for;

D. The provider or other person accepted payment for services (or items) which he knew or should have known were not reasonable or necessary for treatment;

E. The overpayment resulted from a charge in excess of the reasonable charge;

F. A provider or other person, not qualified under SSA regulations to perform services (e.g., an immediate relative or member of the beneficiary's household), accepted payment for services;

G. A physician or supplier collected a payment on the basis of an assignment without disclosing that he had already been paid by the beneficiary.

835.10.2 Beneficiary Liable

A beneficiary is liable for repayment of overpayments made direct to him. He is also liable for overpayments made to a provider of services, supplier or physician on his behalf if he received the services, the services were necessary, the charges were reasonable and:

A. The overpayment resulted from failure to properly apply the deductible or coinsurance; or

B. The overpayment resulted from benefits paid to the provider of services under the guarantee provision of section 1814(e) of the Social Security Act; or

C. The overpayment resulted from some other cause (e.g., non-entitlement or non-coverage) and the provider or other person acted reasonably in filing for and accepting Medicare payments. The provider or other person will be considered to have acted reasonably if he:

   1. Had no basis for questioning entitlement or coverage or, if he did, brought it promptly to the attention of the intermediary or carrier; and

   2. Complied with all pertinent regulations and had reason to believe the services were covered.

D. The provider or other person was without fault in causing the overpayment (effective with notices of payment sent after 10-30-72).

835.10.3 Dual Liability

The provider, physician or supplier and the beneficiary are jointly liable for an overpayment provided the overpayment was made to the provider or other person for services which the beneficiary received, if:

A. The overpayment was caused by an error regarding entitlement or coverage of services and the provider or other person did not act reasonably and with due care in filing for and accepting the payment; or

B. The provider or other person received duplicate payments and turned one payment over to the beneficiary.

835.10.4 Limitation on Beneficiary Liability

A beneficiary who was without fault (i.e., did not know and could not be expected to know that the services were not covered) and whose claim under Part A or Part B has been disallowed because the services were not reasonable or necessary for the diagnosis or treatment of an injury or illness or because the care was a non-covered level of care (i.e., custodial care), shall not be liable for payment.

If the provider or other person in such a case also exercises due care (i.e., did not know and could not be expected to know non-covered services were involved), the Medicare program will make payment as if the services were covered. When payment is made, the provider and patient will be put on notice so that they cannot again claim lack of knowledge in subsequent claims involving similar situations.

If the provider did not exercise due care and the beneficiary was without fault, the provider would be liable for the services but could appeal both the determination as to coverage and "due care". If the provider did not exercise due care and collected from the beneficiary, the program would, upon application, reimburse the beneficiary. The payment would then be treated as an overpayment to the provider.

835.15 Recovery Process

835.15.1 Intermediary's or Carrier's Responsibility

The intermediary or carrier first determines who is liable for the benefit overpayment, releases a letter notifying them of the overpayment and initiates the appropriate recovery action. Part A or B overpayments under $50.00 are automatically waived regardless of who is determined to be liable.

A. When the provider of services, physician or supplier is liable - The intermediary or carrier will notify the provider or other person of the overpayment and request refund, if refund not reserved within a specified period action is taken to offset the overpayment against any future benefits due the provider or other person. If recovery of a Part A overpayment cannot be made from the provider of services, the intermediary will refer the case to CMS. If recovery of a Part B overpayment cannot be made from a physician or supplier, the Medicare Part B carrier will refer the case to RRB.

B. When the beneficiary is liable - The intermediary or carrier will notify the beneficiary of the overpayment, will offset the overpayment against any future unassigned payments due the beneficiary and, if necessary, will ask for a refund. If a Part A overpayment is not recovered from the beneficiary, the intermediary will refer the case to CMS. If a Part B overpayment is not recovered from the beneficiary, the Medicare Part B carrier will refer the case to RRB.

C. Dual liability - The intermediary or carrier will send an overpayment letter first to the provider of services, supplier or physician. If the overpayment is not recovered within 60 days, the intermediary or carrier will ask the beneficiary for a refund. Any payments due the beneficiary will be withheld pending recovery from the provider of services or other person. If recovery of a Part A overpayment cannot be made from either the provider of services or the beneficiary, the intermediary will refer the case to CMS. If recovery of a Part B overpayment cannot be made from either the supplier or physician or the beneficiary, the Medicare Part B carrier will refer the case to RRB.

D. What the overpayment letter should contain - The overpayment letter sent by the intermediary or carrier to the provider of services, physician, supplier or beneficiary should:

1. Clearly identify the overpayment by showing the name and address of the provider or other person, the dates of services, the nature of the services,

the date and amount of the check(s) and to whom it was paid and the amount of the overpayment.

2. Clearly explain why the payment was incorrect.

3. Furnish the amount of the overpayment.

4. Request a refund.

5. Notify the beneficiary that unless a refund is made, the overpayment may be deducted from other Medicare benefits due or monthly annuity payments.

6. Inform a beneficiary of his right to a reconsideration or review of the overpayment decision.

7. Include an explanation of the waiver provision.

E. When the beneficiary requests that recovery be waived - If a beneficiary requests that a Medicare overpayment be waived or states conditions that might qualify him for waiver, the intermediary or carrier should refer the case to CMS (Part A overpayment) or RRB (Part B overpayment) immediately.

F. When beneficiary or physician is deceased

1. Beneficiary liable - The intermediary or carrier should withhold the overpayment from any amount payable on the beneficiary's account to a relative or to the beneficiary's estate. If an amount is payable on the beneficiary's account to any other person or organization, that amount cannot be withheld.

   If a Part A overpayment cannot be recovered by withholding, the intermediary should immediately refer the case to CMS. If a Part B overpayment cannot be recovered by withholding, the Medicare Part B carrier should immediately refer the case to RRB. Any information received concerning an estate should be included with the referral.

2. Physician liable - The Medicare Part B carrier should withhold the overpayment from any other Medicare payment due the physician's estate. If the overpayment cannot be recovered by withholding, the carrier should refer the case to RRB immediately with any information received about an estate.

G. When the beneficiary is entitled to welfare payments - The intermediary or carrier will contact the state welfare department to determine whether that agency will refund an overpayment for which a beneficiary receiving or entitled to welfare is liable, if:

1. A Part A overpayment was caused by:

   a. Failure to properly assess the deductible or coinsurance;

   b. Payment for non-covered services; or

   c. Payment for services after benefits have been exhausted.

2. A Part B overpayment was caused by failure to properly assess the deductible.

   If the state welfare department will not refund the overpayment, the intermediary will refer the case to CMS, or the Medicare Part B carrier will refer the case to RRB without taking any further recovery action. A record of any contact made with the welfare department should be included with the material referred to CMS or RRB.

835.15.2 Responsibility of CMS

A. HIB overpayment - CMS receives all cases in which an overpayment of HIB benefits has not been recovered by the intermediary from a provider of services or beneficiary. After determining who is liable for the overpayment, CMS handles to completion all cases in which the provider is solely liable.

   If a QRRB or DQRRB is liable for repayment of the overpayment, CMS refers the case to RRB for consideration of waiver or recovery from benefits payable under the Railroad Retirement Act.

B. SMI overpayment - CMS will not handle Part B overpayments for QRRBs or DQRRBs unless RRB requests that recovery be made from benefits payable by SSA, because the annuity is not in current pay status. However, all cases in which a physician or supplier of services is liable for repayment should be sent to CMS for handling.

835.15.3 Responsibility of RRB

The chances of recovering a Medicare overpayment are better if recovery action is taken soon after the notice of overpayment is received. Therefore, MS gives preferred handling to Medicare overpayment cases.

A. General - RRB is responsible for the waiver or recovery of a Part A overpayment in any case in which the beneficiary is liable for repayment. RRB will have complete jurisdiction over such overpayments. However, if waiver is not applicable, and RRB cannot recover the overpayment because the annuity is not in current pay status, the case may be referred to SSA for recovery if benefits are payable by that agency.

B. Responsibility of MS (Medicare Section of Operations) - MS reviews all cases referred to Operations to determine if the amount of the overpayment is correct and if all action taken has been correct. If there are any problems or questions, it will act to correct or clarify them. Once MS has determined that all the necessary actions have been completed correctly, they will pursue collection.

835.20 Waiver

835.20.1 When Waiver May Apply

Recovery of a Medicare overpayment from a beneficiary or from any survivor eligible for benefits on his earnings record may be waived if:

A. The individual against whom the recovery would be made was without fault in causing the overpayment; and

B. Recovery would:

1. Deprive the overpaid person of income that is reasonably necessary for ordinary living expenses, or

2. Deprive the person of funds needed within a year for hospital or medical care reasonably necessary for his health.

3. Be against equity and good conscience in accordance with Section 1870(c) of the Social Security Act.

835.20.2 Finding of Without Fault

A. General - A finding of without fault is required in all cases before waiver may be considered.

The term fault as used in "without fault," applies to the overpaid person (beneficiary, provider of services, supplier or physician) and to the individual from whose benefits the overpayment is to be recovered (a survivor entitled to benefits on a deceased beneficiary's wage record). The fact that the overpayment may have been caused by an administrative error will not, in itself, establish "without fault." A "without fault" determination may be possible with information in file without further investigation.

The following guidelines are used in determining whether a beneficiary is without fault in causing an overpayment:

1. A beneficiary is not expected to maintain a personal record of utilization.

2. A beneficiary is not usually expected to know the correct deductible amount.

3. A beneficiary is not usually expected to know which services are not covered by Medicare unless he has been advised in writing that a service is not covered.

B. When an overpaid person is at fault - The person liable for an overpayment is usually at fault when the overpayment resulted from:

1. An incorrect statement by the person that he knew or should have known was false; or

2. Failure of the person to give information that he knew or should have known was material; or

3. Acceptance by the person of a payment that he knew or should have known was incorrect.

C. When an overpaid person is without fault

1. Reliance on misinformation from an official source - The person liable for the overpayment will be found to be without fault if the overpayment occurred solely because the individual relied on misinformation from an official source. If the overpaid person is found to be "without fault" because of reliance on misinformation from an official source, recovery of the overpayment will be deemed to be against equity and good conscience.

Generally, reliance on misinformation may be involved in overpayments resulting from payment for supplies or services which are not covered by Medicare. Reliance on the advice or information given to the individual must have some reasonable basis and must be restricted to information from an agent or agency of the U.S. Government, including intermediaries and carriers.

Generally, misinformation is not considered to be involved when duplicate checks are issued on the basis of the same claim or if information is provided on the basis of erroneous or incomplete records which the individual did not question. However, an individual may sometimes be found to be without fault in such circumstances.

2. Overpayment discovered more than 3 calendar years after notice of payment sent - In the absence of evidence to the contrary, the provider of services, supplier or physician is deemed to have been without fault in causing an overpayment if the overpayment was discovered more than 3 calendar years after the year in which the notice of payment was sent.

835.20.3 Beneficiary Claims that Recovery Would Deprive Him of Necessary Income

Headquarters may request that the field office obtain a completed Form DR-423 from the debtor if the individual claims it would be a hardship to repay the overpayment. A Form DR-423 will not be requested if there is an indication that the beneficiary is receiving or entitled to welfare payments.

Waiver of recovery against an estate may not be considered on the basis of this provision, even though waiver would have been proper on that basis during the lifetime of the overpaid person. The estate cannot be considered to need income for ordinary and necessary living expenses.

835.20.4 Beneficiary Would Be Deprived of Funds for Health Care

The need for hospital or medical care must be real and tentatively planned to occur within a year, and the commitment of the funds must be real and not conjectural to be considered in determining whether adjustment or recovery would deprive the person of funds needed within a year for hospital or medical care reasonably necessary for his health. The individual need not have begun the needed treatment or care, but he must have made the necessary plans to do so. He may have arranged for the treatment when it is medically appropriate or when he has accumulated the necessary cash to defray the expenses. A statement (one or two sentences long) from the physician in charge or from a similarly authorized medical source is needed to indicate (a) whether the treatment and/or care is needed and (b) the estimated cost. Note that expenses already incurred for medical care, hospitalization, etc., are also taken into consideration.

835.20.5 Against Equity and Good Conscience

A. General - Under the Social Security Act, recovery of an overpayment will be considered to be against equity and good conscience where the beneficiary, relying on benefit payments or on a notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In reaching such a determination, the individual's financial circumstances are irrelevant.

B. When "against equity and good conscience" applies - Recovery of an overpayment will be deemed to be "against equity and good conscience" if the overpaid person is found to be "without fault" because of reliance on erroneous information from an official source.

Recovery of an overpayment from a beneficiary who is without fault is also deemed to be against equity and good conscience if:

1. The overpayment was made for items or services not medically necessary or for the expenses of custodial care; and

2. The overpayment was discovered more than 3 calendar years after the year in which the notice of payment was sent.

In addition, a provider under Part A, or a physician or other supplier who accepted assignment under Part B cannot, after refunding an overpayment for medically unnecessary or custodial care services, charge the enrollee who is without fault after 3 calendar years have expired.

835.20.6 Notice of Waiver

If the overpayment is waived, the person liable for the overpayment is notified of the decision by BRC.

835.25 Recovery from Beneficiary's Estate

When liability for recovery rests with an estate, BRC requests that the field office check with the probate court in the area where the overpaid person died or with the nearest relative to determine whether an estate has been opened and, if so, the name and address of the administrator of the estate, the identity and location of the court of jurisdiction, the expected closing date of the estate and the assets and liabilities of the estate. If the estate is closed or was not administered, check to see who received the assets of the estate and the amount of those assets.

835.30 Forged Medicare Benefit Checks

When the payee of a Part B benefit check alleges that he did not endorse the check, The Palmetto GBA will develop the forgery claim and route it to the CMS regional office for investigation. Forward any Part B benefit check forgery claims received in the field office to the Chief of Medicare programs who will forward them to the appropriate destination.

840.5 Introduction

Medicare cannot generally pay for hospital or medical services furnished outside the United States except for care in qualified Canadian or Mexican hospitals. This chapter describes the health insurance services furnished outside the U.S. that are reimbursable under the Medicare program.

Under the Railroad Retirement Act, the RRB administers the hospital insurance part of the Medicare program for beneficiaries who receive services in Canada. The RRB acts as a fiscal intermediary to process claims for payment. Its functions include: coverage determinations, applying the deductible and coinsurance amounts, and determining if all conditions of payment are met.

Beneficiaries in Canada and other foreign countries may elect Part B benefits; premiums are paid in the same manner as for persons living in the United States. Foreign beneficiaries are not automatically enrolled for Part B benefits.

Most Part B services provided in foreign countries are not covered under Medicare. Generally, QRRBs who reside outside the U.S. can receive Part B benefits only for services provided in the United States. Therefore, only those QRRBs residing outside of the U.S. who intend to obtain medical services in the United States should consider enrollment for Part B coverage.

Part B benefits for services obtained in the United States by Canadian QRRBs who elect SMIB are not subject to any reduction because of entitlement to similar benefits under Canadian law.

See RCM 3.8 for additional information about Medicare benefits for services performed outside of the United States.

840.5.1 Summary of Part A Benefits Outside the U.S.

Under the Railroad Retirement Act, payment can be made to any railroad retirement beneficiary for covered hospital insurance services furnished by a qualified Canadian hospital.

Hospital insurance claims from beneficiaries living in Canada sometimes include claims for "chronic care" services. The term "chronic care" refers to a level of care lower than acute inpatient hospital care and significantly higher than custodial care. For purposes of claims processing, always consider a claim for chronic care services to be the same as a claim for skilled nursing services.

In Mexico, inpatient hospital services are covered under the following situations:

1. An emergency occurs in the U.S. and the Mexican hospital is closer than the nearest U.S. hospital equipped to deal with the injury or illness.

2. A U.S. resident receives services in a Mexican hospital which is closer to or substantially more accessible to his or her residence than the nearest hospital within the U.S., regardless of whether or not an emergency exists.

840.5.2 Summary of Part B Benefits Outside the U.S.

Medical insurance benefits are limited to necessary physician and ambulance services furnished in connection with three specific situations.

Those situations are:

1. An emergency occurs in the U.S. and a Canadian or Mexican hospital is closer than the nearest U.S. hospital equipped to deal with the injury or illness;

2. A U.S. resident receives services in a Canadian or Mexican hospital which is closer to or substantially more accessible to his or her residence than the nearest hospital within the U.S., regardless of whether or not an emergency exists; or

3. A medical emergency occurs within Canada which requires admittance to a Canadian hospital while the beneficiary was traveling without unreasonable delay and by the most direct route between Alaska and another state. This provision does not apply when a beneficiary is vacationing in Canada.

840.10 Claims Under Part A In Canada

840.10.1 Application and Evidence Requirements

Every beneficiary living in Canada who is enrolled for hospital insurance coverage (HI-Part A) is provided with a Form RB-I04 describing Part A benefits. An application, Form AA-I04, must be filed for reimbursement of Part A services furnished in Canada. To claim payment, the beneficiary returns a completed Form AA-I04 to the RRB with paid bills attached.

In addition, when private room accommodations are claimed, a statement by the doctor certifying that such accommodations were medically necessary is required. The application for benefits must be filed within the same time limits established for all Medicare claims. Forward claims involving services rendered in Canada to the Medicare Unit (MU) in Unemployment and Programs Support Division (UPSD).

840.10.2 Amount of Benefits

Hospital benefits for services provided in Canada are reduced by the greater of the following:

- The amount paid (or which would have been paid upon application) under a Canadian provincial health care plan; or

- The total of the deductible and coinsurance amounts (converted to Canadian funds).

The above reduction criteria are applied if the beneficiary did not receive payment under a provincial plan because he or she failed to apply for it. A reduction in the payment of benefits will not be applied if the beneficiary had an option to participate in a provincial plan, but elected not to do so.

Each type of service is computed separately, i.e., inpatient hospital care, skilled nursing care and home health service. The same deductible and coinsurance amounts apply to both domestic and foreign hospital insurance services.

840.10.3 Payment of Benefits

The RRB no longer uses the Western Benefits Association (WBA) of Ontario, Canada as its agent in Canada. The RRB has now designated the Specialty Medicare Administrative Contractor (SMAC) Palmetto GBA to act as its agent in Canada. This organization provides the RRB with the information required to make a reimbursement determination. The SMAC represents the RRB as an agent and advisor.

Upon receipt of certification and verification of information from Palmetto GBA regarding the claimed services, the RRB awards Part A benefits in the following priority:

- The individual who received the services if such individual paid for the services and submits documentary proof that such payment was made; or

- The provider of services if the beneficiary assigns payment.

See RCM 3.8.10 and RCM 3.8.11 for additional information.

840.15 Claims Under Part B In Canada

840.15.1 Application and Evidence Requirements

To claim Medicare benefits under Part B, a Canadian or U.S. resident who receives services in Canada must file a Form G-740s or CMS-1490S, Patient's Request for Medicare Payment. Itemized bills covering the claimed Part B services are also required. Form G-740s is available on RRAILS. Form CMS-1490S can be ordered from the Centers for Medicare & Medicaid Services or printed from www.medicare.gov. Each claim for benefits must include the beneficiary's residence where the services were rendered, the type of service and the nature of the illness or injury. This information is needed in order to determine whether the services can be covered under Part B. The claim for benefits must be filed within the same time limit established for all Medicare claims. Only the beneficiary may file for Part B benefits; assignment cannot be made. Underpayments, when the beneficiary is deceased, are handled the same as domestic claims. Forward any claims involving services rendered in Canada to UPSD-MU.

840.15.2 Amount of Benefits

For Canadian physician and ambulance services, the reasonable charge is:

A. The lower of the prevailing charge for similar services in the U.S. locality which is closest to where the service was rendered; or

B. The Canadian Provincial fee. The Medicare Part B carrier obtains the most recent schedule of fees published by the appropriate Canadian Province.

840.15.3 Payment of Benefits

Based on information secured from the beneficiary on the claim form, MU determines whether the services can be covered. If reimbursement is to be made, MU prepares a letter to the Medicare Part B carrier authorizing payment. If we determine that services cannot be covered, MU prepares a letter to the beneficiary explaining the reason for denial and provides Medicare appeal rights information.

840.20 Claims Under Part A In Mexico

When an individual asks about claiming HI benefits for services received in Mexico, question him or her fully to determine if the services are covered under Medicare. If the services appear to be covered, secure:

A. Statement from beneficiary claiming reimbursement, containing description of illness or injury, and indicating circumstances causing use of the facility in Mexico; and

B. Itemized hospital bills, or their equivalent.

Payment is made for necessary physician and ambulance services that meet the other coverage requirements of the Medicare program, and are furnished in connection with a covered foreign hospitalization.

Coverage of Physician and Ambulance Services furnished Outside the U.S.

Where inpatient services in a foreign hospital are covered, payment may also be made for the following:

- Physicians' services furnished to the beneficiary while he/she is an inpatient.
- Physicians' services furnished to the beneficiary outside the hospital on the day of his/her admission as an inpatient, provided the services were for the same condition for which the beneficiary was hospitalized (including the services of a physician who furnishes emergency services in Canadian waters on the day the patient is admitted to a Canadian hospital for a covered emergency stay) and,

- Ambulances services, where necessary, for the trip to the hospital in conjunction with the beneficiary's admission as an inpatient. Return trips from a foreign hospital are not covered.

840.25 Claims Under Part B In Mexico

To claim Part B services in Mexico, a beneficiary must file Form G-740S or CMS-1490S and itemized bills covering Part B service claims. All claims should be forwarded directly to the RRB. If the Medicare Unit (MU) determines that the requirements listed in 840.20 have not been met, MU will deny the claim and send notice to the beneficiary. If the requirements have been met, MU will hold any potentially allowable Part B claim until a MAC determination regarding the coverage of Part A services has been made. When the information regarding Part A coverage is available, MU will send the Part B claim together with pertinent information regarding the Part A determination to Palmetto Government Benefits GBA for consideration of whether the other requirements for Part B coverage have been met. Palmetto Government Benefits GBA will also handle any additional processing.

The beneficiary must file his or her own claim; the assignment method may not be used for Part B services received in Mexico.

In cases involving foreign ambulance services, the general requirements listed above are also applicable, subject to the following special rules:

- If the foreign hospitalization was determined to be covered on the basis of emergency services, Palmetto GBA will determine if the medical necessity requirements have been met.

- The definition of "physician"' for purposes of coverage of services furnished outside the U.S., is expanded to include a foreign practitioner, provided the practitioner is legally licensed to practice in the country in which the services are furnished.

- Only the beneficiary may file for Part B benefits. The assignment method may not be used. However, where the beneficiary is deceased, the rule for settling Part B underpayments is applicable, i.e. payment may be made to the foreign physician or ambulance company on the basis of an unpaid bill, provided the physician or ambulance company accepts the MAC's reasonable charge determination as the full charge.

- The regular deductible and coinsurance requirements apply to physician and ambulance services.

905.5 General

Almost every applicant is required to submit some type of documentary evidence in support of his or her application. The specific types of evidence required in a particular case depend on the type of application being filed and the status of the person filing.

In developing an application for a monthly annuity or for Medicare coverage, try to secure the best possible documentary evidence that can be obtained.

EXCEPTION: If the applicant has not already submitted an acceptable proof of age, check for DOB information on SSA's MBR or NUMIDENT. If the guidelines described in FOM1 905.5.5 are met, the SSA information can be used without any further development of POA even if the probative value of the SSA information is low.

905.5.1 Types of Evidence

Evidence submitted in support of an applicant's claim should be:

A. An original document; or

B. A copy of a certificate or record made by a proper official; or

C. A certification of a public record by the custodian; or

D. A transcript of an original document or record; or

E. Under certain circumstances, an extract from a record certified by SSA. See FOM1 905.5.5 for information.

905.5.2 Acceptable Evidence

To verify the applicant's claim, a document must meet the following requirements:

A. It must be an original or certified copy of an original document; or

B. It may be a facsimile document transmitted to an RRB office by an official records custodian. The facsimile copy must show the sender's identity in lieu of a certification stamp or seal and signature.

NOTE: An imaged document obtained from a state or county website maintained by the custodian of records may be considered acceptable evidence in some instances. It has been determined that proofs obtained from official state or county websites in the state of Florida are considered acceptable evidence. Submit questions about websites in other states to P&S, RAC.

C. It may be taken from SSA databases under certain circumstances. See FOM1 905.5.5 for information.

D. It must not contain:

1. Material alterations in age, dates or in the name of the person which are sufficient to cause doubt that the entry pertains to the person for whom it was submitted. An alteration in the day of the month will not discredit entries showing the month and year if there is no indication that either of those entries has been altered. Likewise, an alteration in the month will not discredit the year if the latter entry is unaltered,

2. Material differences in the name claimed and the name shown on the evidence. A discrepancy between the name claimed and the name shown on a document will not disqualify the evidence, provided the variation in name is reconciled.

E. It must establish, for proof of age, the original record of the information shown on the document was made at least 5 years prior to the date the evidence is presented to the RRB.

EXCEPTION: Accept evidence of age for a child under 5 years if the record was made at or near the time of the child's birth.

905.5.3 Unacceptable Evidence

Do not make or accept as evidence a handwritten or typewritten copy, photocopy or other facsimile of an American passport, naturalization record or immigration record. It is illegal to photocopy an American passport.

905.5.4 List of State Sources and Fees for Birth, Death, Marriage, and Divorce Records

A complete list of state sources and fees for birth, death, marriage, and divorce records is available on the Center for Disease Control website under National Center for Health Statistics/*Where to Write for Vital Records* (https://www.cdc.gov/nchs/w2w/index.htm).

905.5.5 Use of SSA Databases as Proof

Check SSA databases for proof of age if there is not an acceptable proof already in file and the applicant has not brought an acceptable proof of age to the interview. If the SSA database information can be used per instructions in A or B below, it is not necessary to develop for further proof even if the SSA information has low probative value. Note that the NUMIDENT information on date of death, if acceptable per C below, can be used to pay a survivor benefit, but it cannot be used to terminate a benefit.

NOTE: It is not necessary to check the MBR or the NUMIDENT if the person has already provided an acceptable proof.

EXAMPLE 1: An employee submitted a birth certificate as advanced proof of age, which was entered on APPLE.

EXAMPLE 2: A spouse submitted proof of age when she filed for an annuity based on a minor child. That annuity terminated when the child attained age 18. The spouse files a new application when she attains age 62.

A. Use of MBR as Proof of Age

A proof of age may be taken from the DOB shown on SSA's MBR if the proof code shown is not "A". The proof codes are located immediately after the DOB on the Benefit line. The proof codes are as follows:

- A = alleged
- B = birth certificate or religious record
- C = age established on convincing evidence
- F = formerly established
- Q = age established but none of the above codes apply

MBR example:

BENEFIT BIC-A JUNE A ABBOTT SB-F DOB 10/22/1935 B DOEI – 11/97 DOEC 11/97

B. Use of NUMIDENT as Proof of Age

The DOB shown on SSA's NUMIDENT may be used as POA, regardless of the applicant's age, if the applicant's alleged DOB matches all iterations of the NUMIDENT DOB, and the applicant is a U.S. citizen. If the CYD is June 1981 or later, the NUMIDENT can be used to determine citizenship. (These determinations do not apply for taxation purposes. For taxation purposes, refer to RCM 4.9.1 and 4.9.10.) If the CYD is prior to June of 1981, the NUMIDENT cannot be used to determine citizenship. Therefore, in those cases, if other evidence of citizenship is not already in file, do not use NUMIDENT as POA. However, if you have a proof of citizenship that is also acceptable as POA, do not use the NUMIDENT for POA; use that proof of citizenship as the POA. If the CYD is June or 1981 or later, check the following to determine citizenship from the NUMIDENT:

- If the CSP code on the birth line of the NUMIDENT is A, the applicant is a U.S. citizen. (See example of a NUMIDENT record under C below.) If there is any other CSP code, the applicant is not a U.S. citizen. If the CSP code is blank, check the IDN code on the account line. (See example of a NUMIDENT record under C below.)

- Generally speaking, if the IDN code is C, D, or P, you may assume the person is a U.S. citizen when the place of birth (PLB) on the birth line is within the United States and agrees with the place of birth alleged by the applicant. For this purpose, consider the United States to mean the 50 states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. If the IDN code is A, B, H, N, R, X, or Y, the person is not a U.S. citizen.

If you notice significant discrepancies in the claimed date or place of birth with the NUMIDENT DOB or PLB, or have doubts as to the accuracy of the NUMIDENT information, develop POA as usual. If the CYD is prior to June of 1981, the NUMIDENT cannot be used to determine whether or not the person is a U.S. citizen.

The NUMIDENT should not be used as POA if an acceptable POA is already contained in an RRB records system, such as APPLE or a paper file either at headquarters or in the field office.

EXAMPLE: A spouse annuity was terminated when the youngest child attained age 18. The spouse re-files for an aged spouse annuity. Use the proofs that were established with the previous annuity entitlement. If acceptable POA was established at that time, do not go to the NUMIDENT or MBR.

Note that the DOB shown on EDM cannot be used as POA even if the source shown for the information is NUMIDENT because EDM does not give citizenship information.

For more information on interpreting the NUMIDENT, see SSA's procedure in the POMS at RM 00209.004 Basic Format for Numident Query Responses and RM 00202.235 Form SS-5 - Evidence (IDN) Codes. SSA's procedure can be accessed from Boardwalk. From there, click on Quick Links, and then on SSA PolicyNet Site.

C. Use of NUMIDENT as Proof of Death

A proof of death may be taken from a NUMIDENT record if the POD code is "P", meaning proof was provided (see last line of example, below). If the POD code is "N", the date of death has not been verified by SSA and the NUMIDENT record may not be used. If the POD code is "V", the death has been verified but a proof has not been obtained and the NUMIDENT record may not be used. Do not use the NUMIDENT record to terminate an annuity, even if the POD code is "P".

NUMIDENT Example:

NUMI DTE: 05/06/04 SSN: 111-11-1111 XC: UNIT: RRB **PG: 001+**

ACCOUNT SSN: 111-11-1111 ETC: 2 RFN: 1111111111 DOC: Q72 IDN: C
NAME NAA: MARY, ANN, JOHNSON
BIRTH DOB: 09/20/1935 PLB: CHGO, IL SEX: M ETB: 1 CSP:
PARENT MNA: JACKIE L THOMAS

FNA: MICHAEL T
JACKSON INTERNAL FMC: 1 CYD:
05/13/1985

ACCOUNT SSN: 111-11-1111 ETC: T
NAME NAA: MARY ANN JACKSON
BIRTH DOB: 09/20/1935 SEX: F

INTERNAL **DOD: 08/16/1999 SSD: 72 POD: P EDR: N CYD:**
09/01/1999

D. Use of MBR and NUMIDENT as Proof of Relationship

The MBR and the NUMIDENT cannot be used as POR.

E. Use of SSA Databases as Proof of Marriage

The SSA databases that are currently available to RRB employee do not contain proof of marriage information.

F. Entering SSA Database Proofs on APPLE

To record MBR or NUMIDENT DOB on APPLE:

- When SSA's MBR is used for proof of age, the type of document is "other" and the date of the record is the date of filing shown on the MBR. Indicate in remarks that the MBR was used.

- When SSA's NUMIDENT is used for proof of age, the type of document is "other" and the date of the record is the CYD date on the internal line of the record. Indicate in remarks that the NUMIDENT was used.

905.10 Primary Proofs

905.10.1 Original Documents

Consider any document that is obviously difficult, impossible, unlawful or expensive to reproduce to be an "original document." Always return such evidence to the person who presented it. Original documents include but are not limited to:

- Original Marriage and Birth Certificates
- Foreign language documents
- Naturalization Papers and Passports
- Family Bibles
- Insurance Policies and Property Deeds

- Military Records
- Driver's or Hunting Licenses
- Medical Records such as cardiogram prints and X-ray film

905.10.2 Handling Original Documents

Preserve each document in its original condition. Do not date stamp, fold, staple, punch, mark or deface it in any manner. Do not remove a document that is part of a bound volume from its binder. Create an online transcript (APPLE) of the evidence, and return it as soon as possible to the person who presented it. If it is returned by mail, it must be accompanied by RL-158 and sent by registered mail.

Every attempt should be made to translate foreign language documents in the field office. Foreign language documents that cannot be translated in the field office must be photocopied. Sign the photocopy to certify its correctness and fully explain any markings or erasures as instructed in FOM1 905.10.3. Return the original to the applicant. Send the photocopy to RBD if the proof is in relation to an application for an employee or spouse annuity, or to SBD if the proof is in relation to a survivor application, or to Program Support Division, Medicare Section, if the proof is in relation to a Medicare application. Notate the route slip as to type of proof (age, marriage, etc.). If the proof is being submitted in conjunction with an application, use code “A” (attached) for the proof on the APPLE summary screen and notate in remarks that foreign language proof is being submitted for translation. For information about the handling of translation of documents in Headquarters, see RCM 4.1.3.

905.10.3 Online Transcription and Form G-91

A transcript is a certified copy or description of an original document. The following information describes the various types of transcripts that are acceptable evidence to support a claim for benefits.

A. APPLE Evidence Storage

Essential data from an original proof document transcribed to APPLE by authorized RRB personnel, serves as a permanent storage of an otherwise valid paper document. Such online evidence collection replaces the several types of paper evidence previously retained in headquarters files. Whenever possible, determine the authenticity of evidence presented, enter the facts on APPLE, and return the original documentation to the prospective applicant or person who has provided it.

B. Form G-91

Essential data may be transcribed to this form, from an original document, by authorized RRB personnel, when access to APPLE is unavailable or when extraordinary circumstances require recording data for headquarters review.

C. Certified Record Excerpt

A signed statement by an official records custodian certifies that an excerpt from a civil, church, employer, insurance or similar record is accurate. Such excerpts are usually provided on the custodian's official extract forms or letterhead. The custodian's official title and seal, if any, must also appear on the document. Evidence of this type may be sent by facsimile transmittal directly from the records custodian to an RRB office.

D. Photocopy

A photocopy is not a certified copy of the original document and is **not acceptable**.

In rare instances contact representatives may make copies of certified documents or other evidence that may need to be forwarded to headquarters for adjudicative actions. In these situations, the contact representatives should initial and date the copy and write on it that it is an accurate reproduction of the original.

Exceptions: If the original record was damaged many years ago, a photocopy of a torn and crumpled record may be acceptable if accompanied by a statement from a disinterested party.

E. Certified copy

A certified copy is a duplicate of the original document that is certified as a true copy of the original document by the official having custody of the original document. Certified copies of proof or other evidence is acceptable.

F. Typewritten or Handwritten Copy

Evidence copied from an original document is acceptable only if it bears a sworn statement attesting to its authenticity by a disinterested person. When this type of transcript is used, enter explanation on APPLE Remarks such as "County records damaged by flood. Clerk's handwritten statement certifies DOM is accurate but proof cannot be machine copied." Attempt to secure supporting evidence if a copy transcribed by hand is the only proof submitted.

G. Facsimile (Fax)

Accept a fax of an original document if it meets the following requirements:

- Document must be received by an RRB office directly from the official custodian of the document.
- The source of the transmittal must be clearly identified on the document.

Facsimile documentations maybe used for (but not limited to) such evidence as:

- Vital statistics extracts from county and state records offices: birth, death, marriage, etc.
- Payroll records for LPE investigations solicited from non-railroad employers
- Supplemental S.I. reports from doctors and other medical providers
- Court records such as divorce, adoption, or inheritance;
- Statement from an annuitant canceling application for an annuity.
- Written documentation from the annuitant that affects calculation of annuity payments.
- Earnings statements from annuitant that may affect amount of earnings used to calculate annuity.
- Documents received from SSA (regardless of whether the person has or will file for a social security benefit) if an SSA employee certifies that the fax is made from an original document or a certified copy.
- G-478 (Statement Regarding Patient's Capability to Manage Benefits) from a doctor's office.
- G-273a (Funeral Director's Statement of Burial Expenses) from a funeral director if an LSDP is to be paid to someone other than the funeral home, or if the payer of the burial expenses has assigned the LSDP to the funeral home. If the LSDP is to be paid to the funeral home and it has not been assigned by the payer of the burial expenses, a hard copy of the signed G-273a is required.

NOTE: All faxes **MUST** be from the official custodian of the document.

905.15 Secondary Proofs

When an original document cannot be secured or if an evidential discrepancy arises, it may be necessary to develop secondary proofs. These include:

A. Signed statement on the official stationery of attending physician or institutional superintendent in support of age or death claim;

B. Sworn statement of the clergyman who performed the ceremony in marriage cases;

C. Sworn statement of two or more persons having knowledge of the facts and circumstances of the event or situation in question. This should contain dates, times, places and any other pertinent data; or

D. Other evidence of probative value such as excerpts from naturalization certificates, deeds, immigration records, insurance policies, passports or from original business, employment, labor, fraternal, school and church records.

905.20 Questionable or Counterfeit Documents

You are responsible for identifying documents which are questionable or counterfeit.

905.20.1 Aids in Determining the Authenticity of a Document

The following questions are posed as an aid to determining whether a document is genuine:

A. Do the signatures appear genuine and are they in a natural position?

B. Do any of the writings appear disguised or unnatural in any way? Are the writings consistent within themselves and properly dated? Observe any changes in slant within the same writing.

C. Are there any pencil or carbon marks along the writing lines of the signature, or any embossed writings or indentations indicating that the signature may have been traced or transferred?

D. Is there poor or shaky line quality in the writing line of the signature?

E. Are there any hesitations, stops, starts, blunt beginning or ending strokes?

F. Is the document torn, burned or mutilated in any way? Is there any indication of artificial aging of the document?

G. Does the document contain mechanical or chemical erasures, different colored inks, and different kinds of type, alterations, interlineations or substitution of any kind?

H. Are there indentations or embossments in the questioned document which may have resulted from writing or typing on a paper which was on top of the subject document?

905.20.2 Field Office Handling of Questionable Documents

If a person submits a suspect document, handle as follows:

A. Exercise tact and discretion in obtaining information which may help explain the questionable qualities. Do not, under any circumstance, imply that you suspect the person of intent to defraud.

B. If, in your judgment, the explanation of the questionable qualities was not satisfactory:

1. Attempt to verify the contents of a public or religious document with the issuing agency or church. If the custodian of the record is not in your area, telephone the RRB D/O which services the area and ask them to attempt to verify the record; and

2. Ask the person to submit corroborating evidence.

C. If you determine the proof needs further evaluation, send the actual document to the appropriate headquarters unit for review. If, after the review, the proof is determined to be acceptable, it will be entered on APPLE.

905.20.3 Discovered Spurious Documents

This section describes spurious documents known to be in circulation. This data is furnished to assist you in identification of possible counterfeit documents. Do not discuss the contents of this section with anyone outside the RRB or SSA.

A. MARYLAND - A series of thefts from the Maryland State Motor Vehicle Administration resulted in the loss of a complete set of equipment capable of producing apparently valid driver's licenses in the 033 series. Some licenses produced on the equipment may be in the 038 series. The Motor Vehicle Administration has recalled all validly issued licenses in the 033 series and has reissued them in a different series. All licenses in the 033 and 038 series are invalid.

B. MICHIGAN - SSA has discovered that the Lee-Andrew Printing Company of Detroit, Michigan, may be printing various counterfeit marriage licenses and certificates. The sources of issuance shown on some of the documents which have been confiscated are Wood County, Ohio; Anderson County, South Carolina; St. Paul Pentecostal Church, Detroit, Michigan. There may, of course, be others. The paper used has a slightly oily texture, and the print and color are dull and flat. The documents have an overall grayish appearance not unlike that of photocopies. Although they bear a gold seal showing the name of the purported issuing county or church, their general appearance should readily raise a question as to their authenticity.

C. OKLAHOMA - SSA has discovered that as a part of a fund-raising effort for a proposed birth clinic, the City of Faith Hospital in Tulsa, Oklahoma, mailed approximately 800,000 hospital birth records through the country. The forms are completed with the appropriate signatures and hospital seal, except that the

child's and parents' data are not filled out. The hospital did not have a maternity ward or birth clinic until late 1984, therefore a birth before that time would have been unusual. Do not accept as evidence of age, or any other factor of entitlement or eligibility a hospital birth record issued by the Faith Hospital in Tulsa, Oklahoma.

D. OREGON - The Bureau of Vital Statistics has reported the theft of several thousand plastic, wallet-sized birth registration cards scheduled for destruction because of printing errors. A small but undetermined number of the faulty cards were issued legitimately. The stolen cards are easily distinguishable from the usual cards issued in Oregon. The stolen cards are a pale faded yellow with the printed material off center. The cards routinely issued are a bright canary yellow with even borders on all edges.

E. SOUTH DAKOTA - A binder of blank birth certificate forms was stolen from the courthouse in Deadwood, South Dakota. The certificates are numbered 4390l-43999. Also missing were the seals from the Registrar of Deeds and from the Clerk of Courts offices.

F. TENNESSEE - SSA has discovered that the Lee-Andrew Printing Company of Detroit, Michigan, may be printing counterfeit pocket-sized Tennessee Birth Registration Cards. The cards bear a seal, are encased in plastic and appear to be genuine. There are, however, differences between the authentic and counterfeit birth records. The authentic cards are of blue cast, are watermarked and have the name "Whitehead & Co., Los Angeles" pre-printed on the card. This identifying information pertains only to those birth records where the name "R. H. Hutcheson, M.D.," appears on the card. Any Tennessee birth registration card that has Dr. R. H. Hutcheson's name on it but does not have the above characteristics is likely to be counterfeit.

G. TEXAS - A criminal operation has been uncovered which is selling fraudulent identity packages to illegal aliens and other persons wishing to establish a new identity. While these packages are not limited to fraudulent Texas documents, the majority appear to have been made to support a Texas place of birth. Included in the packages are birth registration cards, baptismal certificates, voter registration cards, and Justice Department and insurance documents of all types with bogus seals to "authenticate" them. In addition, there are Selective Service cards, marriage certificates and high school diplomas from various cities and towns. SSA has reported that they have been used for claims for benefits.

905.25 Reconciliation of Names

If the name claimed by a person differs materially from the name appearing on evidence submitted, the difference must be reconciled. Affidavits may be required if there is no evidence that can solve the discrepancy. An affidavit is a sworn statement in writing made under oath or on an affirmation before an authorized magistrate or officer.

905.25.1 Reconcilable Differences

Discrepant names may be reconciled when the variation in names is caused by one of the following:

A. A woman's maiden name is shown on the evidence;

B. Anglicization or simplification of spelling;

C. Use of standard nicknames or diminutive forms of names;

D. Literal translation of names from one language to another; or

E. Transposition, addition, or omission of names according to popular or religious customs.

When the name can be reconciled by one of the situations listed above, having the applicant sign a statement to the fact is sufficient.

905.25.2 When Affidavits Are Required

If the difference in names cannot be explained as in FOM1 905.25.1, the applicant must submit:

A. A personally executed affidavit stating that the names involved refer to him as one and the same person; and

B. A corroborating affidavit executed by a responsible person which substantiates the applicant's statement and reflects the basis of the affiant's knowledge.

Advance collection of evidence to support a claim for RRB benefits is encouraged to facilitate any future application processing. RRB insured status is preferred, but is not required for accepting advance proofs.

910.5 Advance Proof of Age and Military Service

Advance collection of proof of age and MS allows us to secure a potential beneficiary's correct birth date and to credit an employee's MS months prior to the earliest possible ABD. It is especially important to establish an employee's DOB for future benefit estimates and Medicare enrollment. Since APPLE screens permanently store proof information, data may be entered at any time to create records under any employee's SSA number.

910.5.1 Proof of Age

When a person presents advance POA documents, examine the evidence for acceptability (see FOMI-905.5.2) transcribe the pertinent facts to the appropriate APPLE evidence screen; and return the documents to the person.

Advance-filed age proofs remain on APPLE and may be viewed, supplemented, or deleted until an application for benefits is processed. When evidence records are used in an APPLE award action, the screens are "frozen".

A. Discrepant Documents

When multiple birth dates are indicated on available documents, and F/O examination of evidence does not determine the accurate birth date, enter all evidence on the APPLE screens and notify RIS by e-mail that a headquarters decision is needed.

B. Evidence Has Low Probative Value

If APPLE has no previously submitted document of greater value, enter the information from the evidence presented and counsel the person on obtaining additional supporting proof. Low probative value is not a consideration in the use of SSA's MBR or NUMIDENT as POA. See FOM1 905.5.5 for information on when to use MBR or NUMIDENT as POA.

C. Conflicting DOB ON EDM Record

Employer and SSA records supply unverified DOB information to EDM. If an EDM DOB is wrong, MARC and REAP annuity estimates may be wrong, so correct detected errors whenever possible.

Form BA-6 advises current workers to request a change when the displayed DOB is wrong. Historically, documentation has not been required for EDM DOB changes.

When an employee submits POA that differs from the DOB shown in EDM, transcribe the evidence to APPLE, and follow the GL-7 instructions in FOMV-609.1. DO NOT attach a photocopied POA to the Form GL-7.

D. Headquarters Handling

Field personnel will send an e-mail message to RIS when conflicting proofs require a headquarters determination of DOB. RIS will examine the APPLE screens and develop the correct birth date according to rules for benefit applications.

NOTE: If there are unresolved conflicting birth dates on an evidence record when an application is entered, APPLE will select the date with the best proof weight or, if the evidence does not clearly establish the DOB, the claim will be referred for manual handling.

910.5.2 Proof of MS

Periods of MS that are creditable as railroad service months and compensation will be credited toward the employee's benefit eligibility as soon as the proof is verified and entered to EDM through APPLE. Early recording of MS is important in establishing RRA insured status for eligibility queries and allowing uninterrupted processing of future benefit claims.

A. APPLE Entry:

Transcribe advance proofs of active military duty in the U.S. Armed Forces to APPLE. Upon accessing the Proof of MS screen, PF14 will take you to the EDM Military Service Information screen. After data entry, EDM will invoke the MS module to determine if the military months can be credited as railroad months and compensation, or as SSA wages, on the EDM earnings record.

B. Priority Handling:

During periods of heavy F/O workload, it may be necessary to prioritize processing proofs of military service. On such occasions, encourage mailing of proofs to F/O, and return the documents with RL-103A. When possible, record evidence delivered in person while the customer is present.

1. Advise the customer that written verification of credited MS will be available within 90 days. If a customer requests written verification, establish a pending file to query EDM after 90 days and send a reply showing the number of additional service months that are credited to the employee.

2. Send e-mail requests to CESC for expedited Headquarters processing only for customers who

- Need MS credit for benefit insured status; or
- Will be filing an AA-1 application within 90 days; or
- Do not have a MS creditability determination added to EDM 90 days after APPLE input.

C. Customer Inquiries:

1. Use EDM screens to verify that qualifying railroad service was performed. When creditability is obvious, informally advice employees how many more service months will be credited, but if there are months when both RR work and MS was performed, or doubtful credit is involved, wait for credits to be entered on EDM by headquarters before confirming the additional service months.

2. The following information taken from regulations and RRB legal opinions will help answer questions about MS credit. (See FOMI 215 for full requirements of creditability.)

   - The U.S. military draft ended July 3, 1973. Any MS period that began after 7-3-73, is voluntary service and creditability is restricted with exception listed below:
     - After 6-30-1973, Involuntary applies only to reservists called or recalled to federal active duty.
   - The State of National Emergency covering MS in the Korean conflict and Vietnam era ended 9-14-78. Any period of MS that began after 9-14-78, but before 8-2-90, was voluntary AND not in a war service period and it is not creditable as compensation.
   - The most recently declared State of National Emergency, referred to as the Gulf Wars, began 8-2-90 and has not been declared ended.
   - Beginning 1957 SSA credits active duty MS earnings similarly to other wage credits. Prior to 1957 SSA gave only $160 per month credit for MS not used by the RRB.
   - When MS cannot be used as Tier 2 railroad credits, the earnings are included in calculating the annuity Tier 1.
   - MS before 1975 is considered for use as compensation and as wages when a claim is filed. If creditable both ways, it is used to the employee's advantage either for a VDB or for a Tier 2 increase.

- Annual 2-week active duty training time performed by reservists is reported to SSA as wages, but "summer camp" MS rarely meets all qualifications for increased RRA credit. When in doubt, submit evidence, but do not confirm credit until EDM is updated.

- If the RRB uses a period of MS as railroad months, SSA must remove those earnings from their benefit computations - even if SSA eligibility is lost without MS.

910.10 Other Advance Evidence

To plan ahead of the time an application is filed, a potential applicant may provide proof of marriage(s), divorce, spouse's age, and other documents that may be needed when an application is filed. When these proofs are presented to an RRB office, examine the documents and advise the customer regarding their acceptability.

On line information systems allow us to collect, evaluate and permanently store most claims documentation, so it is not appropriate to instruct customers to retain and, in the future, resubmit their proof documents when they file an application.

A. APPLE Entry

Transcribe pertinent proof information to the appropriate APPLE screens and return the documents to the employee or other person who presented them. Advise the customer that the evidence will be retained in our permanent mechanical files for use when filing an application.

In case of discrepant documentation, complete multiple APPLE screens, including appropriate remarks, and e-mail the responsible headquarters unit to request examiner review of the APPLE records.

B. G-91 Series And Imaging

Proofs should be photocopied unless prohibited and scanned to Workdesk. If unable to photocopy or scan the proof, Form G-91 should be used.

If no appropriate Apple screen exists when evidence is received, transcribe the information to a suitable G-91 series form, return the evidence to the customer, and image the G-91 to Headquarters (RIS or SIS) along with any proof of MS. Acceptable unique material, not suitable for Form G-91, may be photocopied by an RRB employee and imaged directly to headquarters (RIS or SIS)

915.5 General

915.5.1 When Required

Proof of age is required of every applicant for any annuity except:

- A spouse annuity based on having an entitled child in her care; or
- A widow's annuity based on having the employee's entitled child in her care.

Although POA is not required in the above excepted cases, it should be secured for future use when the spouse or widow(er) no longer has a qualifying child in care.

Proof of age is required for the employee in the following situations:

In “A” cases POA is required only if the employee's DOB has not been previously verified.

Effective 03-01-2004 POA of deceased employee is required in all “D” cases when a survivor recurring application is filed.

915.5.2 Preliminary Evaluation

Every reasonable effort must be made to establish an applicant's correct date of birth on RRB records. In case of conflicting information, an examiner will determine the value of the birth evidence on the basis of its probative value, not just the numerical value. However, even if the probative value is low, SSA’s MBR or NUMIDENT can be used as POA without further development if the guidelines in FOM1 905.5.5 are met.

Numerical value serves as an objective guide for determining the relative worth of a document such as a birth certificate as compared with a military record. Numerical value is used for comparison purposes only. Probative value represents an assessment of a document's validity in supporting a claim. A birth certificate has high probative value because it is a commonly recognized legal document generally recorded near the time of birth.

Multiple proofs of age may be submitted and recorded on APPLE. This is encouraged when it appears that only evidence of low probative value can be secured. If the date of birth on any of the documents disagrees with the claimed date of birth explain, in the Remarks section of the APPLE screen, why the document is included as evidence.

To record SSA or NUMIDENT DOB on APPLE:

- When SSA’s MBR is used for proof of age, the type of document is “other” and the date of the record is the date of filing shown on the MBR. Indicate in remarks that the MBR was used.

- When SSA's NUMIDENT is used for proof of age, the type of document is "other" and the date of the record is the CYD date on the internal line of the record. Indicate in remarks that the NUMIDENT was used.

Please note that while the date of birth on the MBR and the NUMIDENT can be used for POA, the MBR and the NUMIDENT cannot be used for proof of relationship.

Evidence of low probative value that agrees with the claimed date of birth may not establish the DOB. If the claimed DOB is not in agreement with, or reasonably supported by, other information on record with the RRB, an examiner will determine which evidence is most convincing proof of the individual's birth date.

RRB and SSA must usually establish the same DOB for an individual. Ordinarily, birth evidence of the higher probative value will govern when discrepant dates of birth have to be reconciled.

915.5.3 Evidence Only Establishes Applicant's Year of Birth

When a document establishes only the applicant's year of birth, secure additional evidence to establish the individual's month and, if possible, day of birth. The additional evidence can be one of the proofs listed in FOM1 915.15 or another document such as a driver's license which shows the applicant's month, day and year of birth. The supporting evidence may be more recent than the proof showing only the applicant's year of birth.

Inform the individual that the RRB will establish a date of birth based on information in existing RRB records or information available from SSA.

The claimed month, day and year of birth will be established if there is no discrepant information in RRB or SSA records. If the claimed DOB differs from information previously recorded, handle according to the guidelines in FOM1 915.20.

915.5.4 Attainment Concept

A person attains a given age on the day preceding the anniversary date of his birth. For example, a person born on March 2, 1925 attained age 65 on March l, l990; if his DOB had been March 1, 1925, he would have attained age 65 on February 28, 1990.

915.10 Evaluating Evidence

915.10.1 Probative Value of POA

Determining the probative value of a particular piece of birth evidence is a matter of judgment. Evaluate each piece of evidence to determine the probative values. In making the evaluation, consider all of the following factors:

A. Age of the evidence or date the evidence was established;

B. The purpose for which the evidence was established (i.e., would it have served the person's interest to falsify his age at the time the evidence was established?);

C. Basis for the record (i.e., was proof of the person's age required?);

D. Formality of the record (i.e., was the record made under oath, witnessed, or was there a penalty provided for a false statement?).

A probative value judgment should not be based solely on any one factor. For instance, while the age of the evidence is an important factor (the earlier a record was made, the more reliable it tends to be), do not base the probative value decision on this factor alone. Note that, even if the probative value is low, SSA's MBR or NUMIDENT can be used as POA without further development if the guidelines in FOM1 905.5.5 are met.

915.10.2 Numerical Value of Evidence

The following tables, which have been developed for electronic data processing purposes, are merely a guide for determining the relative weight of birth evidence. The document with the highest numerical value is not necessarily the one with the highest probative value.

To determine the numerical value, total the values assigned for the type of document and the age of the document. For example, a census record made 25 years after birth would have a value of 30 (15 based on type and 15 based on age).

TYPE OF DOCUMENT	NUMERIC VALUE
Civil Record of Birth Church Record of Birth or Baptism Notification of Registration of Birth	30
Hospital Birth Record or Certificate Physician's or Midwife's Birth Record Bible or Other Family Record	25
Naturalization Record Military Record Immigration Record Passport Draft Registration Record	20
School Record Vaccination Record Census Record	15

Insurance Record Labor Union or Fraternal Record Marriage Record Employer's Record	10
Other records not classified above	5

NUMBER OF YEARS AFTER DOB RECORD WAS MADE	NUMERIC VALUE
Record made within 5 years of DOB	24
Record made 5 through 10 years after DOB	21
Record made 11 through 20 years after DOB	18
Record made 21 through 30 years after DOB	15
Record made 31 through 40 years after DOB	12
Record made 41 through 50 years after DOB	9
Record made 51 through 60 years after DOB	6
Record made 61 through 70 years after DOB	3

915.10.3 Acceptability of Birth Evidence

Any document an applicant offers as proof of age may be accepted by the field office and submitted provided it would otherwise be acceptable even though the evidence is not in agreement with the applicant's claim. However, to VERIFY the applicant's claim, the evidence must meet the following requirements:

A. It must be an original document or a certified copy of an original document. A photocopy may also be acceptable (see FOM1 905.10.3.D).

B. It must not contain:

1. Material alterations in age, DOB or in the name of the person which are sufficient to cause doubt that the entry pertains to the person for whom it was submitted. An alteration in the day of the month will not discredit entries showing the month and year of birth if there is no indication that either of those entries has been altered. Likewise, an alteration in the month will not discredit the year of birth if the latter entry is unaltered.

2. Material differences in the name claimed and the name shown on the evidence, unless the variation in name is reconciled.

In addition to the requirements above, the original entry of the age or date of birth of an employee shown on the evidence submitted must have been made more than 5 years before the filing date of the application. Evidence submitted to establish the age of a dependent or survivor must have been recorded more than 5 years before the date of submission or the filing date of the application, whichever is first; accept evidence submitted to establish the age of a child under 5 years of age, if recorded at or near the time of such child's birth and it is otherwise acceptable.

915.15 Specific Types of POA

915.15.1 Civil Record of Birth

A. Record Made At or Near Time of Birth - A copy of the public record of birth made at or near the time of birth, or a statement of the DOB shown by such record (as certified by the custodian of the records) is usually the best evidence of age.

B. Certificate of Delayed Registration - A certificate of delayed registration issued by a civil authority, or pursuant to a court order, is acceptable if it shows that the record of the DOB was made MORE than 5 years before the official filing date of the application for annuity, regardless of the source of the record.

If the certificate of delayed registration shows that the record of the DOB was made LESS than 5 years before the official filing date of the application, accept it if:

1. The basic evidence used to establish the delayed record was of earlier origin than 5 years before the application filing date; and

2. Such basic evidence is otherwise acceptable to the RRB.

NOTE: In assigning numerical values to delayed birth registrations, use the values that would be assigned to the evidence on which the registration is based. For example, if the registration is based on affidavits, assign a value of "5" for type of document. Consider the date of the oldest acceptable evidence used to obtain a delayed birth certificate as the date of the document. If no acceptable evidence is described on the document, use the date the delayed birth certificate was issued.

C. Amended Birth Certificate – A birth certificate showing a date of record more than 5 years after the date of birth because the individual was adopted is an amended birth certificate. Consider the date the amended birth certificate was issued as the date of record.

915.15.2 Naturalization Papers or Record

A. Naturalization Papers - Although naturalization papers may be surrendered, the making of copies is forbidden; however, a Form G-91 transcript may be made of pertinent excerpts and used to establish DOB or as POA if otherwise acceptable.

B. Naturalization Record - If the applicant is a naturalized citizen, POA or DOB may be established from a record furnished by the Immigration and Naturalization Service. Address all requests for records made before 4-1-56 to the Immigration and Naturalization Service, ll9 D Street NE, Washington, D.C. 20536. Requests for records made after 3-31-56 should be directed to the INS district office servicing the area where the person was naturalized.

In order to help locate the record, the applicant should furnish as much of the following information as possible:

1. Name on certificate (as spelled when naturalized or when declaration was filed);

2. Number of the certificate of declaration if final papers were issued;

3. Address when naturalized;

4. Place of birth;

5. Alleged date of birth;

6. Name and location of the court which issued the certificate (or in which the declaration was filed); and

7. Date of naturalization (date issued).

915.15.3 Immigration Record

If a naturalization record is not obtainable, an applicant can establish POA or DOB on the basis of an immigration record. There are two types of immigration records, an arrival record and an alien registration record.

A. Arrival Record - Only the person's age is shown on this record, not his DOB. If the applicant arrived before 7-1-24, requests for this record should be directed to the Verification Center of the INS at the address of the office having jurisdiction as follows:

Place of Entry	**Address**

Canadian Border	74 Kingman Street St. Albans, Vermont 05478
Mexican Land Border	Post Office Box 9398 El Paso, Texas 79984
Ports along the eastern seaboard, and the Gulf of Mexico as far west as, and including New Orleans, Louisiana	26 Federal Plaza New York, New York 10007
Ports along the western seaboard, as well as ports on the Gulf of Mexico from New Orleans, Louisiana, southwest to the border	630 Sansome Street San Francisco, California 94111

To help locate the record, the applicant should furnish the exact name given on arrival, date of arrival, name of ship, and the port of embarkation.

If the applicant arrived after 6-30-24, the record is available from the INS district office having jurisdiction over the area in which the alien resides. These records will indicate DOB since visas and birth records or other supporting evidence were required for arrivals after 6-30-24.

B. Alien Registration Record - Age information from this record is available from the INS district office having jurisdiction over the area in which the alien resides. The information on the original alien registration record is based on the DOB given under oath when the applicant registered under the Alien Registration Act of 1940. However, the age on the alien registration card in the applicant's possession may be based upon a more recent allegation of the applicant if a new card was issued to him at a later date.

915.15.4 Passport

A. U.S. Passport - According to State Department regulations, American passports may not be surrendered; therefore, transfer pertinent excerpts onto a Form G-91. Do not make or accept as evidence handwritten or typewritten copies, photocopies, or other facsimiles.

B. Japanese Passport - Some passports issued by the Japanese government may show the person's age in years and months but not the DOB. Under the Japanese method of computing age, a person is considered 1 year old at the time of birth and attains the age of 2 years on the following January 1st. Thus, any Japanese document reporting only attained age probably does not reflect the person's true age.

When the only acceptable DOB evidence of record consists of a Japanese passport which shows the attained age, ask the applicant to submit one of the following forms of evidence:

1. Family records which are issued to Japanese subjects and which give the dates of birth of family members; or

2. Village officer's certificates, which are also issued to Japanese subjects and show DOB; or

3. Statements obtained from immigration authorities as to the DOB given by the person at the time application for passport or visa was made.

915.15.5 Military Records

Accept as POA a certificate of discharge or a release to inactive duty from a branch of the Armed Forces, a certified copy of such a certificate, or a certification of the M/S from a branch of the Armed Forces showing the applicant's claimed age or DOB as established if the date of release or discharge is more than 5 years prior to the application filing date. Accept a photocopy of such a document as POA.

915.15.6 Census Record

If after reasonable effort, the applicant is unable to secure acceptable evidence to establish a date of birth, or the only evidence available is of limited value, a search of the Bureau of the Census records may be undertaken at no expense to the applicant.

To secure a search of the census records, the applicant must complete a Form G-256 authorizing the Bureau of the Census to conduct a search and report the results to the Board. Refer to FOM1 1720 for instructions on preparing and releasing Form G-256.

The Bureau of the Census will search only 2 years' records on one request. Assist the applicant in completing the request for the earliest two census years for which he has the most complete information.

The Bureau of the Census has records taken every ten years, starting 1900, for all 50 states. Information for Puerto Rico begins with 1910. Other U.S Territories' census records begin 1920.

915.15.7 School Record

A school record showing DOB or age at the time of school admission is generally accessible and acceptable as POA.

(Exception: Mississippi School Census Records made before l923. This evidence may be acceptable, but requires special consideration. The school census was taken between February 1 and the first Monday in June each year. Thus, the recording date varied from year to year and county to county. Since the child's age on the recording

date is shown, but the actual recording date is not, examiners must verify the recording date in each case. When data is transcribed from a Mississippi School Census Record for POA, clearly indicate this fact in the remarks section of Form G-91.)

915.15.8 Insurance Policies

A. Ordinary Life Insurance Policies - These policies generally indicate the exact DOB of the insured in a photocopy of the application attached to the policy. When this type of insurance policy does not state the exact DOB or whether the age of the person was given as of the next or the nearest birthday, consider the age shown to have been attained as of the NEAREST birth date.

B. Industrial Life Insurance Policies - These policies are issued in small amounts, usually not over $500.00. Premiums are stated in weekly amounts and are generally collected at the home by an agent of the company. Such a policy generally shows only the age of the insured and does not have the application attached to the policy. In the absence of a showing to the contrary, consider the age shown to be the age at the NEXT birthday as of the time the policy was issued.

915.15.9 Labor Union or Fraternal Record

Accept as POA a statement as to the applicant's DOB on the stationery of a labor organization or fraternal order (or which bears the seal of the lodge) and is signed by the lodge secretary (or officer responsible for the duties of a secretary). The statement should be in the form shown in the example below or should show the age or DOB of the applicant and the date the record was established.

EXAMPLE:

(Date)_____

Dear (Name of Applicant):

The records of Lodge (name and number) show that you joined it on (date) and at that time gave the date of your birth as (date) ..... or ..... your age as (number of years.)

(Signed) John Doe

Secretary

915.15.10 Employer Record

This record, when on official company stationery or on Form AA-2P may be accepted as POA of the employee if his age or DOB was entered on employer records more than 5 years before his application filing date. If the employer record shows that the age or

DOB of the employee was verified by documentary evidence, secure that documentary evidence if possible.

Because an employer record of age or DOB, when not verified, has a low probative value, make reasonable effort to secure more convincing POA.

915.15.11 Pullman Company Insurance Record

Consider a photocopy of an application for Pullman Company group insurance an acceptable insurance record (as distinguished from an employer record) to establish an employee's age or DOB if the record was made more than 5 years before the official filing date of the annuity application.

915.15.12 Indian Tribal Census Rolls and National Archives Records

A. Navajo Indian Tribal Census Rolls - Navajo tribal census records are normally established at birth based on copies of the same hospital notice as those sent to the various public recorders serving the Navajo reservations. These records are maintained at Window Rock, Arizona. Include the following information about the applicant in requests for records: full name (including Indian name and nicknames); alleged DOB; place of birth (if known); parents' names (including Indian names and nicknames); parents' census number; and the individual Navajo census number involved.

   Address the request letter to the Navajo Tribe and sent it to the RRB district office in Albuquerque NM. See Appendix A6 in FOM1 Art 9 Appendices.

B. Seneca Indian Tribal Census Records - From 1882 until about 1940, a yearly census was conducted in the Seneca Indian Nation. Beginning about 1906, these census records were based on New York state birth records. The individual's specific DOB was recorded in the first census taken after his or her birth.

   The records are maintained by the clerk of the Seneca Nation. The clerk is changed every 2 years when the headquarters of the Nation is rotated between the Allegheny reservation in Salamanca, NY, and the Cattaraugus reservation in Irving, NY. The records will be in Irving from November 1996 to November 1998; they will then return to Salamanca for 2 years and continue to rotate in November of even-numbered years. Include the following information about the applicant in requests for records: name at birth, alleged DOB and parents' names. There is no charge to members of the Seneca Nation.

   Address the request letter to the Clerk of the Seneca Nation and send it to the RRB district office in Buffalo, NY. Both Irving and Salamanca, NY, are in the area serviced by the Buffalo D/O. See Appendix A7 in FOM1 Art 9 Appendices.

C. National Archives Indian Records - The National Archives in Washington, D.C., has extensive records from the Bureau of Indian Affairs. Two types of records are especially helpful for establishing age for Indian claimants:

*Indian Census Rolls, 1885-1940 - The rolls are grouped by families, showing the age or DOB of each person and his or her relationship to the head of the family. The records are not complete because a census was not taken for every reservation or group of Indians for each year. Some Indians are not listed because they did not maintain a formal affiliation with a tribe under Federal supervision. Moreover, few records are kept at the National Archives for the following Oklahoma tribes: Cherokee, Chickasaw, Choctaw, Creek and Seminole.

*Quarterly Reports of Indian Schools, 1910-1939 - These records involve both Federal government-operated and private contract schools, and list students and their ages. However, these records are not complete; they do not list all schools or even all students in a given school.

For a particular tribe, other types of records may be available. Because of the variety of information contained in the National Archives, it is best to consider each case on an individual basis. If enough information about an applicant is known, the personnel at the National Archives can determine what types of records might list him or her.

Requests for information from the National Archives should include: applicant's name (including Indian name and nicknames); tribe, band, reservation or agency if known; alleged DOB; place of birth; parents' names (including Indian names and nicknames); place(s) of residence as a child; siblings' names; name and location of Indian school(s) attended; and the approximate dates of school attendance.

Address the request letter to the National Archives, Washington, DC, and send it to the RRB branch office in Washington, DC. See Appendix A8 in FOM1 Art 9 Appendices.

915.15.13 Affidavits

The sworn statements of two persons having personal knowledge of the age or DOB of an applicant may be acceptable. These statements should contain the following information:

A. The applicant's age, approximate age, or DOB; and

B. The circumstances under which the affiant has knowledge of the facts sworn to; and

C. The extent of the affiant's knowledge upon which the statement is based

915.15.14 SSA Data Bases

For information about using SSA's databases for POA, see FOM1 905.5.5

915.20 Reconciling Discrepant Dates of Birth

915.20.1 General

If the age evidence in file conflicts with the claimed date of birth, a claims examiner will establish the claimed DOB when:

A. The evidence of highest probative value agrees with the claimed DOB and is clearly superior to any conflicting evidence in file; or

B. The evidence of highest probative value is not in agreement with the claimed DOB, but the discrepancy does not affect:

   1. The applicant's current or future eligibility for an annuity or for Medicare benefits, or

   2. The employee's or spouse's ABD by more than 30 days, or

   3. The monthly annuity rate by more than $1.00.

C. It is supported by the 1910, 1920 or 1930 Census. A 1910, 1920 or 1930 census record corroborates the claimed DOB when:

   1. The claimed DOB and that shown on the census record are the same or differ by only 1 year; or

   2. There is additional proof of age in file that was recorded at least 5 years before the filing date of the current application which supports claimed DOB and the discrepant evidence has less probative value.

915.20.2 Interagency Discrepancy

SSA and RRB have agreed that when both agencies are concerned with the DOB for an applicant or annuitant the same DOB should be established by both agencies. During the adjudication process, SSA reports DOBs on various forms. When the DOB in an RRB correspondence and the one of record at SSA disagree, a discrepancy message is printed on the social security earnings record (Form G-90). The claims examiner will begin an investigation which will involve an exchange of evidence with SSA.

A. When RRB age evidence is clearly higher in probative value, SSA will ordinarily change its record to agree with the DOB established by RRB.

B. When SSA has age evidence clearly higher in probative value, the examiner will ask you to secure:

1. Evidence of higher probative value than that furnished to SSA; and

2. An explanation of the discrepant DOBs, including the applicant's reason for having claimed a different DOB if he had done so; and

3. A signed statement from the person if he wants to amend the age or DOB previously claimed with the RRB; and

4. A copy of the evidence used by SSA, if not in file.

If the applicant does not submit evidence of higher probative value than that used by SSA, the examiner will determine whether the DOB should be changed or administrative finality applied.

C. When SSA's and RRB's evidence have almost identical probative values and the DOB discrepancy is within the same month and year; establish the claimed DOB if the birth day is other than the first or second of the month. If the claimed day is on the first or second of the month, secure a third piece of evidence before resolving the matter.

Example: RRB had established a spouse's DOB as 6-14-18, based on her claim. SSA established the DOB as 6-15-18, based on a transcript of an original document. The probative value is identical. We would use the applicant's claimed DOB to establish her DOB.

915.20.3 Administrative Finality

A. Defined - Once a date of birth has been established and it is material to an award (even though only a partial award may have been made) or is the basis for a determination of entitlement to Medicare, the DOB is final for the purpose(s) for which it was established and may be changed only if the claim is reopened because:

1. The determination was caused by fraud or other fault of the applicant; or

2. There is a clear and obvious mistake of fact or a clear and obvious mistake of law; or

3. New and material evidence received after the determination would result in a decision favorable to the applicant.

B. Effects - The effect of a declaration of administrative finality will depend on the favorability of the established date of birth to the annuitant.

1. DOB Favorable - Normally, evidence that established that an applicant is older is considered favorable to him. However, do not consider that the evidence would result in a decision favorable to the applicant if establishing an earlier DOB for an employee born before 9-2-16 changes

an employee's closing date and disqualifies him from receiving a supplemental annuity.

2. DOB Not Material - A date of birth determination is not material to the award in some cases.

   a. A disabled employee begins receiving an occupational disability annuity. His DOB would not be material to the award until he reaches age 65. If at or before age 65 it is determined that SSA has POA of higher probative value or has enrolled the employee for SMIB under a DOB different from the one on our records, our DOB will be changed to agree with the one established by SSA.

   b. A widow(er) or spouse is receiving an annuity on the basis of having a child in care. Depending upon other adjudicative factors in the case, the DOB would not be material until the widow(er) reaches age 60 or 65 or until the spouse reaches age 62 or 65.

      In a case where the DOB is not material to the award, the DOB may be changed on the basis of evidence of higher probative value even though the change would be considered unfavorable to the annuitant. However, at the point that the DOB on our records is material to the award, the determination is final.

3. DOB Unfavorable - If new evidence, superior to the original birthdate evidence, establishes that the annuitant is younger than was previously believed, administrative finality will be applied to the DOB used in any annuity awarded or Medicare determination made prior to the time the new evidence is received, providing that the original determination was not caused by fraud or other fault of the annuitant.

   When administrative finality is applied to a DOB determination, no action will be taken to correct any previous Medicare entitlement determinations or awards (i.e., the PIA used in the calculations, the age reductions and the date of entitlement will not be changed). All future adjustments, whether caused by cost-of-living increases, amendments or changes in a family group, will be based on the original DOB.

   A DOB will be established for the annuitant on the basis of superior evidence for all new awards and Medicare entitlement determinations, such as the award of a regular annuity following a determination of entitlement to Medicare, the later award of a supplemental annuity or spouse annuity or the inclusion of a husband or wife in the award under the overall SSA minimum.

915.20.4 Right of Appeal

If, as a result of a reconciliation of a discrepant DOB with SSA, the person's DOB is changed on RRB records, he or she has the right to appeal that decision. The appeals paragraph must be included in the decision notice.

920.5 When Proof of Death Is Required

920.5.1 Survivor Benefits

Proof of death (POD) of an employee or an employee annuitant is required in all claims for survivor benefits. POD of other individuals is also required in the following situations:

A. When the death of any person who, if living, would be entitled to all or a portion of the survivor benefit is alleged, AND such death occurred after the death of the employee or employee annuitant;

NOTE: POD of a widow(er) is required in spouse–to-widow(er) cases, when the widow(er) dies after the employee but in the same month as the EE and a LSDP is payable.

B. When a designated beneficiary in an RLS case who, if living, would be entitled to an amount in excess of $100.00 is alleged to have died;

C. When the spouse in a J&S election case dies before the employee annuitant;

D. Any other case in which there is reasonable doubt as to the death of:

1. Any person who, if living, would have priority over the applicant; or

2. Any spouse whose death is alleged to have ended a prior marriage; or

3. Any beneficiary whose termination of entitlement would increase other benefits.

920.5.2 Acceptability of POD Used by SSA

Any evidence acceptable to SSA as POD is acceptable to the Railroad Retirement Board without further development unless there is a conflict as explained in FOM-I-920.20. Additional evidence of death is not required for the payment of an RLS when POD has been accepted by SSA and is contained in their files.

SSA NUMIDENT may also be used as POD if the record indicates DOD has been verified. (See FOM1_905.5.5C).

920.10 Preferred Proofs

920.10.1 Death within the U.S. (Civilian or Military)

A. Public record of death

1. A certified copy of the public record of death, coroner's report of death or verdict of the coroner's jury of the state or community where death occurred, a certificate by the custodian of the public record of death, or a certificate or statement of death issued by a local registrar, or public health official; or

2. A certified copy of an official report of finding of death made by an agency or department of the United States which is authorized or requested to make such report or finding in the administration of any law of the United States; or

3. A photocopy of any of the documents described above showing no signs of alteration. (A photocopy of a death certificate does not have to be certified.) If a photocopy has been altered, obtain the original document.

B. Government agency forms

1. RRB Forms - The following forms are acceptable:

   a. Form G-91 describing public record of death; or

   b. Form G-273 (Statement of Death by Funeral Director); this form is acceptable only if it is received in an office of the RRB before 8-31-89; or

   c. Form G-273a (Statement of Burial Expenses). This form serves a dual purpose, i.e., it may be used as proof of payment of B/E and POD. (If the FH is applying directly for the LSDP, Form G-273a is not acceptable as POD.)

2. SSA Forms - The following forms are acceptable:

   a. Form SSA-704 - Describing public record of death; or

   b. Form SSA-721 (Statement of Death by Funeral Director);

   c. Form SSA-2872 (Statement of Death and Burial Expenses by Funeral Director).

   NOTE: A photocopy of the Forms SSA-704, SSA-721 or SSA-2872 furnished by SSA does not have to be certified to be acceptable as POD. If the FH is applying directly for the LSDP, the Forms SSA-721 or SSA-2872 are not acceptable as POD.

920.10.2 Death Outside the U.S.

A. Civilian - When the death of an individual, other than a member of the U.S. Armed Forces, occurred outside of the U.S., acceptable POD is:

1. A report of death by a United States Consul or other agent of the State Department bearing the signature and official seal of such consul or agent; or

2. A certified copy of the public record of death; or

3. A signed statement of death by a funeral director (RRB Forms G-273, G-283a, SSA Forms SSA-721 or SSA-2872 submitted as proof of B/E (unless the FH is applying directly for LSDP) when submitted through a D/O for deaths occurring in Canada or Mexico.

B. Military

1. The official report of death (including telegrams), or any signed communication from the Washington D.C. headquarters of the service department showing the date of death; or

2. A letter from any commanding officer under whom the serviceman served at the time of death describing the casualty and showing the date of death; or

3. A citation signed by the President of the United States showing the serviceman's name and date of death.

920.15 Secondary Proofs

If preferred evidence cannot be obtained and a satisfactory reason is provided in a signed statement by the applicant, accept one of the following:

A. A signed statement on the official stationery of the attending physician or superintendent of the institution where death occurred (SSA's Form SSA-795 completed by such physician or superintendent is acceptable in this case); or

B. The sworn statements of two or more persons having knowledge of the death which set forth the facts and circumstances as to the date, time, place and cause of death.

920.20 Discrepancies

There may be a conflict between the date of death shown on the evidence and the date of death claimed on the application for an annuity or other material in file. In such cases, accept the date indicated by the evidence unless the discrepancy:

A. Involves the month or year of death; and

B. Is material; and

C. Is not satisfactorily explained.

If there still remains an unacceptable conflict, secure additional evidence of the correct date of death. Headquarters will then make a DOD determination or ask for further development, if appropriate.

920.25 Disappearance and Presumed Death

920.25.1 Effect of Disappearance on RR Act Annuities

A. Retirement annuitants - Effective November 1, 1966, no annuity may accrue to an employee annuitant for any month during which (s)he disappears unless it is proven that (s)he was actually alive during such month. The annuity will be suspended upon notice of disappearance.

If the employee annuitant disappears, payment of the spouse annuity continues. See section 920.25.1.C.

B. Accrual annuities - When the annuitant disappears in or after November 1966, an application for accrued annuities will be denied unless the applicant can submit evidence to show that the annuitant was alive for 1 or more months after the month of disappearance. However, the accrued annuity for the months the annuitant is shown to be alive cannot be paid unless the evidence shows that the annuitant is now dead or is presumed to be dead.

C. Survivor annuities - If the employee annuitant who disappears leaves a spouse entitled to a spouse's annuity (or who could be entitled by filing an application), the employee is deemed to have died in the month of disappearance and to be completely insured for the purpose of paying survivor annuities.

A jurisdiction determination cannot be made until we or SSA have proof of death or death can be presumed. If the employee is entitled to SS benefits, SSA will suspend the benefit. However, any auxiliary benefit is continued in force until they have proof of death or death can be presumed.

1. Spouse on the rolls - Headquarters will initiate the normal survivor development action in addition to developing for presumption of death.

2. Spouse not on the rolls - If the spouse would be eligible for a spouse annuity, Headquarters will initiate the normal survivor development action in addition to developing for presumption of death. If, however, (s)he would not be eligible for a spouse annuity until some future date if the annuitant were alive, advise the spouse to file a survivor application at the time (s)he meets the spouse annuity eligibility requirements. For example, (s)he may be under age 62 and, therefore, could not qualify for a spouse annuity until (s)he reaches age 62. For the purposes of this provision, assume that the "living with" requirements for a spouse annuity are met.

3. Annuitant alive after payment of survivor annuities - When survivor annuities have been paid and it is later determined that the employee annuitant was alive for 1 or more months after disappearing, the total amount of survivor annuities paid for such month(s) minus the total amount payable as a spouse annuity will be recovered. For this purpose, the survivor application is treated as a spouse annuity application. The unpaid retirement annuity is, of course, payable either to the employee annuitant, if still alive, or to the widow(er) if the employee annuitant is dead or is presumed to be dead.

920.25.2 Presumptive Finding of Death

The termination of an annuity due to disappearance does not establish a date of death. Therefore, develop for presumption of death in accordance with the following sections whether or not the annuitant leaves a spouse. Operations will submit the fully developed case to the Deputy General Counsel for a determination.

A. Presumption of death in military service - A presumptive finding of death by a service department is made pursuant to Section 5 of Public Law 490, 77th Congress, as amended, and will so state. The date of death in these cases is a statutory date, and is usually a year and a day from the missing date, but may be later in some cases. If the finding establishes the fact of death, but it is not evident as to the date of death, operations will use the presumptive date of death as the date of death in the absence of evidence establishing a later date.

B. Development of evidence of presumptive death of missing person (body not recovered) - When the body of a missing person has not been recovered, obtain the best evidence possible in accordance with the following instructions.

1. Statement from Claimant and Others - Obtain detailed statements from the claimant and other persons having knowledge of the event including the following:

a. Identification of the person making the statement;

b. Time, place and circumstances in which the missing person was last seen;

c. Remarks and actions of the missing person before disappearance;

d. Search for the missing person;

e. Missing person's continued absence from his residence, business and places he may have customarily frequented;

f. Reasons or lack of reasons for falsifying a disappearance such as financial, family or mental trouble;

g. Pertinent evidence or information which came into the person's possession before, during or after the disappearance and its source and basis;

h. Opinion as to whether death was the probable result of the circumstances in which the missing person was last seen;

i. Whether a court has been petitioned to declare the missing person dead.

2. Writings by Missing Person - Obtain any letters, notes, or other writings left or sent by the missing person that have any bearing on the disappearance.

3. Insurance Investigation - If available, obtain:

a. Evidence whether any life insurance policies carried on the missing person's life were paid in full;

b. The facts and date of death established by the insurance company's investigation.

920.25.3 Disappearance Due to Drowning

Develop in accordance with the preceding section and, if possible, obtain statements from three or four representative eyewitnesses before submitting the evidence to Headquarters for determination. If there were fewer than five eyewitnesses, obtain statements from all. If there were no eyewitnesses, obtain statements from other persons having knowledge of the facts giving the basis of their knowledge.

920.25.4 Disappearance after Common Disaster

In common disaster cases when the body is not recovered, the file should contain the applicant's statement that the employee is believed to be dead (and the reasons therefore) and a statement from a disinterested person to corroborate the applicant's belief.

A. Applicant's statement - The applicant should state under "Remarks" on the application or on a continuation sheet why (s)he believes the employee should be presumed dead; i.e., (s)he should state such facts that will bear out the fact that the employee was presumably on the scene of the accident when it occurred and that disappearance is attributable to the disaster.

B. Statement from disinterested person - The principal requirement in common disaster cases is to prove as definitely as possible that the missing person was on the scene of the accident and was in imminent peril. Therefore, the best evidence is statements from individuals who saw the missing person at the scene of the accident shortly before it happened, or under such circumstances that

make it appear unlikely that (s)he could have survived. The employer or a fellow employee is probably in the best position to furnish this type of statement. Any such statements should also contain the reasons for believing that the employee is dead.

In cases in which it is not possible to obtain statements to indicate that a particular employee was observed at work or actually trapped at the scene of the accident, obtain statements which will establish that (s)he was presumably at the scene when the accident occurred. A master statement by an employer giving the names of employees who were believed to have been on duty in a particular place which was devastated is acceptable to aid in establishing the death of an employee. Such a statement should clearly show the basis for the knowledge or belief that the particular employees were on the scene of the disaster when it occurred. A copy of the master statement should be included with each claim.

In disasters involving common carriers, obtain the statement of responsible company officials and statements of crew members or witnesses.

Cases probably will arise in which the missing person was not known to have been at the scene of the disaster, and it will be impossible to secure a statement from an employer, fellow employee or eyewitness placing the employee on the scene when the disaster happened. In such case, secure from the applicant and friends or neighbors all information which may have a strong bearing on the movements of the missing individual the day of the accident and which tends to establish whether (s)he may be presumed to have died in a disaster. This data should include times and places the missing person was known to have been during the course of the day (i.e., if someone claims to have seen the individual during or after the disaster, it may be possible to infer that the missing person is still alive).

920.25.5 Missing Person

Unexplained Absence of 7 or More Years - When a person has been absent from home without explanation and unheard of for 7 or more years, (s)he may be presumed dead in the absence of substantial evidence to the contrary. In addition to the development outlined in FOM-I-920.25.2, develop the following:

A. Statement from claimant to include:

1. When and what was last heard concerning the whereabouts of the missing person;

2. What effort was made to learn of the person's whereabouts if no information concerning the missing person has been received over a long period of time;

3. Whether there had been any previous separation of the missing person from his family;

4. Whether there is any belief that the missing person is dead, and the basis of such belief;

5. Whether the missing person designated a beneficiary in a life insurance policy or policies (s)he had taken out.

B. Statement from other person - Obtain a statement from another person who has knowledge of the missing person's domestic life to explain the attitude of the missing person and his family toward each other.

C. Statement from police department official - Obtain a statement from an official in the police department which conducted a search for the missing person to indicate what action was taken, how extensive the search was and whether it uncovered any trace of the person's whereabouts.

920.25.6 Missing Person Other Than Employee

The existence of a person who is missing and thought to be dead (other than the employee upon whose death the claim is based), may directly affect the right of an applicant to benefits. Develop these cases in accordance with the preceding section. If it is found that the missing person was alive after his disappearance, inform the applicant that the missing person is known to have been alive during the period of his absence and cannot be presumed to be dead.

920.30 Felonious Homicide

920.30.1 Determining Whether Felonious Homicide Is Involved

A person who is found guilty under applicable state laws of the felonious and intentional homicide of an employee cannot become entitled to benefits with respect to the death of that employee. When the employee's death was caused by violence and when it is possible that a claimant living in the same area might have caused the employee's death, determine whether felonious homicide is involved. However, if the death certificate shows that the death was an accident or a suicide, felonious homicide need not be considered.

EXAMPLE 1: John Doe died on 9-27-80 in an apartment in Chicago and was survived by an eligible widow residing in Gary, Indiana, about 40 miles away. The death certificate shows that death resulted from a gunshot wound which was neither accidental nor self-inflicted. Develop for felonious homicide since the widow was in the area where the violent death occurred and might have been involved.

EXAMPLE 2: Frank Smith died 10-11-80 at his home in Detroit, Michigan, and was survived by a not-living-with widow, also residing in Detroit. The death certificate also

shows that death was accidental and, therefore, felonious homicide need not be considered.

920.30.2 Effect of Felonious Homicide on Benefits

A person who has been convicted of the felonious and intentional homicide of the employee is considered nonexistent in determining the entitlement of other survivors or the amount of their benefits. Similarly, persons who are secondary beneficiaries may not be paid benefits if they are convicted of the felonious homicide of the primary beneficiary (e.g., a child murders the employee's widow).

Burial and/or other related expenses paid by a person convicted of the felonious and intentional homicide of the employee will be excluded in computing the reimbursable amount. If the felon is reimbursed by some other person, that other person is not equitably entitled and may not receive payment on the basis of such reimbursement.

The lump-sum death benefit cannot be paid to a funeral home based on authorization by a person who has been convicted of the felonious and intentional homicide of the employee and who assumed responsibility for paying all or part of the funeral home expenses.

After the expiration of 90 days after the employee's death, the funeral home may qualify for the lump-sum on its own application if no one else has assumed responsibility for payment of such expenses.

920.30.3 Meaning of Intentional Homicide

A. General - Intent generally refers to the purpose(s) for committing an act; a wish or an expectancy that the act will have a certain result (regardless of the actual likelihood of such a result). Intent has also been defined as the presence of will in the commission of a criminal act where the individual is fully aware of the nature and probable consequences of the act which is to be done. This applies whether the individual desires that such consequences occur or is indifferent to their occurrence. Since intent is a state of mind, it is seldom established by direct proof but must be inferred from facts. Examples of situations where intentional homicide with respect to an individual will be found are:

an individual actually desires the death of the employee to result from his or her act;

or,

an individual commits an act which he or she knows could result in the death of the employee even though the employee's death is not actually desired (except as noted below).

The following cases are excluded from intentional homicide:

1. Homicides which are the result of an accident;

2. Homicides where the killing is the result of self-defense;

3. Homicides where the claimant was insane when (s)he killed the employee, i.e., unaware of the nature and the consequences of the act.

B. Particular offenses - Murder in the first degree involves intent, by definition. Murder in the second degree is presumably intentional although the presumption is rebuttable. In the absence of evidence to the contrary, a conviction of murder in the second degree will be considered an intentional homicide. (The rare statutory offense of murder in third degree, found in only a few states, is defined as an unintentional act.)

Manslaughter may be either involuntary or voluntary, although the laws of some states do not distinguish between voluntary and involuntary manslaughter, but merely provide that manslaughter is a felony.

Involuntary manslaughter will generally be regarded as a unintentional slaying, and conviction of this offense will generally not bar entitlement to an LSDP or to monthly benefits.

Voluntary manslaughter may or may not preclude entitlement depending on the law of the state in which the charge is preferred. This is also true of a charge of manslaughter if state law does not distinguish between voluntary and involuntary manslaughter. In such cases, development of the facts relative to the slaying will be required (see FOM-I-920.30.6) and submission to the Deputy General Counsel may be necessary.

C. List of particular offenses

Conviction	**Rule**
First degree murder	Intent conclusively presumed.
Second degree murder	Intent presumed, but may be rebutted.
Third degree murder	Lack of intent presumed. This may be rebutted.
Involuntary manslaughter	Lack of intent presumed. This may be rebutted.
Voluntary manslaughter	No presumption. Facts must be developed. (See B above.)

920.30.4 Homicide by Child

If a child is tried in an adult criminal court and convicted of the intentional and felonious homicide of the employee, no benefits (annuity or lump-sum) may be paid to the child.

If the child is under the jurisdiction of the juvenile justice system, and the juvenile court finds that the child intentionally killed the employee by an act which, if committed by an adult, would be considered a felony, no benefits may be paid to the child. Information on the court's finding should be obtained from the court, the state's attorney or other reliable source. If possible, a copy or official synopsis of the court finding should be obtained. If the court records are sealed and no information is available, the benefits will be paid unless information is later obtained which shows that the child intentionally killed the employee. If the juvenile court finding does not clearly show whether the act would be considered a felony, operations will submit the case to the Deputy General Counsel to determine whether the child's offense would be intentional and felonious if committed by an adult.

920.30.5 Development of Felonious Homicide

Do not investigate the cause of death when Forms G-273, G-273a or SSA-2872 are submitted as POD unless you learn, while developing the application, that death was due to violence. In such case, contact the proper law enforcement officials (local sheriff, chief of police, state's attorney, etc.) to determine whether the applicant was involved in the death. Do not conduct any correspondence with the applicant or his representative about the case. Handle such a case as follows:

A. Charge of felonious homicide pending against the applicant - If the claim has been otherwise fully developed, forward it to HQ. When such a case is submitted, show on Form G-659a that evidence specified in sub-paragraph B. below will be furnished if the applicant is acquitted or convicted.

B. When applicant is acquitted or convicted - Secure a certification of the final verdict or proper court record, or statement from the district attorney or other proper court official, on the final disposition of the case and forward it to Headquarters.

C. Person other than applicant is charged with or convicted of employee's felonious homicide - Secure and forward to Headquarters a statement from the proper law enforcement official showing that the claimant was not involved in the homicide.

D. No one has been charged with or convicted of the employee's felonious homicide - Obtain and forward to Headquarters a statement from the proper law enforcement official to show that the applicant was not involved in any way in the homicide.

920.30.6 Cases Involving Manslaughter

If the claimant has been convicted of voluntary manslaughter, include in the file a brief summary statement of the circumstances under which the killing took place, and all available evidence that has a bearing on whether the homicide was intentional. Such evidence includes statements from the prosecuting attorney, trial transcripts, coroner's and police reports and the finding of the court in its decision. Operations will use the above evidence to resolve the issue of whether the claimant has been convicted of a felonious and intentional homicide. If Operations is unable to make a determination as to the individual's intent, it will submit the case to the Deputy General Counsel for an opinion. This instruction is also applicable to convictions or charges of manslaughter in states which do not distinguish between voluntary and involuntary manslaughter.

920.30.7 Convicted Claimant Is Granted Pardon

A pardon of a claimant who has been convicted of the felonious and intentional homicide of the employee makes the felonious and intentional homicide regulations inapplicable only if it is clearly shown that the pardon was granted because the pardoning authority became convinced (e.g., by new evidence) that the convicted person was in fact innocent of the crime. This will generally be indicated in the pardon. If not, and it is alleged that the pardon was granted for this reason, get information from the pardoning authority whether innocence was the basis for the pardon. The fact that the pardon is granted is not alone a basis for concluding that the pardoning authority became convinced of the claimant's innocence since an executive pardon may be granted for other reasons.

925.5 General

925.5.1 Defined

A. Establishment of relationship - A marriage relationship is determined either by applicable state law or by the deemed marriage provision of the RR Act. Under state law, a marriage relationship may be created when an individual participates in a ceremony (civil or religious), is eligible to inherit intestate property as the surviving spouse or is living with another person in a common-law relationship. Under our deemed marriage provision, however, we can establish a marriage relationship when a ceremonial marriage would not be recognized under state law due to certain impediments or defects.

NOTE: The deemed marriage provision can only be applied when there are no adverse claimants.

B. Validity of marriage - The validity of a marriage is ordinarily determined by the law of the state in which the marriage took place. If valid in that jurisdiction, the marriage is ordinarily held valid in other jurisdictions.

A marriage of miscegenation (interracial) is valid even though state law may bar such a marriage. Such laws were declared unconstitutional by the Supreme Court in 1967.

925.5.2 When Proof of Marriage (POM) Required

Documentary POM is required from an applicant for a monthly annuity, LSDP or RLS (except a designated beneficiary) who claims status as the wife, husband, widow(er) or step-parent of an employee.

Documentary POM of any other person may also be required when such person's marriage is relevant in the determination of payments under the RR Act.

Before 6-1-58, a spouse applicant's statement on the application that (s)he was ceremonially married to the employee was accepted as POM under certain circumstances if the employee verified the statement on Forms G-346 or G-345.

Effective 6-1-58, POM is required in all cases, except those where the spouse's application was filed before that date. Therefore, in a survivor case the widow(er) need not submit POM if a spouse annuity began to accrue to such person before the employee's death and marriage was proved in accordance with procedures in effect prior to 6-1-58. Accept the applicant's statement on the application that a ceremonial marriage was performed without securing documentary evidence when there are no monthly annuities payable and it is apparent that the total amount payable does not exceed $25.

925.10 Ceremonial Marriage

925.10.1 Preferred Proofs

The following are preferred POM:

A. The original certificate of marriage;

B. A copy of or statement regarding a public record of the marriage certified by the custodian of such record or by an RRB employee;

NOTE: An imaged marriage certificate obtained from a state or county website maintained by the custodian of records may be considered acceptable evidence in some instances. It has been determined that proofs obtained from official state or county websites in the state of Florida are considered acceptable evidence. Submit questions about websites in other states to P&S, RAC.

C. A copy of or statement regarding a church record of the marriage certified by the custodian of such record or by an RRB employee.

NOTE: Religious ceremonial marriages performed in Mexico by a clergyman have no legal status. Ordinarily, however, when a religious ceremony of marriage is shown to have been performed, it can reasonably be inferred in the absence of evidence to the contrary that a civil ceremony preceded the religious ceremony. The performance of a religious ceremony that has not been preceded by a civil ceremony subjects the officiating clergyman to criminal prosecution, BUT the performance of a criminal act is not to be presumed.

925.10.2 Secondary Proofs

If none of the preferred proofs of marriage can be furnished, obtain a signed statement from the applicant explaining why the preferred proofs are unavailable. Also obtain one of the following forms of evidence:

A. The sworn statement of the clergyman or official who performed the marriage ceremony; or,

B. Other evidence of probative value such as:

1. The sworn statements of two persons who know the facts of the marriage (preferably eyewitnesses to the marriage ceremony) showing the time and place of the marriage and the basis of the affiant's knowledge; or

2. Excerpts from naturalization certificates, deeds, immigration records, insurance policies, passports, or from original business, employment, labor, fraternal, school, church, or other records that show the relationship of husband and wife, and a sworn statement from a knowledgeable

person showing when and where the husband and wife resided together and the basis of that person's knowledge.

Evidence of cohabitation should be developed only if the applicant lived in a state where such evidence can be used to establish a marriage and if the applicant claims to have participated in a marriage ceremony but cannot submit proof. Examiners will initiate such development only if it is requested by the attorney-advisor.

In determining the acceptability of secondary evidence, consider the statements and conduct of the parties. Also consider the length of time during which the parties have lived together as husband and wife; the longer the period, the stronger the inference. When children were born of the relationship, the inference is even stronger.

925.15 De Facto (Deemed) Marriage

925.15.1 Defined

A deemed marriage is created when the claimant's marriage to the employee would have been valid under applicable state law except for a legal impediment, provided:

A. There was a marriage ceremony. (This requirement may be met by the individual's participation in a ceremony conducted under civil, religious or tribal practices, and situations in which certain formalities were observed such as securing a marriage license, but no ceremony was actually performed although the parties believed a ceremony had been performed. The term includes all ceremonial marriages we would otherwise recognize as valid were it not for the defect but does not include common-law marriage.); and

B. The claimant went through the marriage ceremony in good faith not knowing of the impediment at the time of the marriage; and

C. The claimant was living in the same household with the employee at the time of the death of the employee, or, in a life case, at the time (s)he files the application. (In a survivor case, this requirement must be met even if the claimant was entitled to a spouse annuity at the time of the employee's death.); and

D. At the time of filing an application there is no other person (based on a valid marriage or inheritance rights under state law) who had filed and been found entitled to any type of survivor benefit, or, in a life case, there is no other person who is or was entitled to a spouse's benefit at SSA; and

E. The impediment is one resulting from a prior undissolved marriage or otherwise arising out of a prior marriage or its dissolution, or one arising from a defect in the procedure followed in connection with the purported marriage.

925.15.2 Legal Impediment

The deemed marriage provision applies only:

A. To marriages that are invalid because the prior marriage was not dissolved, or the attempted dissolution was not valid (e.g., Mexican mail order divorce) or, if dissolved, there was a restriction against marriage still in effect at the time of remarriage; or

B. When the marriage is invalid because of a procedural defect in connection with the marriage. Examples of such defects are: religious marriage in a country (such as Mexico) which requires a civil ceremony for a valid marriage, or failure to comply with state licensing requirements. When a valid marriage is alleged, do not look for a procedural defect which makes the marriage invalid; however, if it comes to your attention, it must be considered since it would require deemed marriage development.

When the marriage is invalid for other reasons under state law (e.g., because it was incestuous), the deemed marriage provision does not apply.

925.15.3 Good Faith

The applicant must establish that (s)he acted in good faith and in ignorance of any legal impediment which invalidated the marriage as of the time (s)he went through the marriage ceremony. Good faith, or lack of it on the part of the employee makes no difference; nor does it matter if the applicant learned of the invalidity of the marriage after the marriage took place.

The test for determining whether the claimant acted in good faith is the individual claimant's belief at the time of the ceremony. If the claimant believed that the marriage was valid, the requirement is met. The fact that another person might not have had the same belief under the same circumstances, or that a more prudent course could have been adopted, will not prevent a finding that the claimant acted in good faith.

Generally, if the action taken was based on the advice of an attorney or other person who the claimant believes would know the law (e.g., minister, marriage license clerk, etc.), consider the claimant to have acted in good faith in the absence of evidence to the contrary. Other factors which may be helpful in resolving the question in doubtful cases (i.e., whether the claimant's allegation of believing the marriage valid is creditable) are the claimant's education, experience in worldly affairs and age.

Usually, the statement of the claimant is sufficient to determine whether there was good faith.

Include in the statement from the claimant why, at the time of the ceremony, (s)he believed the marriage to be valid. If a prior marriage is involved, include also in the statement whether (s)he knew of it and its invalid dissolution or lack of dissolution. If

there was a restriction on remarriage, the claimant's statement should include the reason (s)he believed the restrictions did not apply.

925.15.4 Living in the Same Household

To determine whether the claimant was living in the same household as the employee at the time of the employee's death or at the time the application was filed in a life case, use the applicable rules in FOM-I-935.

925.15.5 Development

Usually, if entitlement is possible under the deemed marriage provision, it is not necessary to determine the legality of the relationship under state law before developing deemed marriage. Development may be under state law or under the deemed marriage provision, whichever way is quicker or easier. However, if two people are claiming the status of a widow(er), you must develop under state law; in such cases, the deemed marriage provision cannot be applied.

925.15.6 Prior Spouse Entitlement

If, in the course of developing "good faith", the prior spouse inquires about benefits, explain the requirements for entitlement and the necessity of filing an application.

925.20 Common-Law Marriage

925.20.1 General Rules for Determining Validity

Subject to the exceptions in the different States, the following guidelines may be used in determining whether a common-law marriage may exist.

A. How created - Ordinarily, a common-law marriage is created when parties free to contract marriage enter into an agreement to be husband and wife, and actually live together as husband and wife subsequent to and as a provision of the agreement.

B. Bigamous marriage contracted in good faith by at least one party - A valid common-law marriage may arise in some States if at least one of the parties to a bigamous marriage contracted it in good faith and they lived together as husband and wife in a State which recognizes common-law marriages after the impediment is removed.

   An agreement of marriage after removal of the impediment may, in some States, be inferred from the parties continued cohabitation.

C. Both parties enter into bigamous marriages knowing that such marriage is void - Ordinarily, a common-law marriage will not arise when both parties enter into a bigamous marriage knowing that such marriage is void, even after removal of the

impediment unless the parties enter into a new agreement of marriage and live together as husband and wife after the new agreement.

D. Parties domiciled in State which does not recognize common-law marriages - If the parties were domiciled in a State which does not recognize common-law marriages but they contracted a marriage in a State where such marriages are recognized, their marriage will be considered valid by the State of their domicile except in Utah.

E. Cohabitation in State not recognizing common-law marriage - If a couple lives together and declares to be husband and wife after removal of an impediment to a bigamous marriage, do not assume a valid marriage in a State that does not recognize common-law marriage. (Wisconsin is an exception to this general rule.)

F. Cohabitation requirement - After an agreement to be husband and wife, some States require cohabitation but the cohabitation need not always be in the State where the agreement was made.

G. Marriage not valid in beginning - When the marriage was not valid in the beginning, generally the relationship is presumed to be still invalid after removal of the impediment. However, convincing evidence that the parties intended to establish a valid marital relationship after the removal of the impediment could validate the marriage.

925.20.2 When Proof of Common-Law Marriage Is Required

Secure proofs (described in FOM-I-925.20.3 through 925.20.6) whenever

A. The parties agreed to be husband and wife and/or lived together as such in a State that recognizes common-law marriages - If the parties lived together as husband and wife while living temporarily or visiting in a State which recognizes common-law marriages, a valid common-law marriage may arise from their temporary stay in that State. Therefore, if a valid marriage cannot be established under the laws of the State where the parties have been domiciled, it may be possible to establish a common-law marriage in a State in which the couple visited (ask about the places they visited together).

B. Ceremonial marriage alleged, supporting evidence not submitted - When a ceremonial marriage is alleged but evidence that such marriage was solemnized by a clergyman, justice of the peace, or other civil official authorized to perform the marriage ceremony has not been submitted, do not try to establish a common-law marriage until all reasonable efforts have been made to establish the relationship on the basis of the alleged ceremonial marriage.

C. Ceremonial marriage void - If a ceremonial marriage was void when entered into because of a legal impediment and the parties continued to live together as

husband and wife after removal of the impediment, develop for a common-law relationship.

925.20.3 Proof When Husband and Wife Are Both Living

A. Primary proof - Obtain a completed Form G-124, Statement of Marital Relationship, from both husband and wife, and a completed Form G-124a, Statement Regarding Marriage, from a blood relative of each party.

When a G-124a cannot be secured from a blood relative, another knowledgeable person may substitute if the employee furnishes a statement explaining why no blood relatives can complete the G-124a.

B. Evidence in lieu of Form G-124a - Although Form G-124a does not indicate the absence of a ceremonial marriage, an applicant may object to its completion. The fact that completion of a G-124a might prove embarrassing is not sufficient reason why the form should not be secured. If the claimant explains satisfactorily in writing why use of a G-124a would actually be detrimental to the parties or to children born of the relationship, accept other evidence of equal value. Acceptable substitute evidence includes documents identifying the parties as husband and wife, such as:

- Copies of purchase agreements;
- Contracts and leases executed by both parties;
- Bank accounts;
- Correspondence;
- Insurance policies, employment, church, or fraternal records;
- Other documents of equal value.

925.20.4 Proof When One Spouse Is Deceased

Obtain a completed Form G-124 from the surviving spouse and a completed Form G-124a from each of two blood relatives of the deceased husband or wife.

If you cannot secure statements from blood relatives, or if you can only secure a statement from one, obtain a written explanation from the applicant. For each statement not obtained from a blood relative of the decedent, secure a completed G-124a from a person who knows the facts. (See FOM-I-920.15.4B on substituting other evidence for Form G-124a.)

925.20.5 Proof When Husband and Wife Are Both Deceased

Secure a completed Form G-124a from a blood relative of each deceased party. Obtain a G-124a completed by an individual other than a relative as a substitute upon written explanation if such relative's statement is not reasonably obtainable. (See FOM-I-925.20.3B on substituting other evidence for Form G-124a.)

925.20.6 Proof When Ceremonial Marriage Void Due To Legal Impediment

If both or one of the parties who entered into a ceremonial marriage that was void because of a legal impediment are alive there may be a valid common-law marriage if:

A. the impediment is later removed; and

B. the parties continued to live together as husband and wife; and

C. such marriages are recognized under applicable State law.

Signed statements by blood relatives and other are not required in these cases. Obtain proof of the ceremonial marriage and Forms G-124 completed by both the husband and wife or by the surviving party. This rule applies even though the State law requires proof of a new agreement to be husband and wife after the impediment is removed.

If the parties were separated temporarily for reasons such as ill health, financial trouble, employment away from home, or service in the Armed Forces, the living-together requirement may be met in some States.

925.20.7 Foreign Common-Law Marriages

If the employee was not domiciled in any State (the term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam and American Samoa), but rather in a foreign country, the law of the District of Columbia would govern. In the District of Columbia, a marriage not valid in the place where it is contracted is not valid anywhere. Therefore, a common-law marriage is only recognized if it is valid under the applicable law in the place where it was contracted.

For example, Legal Opinion L-97-26 determined that common-law marriages were not recognized in Ontario, Canada. Since the relationship between the claimant and the deceased employee could not be recognized as a valid marriage under the laws of Ontario, Canada, the relationship does not create a valid marriage under the laws of the District of Columbia, and the claimant could not be recognized as the widow for purposes of awarding her a widow's insurance annuity under the Railroad Retirement Act.

Headquarters examiners must submit cases involving foreign common-law marriages to their attorney advisor for a determination on the validity of the marriage.

925.25 Marriage or Divorce Under Indian Tribal Custom

925.25.1 Field Office Action

Status as a spouse under state law may exist as a result of an Indian tribal or custom marriage. Take the following action when an applicant (employee, spouse, or survivor) reports, or you become aware of, a marriage or divorce under Indian tribal custom:

A. Develop and report all the facts; and

B. Cite the state statute, if any is readily available, determining the validity of such marriage or divorce.

925.25.2 Condition for Validity

It is impossible to put into the FOM all the state laws and tribal customs. However, such marriages are recognized as valid under laws of various states if:

A. There was a tribal government to which the parties were subject at the time of the marriage; and

B. The parties at the time of the marriage had been following tribal customs and laws; and

C. The marriage was in accordance with tribal customs and laws.

925.25.3 Proofs

Indian tribal rolls in the custody of a tribal council or agent may constitute the only extant record of a tribal ceremony. However, among Navaho Indians a tribal marriage certificate was issued for marriages after 2-11-54, and should be secured if such marriage is alleged. This would also be true of a tribal marriage for members of any other tribe which is known to have, by resolution or otherwise, provided for licensing and ceremonial requirements.

The evidence must establish that the applicable requirements have been met in order for the marriage to be binding under Indian tribal customs and laws and thus recognized as valid under state law. If one or more of the requirements was not met, the relationship may (under California or Louisiana laws) be a putative marriage which would also establish the necessary status under state law. (A putative marriage is one in which the innocent party to a void marriage may acquire inheritance right as a spouse.) If the applicant does not have a status as spouse under the foregoing provisions, such status may exist under the deemed marriage provision if the acts of the parties constitute a ceremony under FOM-I-925.15.1.

925.30 Chinese Custom Marriage

An applicant may have the status of a spouse on the basis of a custom marriage which took place in China. A Chinese custom marriage would be recognized as valid under state law if the Chinese procedural requirements of law and custom for affecting a marriage were met. These requirements for the respective period are as follows:

A. Prior to 1912

1. Consent of the two interested families to the contract of marriage; and

2. A betrothal conducted by a go-between and evidenced by a formal contract; and

3. A ceremony of some sort concluding the marriage.

B. After 1911 and before 5-5-31

1. All requirements in Item A. above; and

2. consent of the parties to the marriage.

Lack of family consent to a marriage would not actually invalidate such a marriage but would make it merely voidable, i.e., valid unless and until declared void by courts.

C. After 5-4-31 and before 5-1-50

A celebration of marriage between consenting parties in open ceremony and in the presence of two or more witnesses.

The "open ceremony" requirement means that the observance must have been public, i.e., everybody who wished to attend must have been able to do so. When only guests were invited and no other persons were or would have been admitted, there is no open ceremony.

D. After 4-30-50

Examiners will submit to the GC for an opinion on the requirements for marriage on the Chinese mainland.

If the marriage is invalid because one of the requirements above was not met, the marriage may be a deemed marriage if there was a ceremony. See FOM-I-925.15.1.

930.5 Means Of Termination

A ceremonial or common-law marriage can be terminated by:

A. Divorce - A final divorce is one which irrevocably ends the marriage relationship. A final divorce may also be referred to as an "absolute divorce" or a "divorce a vinculo matrimonii." A marriage is not dissolved or terminated by a "preliminary decree," an "interlocutory decree" or a "decree nisi." In some jurisdictions, the court may grant a legal separation, sometimes called a "divorce from bed and board," a "divorce a mensa et thoro" or a "limited divorce." Such a divorce does not terminate the marital relationship. State law will be applied in determining whether a divorce is final, limited or preliminary.

Do not assume that a marriage was legally terminated if the applicant alleges merely that the termination resulted from the separation of the parties, abandonment of one spouse by the other or a limited divorce.

Refer to FOM-I-930.l5 if a divorce was obtained outside the United States. The validity of a foreign divorce, particularly a divorce obtained in Mexico, may be questionable.

B. Annulment - A decree of annulment may constitute a judicial declaration that a purported marriage was always void.

C. Death of either spouse.

930.10 Prior Marriage

The field office is responsible for securing the marital history of the employee and spouse applicants. The FO will review this history, and in the instance of multiple marriages of either the employee or spouse, make the initial determination as to whether the prior marriage(s) affects the spouse's entitlement to benefits.

The field office determines the validity of the current marriage. If review by RBD personnel is needed, it is indicated on APPLE in the remarks section (see FOM-I-1581.14). In addition to making a comment on the remarks screen, there is a field Summary screen for RASI Review. A "P" is entered in this field to indicate that a review of prior marriages is needed. Completing this field will create a manual op code for RASI.

The determination is based on the criteria for a valid marriage as outlined in FOM-I-925 and the termination of marriage as described in the following sections.

930.10.1 Termination

In determining whether the last marriage is valid, the first question to resolve is whether a prior marriage has been terminated. If there is any question as to the dissolution of a

prior marriage, the case should be referred to Headquarters for review and final determination after the requested development is completed.

A. Separation or abandonment - If an applicant states that a prior marriage was terminated by divorce, but does not appear to understand the difference between a divorce and a mere separation, find out what (s)he really means. The fact that the parties to the marriage separated or that one party abandoned the other does not necessarily mean that a divorce followed such action and terminated the marriage.

B. Prior marriage terminated after later marriage - If the prior marriage terminated after the later marriage, a valid marriage may come into being under applicable state law (see FOM-I-930.10.4).

C. Prior marital status unknown - If the applicant does not know whether the employee was previously married, and there is no evidence to the contrary, assume that there was no prior marriage.

D. Termination of prior marriage uncertain - If the applicant alleges a prior marriage but does not know whether it was terminated, inform the applicant that he/she needs to secure information from other sources such as relatives or friends. The applicant has the burden of securing the evidence necessary to establish the claim. However, it is to the employee's advantage to cooperate in providing information about his/her marriages. There are instances in which overpayments to spouses and even divorced spouses can be recovered from the employee. If the evidence shows that the prior marriage was terminated but not all the details are known, handle as follows:

- If the claimant knows the present whereabouts of the prior spouse, secure a signed statement from such spouse showing whether there was an attempt to end the marriage to the employee by divorce or annulment, whether it was granted, and, if so, the place and date.

- If the applicant does not know the whereabouts of the prior spouse, secure the names and addresses of any of the missing spouse's relatives and friends.

- If the prior spouse can be located through relatives or friends, secure a signed statement furnishing all information regarding the circumstances and manner of the termination of the prior marriage.

- If the relatives or friends do not know the whereabouts of the missing prior spouse, obtain any available information as to possible locations, employers, etc.

If the prior spouse (including the employee) is uncooperative or there is conflicting information or reasonable doubt as to whether or not a divorce took place, use the following forms when applicable:

- G-237 (Statement/Regarding Marital Status);
- G-238 (Statement of Residence);
- G-238a (Statement Regarding Divorce or Annulment).

It is not always necessary to secure each of these forms; their usefulness depends on how much information is in file and how much additional information is needed.

Form G-238 is used to obtain information as to where both spouses lived at the time of the alleged divorce, or from the time of separation to the time of the annuity application. Using this information, a request for a records search (G-238a) should be submitted to the records custodian, usually a county court clerk, for the locations where the parties lived.

The statement G-238a from the court clerk as to the search of the records should be signed by such clerk and show:

- The name of the court and county where the court is located; and
- The records searched (i.e., both divorce and annulment records) and whether a record of a divorce or annulment is shown; and
- The dates for which these records were searched.

Occasionally, a custodian of the public records will not search his records or will not furnish such a report. In these cases, if a F/O employee makes the search he should submit a statement covering the above items. He should also indicate his title, F/O name, and show that he made the search.

NOTE: A request for a search of public records by a F/O employee should only be made upon the authorization of the section supervisor.

930.10.2 When to Accept Allegation That Marriage Was Terminated

Accept a statement that a marriage was terminated by death of a spouse, divorce or annulment when at least the year and state of termination are provided and when there is no evidence to the contrary creating a reasonable doubt. Accept such a statement even though complete information is not furnished as to the exact date, place of termination, or the identity of the other party and even though a common-law marriage is claimed in the present or in a former marriage.

When the year or state of termination is not provided or when there is a reasonable doubt that the prior marriage was not terminated, secure proof of death, divorce or annulment. If preferred proofs cannot be secured, obtain any available secondary evidence such as a statement from the other spouse of the prior marriage, correspondence referring to the terminating event, statements from friends or relatives of both parties to the prior marriage, newspaper accounts or other evidence of probative value. Also, secure a statement giving the reason a preferred proof cannot be furnished. When development is completed refer the case to Headquarters for review and final determination.

930.10.3 When Date of Termination of Prior Marriage Is Material

In determining the validity of a later marriage, the date the prior marriage terminated is material when the length of time between the marriages is short. In some states, when a prior marriage was ended by divorce, there is a restriction on the remarriage of one or both parties within a certain period of time. Remarriage within this period may be invalid. As a general rule, if the remarriage occurred at least 1 year after the date of divorce, assume that the subsequent marriage is valid. If less than 1 year, refer to Appendix M to determine if the validity of remarriage should be questioned. If it appears from Appendix M that the remarriage may be invalid, refer the decree to Headquarters for a final determination. Accept a statement of the approximate time the prior marriage was terminated only if there is no evidence that creates a reasonable doubt as to the correctness of the statement.

930.10.4 Presumption of Validity of Last Marriage

Most states follow a presumption in favor of the validity of the last of several conflicting marriages. However, this does not mean that the applicant need only submit proof of such last marriage and thereby qualify as the legal spouse of the insured individual. Even though there is no adverse applicant, the C/R should develop and the claimant must submit all pertinent proofs of marriage and the dissolution of marriage. In addition, a statement describing the history of events and other relevant information would be beneficial to Headquarters personnel in their review and determination. If necessary, RBD or the Office of General Counsel will request additional specific development.

Georgia applies a presumption of validity of a subsequent ceremonial marriage until evidence is provided that the spouse of the first marriage is living. Ohio and Nebraska do not apply a presumption of validity of the last marriage. Ohio applies a presumption that the first marriage continues in the absence of conclusive proof that it has terminated. Under Nebraska law, the presumption in favor of each of two successive marriages is equal. Louisiana does not apply a presumption of validity of the last marriage with respect to a party who was in bad faith; in such cases, the burden is upon such party to show the dissolution of a prior marriage. With respect to a party who was in good faith, Louisiana does apply a presumption of validity of the last marriage.

930.15 Validity Of Divorce And Foreign Divorce

A divorce is valid if it was granted by the court in whose jurisdiction at least one of the parties was domiciled at the time of the divorce. Assume a divorce is valid, unless it is questionable according to the following section.

930.15.1 When a Divorce May Not Be Valid

The validity of a divorce is questionable if:

A. Evidence indicates that, at the time of the divorce, neither party was a resident of the state or country in which the divorce was granted.

A divorce granted by a state that did not have jurisdiction will be held invalid if it is found not valid according to the law of the employee's domicile at the time a spouse annuity application is filed or at the time of the employee's death.

A divorce granted in a jurisdiction in which neither party is domiciled, such as a mail-order divorce, is not valid. Also, when the plaintiff in a divorce action goes to another jurisdiction solely for the purpose of obtaining a divorce, and did not intend to make his home there, the validity of the divorce is questionable. This is common to divorces obtained in foreign countries, especially Mexico. However, do not question the validity of the divorce if either party had some connection with that country, for example, prior residence in that country; or

B. The divorce allegedly was granted in a country whose laws do not permit an absolute divorce. Those countries are:

Argentina

Brazil

Chile

Columbia

Dominican Republic (for Catholic ceremonies performed after 8-5-54)

Ireland

Italy (prior to 1-1-71)

Liechtenstein (when either party is a Catholic)

Philippines (before 1917 and after 8-29-50)

Portugal (for Catholic ceremonies performed after August 1940)

Spain (except from 3-2-32 through 3-4-38).

Such a divorce will be held invalid. Therefore, no additional development is required; or

C. There is a technical defect in the proceedings, e.g., the decree was not recorded properly or the court costs were not paid. In this case, the following evidence is required:

1. A copy of the divorce decree;

2. A statement from the clerk of the court as to whether the records substantiate the allegation of the defect; and

3. Certifications of the pertinent court record entries.

Whenever an applicant may qualify as the de facto (deemed) spouse or widow(er), develop according to FOM-I-925.15.3.

930.15.2 When Field Offices Should Initiate Development

Field offices should initiate development only if the most recent divorce of the employee or applicant may be questionable because:

A. An applicant, potential applicant or other party questions the validity of the divorce; or

B. It is obvious that there was a technical defect in the proceedings; for example, the divorce decree is not certified by a court. Develop according to the preceding section; or

C. It is obvious that neither party was a resident of the state in which the divorce was granted. For example, an employee and spouse annuitant living in Ohio obtained a divorce in Nevada; or

D. A divorce was obtained in a foreign country (especially Mexico) that is not listed in FOM-I-930.15.1. Ask the applicant if either party in the divorce was ever a resident of that country. Record that information on the application or the application checklist. If the response was "no," also develop the information in FOM-I- 930.15.3.

930.15.3 Development of Questionable Divorce

Obtain the following when a divorce is questionable:

A. A certified copy of the divorce decree; and

B. A statement from the applicant with the following information:

1. The identity of the plaintiff in the divorce proceeding;

2. The domicile of the parties before the divorce;

3. How long each party lived in the state or foreign country where the divorce was obtained;

4. The reason for establishing residence in that place;

5. Whether the defendant was given notice of the divorce proceeding, and how;

6. Whether the defendant filed an answer in the proceeding or appeared in court;

7. Whether there was any property settlement;

8. Whether either party remarried; and

9. If the applicant may qualify as the de facto (deemed) spouse or widow(er), a statement to determine good faith (see FOM-I- 925.15.3).

935.5 General

935.5.1 "Living With" Defined

A spouse or widow(er) is "living with" if:

A. The claimant and the employee are members of the same household; or

B. The employee is contributing to the spouse's or widow(er)'s support; or

C. The employee is under court order to contribute to the spouse's or widow(er)'s support.

935.5.2 When "Living With" Is Required

A. Life cases - The 1983 RR amendments eliminated the "living with" requirement except when:

1. The spouse is filing as a de facto (deemed) spouse; or

2. The spouse's entitlement may begin prior to 8-12-83.

B. Survivor cases - "Living with" is required for a widow(er) to qualify for an accrued employee annuity due but unpaid at death, LSDP or RLS on the basis of that relationship.

For eligibility to an LSDP in cases where the employee acquired his 120th railroad service month after 1974, or 60-119 months after 1995, the widow must meet the “living with” requirement by “living in the same household” as the employee at the time of the employee’s death. For further information about eligibility for an LSDP, see FOM1 605.20.4. For a definition of “living in the same household”, see FOM1 935.10.1.

Effective 11-1-66, "living with" is not required for a legal widow(er) to qualify for an insurance annuity. However, a de facto widow(er) must always be living in the same household with the employee at the time of the employee's death to qualify for an insurance annuity.

935.5.3 Point When "Living With" Requirement Must Be Met

A. Members of same household

1. Life case - The employee and spouse must be members of the same household on the date on which the spouse annuity application is filed.

2. Survivor case - The employee and widow(er) must be members of the same household at the time of the employee's death.

B. Contributions toward support

1. Life case - The employee must be contributing to the spouse's support as of the day on which the application for a spouse annuity is filed. However, the phrase "as of the day on which the application for a spouse annuity is filed" has a broad meaning.

   In this case, it means if the employee made contributions on any regular basis within the 12-month retroactivity period, the spouse may be qualified if all other requirements are met. This applies even though contributions may have been discontinued before the actual filing date of the spouse application.

   When a spouse annuity has been denied for not meeting this requirement, the spouse may qualify at a later date upon establishing that the employee has made regular contributions subsequent to the denial. If proof is submitted that the employee made substantial contributions in each of at least 6 consecutive calendar months, examiners will consider the regularity of the contributions established as of the 6th month. The annuity, if otherwise payable, could begin in the following month.

2. Survivor case - The employee must be contributing to the widow(er)'s support at the time of the employee's death.

C. Court order for support

1. Life case - The court order for support must be in effect on the date on which the application for a spouse annuity is filed.

2. Survivor case - The court order for support must be in effect at the time of the employee's death.

In either case, the "living with" requirement is met even if the employee does not actually make the payments, as long as the court order is in effect.

935.5.4 Effect of Employee's Place of Death on "Living With" Development

The fact that the employee died away from the family household is not in itself reason for full development of "living with." Many deaths occur away from the family residence. When there is an allegation of "living with," but the file indicates that death occurred away from the family residence, an explanation showing that the employee died at a hospital, at work, on a business trip or vacation is usually sufficient. This is not true, of course, when other evidence casts doubt on the "living with" allegation. In such case, develop the "living with" allegation fully.

935.10 Members Of Same Household

935.10.1 Defined

A husband and wife are considered "members of the same household" if they customarily live together as husband and wife in the same abode. If they are living at the same address, assume they are living together in the absence of evidence to the contrary.

A husband and wife are also considered members of the same household if they have shared and again intend to share the same abode, even though:

A. They live apart temporarily because of circumstances beyond their control (such as financial difficulties, ill health, working away from home, service in the Armed Forces, etc.); or

B. They live apart temporarily because one spouse is in a curative, custodial or penal institution.

While temporarily living apart as described above does not defeat "living with," the facts must establish that there is an intent to resume living together and that the living apart is temporary in nature.

If the employee and spouse were separated solely for medical reasons, see FOM-I-935.15.3.

935.10.2 Proof Required

In retirement cases, the Form AA-3 does not request living with information. A deemed spouse and the employee must submit signed statements that they are members of the same household on the date the spouse files an annuity application. The statements may be separate, or a joint statement signed by both individuals. These statements are acceptable as proof unless information received in the course of development raises doubt. Statements would also be required in the rare case of a spouse eligible before 8-12-83.

Prior to 5-1-84, "living with" information was furnished on Forms AA-3 and G-346.

In most survivor cases, proof that the husband and wife were members of the same household consists of a statement made by the applicant on the application form. This statement is acceptable to establish that the husband and wife were members of the same household, unless information received in the course of development raises doubt. However, if the required information is not furnished on the application, or if additional information is required, a sworn statement may be submitted.

Living with information is not requested on Form G-476c in a spouse to widow(er) conversion. We do not assume the former spouse annuitant was living with the employee, since it is no longer a requirement for the spouse annuity. If the information

in file is sufficient to establish a "living with" relationship, BRC will award due but unpaid accrued annuities to the widow(er). If the file information is not sufficient, BRC will ask you to develop.

935.15 Temporary Separations

935.15.1 Effect

Statements of intent to live together again from the husband and wife (or survivor) will prove "living with" unless the evidence shows other than temporary causes for separation. However, the intent to resume living together must be present at the time of the separation. Consider the reason for the separation and its duration in determining whether the intent existed or changed. Whether a separation is temporary is governed by the circumstances at the time of the separation, duration of the separation and what occurred during the living apart, as well as by the intention of the parties.

When the temporary separation resulted from domestic difficulties or when a permanent separation was the initial intent, handle in accordance with the following sections.

935.15.2 Separation Due to Domestic Trouble or Incompatibility

When the separation is due to incompatibility, ill treatment or other domestic difficulty, do not assume the separation is temporary without proof that it is. When there is a history of separations due to domestic difficulties, the fact that the parties resumed living together on prior occasions does not necessarily mean that the last separation is a temporary one. The single fact that on previous occasions the parties did resume living together does not justify an assumption that they would resume living together on the last occasion. However, consider the history of those prior separations and resumptions of living together in determining whether or not the last separation was temporary.

A. Effect of reconciliation - The fact that a couple may have considered their separation permanent at one time does not prevent a finding of "living together" if they later reconcile AND demonstrate their intention to resume cohabitation. When BOTH these conditions are met, the separation will be considered ended unless one party denies reconciliation. The mere intention to resume cohabitation cannot justify a finding that the parties were members of the same household on either the application filing date or the date of the reconciliation agreement.

   A conditional agreement to resume cohabitation does not become a reconciliation agreement until the condition is fulfilled. However, the fulfillment of the condition is not an overt act since it relates only to the completion of the conditional reconciliation agreement, but not to the execution of such agreement. For example, the parties agree to resume living together if the husband goes to work. His employment fulfills the condition of the agreement, but the parties

must also perform an overt act (e.g., rent an apartment) to complete the reconciliation.

B. Development of reconciliation - Secure evidence of acts showing that the couple reconciled with intent to resume living together. Evidence may include receipts for rent, furniture, etc., combined with evidence of a resumption of cohabitation. Obtain statements from the applicant, the employee (if living) and from one other person who knows the facts, as to:

1. The date and cause of the separation;

2. The history of other separations;

3. The action of the parties while separated;

4. Remarks made by either spouse to the witness (or in his presence) showing whether there is an intent to resume living together and the conditions under which the remarks are made;

5. Whether the husband or wife performed an act preparatory to living together again, and the basis for the witness' knowledge of this act.

Evidence showing that the other party is living with someone else in a marital or meretricious relationship also rebuts the intention to resume living together.

935.15.3 Separation Due to Confinement of One Spouse

A. Examiners will consider a husband and wife members of the same household even though one party is confined in a curative, custodial or penal institution if:

1. They are living together at the time one of them is confined; and

2. There is a continuing intent to resume living together.

B. Separation for medical reasons - If the employee and spouse were separated solely for medical reasons, consider them to be living in the same household, even if the separation was likely to be permanent and there was little or no expectation of them living together again. As long as one spouse continued to demonstrate strong personal and/or financial concern for the other, assume they would have lived together (absent evidence to the contrary) had the medical reasons not necessitated a separation.

C. Party committed to penal institution - A finding of "living together" when one party is in a penal institution is not justified if (s)he is committed:

1. For life; or

2. For a period of years exceeding life expectancy; or

3. Under a sentence of death.

935.20 Contributions Toward Support

935.20.1 Defined

Contributions by the employee to the spouse may be in cash or in kind, but they must be regular and substantial. No fixed amount has been set. The test is whether the employee recognized an obligation to contribute to the support of the spouse and does so contribute. For example, contributions are proved if a husband lets his wife live rent free in a house that he owns. However, if they own the house jointly, the employee's contribution is equal to one-half of the amount by which the fair rental value exceeds the cost of maintenance. ((Maintenance costs include repairs, taxes, mortgage payments and interest, etc.) This factor merely establishes regularity; it is still necessary to determine whether the contribution is substantial.

935.20.2 Proof Required

In the rare case of a spouse eligible before 8-12-83, secure statements from the employee and the spouse stating if the employee is contributing to the spouse's support and the frequency and the amount of the contributions. The statements should also state why the employee and spouse are not living together.

Prior to 5-1-84, the statements on Forms AA-3 and G-346 were generally acceptable as proof of contributions toward support.

In most survivor cases, the statement by the applicant on the application is sufficient to establish contributions toward support. Obtain a sworn statement to establish contributions toward support if:

A. The information required is not furnished by the applicant on the application; or

B. Reasonable doubt exists about the accuracy of the statements in view of other information in file; or

C. Additional information is needed before making a determination.

"Living with" information is not requested on Form G-476c in a spouse to widow(er) conversion. If information regarding living with and contributions toward support is requested, secure a statement from the former spouse giving the date the employee and spouse stopped living together, the reason they stopped living together and if the employee was making regular contributions to the spouse's support when the employee died.

The above rules apply regardless of whether the applicant lives in this country or in a foreign country.

If it is alleged that the employee had been contributing but had been forced to stop, secure the required statement showing why he was unable to continue contributing.

935.20.3 Federal Benefit Programs

Contributions made to a spouse in the form of regular payments from a Federal agency may be considered "contributions toward support."

A. Monthly social security benefits - The receipt of a wife or husband's monthly benefit under the SS Act does not always constitute "contributions toward support." The 1957 SS Act amendments eliminated "living with" as a requirement for entitlement to a spouse's, widow(er)'s and mother's monthly benefit for months after 8-1957. Therefore, only the receipt of a monthly spouse benefit awarded before 9-1957 can possibly establish "contributions toward support" on that basis.

B. Railroad Retirement Act spouse annuity - An RR Act spouse annuity properly paid or payable before 8-12-83 on the employee's compensation record for the month before the month the employee died is a contribution toward support and establishes "living with" for the purpose of paying the widow(er) survivor benefits.

   A spouse annuity payable 8-12-83 or later is a contribution toward support only if the spouse met the living with requirement on the filing date of the spouse annuity application.

C. Veterans Administration payment - VA payments to a wife based on her husband's entitlement to veteran's payments are deemed to be contributions by him if they are paid or payable before his death. It is immaterial whether he agreed to such payments.

935.20.4 Court Order to Support

When the employee is ordered by a court to contribute to the applicant's support, secure a certified copy of the order. Any such court order must be certified by the court clerk or custodian of the records as not having expired or been vacated before the actual date on which the spouse application is filed, or, in a survivor case, before the date of the employee's death.

An uncertified photocopy of the order is acceptable, providing that there is an indication of court approval (e.g., signature of the judge or court clerk is shown) and the photocopy does not show any interlineation or other signs of alteration.

940.5 General

940.5.1 Scope of Chapter

This chapter covers the various types of parent-child relationships and how they may be established. It also contains information on establishing other family relationships which may be necessary to award benefits under the RR Act.

The chapter is oriented to establishing the relationship of a child to the employee parent, but unless otherwise indicated the same conditions apply in establishing the relationship of a parent to the employee child.

940.5.2 When Proof of Relationship (POR) Is Required

A. Recurring payment or O/M inclusion - An applicant for a recurring payment as the child, grandchild or parent of the employee must prove such relationship. Likewise, such relationship must be established to qualify a child for inclusion in the O/M.

B. Nonrecurring payment - Proof of relationship is always required when the applicant's share of a lump-sum is more than $25.00. POR is also required when the share is less than $25.00 and the relationship is questionable.

When children, grandchildren or siblings of a deceased employee share in a nonrecurring payment, consider POR of each verified if at least one applicant:

1. Has established relationship to the deceased employee by regular documentary evidence; and

2. Has listed in the application (or in another writing) the names and relationships of the remaining applicants entitled to share the payment, and the relationships so stated are the same as those alleged by such remaining applicants.

However, if any claimed relationship is questioned, each person whose relationship is questionable must furnish regular documentary POR.

If the employee died before 10-1-58, the old order of precedence for nonrecurring payments applies. Under that order, children and grandchildren and other lineal descendants may share in a nonrecurring payment in those proportions provided by applicable state law. In such a case, examiners will consider POR verified for each such entitled survivor if one entitled child (or grandchild if no child survived) fulfills the above requirements and no relationship is questionable.

C. Multiple payees - Cases may occur in which one or more apparently eligible survivors do not file applications or answer inquiries. Their failure to do either will

not in itself prevent verification of relationships. Examiners will allow 30 days for the person to furnish the required information or document, after which final action will be taken on the claim.

Should an applicant fail to list the names and relationships of all the other apparently eligible survivors, ask him to explain the omission. If the information was omitted in error and he does not challenge the relationship of the survivors in question, such omission will not prevent verification of relationships.

If the survivor whose relationship is questioned has not filed, see whether he wishes to file; if so, obtain documentary POR along with the application. If he does not wish to file, secure his statement giving the reason he does not.

940.10 Natural Child

940.10.1 Defined

The term "natural legitimate child" includes:

A. A child of a valid ceremonial or common-law marriage;

B. A child or a voidable marriage not judicially declared void;

C. A child held legitimate under a void marriage statute;

D. A posthumous child (a child of the employee born alive after the employee's death);

E. A child legitimated under applicable state law;

F. Any child who is legitimate under state law even though there has been no marriage or act of legitimacy;

G. Any child who is deemed to be a "child" under the Railroad Retirement Act as defined in FOM-I-940.35.

940.10.2 Preferred Proofs

The preferred evidence of a natural parent-child relationship is:

A. A certified copy of a civil or church record of birth;

B. A proof of age of the child when the proof shows that the employee is one of the parents. Sometimes this proof will show only the mother's name; in such a case, if the father is the employee, the relationship is established if the child's surname is the same as the employee's and other evidence establishes a marital relationship between the employee and the child's mother before the child's birth.

C. A short form birth certificate (i.e., one that does not have space for showing the names of the parents) when the child's given name and surname are shown on the certificate. This includes a short form certificate based on a hospital birth record or a church baptismal record. The child's surname shown must be the same as that of the employee at the time the child was born.

D. Any of the proofs in subsections B and C above will also establish the relationship of a child of a void marriage considered legitimated under a void marriage statute.

Note that information from SSA's MBR or NUMIDENT cannot be used as proof of relationship.

940.10.3 Secondary Proofs

Records originating after the death of an employee are always of doubtful value unless based upon evidence predating the death of the employee. Newspaper or magazine clippings are never acceptable as evidence. If no documentary evidence is obtainable, the applicant must:

A. Furnish a written statement giving the reason why documentary evidence is not obtainable; and

B. Submit affidavits from two disinterested persons showing:

1. The names of the child and the natural parent;

2. A statement of the affiant's knowledge that the child is the natural child of the parent;

3. The basis of the affiant's knowledge.

940.10.4 Lord Mansfield Rule

In many states, the Lord Mansfield Rule bars the mother of the child and her legal husband at the time the child is conceived or born from giving testimony which might prove the child to be illegitimate. Do not accept evidence submitted by the parents which tends to prove a child illegitimate if the evidence is not acceptable under applicable state law. In such states, if the only available evidence is the testimony of the mother or her legal husband, the presumption of the child's legitimacy is <u>not</u> rebutted.

In some states, a married woman can testify concerning the non-access of her husband in proceedings seeking to establish the paternity of her child. This does not, however, affect the application of the Lord Mansfield Rule when making a determination. If the Lord Mansfield Rule applies in those states in proceedings relating to property rights, do not accept such statements.

940.10.5 State Law on Applicability of Lord Mansfield Rule

If the state of the employee's domicile follows the Lord Mansfield Rule, do not accept the testimony of the child's mother or the person who is her legal husband when the child is conceived or born as evidence disproving the child's legitimacy.

To determine if a state follows the Lord Mansfield Rule see RCM 4.4.15.

940.15 Legally Adopted Child

940.15.1 Defined

A child who is legally adopted by the employee under applicable State adoption law is a "child" of the employee. Legal adoption is distinguished from equitable adoption by the fact that the contemplated adoption is completed under applicable State adoption law and the proceedings are not defective.

940.15.2 Child Legally Adopted by Employee's Widow(er)

In survivor cases, a child adopted after the employee's death by the widow(er) under certain conditions is deemed to be the employee's child.

A. Child adopted within 2 years after employee's death - Effective 1-1-91 (for applications filed after 12-31-90), deem a child who is legally adopted by the employee's widow(er) within 2 years after the day the employee died to be a child of the employee if:

1. Such child was living with the employee at the time of the employee's death; or

2. Such child received at least one-half of his/her support from the employee in the year prior to the employee's death.

NOTE: Prior to 1-1-91, the following requirements applied: the child must have been living with the employee at the time of his death, and at the time of the employee's death, the child is not receiving regular and substantial contributions for his support from any public or private welfare organization which furnishes assistance or services for children, or from any person other than the employee or spouse.

B. Child adopted more than 2 years after employee's death - Effective 1-1-91 (for applications filed after 12-31-90), deem a child who is legally adopted by the employee's widow(er) anytime after the employee's death to be a child of the employee if:

- The employee instituted proceedings to adopt the child before death; and

- Such child was living with the employee at the time of the employee's death; or

- Such child received at least one-half of his/her support from the employee in the year prior to the employee's death.

NOTE: Prior to 1-1-91, the following requirements applied: the employee instituted proceedings to adopt the child before death, and the child was living in the employee's household at the time of death; and at the time of death, the child is not receiving support from any public or private welfare organization which furnishes assistance or services for children, or from any person other than the employee or spouse.

C. Development when child legally adopted by employee's widow(er) more than 2 years after death - Develop in accordance with the following section. However, in addition, it is necessary to establish whether proceedings to adopt the child are instituted by the employee before death.

Consider adoption proceedings to be instituted by the employee before death if the employee takes some specific action toward the child's legal adoption. The specific action may include arrangements for the adoption with approved adoption agencies or other qualified persons, as well as initial court proceedings for the adoption. Of course, development should cover all possibilities that the employee instituted adoption proceedings before death and should not be confined to only the above examples. Evidence of action to adopt a child may be on adoption certificates, contracts, affidavits, etc., or it may be necessary to contact appropriate officials for verification.

940.15.3 Proofs

A. Preferred proof - The preferred POR of a legally adopted child to the adopting parent is:

1. A copy of the decree or order of adoption, certified by the custodian of the record; or

2. A properly certified photocopy of the above.

B. Other acceptable proof - In a number of states the record of adoption is sealed and cannot be obtained without a court order. In such an event, accept the following types of evidence as proof of adoption:

1. An official notice received by the adopting parents at the time of adoption stating that the adoption has been completed; or

2. A birth certificate issued as a result of an adoption proceeding.

C. Adoption established by birth certificate - When a birth certificate or a certified copy of the record of birth is used as proof of adoption, it is not necessary that the date of adoption be shown if:

1. The certificate is issued before the requested ABD; or

2. In the case of a child to be included in the O/M after 8-1958, the certificate is issued before the effective date of the O/M (before 9-1958, the certificate must have been issued more than 3 years before the effective date of the O/M); or

3. In a survivor case, the certificate is issued before the death of the employee.

Be sure to record the date the amended birth certificate was issued in item 8(d) when preparing Form G-91. A certificate that does not meet these requirements must be accompanied by a statement from the official having custody of the records which indicates the date the record is changed to reflect the adopting parent's names.

940.20 Equitably Adopted Child

940.20.1 Defined

Sometimes a child cannot qualify as a legally adopted child because:

A. The adoption proceedings are defective under state law; or

B. A contemplated adoption is never completed.

Such a child may qualify as an equitably adopted child for inheriting intestate personal property from the "adopting" parent; he may, therefore, qualify for O/M purposes, become entitled to a CIA, or entitled to an RLS based on the creditable earnings of his "adopting" parent. Under the theory of equitable adoption, most states grant relief to a child who is the subject of a contract to adopt and has performed as a child for such a length of time that failure to permit the child to take property as if he were legally adopted would operate as a fraud upon the child.

Equitable adoption applies only if the question of the child's entitlement to benefits is involved. It does not qualify an equitably adopting parent as a parent under the act.

940.20.2 Requirements

For equitable adoption to occur there must be:

A. An express or implied (in some states) contract to adopt the child; and

B. A legal consideration for the adopting parent's promise to adopt; and

C. In some states, a promise to give the child inheritance rights in the adopting parent's personal property; and

D. Surrender of the child to the adopting parent; and

E. Performance by the child under the contract; and

F. Sufficient lapse of time so that the child could have been legally adopted under applicable State law prior to the time the child is included under the O/M in a life case, or prior to the employee's death in a survivor case.

940.20.3 Developing Equitable Adoption

When adoption is alleged but there is no formal legal adoption, obtain proof of equitable adoption. Such proof should consist of:

A. The original or transcribed copy of any written contract or agreement; and

B. Form G-118 completed by the applicant (regardless of whether or not a written contract or agreement exists); and

C. A second Form G-118 completed by a responsible person who has knowledge of the facts, preferably a natural parent (regardless of whether a written contract or agreement exists).

However, if affidavits executed by the applicant and another responsible person containing substantially the same information called for on the G-118 and G-118a are in file, accept the affidavits in lieu of a G-118 and G-118a.

940.25 Stepchild

940.25.1 Defined

A stepchild of the employee (or employee annuitant) is a child whose relationship is created by the employee's marriage to the child's natural or adoptive parent after the child's birth. The marriage which creates the relationship need not be valid provided there is a marriage ceremony and the marriage is invalid only because of a legal impediment.

A child conceived before the marriage of his mother to the employee who is not the child's natural father, and born after the marriage, is also considered to be the stepchild of the employee.

940.25.2 Life Cases

The marriage of the employee annuitant and the child's parent must take place 1 year before the child otherwise qualifies for O/M purposes as a stepchild or the spouse otherwise qualifies for a full annuity on the basis of the child. The month in which the

first anniversary date occurs is the first month the stepchild may be taken into account under the O/M or may qualify the spouse for a full annuity.

(A child conceived and born to one of the parties after the marriage is not the step-child of the other party; this child would be a "natural legitimate child" of the employee. A child adopted by the spouse after the marriage (but not adopted by the employee) is not the stepchild of the employee; such child holds no entitlement.)

Death of a spouse does not end the parent-stepchild relationship, but divorce does. Therefore, a stepchild cannot be included in the O/M award of an employee divorced from the child's natural parent. If the divorce occurs after such entitlement, the child's inclusion in the O/M ends the month after the month in which the divorce between the employee and the natural parent becomes final.

If a child is adopted in a state where adoption eliminates inheritance rights between the parent and child, a person who later marries the child's natural mother is not the child's stepfather.

940.25.3 Survivor Cases

The marriage of the employee and the child's parent must take place 9 months (3 months if death is accidental or the employee died while on active duty in the armed forces) before the day on which the employee died. Prior to February 1968, a marriage must have taken place at least 1 year before the day on which the employee died.

If a child is adopted in a state where adoption eliminates inheritance rights between the parent and child, a person who later marries the child's natural mother is not the child's stepfather.

Death of a spouse does not end the parent-stepchild relationship, but divorce does. When a parent-stepchild relationship is terminated by divorce, the remarriage of the child's natural parent and former stepparent re-establishes the parent-stepchild relationship as of the date of the remarriage. Thus, in order for such a child to qualify for a CIA as a stepchild, such remarriage must take place 9 months (3 months if death is accidental or the employee died while on active duty in the armed forces) before the day of the employee's death.

940.25.4 Proofs

To establish the relationship of a stepchild to an employee, secure:

A. Proof of the relationship of the stepchild to his natural parent. This will usually be one of the forms of documentary evidence as described in FOM-I-915.

   Accept a short form birth certificate as proof if the child's given name and surname are shown on the certificate and the surname is the same as that of the blood parent at the time of birth of the child, and if none of the information furnished casts doubt on the existence of the relationship.

If no documentary evidence is obtainable, have the applicant:

1. furnish a written statement giving the reasons why documentary evidence is not obtainable; and

2. submit affidavits from two disinterested persons showing:

   a. the names of the child and the natural parent;

   b. a statement of the affiant's knowledge that the child is the natural child of the parent;

   c. the basis of the affiant's knowledge.

B. Proof of marriage of the child's parent to the employee.

940.30 Grandchild and Step-grandchild

940.30.1 Defined

A. Grandchild - A child is the grandchild of the employee or his spouse if the child is the natural child or legally adopted child of a parent who is the child of the employee or the employee's spouse. A great-grandchild cannot be entitled under this provision.

B. Step-grandchild - A step-grandchild is a child who has only a grandchild relationship to the employee or his spouse. If the child is a grandchild of the employee or his spouse and the step-grandchild of the other party, the child is a grandchild rather than a step-grandchild. Following are examples of step-grandchild relationships:

1. A stepchild of the employee's natural child;

2. A stepchild of the employee's stepchild;

3. A stepchild of the employee's spouse's natural child;

4. A stepchild of the employee's spouse's stepchild;

5. A natural child of the employee's stepchild;

6. A natural child of the employee's spouse's stepchild.

940.30.2 When Proof Is Required

A grandchild or a step-grandchild may qualify for benefits or qualify the employee's spouse for benefits effective 1-1-73. In those instances, the relationship of a grandchild to the employee or the employee's spouse must be established. A great grandchild cannot be entitled under this provision.

A. Life cases - A grandchild or step grandchild who meets the eligibility requirements can:

1. Qualify a spouse under age 65 for an unreduced spouse's annuity; and

2. Be included in the O/M.

These benefits cannot be paid prior to 1-1-73.

B. Survivor cases

1. Monthly benefits - A grandchild or step grandchild who meets the eligibility requirements can:

a. Qualify for a CIA; and

b. Qualify a widow(er) under age 65 for a WCIA.

These benefits cannot be paid prior to 1-1-73.

2. Non-recurring payments - A grandchild may qualify for the accrued annuities due but unpaid at death or for the RLS in some instances. If these benefits are paid, retroactivity is not limited to 1-1-73. The following rules will be applied to establish a grandchild's relationship when paying the RLS or an annuity due but unpaid at death to a grandchild:

a. Establish the relationship between a deceased employee and his grandchild by first establishing the relationship of the grandchild to its parent and then establishing the relationship of that parent to the deceased employee.

b. The instructions in FOM-I-940.5.2B regarding submission of POR for children in non-recurring payment cases also apply to grandchildren.

940.30.3 Relationship Requirements

To establish the relationship of a grandchild to the employee or the employee's spouse for the purpose of paying monthly benefits, it is necessary to establish both of the relationships discussed in A and B below.

A. Grandchild to his or her parent - In order to determine the relationship between the grandchild and his or her parent, it is only necessary to establish the fact of biological relationship, legal adoption or step-relationship through a marriage to the biological or legally adopting parent. If step-relationship is involved, the marriage to the child's parent must be a valid or voidable marriage, and such marriage must not have ended in divorce or annulment. A void marriage will not

serve to create a step-relationship, and the deemed marriage provision cannot apply to a "stepchild" (through deemed marriage) of the grandchild's parent.

B. Employee or employee's spouse to the grandchild's parent - In determining the relationship of the grandchild's parent or stepparent as a child of the employee or the employee's spouse, all of the provisions of state laws on inheritance, child (or stepchild) of a deemed marriage and deemed child are applicable. If the relationship to the employee's spouse must be established, consider the spouse as the "insured individual" in applying those provisions. Note that it is not necessary to establish the dependency of the grandchild's parent on the employee or the employee's spouse. However, factors that are normally considered "dependency" factors attach as a condition to relationship in some cases.

940.30.4 Proofs

A. Grandchild and parent - The evidence necessary to establish a grandchild's relationship to his parent depends on whether the child is a stepchild or not.

1. Natural or adopted child of parent

a. Child's birth certificate showing the name of the employee's or the employee's spouse's child as the parent. If the name of the parent is not shown on the birth certificate, develop sufficient documentary evidence to establish biological paternity or maternity.

b. Amended birth certificate of a legally adopted child showing the name of the employee's or the employee's spouse's child as the parent and the adoption decree, if it is offered.

To establish a legal adoption if an amended birth certificate has not been issued or if the adoption decree is not offered, secure:

(1). A copy of the court record from the court which granted the adoption; or

(2). A copy of the official notice received by the adopting parents; or

(3). A copy of the record of the state's attorney or the child welfare division regarding the adoption.

2. Stepchild of parent

a. The child's birth certificate showing the names of the child's parents; and

b. Proof of the marriage which created the step-relationship; and

c. A statement from the person who is filing on behalf of the child that the marriage which created the step-relationship did not end in divorce or annulment.

B. Grandchild's parent and employee or spouse - The evidence necessary to establish the relationship of the grandchild's parent to the employee or the employee's spouse should be developed as any other parent-child relationship cited in this chapter.

C. Proof of death - For the following situations, proof of death as described in FOM-I-920 should be secured:

1. Natural child of employee's or employee's spouse's daughter - The natural mother's death must be established. If the evidence establishes the identity of the child's natural father, his death must also be established. Otherwise, a thorough and exhaustive attempt must be made to determine his identity through contact with the person filing on behalf of the child, the employee or his spouse, or any other readily available person who might reasonably be expected to have that knowledge. Also, other possible sources of evidence (such as church, school, court and hospital records) should be checked. All efforts to identify the natural father should be documented and submitted to HQ.

   If the identity of the father is established, but his whereabouts are unknown, document and submit all information about the last known whereabouts of the individual and the father's social security account number. The examiner will use this information to determine if the natural father is deceased or disabled.

   If the child's father is identified, but his whereabouts are unknown or, for any other reason proof of death cannot be obtained, it cannot be assumed that the father is deceased, unless death may be presumed.

   If after a thorough and exhaustive attempt is made the father's identity cannot be determined, it may be assumed he was deceased at the applicable time; this determination must be made by a claims examiner.

2. Natural child of employee's or employee's spouse's son - The natural father's death must be established. Since the natural mother's name is shown on the child's birth certificate, there should be no difficulty in determining the natural mother's identity. Since the natural mother's identity is known, her death must also be established. If the mother's whereabouts cannot be determined, develop according to (l) above.

3. Legally adopted child of employee's or employee's spouse's son or daughter - The death of both adopting parents must be established. It is not material whether the child's natural parents are deceased. If one of

the adopting parents adopted the natural child of his other spouse, the death of both the natural parent and the adopting parent must be established. In the rare case in which an individual alone adopted the child, without being joined by his spouse in the adoption, only the death of the adopting parent need be established.

4. Stepchild of employee's or employee's spouse's son or daughter - The stepparent (i.e., the employee or spouse's child) need not be deceased. The evidence must identify the natural or adopting parent to whom the employee's or his spouse's child was married, and the death of that parent must be established. Also the death of the other natural or adopting parent must be established if the identity of this individual is known; if the identity or whereabouts of this other parent is not known, handle in accordance with (l). above.

D. Proof of disability of grandchild's parent

1. Disability under SS Act established - If SSA is paying grandchild's parent a DIB, secure copy of SSA's award letter or similar evidence to establish proof of disability.

2. Disability under SS Act not established - If disability is alleged and either no application has been filed, SSA denied the DIB application for lack of insured status, or SSA denied the DIB application prior to the month:

- The employee met the conditions for entitlement to an RIB or DIB under the SS Act, or died; or

- The employee's period of disability began which continued until he met the conditions for an RIB or DIB or until his death, secure the following:

a. A statement from the grandchild's parent who claims to be disabled;

b. A letter or report from the allegedly disabled parent's personal physician; and

c. Medical evidence used to support a disability claim at SSA, VA, Welfare, etc., when such can be obtained.

940.35 Deemed Child

940.35.1 Defined

A deemed child is one who would not be considered a child under state law but who may be considered a child for purposes of the RR Act. The child may meet the definition of a child under the RR Act if the facts indicate that (s)he:

A. Is the offspring of the employee; and

B. Is the child of an invalid marriage of the parents,

or

C. Is an illegitimate child of the employee (under certain conditions).

940.35.2 Natural Child of the Employee

A child will be deemed to be the "child" of an insured employee if the employee is the child's natural parent, and the employee and the child's other parent went through a marriage ceremony resulting in a purported marriage between them which would be a valid marriage except for the existence of a legal impediment. In this situation it is unnecessary to determine whether the child has inheritance rights under state law. The phrase "legal impediment" includes:

A. A prior undissolved marriage or an impediment otherwise arising out of a prior marriage or its dissolution; or

B. A defect in the procedure followed in connection with the purported marriage.

940.35.3 Stepchild of the Employee

Effective 9-1-60, a child is deemed to be the stepchild if his natural or adopting father or mother went through a marriage ceremony with the employee (who is not his natural or adopting parent) resulting in a purported marriage between them which would have been a valid marriage except for the existence of a legal impediment.

940.35.4 Proof of Relationship of Child of Invalid Ceremonial Marriage

Documentary evidence of marriage is always required in this type of case regardless of whether the marriage occurred before or after the child's birth. The following paragraphs contain general guidelines for securing evidence in male employee cases:

A. When the mother of the child has no legal husband, any pertinent evidence may be used to establish the relationship of the child to the employee. The following are sufficient proofs of relationship (in addition to proof of marriage) if they show the employee as father:

1. Birth certificate;

2. Hospital record;

3. School record.

B. If the mother is legally married to someone else when the child is conceived, but she and the employee are living together at that time as husband and wife, this tends to establish the child's relationship to the employee.

C. When a child is allegedly born to an employee who is not living with the mother when the child is conceived, and the mother of the child has a legal husband other than the employee, the evidence must clearly show that the employee is the child's father.

940.40 Illegitimate Child

940.40.1 General

An employee's illegitimate child (one born out of wedlock) may have the status of a child and meet the definition of a child for benefit purposes if the child is:

A. Legitimated under applicable state law (such a child is treated the same as one born in wedlock); or

B. Recognized or acknowledged under applicable state law for the purpose of inheriting intestate personal property. Effective February l968, an illegitimate child may usually be deemed to be a "child" of the employee regardless of the child's status under applicable state law.

940.40.2 Child Recognized for Inheritance Rights

If an illegitimate child would be recognized for inheritance rights under state law as the result of acts by the father, but has not acquired a legitimate status, dependency is deemed.

940.40.3 Written Acknowledgement

If State law provides that a child may be legitimated or acknowledged for inheritance purposes by a statement in writing signed in the presence of a witness, there is a great variety of written statements which may suffice. For example:

A. A soldier's application for an allotment is sufficient if the application lists the child as his child.

B. An application for social security benefits on behalf of a child signed by the father before a witness.

940.45 Illegitimate Child Deemed A Child

940.45.1 Life Cases

For months after August 1965, the RRB will deem a child of a male employee annuitant to be his child for O/M purposes regardless of the child's status under state law. For

months after January l968, such a child may also qualify a spouse for a full annuity. The child may be included in the O/M or qualify the spouse even though under state law (s)he is presumed to be the legitimate child of another person. However, in order for this provision to apply, it must be established that the conditions in A. or B. below are met:

The l983 amendments to the Social Security Act removed gender-based distinctions from the law. Before the amendments, the child of a female employee could not be deemed on the basis of a court order or other satisfactory evidence; those eligibility requirements applied only to the child of a male employee. That distinction was removed for benefits payable beginning May 1, 1983.

A. Court Order or Written Acknowledgement

1. The employee is decreed by a court to be the child's parent;

2. The employee is ordered by a court to contribute to the child's support because the child is his son or daughter; or

3. The employee acknowledges in writing that the child is his son or daughter.

Prior to June 1974, to meet this part of the test the court action or written agreement must have occurred at least 1 year before the employee became entitled to an annuity or attained age 65, whichever was earlier. Effective June 1, 1974, the court order or written acknowledgement requirement need be met only at the time the child can be included in the O/M (or any month in the retroactive period for inclusion in the O/M).

B. Other Evidence - If the above conditions are not met, the child may still be included in the O/M or qualify the spouse if the employee annuitant:

1. Is shown to be the child's parent by other satisfactory evidence (which may include a written acknowledgement or court action that is not timely established); and

2. Is living with the child or contributing to the child's support at the time he becomes entitled to an annuity or attains age 65, whichever is earlier.

NOTE: Effective June 1, 1974, the living with or contributions requirement need be met only at the time the child can be included in the O/M (or any month in the retroactive period for inclusion in the O/M).

940.45.2 Survivor Cases

Effective February 1968, we will deem the son or daughter of a male employee to be the employee's child for monthly benefits under the RR Act regardless of the child's status under state law if the requirements below are met. In determining the

relationship of a "child" for payment of an RLS, do NOT apply this provision if the employee died before 2-15-68, the enactment date of the 1968 amendments. For payment of an RLS, the new definition of a child applies only when the employee died on or after 2-15-68.

An illegitimate child is deemed to be the child of the employee if the employee:

A. Acknowledges the child in writing; or

B. Is decreed by a court to be the child's parent; or

C. Is ordered by a court to contribute to the child's support because he is the child's parent; or

D. Is shown by other satisfactory evidence to be the child's parent and is living with or contributing to the support of the child at the time of death.

The child may qualify on the employee's earnings record under this provision even if under state law he is presumed to be the legitimate child of another person. This provision may be used not only to establish relationship of a child to his father, but also to his mother in those few jurisdictions where a child does not always have status with respect to his mother. Prior to May l, l983, a child could qualify on his mother's earnings record under this provision only if either the "court order for support" provision or "written acknowledgement" provision is met. However, the 1983 amendments to the Social Security Act removed gender-based distinctions from the law. Beginning 5-1-83, a child may also qualify on his mother's earnings record if she is decreed by a court to be the child's mother or is shown by other satisfactory evidence to be the child's mother.

This provision does not give the father or mother the status of "parent" under the act. If the parent is claiming on the earnings record of the child, the parent-child relationship must be determined under state law.

NOTE: From 9-1-65 through 1-31-68, such a child could only be included in the O/M.

940.45.3 Evidence to Qualify Illegitimate Child as Deemed Child

A. Acknowledgement in Writing

1. The writing must identify the child in question by name or otherwise and must acknowledge the child as the employee's son or daughter.

2. There is no requirement that the writing be in any special form as long as it is made before the employee's death.

3. A variety of written statements by the employee may suffice. For example:

   a. An income tax return listing the child as his;

b. A soldier's application for allotment listing the child as his;

c. A will referring to the child as his child.

4. Definitions or precedents as to what constitutes written acknowledgement under state laws relating to legitimacy or recognition are not controlling here.

If clear and convincing evidence shows that the employee acknowledged the child in writing, the requirements are met even if the acknowledgement is no longer in existence or cannot be obtained.

There is a question as to whether a "written acknowledgement" must be signed by the employee. If there is evidence establishing that an unsigned writing was prepared by the employee and the child cannot otherwise qualify, HQ will determine the acceptability of such evidence.

B. Child's Birth Certificate See RCM 4.4.62

C. Court Decree of Paternity - The court decree must find that the employee is the mother or father of the child. Even though it does not expressly state this, it is sufficient if the order or decree indicates that the employee is charged and either pleads guilty or is found guilty under a specific statute which is applicable only if the employee is the child's mother or father (for example, a bastardy statute). When the decree shows a finding under a statute or provision of a state Code, referred to only by number in the decree, the case will be submitted to the Bureau of Law in the absence of a precedent or other information on the nature of the statute.

The decree must name the employee and identify the child. It is not necessary that the child be identified by name as long as it is clear that the reference is to be the child in question. Related court records (e.g., complaint, indictment, sentence, etc.) may be considered.

EXAMPLE 1: The employee is found guilty in a bastard proceeding naming him as the father of a child born on 2-10-75 to Mary Jones. The evidence shows the claimant was born 2-10-75 and is the child of the named Mary Jones.

EXAMPLE 2: The employee is found guilty in a court proceeding naming him as the father of the unborn child of Mary Jones. The claimant is born to Mary Jones 7 months later (or any date on which the child can be reasonably identified as the subject of the proceeding).

Consider a court decree of paternity issued after the death of the employee as "other evidence" of paternity which may satisfy the requirement of E below if the employee is living with the child or contributing to the child's support at the time of his death.

D. Court Order for Support - The court order must identify the child and name the employee and direct the latter to contribute to the child's support. Even though the court order does not name the employee as the child's parent, it is sufficient if the order is issued under a statute requiring a parent to support his child. The discussion in C above as to the identity of the child and reference to a statute or code number also applies here.

Consider a court order for the child's support issued after the employee's death as "other evidence" under E below.

E. Other Satisfactory Evidence - The evidence must identify the child in question and must establish that the employee is the biological mother or father of the child. There is no requirement that the evidence be in a specific form. Satisfactory evidence may include a court decree, court order or written acknowledgement which established paternity but does not qualify under A to D above. Statements by the employee's relatives that the employee considered the child his own may also constitute evidence.

F. Living With or Contributions

1. "Living With" - "Living with" means that the child and parent share a common roof under conditions which indicate more than mere coincidence of residence. It also means that the parent has the right to exercise, or is exercising, parental responsibility and authority.

   Periodic or temporary separation does not bar "living with" if the circumstances indicate that the child and parent have shared and again expect to share a common roof or resume common residence when conditions permit. Thus, a parent in the armed forces who shares a common roof with the child until his induction is deemed to be "living with" the child; "living with" is also deemed when the child is born while the father is in the armed forces. However, if the child is in the armed forces or committed to a correctional institution, do not consider him to be "living with" his parent, since the parent does not have the right to exercise parental control.

2. Contributions to Support - Contributing to support means substantial contributions in cash or kind. The amount of contributions must be a material factor in the reasonable cost of the child's support.

   a. Benefits to a child on the earnings record of a living parent are contributions by that parent to support.

   b. Gifts or donations at special times or for special purposes usually are not contributions. Donations are contributions only if they are given for the child's support and are large enough to provide some of the usual necessities.

c. Funds set aside for the child's future use are not contributions.

d. An allowance or allotment for a child by a serviceman is a contribution.

e. Apportionment of a living veteran's VA compensation or pension is a contribution by the veteran. Since these are cash payments out of the veteran's own funds, it is immaterial whether he has agreed to such payments.

f. Whether contributions or support are voluntary or compulsory does not matter. Therefore, a court order for support alone is not significant; consider only contributions actually made without regard to the amount the court order specifies.

3. Limited-Interruption Rule - Contributing to the support of the child may be found even though:

a. The normal patter of contributions is disturbed by a temporary interruption (i.e., it does not involve an assumption of support by someone else on a permanent and continuing bases); and

b. The evidence indicates that the interruption is involuntary and that contributions would continue if conditions permitted. Involuntary means the person is unable to contribute because he is ill, disabled, unemployed, etc.

4. Existence and Relationship of Child - In order to establish dependency, the child must be in existence and have the necessary relationship to the employee at the time of his death. If the employee is living with the mother or contributing to her support during the child's period of gestation, the employee is considered to be living with the child or contributing to the child's support during this period.

940.45.4 Development

A. General - Obtain a full birth certificate showing the parent's names. Some states will not issue such a certificate because it may disclose the child's illegitimacy; if only a short form birth certificate can be obtained because of this, place a written statement to this effect in the file.

Use discretion and develop the child's relationship under state law, under the invalid ceremonial marriage provision as discussed in FOM-I-940.35.4, or under the illegitimate child provision in FOM- I-940.45.1, whichever is applicable or more expeditious, or develop under each concurrently. However, if benefits for months before 2-I968 are involved, development must be made to determine whether the child meets the inheritance tests under state law.

When the applicant states the child is illegitimate or other information indicates illegitimacy, obtain the full birth certificate and answers to the following questions under "Remarks" on the application, or in a separate statement signed by the applicant:

1. Is the employee living with or contributing to the support of (child's name)?

2. Did the employee acknowledge in writing that this child is his son or daughter?

3. Is the employee decreed by a court to be the parent of this child?

4. Is the employee ordered by a court to contribute to this child's support?

If the answer to any of these questions is yes, develop under the following sections.

B. Development of Court Order - Ordinarily, obtain a copy of the court decree of paternity or court order for support certified by the proper court official. However, accept an excerpt from the order or decree certified by the court official if it contains sufficient information to determine that the child qualifies (i.e., there is a finding of paternity or an order to support the claimant as a child of the employee). Identifying information may be completed by considering other papers as explained in FOM-I-940.45.3 C. and D.

If there is any indication of a modification in a finding of paternity in the decree or the identity of the parent in the court order, the applicant should furnish a current decree or order with the certification by the proper court official as to whether the finding is vacated or changed.

Be sure the decree or order shows the date the court made its ruling.

C. Development of Written Acknowledgement - Include in the file the written acknowledgement or a photocopy of a true and exact copy.

It is not material whether the date is shown as long as it can be determined that the employee made the acknowledgement.

If the acknowledgement is not signed, obtain evidence as to whether the employee prepared it. When the evidence shows that the acknowledgement was prepared by the employee and the child cannot otherwise qualify, submit the data to the proper adjudication unit for a determination as to the acceptability of the evidence.

In some instances the appearance of the employee's name as father on a child's birth certificate may suggest development of a written acknowledgement with the state vital statistics office.

D. Development of Other Evidence - Since the evidence offered may be in a variety of forms, exercise judgment in evaluating it, keeping in mind that such evidence must establish biological paternity.

Consider such factors as the age of the evidence and date established, the purpose for which it was established, who furnished the information on which the evidence was based, the formality of the evidence, etc.

In addition to the child's birth certificate, obtain the mother's statement as to paternity if she is not the applicant. If the mother's whereabouts are unknown, or if she is incompetent or deceased, secure other evidence to establish paternity. This may be hospital, church, or school records; a court order or decree; or a statement from the attending physician, relative, or person who knows the child's relationship to the employee including the basis for that knowledge. It may also be evidence that the employee and the child's mother were living together when the child was conceived.

This list is not exhaustive and there may be other evidence which can establish the child's relationship to the employee.

If the birth certificate shows the employee as the child's father and this is corroborated by the applicant (mother's statement if she is not the applicant), this is ordinarily sufficient, unless there is evidence to the contrary. If the birth certificate does not show the employee as father, or shows the birth was registered after the employee's death, or if a birth registration cannot be located, develop other evidence of paternity as in the preceding paragraph.

NOTE: In addition to establishing paternity based on "other evidence" it is also necessary to establish that the child was either living with the employee or being supported by him at the time of the employee's death.

E. Development of Living With or Contributions

1. "Living With" - Obtain the applicant's statement as to whether the child lived with the employee at the time of the employee's death.

   Additional evidence of living with is required if information obtained during the normal course of development raises some doubt as to whether the child is living with the employee; or the applicant on behalf of the child does not have personal knowledge of where the child lived at the time of the employee's death.

2. Contributions - If the child is not living with the employee at the time of the employee's death, have the applicant submit a signed statement regarding the contributions to the child's support by the employee during the year preceding the employee's death. Obtain supporting statements from the

best available source with personal knowledge, or obtain corroborating evidence, such as cancelled checks, receipts, etc.

940.50 Siblings

940.50.1 General

This relationship is established for the claimant by proving that the deceased employee and the claimant have the same two parents.

940.50.2 Proofs

The preferred proof of a brother or sister relationship is a certified copy of a civil or church record of such brother's or sister's birth. However, any of the forms of documentary evidence shown in FOM-I-9l5, "Age," is acceptable if it shows the relationship claimed and if none of the information available or furnished to the RRB is inconsistent with the existence of the relationship.

Records originating after the death of an employee are always of doubtful value, unless based upon evidence predating the death of the employee.

Newspaper or magazine clippings are never acceptable as evidence.

If no documentary evidence is obtainable, the applicant must:

A. Furnish a written statement giving the reasons why documentary evidence is not obtainable; and

B. Submit affidavits from two disinterested persons showing:

1. The names of the applicant, the applicant's parents (maiden name of the mother), and the deceased employee;

2. A statement of the affiant's knowledge that the applicant was a sibling of the employee;

3. The basis of the affiant's knowledge.

945.5 Dependency

945.5.1 When Dependency Is Required

A. Life cases - Dependency of the child upon the employee is required when:

1. The employee's annuity is to be increased under the O/M by including a child, a grandchild or a spouse who has a child in care; or

2. A spouse under age 65 files for a full spouse annuity on the basis of a child or a grandchild in care.

B. Survivor cases - Dependency of a child upon the deceased employee is required for entitlement to a child's insurance annuity. Dependency must be established at the time of the employee's death unless the employee had a disability freeze that continued until the time when (s)he would have met the conditions for an age or disability benefit under the SS Act if his/her. Railroad service had been covered as wages under that act. If the deceased employee had a disability freeze that continued until (s)he would have become entitled to a social security benefit or died, the dependency requirements may be met at the following points:

1. At the beginning of the period of disability; or

2. At the time the employee would have become entitled to a social security benefit (as explained above).

The dependency requirement must be met even if the child was previously determined to be dependent upon the employee for the purpose of increasing the employee's O/M or qualifying a spouse for an annuity.

945.5.2 When Dependency Requirement Must Be Met

The point in time at which a child must be dependent upon the employee varies according to the type of claim as shown in the following table.

CHILD'S STATUS	TYPE OF CLAIM	POINT IN TIME DEPENDENCY MUST EXIST
Natural child, equitably adopted child, stepchild, deemed child, illegitimate.	IPI child in Employee's O/M	

	1. No DF or DIB involved	When employee's annuity can be increased under by including child.
	2. DF or DIB involved.	When latest DF period begins, or when employee last meets DIB requirements, OR when child is otherwise eligible to be included under DIB-O/M.
	<u>Spouse with Child in Care</u>	
	1. Full spouse annuity under RR Act.	Beginning date of spouse annuity.
	2. Inclusion under O/M.	When employee's annuity can be increased under O/M by including child.
	<u>Child of Deceased Employee</u>	
	1. Child's Insurance Annuity.	At the time of the employee's death, unless employee because entitled to a disability freeze that continued until the time when he or she <u>would</u> have met the conditions for an age or disability benefit under the Social Security Act if his or her RR service had been covered as wages under the Act. If the deceased employee had a disability freeze that continued until he or she <u>would</u> have become entitled to a social security benefit or died, the dependency requirements may be met at the following points:

		• At the beginning of the period of disability; or • At the time the employee <u>would</u> have become entitled to a social security benefit.
Grandchild (except a legally adopted grandchild.)	Any type of claim.	During the entire 1-year** prior to month in which: 1. Employee became entitled to the O/M or died; or 2. Period of disability began which continued to what would be social security entitlement or death.
Legally Adoped Child	<u>IPI Child in Employee's O/M</u> 1. Adopted before month of employee's O/M entitlement. 2. Adopted any time after employee's O/M entitlement.	 When employee's annuity can be increased under O/M or DIB-O/M by including child. When employee's annuity can be increased under O/M or DIB-O/M by including child.
	<u>Spouse With Child in Care</u> 1. Full spouse annuity under RR Act. 2. Inclusion under O/M.	 Beginning date of spouse annuity. When employee's annuity can be increased under O/M by including child.
	<u>Child of Deceased Employee</u>	

	Child's insurance annuity.	At the time of the employee's death.

** A child born during the 1-year period is deemed to meet the 1-year requirement.

945.5.3 Child's Dependency Upon Natural or Legally Adoptive Parent

A. Life cases - A legally adopted child (including a grandchild) who is adopted by the employee during his lifetime is deemed dependent for payment of RR formula annuities, and, as such, can qualify a spouse for a full spouse annuity if the "in care" requirement is met. However, if an adopted child is to be included in the computation of the employee's annuity under the O/M, the following requirements must be met:

1. Months after 9-1972 - A child will be deemed dependent upon the employee when the employee is his natural parent. A legally adopted child will be deemed dependent unless the child was adopted after the point at which the employee would have been entitled to an age or disability social security benefit if his/her railroad service had been covered as wages under that act. If the child is adopted by someone else during the employee's lifetime, dependency is established by "living with" or if the employee is contributing to the child's support.

2. Months after 1-1968 and prior to 10-1972 - A child will be deemed dependent upon the employee as for months after 9-l972 unless subsequently adopted by someone other than the employee.

3. Months after 8-l960 and prior to 2-1968

   a. Male employees - The rules for establishing dependency are the same as for months after l-l968 and prior to 10-1972.

   b. Female employees - A child will be deemed dependent upon the employee when the employee is his natural mother or legally adoptive mother if the employee is currently insured under the SS Act or partially insured under the RR Act. If the employee is not currently insured under the SS Act or partially insured under the RR Act, the child is dependent upon her only if:

      - The employee contributes one-half of the child's support; or
      - The employee is living with or contributing to the child's support AND the child's natural or adopting father is neither living with nor contributing to the child's support.

4. Months prior to 9-1960

a. Male employee - A child is dependent upon his natural or legally adopting father (employee) if:

- Such father is living with or contributing to the child's support; or

- The child is the employee's legitimate or legally adopted child, has not been adopted by someone else, AND is not living with AND receiving more than one-half of his support from his stepfather.

  NOTE: In those states in which adoption by another person during the natural father's lifetime does not cut off inheritance rights between the child and such father, the child may qualify on the insured status of the natural father. However, in such a case, the child is dependent upon his natural father ONLY if he is living with or receiving contributions for support from such father.

b. Female employee - The rules for establishing dependency are the same as for months prior to 2-1968 and after 8-1960.

B. Survivor cases

1. Months after 9-1972 - A natural child will be deemed dependent upon the deceased employee when the employee was his natural parent. A legally adopted child will be deemed dependent upon the deceased employee when the employee was his legally adoptive parent. The child's benefits or annuity will not be terminated if he is subsequently adopted.

2. Months after 1-1968 and prior to 10-1972 - A child will be deemed dependent upon the deceased employee as for months after 9-1972 unless he is adopted by someone other than a stepparent, grandparent, aunt, uncle, brother or sister. If a child is adopted by someone other than one of these "close" relatives, his annuity must be terminated. However, he can qualify as an IPI, if another family member is being paid under the O/M.

3. Months after 8-1960 and prior to 2-1968

   a. Male employees - The rules for establishing dependency are the same as for months after 1-1968 and prior to 10-1972.

   b. Female employees - A child will be deemed dependent upon the deceased employee when the employee was his natural mother or legally adoptive mother if the employee was currently insured under the SS Act or partially insured under the RR Act. If the employee was not currently insured under the SS Act or partially insured under the RR Act, the child is dependent upon her only if:

- The employee contributed one-half of the child's support; or
- The employee was living with or contributing to the child's support AND the child's natural or adopting father is neither living with nor contributing to the child's support.

4. Months prior to 9-1960

a. Male employee - A child is dependent upon his natural or legally adopting father (employee) if:

- Such father was living with or contributing to the child's support; or
- The child was the employee's legitimate or legally adopted child, has not been adopted by someone else, AND is not living with AND receiving more than one-half of his support from his stepfather.

NOTE: In those states in which adoption by another person during the natural father's lifetime does not eliminate inheritance rights between the child and such father, the child may qualify on the insured status of the natural father. However, in such a case, the child is dependent upon his natural father ONLY if he is living with or receiving contributions for support from such father.

b. Female employee - The rules for establishing dependency are the same as for months prior to 2-1968 and after 8-1960.

945.5.4 Child Legally Adopted by Employee's Widow(er)

Effective 1-1-91 (for applications filed after 12-31-90), a child will be deemed to have been dependent upon the deceased employee if:

A. The child was living with the employee at the time of the employee's death; or

B. The child received at least one-half support from the employee in the year prior to the employee's death.

NOTE 1: The above rules apply both to children adopted within 2 years of the employee's death and to children adopted more than 2 years after the employee's death when adoption proceedings were initiated before the employee's death.

NOTE 2: Prior to 1-1-91, the following requirements applied: the employee instituted proceedings to adopt the child before the employee's death; and the child was living in the employee's household at the time of death; and at the time

of his death, the child is not receiving support from any public or private welfare organization which furnishes assistance or services for children, or from any person other than the employee or spouse.

945.5.5 Child's Dependency Upon Equitably Adopting Parent

A child's dependency upon an equitably adopting parent will not be deemed as in the case of a legally adopting parent, but rather dependency will be established in accordance with A or B below.

A. Equitably adopting father - He must either:

1. Be living with the equitably adopted child; or

2. Be contributing to the equitably adopted child's support.

B. Equitably adopting mother

1. Months after 1-1968 - She must either:

   a. Be living with the equitably adopted child; or

   b. Be contributing to the equitably adopted child's support.

2. Months prior to 2-1968 She must either:

   a. Be contributing one-half of the equitably adopted child's support; or

   b. Be living with or contributing to the equitably adopted child's support AND the natural or adopting (including equitably adopting) father is neither living with nor contributing to the child's support.

945.5.6 Child's Dependency Upon Stepparent

A child's dependency upon a stepparent may not be deemed. Dependency must be established in accordance with A, B or C below.

A. Stepfather - He must either:

1. Be living with the stepchild; or

2. Be contributing one-half of the stepchild's support.

B. Stepmother

1. Months after l-1968 - She must either:

   a. Be living with the stepchild; or

b. Be contributing one-half of the stepchild's support.

2. Months prior to 2-1968 - She must either:

a. Be contributing one-half of the stepchild's support; or

b. Be living with or contributing to the stepchild's support AND the natural or adopting father is neither living with nor contributing to the stepchild's support.

C. Stepparents Effective July 1, 1996

The employee must be contributing at least one-half support to the stepchild. "Living-with" is no longer an option for meeting dependency.

945.5.7 Illegitimate Child's Dependency Upon Parent

The following rules will be applied when an illegitimate child cannot be deemed a child of the employee under the February l968 amendments to the RR Act:

A. Father

1. Effective 6-29-76 - Dependency is deemed if the child has inheritance rights under state law.

2. Prior to 6-29-76 - The child's dependency upon the father is determined by the child's status under applicable state law. If the child is recognized or acknowledged by the father for inheritance purposes under applicable state law, the child is dependent if the father:

a. Is living with the child; or

b. Is contributing to the child's support.

B. Mother

1. Effective 6-29-76 - Dependency is deemed if the child has inheritance rights under state law.

2. Months after January l968 - The child's dependency upon the mother is determined by the child's status under applicable state law. If the child is recognized or acknowledged by the mother for inheritance purposes under applicable state law, the child is dependent upon the mother if she:

a. Is living with the child; or

b. Is contributing to the child's support.

3. Months prior to February l968 - If the mother is currently insured under the SS Act or partially insured under the RR Act, the child will be deemed dependent upon the mother regardless of the child's status under applicable state law.

   If the mother is not currently insured under the SS Act or partially insured under the RR Act, the child is dependent upon the mother if she is:

   a. Contributing one-half of the child's support; or

   b. Living with or contributing to the child's support AND the child's father is neither living with nor contributing to the child's support.

945.5.8 Deemed Child's Dependency Upon Parent

A. Child of invalid ceremonial marriage - For months after January l968, the dependency of such a child upon the natural parent is deemed as for a legitimate child. It is, therefore, not necessary to determine whether the child has inheritance rights under applicable state law.

B. Illegitimate child deemed a child for months after January 1968 - The dependency of such a child upon the parent is deemed as for a legitimate child.

945.5.9 Determining Whether Child Is "Living With"

"Living with" is defined as meaning the child and parent share a common roof under conditions which indicate more than mere coincidence of residence. It also means that the parent has the right to exercise, or is exercising, parental responsibility and authority.

Periodic or temporary separation does not prevent a finding of "living with" if the circumstances indicate that the child and parent have shared and again intend to share a common roof or resume common residence when conditions permit. Thus, a parent who shares a common roof with the child until induction into the armed forces is deemed to be "living with" the child. However, if the child is in the armed forces or committed to a correctional institution, do not consider him to be "living with" his parent since the parent does not have the right to exercise parental control.

945.5.10 Grandchild Dependency Requirements

A. Dependency - In addition to meeting the relationship requirements in FOM-I-940.30.3, the grandchild must also have been dependent on the employee. Note that the child must have the necessary relationship to the employee at the time used for establishing dependency. To be dependent, a grandchild must have:

   1. Begun living with the employee before (s)he attained age l8; and

2. Lived with the employee in the U.S. throughout the year specified in B. below; and

3. Received at least one-half support from the employee throughout that same year.

B. Time requirement - living with and one-half support - The grandchild must have been living with and receiving one-half support from the employee for the entire year before:

1. The month in which the employee would have met the requirements for a social security benefit if covered or the month in which the employee died; or

2. The month in which the employee's period of disability began which continued until (s)he would have met the conditions for entitlement to a social security benefit if covered or until his/her death; or

3. In the case of a grandchild adopted by an RIB or DIB beneficiary only, the month before the application is filed for the child.

If the grandchild was born during this 1-year period, the dependency requirements are deemed to be met if the grandchild lived with the employee in the U.S. and received at least one-half support from the employee for substantially the entire period between the date of his birth and the earliest of the above mentioned dates.

C. No natural or adopting parent living with and contributing to the support of the child - in cases involving adoption of a grandchild or step-grandchild by the deceased employee's surviving spouse, the grandchild, in addition to meeting the relationship tests in FOM-I- 940.30.1, must not have been receiving regular contributions towards his support from his natural or adopting parent or stepparent who was living in the employee's household at the time the employee died. The parent must have been both contributing to the support of the child and living in the employee's household for benefits to be precluded. A parent who is living in the employee's household but not contributing to the child's support will not bar the child's entitlement.

Likewise, regular contributions from a parent not living in the employee's household will not bar the child's entitlement. However, such contributions must be considered in determining whether the child was receiving at least one-half of his support from the employee.

945.10 Support

945.10.1 Support Defined

A. General - Support is the maintenance of a person necessary for his well being. It includes such things as food, clothing, shelter, current medical needs, etc. Support of a person can be shown by contributions in cash, kind or services.

B. One-half support - One-half support means that the applicant is receiving at least 50% of his support from the employee in the form of regular contributions in case, kind or services.

945.10.2 When Proof of Support Is Required

A. Life cases - A husband must have met the requirement of receiving at least one-half of his support from his wife:

1. To receive a male spouse annuity beginning before 3-1-77, or to be included in the retirement O/M computation as a male spouse before 3-1-77. Effective 3-1-77, one-half support is no longer a requirement for payment of a male spouse annuity or for inclusion in the retirement O/M computation; or

2. To be exempt from reduction for a public service pension (PSP), if he is eligible for the PSP before 7-1-83; or

3. To receive payment of a RIB/DIB vested dual benefit, before spouse vested dual benefits were eliminated beginning 8-13-81.

   A spouse or divorced spouse who is receiving one-half support, and is eligible for a PSP before 7-1-83, may be exempt from reduction for the PSP beginning 12-1-82. See FOM-I-120.

B. Survivor cases - Proof of support is required for a parent's annuity and for certain cases of child dependency.

Effective July 1, 1996, all stepchildren must meet the dependency requirement of one-half support. Prior to July 1, 1996, a stepchild was deemed dependent if the child was living-with the employee.

A widower must have been receiving one-half support from the employee at the time of her death or at the time her retirement annuity began for his annuity to begin before 3-1-77; after February 1977 a widower does not have to prove one-half support except for payment of a vested dual benefit (if payable before 8-13-81) or employee annuity restored amount. In addition, a widow or a widower who is eligible for a PSP before 7-1-83 may have to prove one-half support to be exempt from reduction for the PSP. See FOM-I-120.

945.10.3 Contributions to Child's Support

A. General - "Contributions to support" means regular and substantial contributions in cash or kind. The amount of contributions must be a material factor in the reasonable cost of the child's support. Whether contributions to the child's support are voluntary or compulsory does not matter. Therefore, a court order for support is not significant; only contributions actually made (without regard to the amount the court order specifies) will be considered.

   Benefits to a child based on the employee's insured status are contributions by the employee.

   Gifts or donations at special times or for special purposes usually are not contributions, nor are funds set aside for the child's future use contributions. Donations are contributions only if they are given for the child's support and are large enough to provide some of the usual necessities.

B. Determining one-half support - Contributions in both cash and kind will be considered when determining whether a parent contributes at least one-half of the total cost of the child's support.

C. Limited interruption rule - "Contributions to support' can be established even though the normal pattern of contributions is disturbed by a temporary interruption (i.e., does not involve an assumption of support by someone else on a permanent and continuing basis). However, the evidence must prove that the interruption is involuntary (i.e., due to ill health, disability, unemployment, etc.) and that contributions would have been continued had conditions permitted.

945.10.4 Statement Regarding Support

When applicable obtain a sworn statement from the applicant or other person having knowledge of the facts regarding contributions to the child's support. The statement should furnish the following information:

A. Name of person who is contributing to the support of the child and relationship to the child;

B. How often cash payments are made by such person for the support of the child;

C. The usual amount of each payment;

D. The period of time over which the payments are made;

E. The amount and date of the last payment;

F. A description of any contributions made in a form other than cash and their cash value;

G. The name of the person to whom payments are made for the child's support.

In addition, if the pooled fund method can be used in determining if the one-half support requirement is met, secure the amount and source of income of each member of the single family residing in the household. (See FOM-I-945.10.7 for an explanation of the "Pooled Fund Method of Determining Support" and when this method can be used.)

945.10.5 Time Frame for Determining Support

An applicant must be receiving at least one-half support from the employee at the time the employee's annuity began under the RR Act, or at the time of the employee's death. In a life case, if support is established for annuity purposes, it is also established for O/M purposes.

Although "the time the retirement annuity began under the RR Act, or at the time of the employee's death" refers to the date on which those events occurred, the facts relating to the applicant's total support for a reasonable period before such date are considered in determining whether the support requirement is met. The three following sections illustrate the application of this principle.

A. Twelve months as a reasonable period - An applicant meets the support requirement at the appropriate time if, during the 12-month period preceding that time, the employee contributed regularly and without a permanent break at least one-half the applicant's whole support. Where there is a change in the support pattern, the period to be considered in determining support begins with the change in circumstances unless unfortunate circumstances are present.

B. Three months as a reasonable period - unfortunate circumstances involved - The applicant is receiving at least one-half support if:

   1. The employee contributes at least one-half of the applicant's whole support for at least 3 months of the support year; and

   2. Unfortunate circumstances such as illness, unemployment, etc., prevent the employee from making further contributions; and

   3. The applicant's income during the rest of the year (excluding initial or supplemental public assistance grants first received after the employee stopped contributing) is reduced 25% or more.

C. Other reasonable periods - The applicant meets the support requirement at the appropriate time if the employee, during a reasonable period just before that time, contributes at least one-half of the applicant's support. The brevity of such a period does not preclude a finding of support if the employee plainly showed intent to provide at least one-half of the applicant's support on a continuing and permanent basis.

When the applicant receives wages and/or SE income during part of the year before the employee's annuity began or before the employee's death but not in the period just before the employee's ABD or death, have the applicant state whether the employment was permanent or temporary, or regular or seasonal in nature. If the applicant could reasonably be expected to return to regular employment at the time of or shortly after the employee's ABD or death, the reasonable period rule usually will not apply.

D. Deemed support rule - Effective 1-1-82, the applicant is deemed to have been receiving at least one-half support from the employee if the employee provided the applicant with room and board, and the applicant's income from other sources was not more than $128.50 a month ($96 a month for support periods 1979 through 1981). This rule may be used only to find one-half support, not to deny it.

945.10.6 Income

Any payment received by the applicant in cash, kind or services (including any proceeds from property) is income to the applicant. Also consider the amount of unpaid debts contracted by the applicant for current support during the period for which support is being determined. The following sections list the types of income that should be considered when support is being developed.

A. Employment - For support purposes, the applicant's net income from employment is his gross pay minus any expenses incurred in furthering his employer's business.

B. Investment and similar income - If the applicant is the sole owner of income producing property such as stocks and bonds, real estate investments, bank deposits, etc., the current earnings (dividends, interest, etc.) are income to the applicant. If the property is jointly owned, the income will be allocated equally to the joint owners.

C. Business - Net earnings from the operation of a business (including commercial farms) are income for support purposes. When the employee and the applicant are joint owners, the net income will be allocated equally to both.

D. Rental property - Income from rental property is equal to the gross income minus all regular expenses. Accelerated mortgage payments and depreciation are not regular expenses.

E. Farming - The net value of farm or garden produce used (market value less expenses of production) is income for support purposes.

F. Sales of assets - Proceeds from the sale of assets are considered income only if and to the extent used for support purposes.

G. Funds from insurance policies - Funds from policies of which the applicant is either owner or beneficiary are considered income only if and to the extent used for support purposes.

H. Federal benefits - Monthly benefits paid under the RR Act and those of other Federal agencies are income to the applicant. Lump-sums paid under the RR Act and those of other Federal agencies are also income to the applicant if used for the applicant's support.

I. Public assistance or other public aid - Public assistance or other aid is income to the recipient in all cases. However, such income does not prevent the applicant's entitlement when it is initially received or increased after unfortunate circumstances forced a reduction or termination of the employee's contributions.

J. Room and board - Room and board furnished to the applicant by the employee or some other person is income and must be considered in the support computation.

K. Contributions - A contribution to an applicant by the employee or some other person is income to the applicant. A contribution may be in cash, in kind, or work done.

1. Contributions in kind - In order for a one-time contribution in kind to constitute income for support, it must be used for support. The cash value of regular contributions in kind is the cost of the items if bought in the open market when the contributions were made.

2. Contributions of work - The cash value of work that the employee or other person does for the applicant, or vice versa, is what it would cost to hire similar labor to do similar tasks in the same length of time.

   This rule applies to work for which labor would usually be hired, such as repairs or improvements in the home. It does not apply to routine household tasks ordinarily expected of members of the household; these tasks do not have a cash value in determining support.

3. Housing - If the applicant occupies a rent-free house provided by the employee or some other person, consider the fair rental value as income to the applicant if the contributor owns the property and pays the maintenance costs. (Maintenance costs do not include ordinary utilities.)

945.10.7 Pooled Fund Method of Computing Support

The pooled fund method of computing support is based on the assumption that, where all income coming into a household is pooled for the support of the household, each member shares equally in the funds used for support. The pooled fund method cannot be used to establish support when:

A. Separate family groups are living in the same household; or

B. A father is under a court order to support his minor children, but the order does not provide for payments to the mother; or

C. There is evidence indicating that the income for support is not shared equally.

If using the pooled fund method results in disproving one-half support by a narrow margin, the method will not be used; further development will be initiated to determine the amounts of actual contributions by the employee and living expenses of the alleged dependent.

When the pooled fund method is used to establish support, it is assumed that each member of the family shares equally in the income received by the family for support. This method can be used to determine whether the dependency requirement is met for purposes of qualifying a husband, parent or grandchild for a monthly benefit.

945.10.8 Grandchildren-Special Support Rules

A grandchild or step-grandchild, as defined in FOM-I-940.30.1, may qualify for benefits or qualify the employee's wife for benefits effective January 1, 1973. In addition to meeting the relationship requirements, except for a grandchild adopted by an O/M recipient (see FOM-I-945.10.9), the grandchild or step-grandchild must meet the dependency requirements and fulfill the requirements in A or B below.

A. The child's natural or adoptive parents must be either deceased or disabled:

   1. In the month in which the employee met the conditions for entitlement to the O/M, or died; or

   2. In the month in which the employee's period of disability began which continued until he met the conditions for entitlement to the O/M or until his death.

B. The child was legally adopted anytime after the employee died by the employee's surviving spouse in an adoption decree by a court of competent jurisdiction within the U.S. (including Puerto Rico, the Virgin Islands, Guam and American Samoa), and the child's natural or adopting parent or stepparent was not living in the employee's household and making regular contributions.

945.10.9 Requirements for Eligibility of Grandchild Adopted by an O/M Recipient

An adopted grandchild of the employee or spouse who does not meet the dependency requirements for any of the 1-year periods shown in FOM-I-945.5.2 may still be eligible to be included in the O/M or make the employee's wife eligible to be included in the O/M if:

A. The adoption was by an O/M recipient, and

B. The dependency requirements in FOM-I-945.5.10 are met for the 1-year period immediately prior to the month in which the child's application is filed. This is the alternative period of dependency test. Under this test, the child must meet all of the following requirements:

1. (S)he must not be a step-grandchild as defined in FOM-I-940.30.1; and

2. (S)he must have been legally adopted by the employee in an adoption decreed by a court of competent jurisdiction in the U.S. (including Puerto Rico, the Virgin Islands, Guam and American Samoa); and

3. (S)he must not have attained the age of l8 before (s)he began living with the employee; and

4. (S)he must have been both living with the employee in the U.S. (including the territories in number 2, above) and receiving one-half support from the employee for the entire 1-year period immediately before the month in which the child's application is filed.

The alternative dependency test for grandchildren does not affect cases where the child is adopted after the employee's death by his surviving spouse. A step-grandchild of the employee or spouse (who is not the grandchild of the other) does not qualify under this provision.

An adopted child born during the 1-year period is deemed to meet the living with and one-half support requirement if he lived with and received at least one-half support from the employee for substantially all of the period from the date of his birth to the month in which the child's application is filed.

NOTE: Unlike the grandchild definition and dependency requirements in sections 945.10.8 and 945.5.10, respectively:

- There are no conditions requiring the grandchild's parents to be either deceased or disabled; and

- There are no conditions regarding partial support by the grandchild's parent who lives in the same household. Of course, if the grandchild's parent is contributing one-half support of more, then the grandchild could not be dependent upon the employee.

945.10.10 Development of Proof of Death or Disability of Grandchild's Natural or Adopting Parents

In all cases except those in which a grandchild could qualify as an employee's adopted child, the grandchild's parents must be either deceased or disabled. In the applicable cases, when the death or disability of the grandchild's natural or adopting parent cannot be proved, the claim for the grandchild must be denied. The natural or adopting parents will generally be identified in the evidence obtained.

A. Proof of death

1. Natural child of employee's or spouse's daughter - The natural mother's death must be established. If the evidence establishes the identity of the child's natural father, his death must also be established. Otherwise, an attempt must be made to ascertain his identity through contact with the person filing on behalf of the child, the employee or his spouse or any other readily available person who might reasonably be expected to have that knowledge. In addition, other possible sources of evidence (such as hospital, church, court or school records) should be checked. All efforts to identify the natural father should be documented and submitted for the file.

   If the child's father is identified but his whereabouts are unknown or, for any reason, proof of death cannot be obtained, an assumption cannot be made that the father is deceased, except where death can be presumed.

2. Natural child of employee or employee's spouse's son - The natural father's death must be established. In addition, there should be no difficulty in identifying the child's natural mother since this information is almost always shown on the child's birth certificate. If this document is not available, the identity of the child's mother should be established following the same general guidelines for identifying the natural father described in l. above.

3. Legally adopted child of employee or employee's spouse's son or daughter - The death of both adopting parents must be established. If neither adopting parent is also the child's natural parent, it is not material whether the child's natural parents are deceased. If one parent adopted his spouse's natural child, the death of both the adopting parent and the natural parent must be established. In the rate case in which an individual alone adopted the child without being joined by his spouse, if any, in the adoption, only the death of the adopting parent need be established.

4. Stepchild of employee or employee's spouse's son or daughter - The stepparent need not be deceased. The evidence must identify the natural or adopting parent to whom the employee or employee's spouse's child was married, and the death of that parent must be established. In addition, the death of the child's other natural or adopting parent (if any) must also be established if this person is identified by the evidence in file. An attempt must be made to ascertain the other parent's identity and death following the same procedure outlined in 1 above.

B. Proof of disability - The grandchild's parent must have been disabled within the meaning of the SS Act as of the month in which:

- The employee met the conditions for entitlement to the O/M; or

- The employee began a period of disability which continued until he met the conditions for entitlement to the O/M or until his death; or

- The employee died.

1. When disability under the SS Act has been established - If disability is alleged and SSA is paying a DIB to the grandchild's parent, a copy of the award letter or similar evidence of SSA's award will be sufficient proof of disability.

2. When disability under the SS Act has not been established - If disability is alleged and either no application for a DIB was ever filed, or SSA denied the DIB application for lack of insured status, obtain:

   a. A statement from the grandchild's parent who claims to be disabled; and

   b. A complete Form G-251; and

   c. The contact representative's personal observations report; and

   d. A letter or other report from the allegedly disabled person's personal physician; and

   e. Medical evidence used to support a disability claim at SSA, VA, Welfare, etc., when such can be obtained.

945.10.11 Special Support Rules - Divorced Woman

Prior to 10-5-72 a divorced woman (a divorced wife, surviving divorced wife, and surviving divorced mother) could be included in the O/M if she would qualify for a monthly benefit under the SS Act even though she was not eligible for an annuity under the RR Act. One condition of eligibility under the SS Act was that she received at least one-half of her total support from the employee.

Effective 10-5-72, a divorced woman cannot be initially included in the O/M. However, such individuals who are on the benefit payment rolls will continue to be included until the O/M is no longer applicable, the annuity of the employee or eligible survivor is terminated or the person could no longer qualify for a benefit under the SS Act.

A divorced wife or husband who is entitled to an RR Act annuity may be included in the O/M beginning 10-1-81. There is no support requirement for entitlement.

945.15 Care

945.15.1 "Child in Care"

"Child in care" means that the applicant exercises parental control and responsibility for the welfare and care of a child under age 18 (or 16) or a mentally incompetent child age 18 (or 16) or over, or performs personal services for a mentally competent child age 18 (or 16) or over who is disabled. The applicant may be exercising parental responsibility or performing personal services either alone or jointly with a spouse or other household member.

Entitlement to a spouse annuity or widow(er)'s annuity is based on having a child under age 18 or a child who became disabled prior to age 22 in his/her care.. Payment of surviving divorced spouse or remarried widow's annuity and O/M entitlement, however, are based on having a child under age 16 or a child who became disabled prior to age 22 in his/her care.

NOTE: For the period 9-81 to 7-92, the tier I portion of a spouse or widow(er)'s annuity was terminated if the child was over age 16 but under age 18. Per Board Order 92-263, eligibility for Tier 1 was restored in cases in which the child attained age 16 later than 7-92. Per Board Order 93-108, tier I was restored retroactive to 1-1-1986 in cases previously terminated. These are called "Nancy Johnson" cases.

References in this chapter may apply to a child at age 18 or age 16, depending on the spouse's or widow(er)'s eligibility requirements.

A. When required -- "Child in care" is an eligibility requirement for:

1. A spouse under FRA who applies for a full spouse annuity on the basis of a child of the employee; or

2. A spouse to be included in the computation of the employee's O/M on the basis of his child; or

3. A widow(er) (including divorced and remarried) under age 60 who applies for a widow(er)'s current insurance annuity.

B. Parental responsibility -- Parental control and responsibility over a child under age 18 (or 16) or an incompetent child age 18 (or 16) or over may be exercised directly when the applicant lives with the child. When the applicant does not live with the child, parental control and responsibility may be exercised indirectly by giving instructions to the child's custodian and ensuring that those instructions re followed. The applicant must:

1. Supervise the child's activities;

2. Participate in important decisions about the child's physical and mental needs;

3. Measurably control the child's upbringing and development;

4. Influence the training and development of the child.

If the development and training of a mentally incompetent child who is not living with the applicant is exclusively controlled by the custodian, even though paid for by the applicant, the child is not in the applicant's care.

C. Personal services -- The personal service required for "child in care" when the mentally competent child is age 18 (or 16) or over must be performed regularly and in addition to any routine household service which may be rendered for any adult member of the household. Thus, personal services are services of a special nature such as nursing care, feeding or dressing. However, the concept of personal services is not necessarily limited to such actual physical or personal care. The direction or supervision of the activities of a mentally competent child who is unable to manage his own funds or is able to do so only with considerable help would constitute personal services. Also, when the applicant's presence is required by the nature of the child's disability, (s)he will be considered to be performing personal services.

945.15.2 Applicant and Child Living Together Regularly

A. Child under age 18 (or 16) or mentally incompetent -- Examiners will assume that an applicant living with such a child has the child in care for each month they live together. This includes the month they began or ended living together regularly, if they lived together for at least 1 full day of the beginning or ending month, unless a spouse annuitant or O/M beneficiary is required to have the child in care for every day of the first month.

Do not assume that the child is in the applicant's care if there is evidence to the contrary or the applicant is mentally incompetent. Instead, obtain the applicant's statement about the exercise of parental control and responsibility. Obtain a statement from another person who lives in the household or has knowledge of the circumstances only if there is doubt on whether the applicant's statement is true.

B. Disabled mentally competent child -- If the applicant regularly lives with such a child age 18 (or 16) or over, the child is in the applicant's care only if the applicant performs personal services for the child. If it is established that the applicant has the child in care, the applicant is considered to have the child in care for the month they began or ended living together regularly, provided they lived together for at least 1 full day of such month. However, a spouse annuitant or O/M beneficiary may be required to have the child in care for every day of the first month.

Obtain a statement from the applicant and from the disabled adult child about the nature and frequency of the personal services performed and whether and to

what extent the applicant's presence is required because of the child's disability. If there is any question, obtain a statement from another person who lives in the household or has knowledge of the circumstances.

945.15.3 Applicant and Child Living Together Temporarily

A. Child under age 18 (or 16) or mentally incompetent - When the applicant is temporarily living with such a child, the child is in the applicant's care only if:

1. The child is in the applicant's care while they are apart; or

2. The child is with the applicant for a period of at least 30 consecutive days (except where the child is in the armed forces) and the applicant exercises parental control and responsibility. The child is considered to be in the applicant's care for the month the period began or ended if the child was in the applicant's care for at least 1 full day of such month. However, a spouse annuitant or O/M beneficiary may be required to have the child in care for every day of the first month.

   The child is not in the applicant's care during periods they are living together when the child is on active duty status in the armed forces. This is true even if the child is in a period of furlough that exceeds 30 days.

B. Disabled mentally competent child - If the applicant and disabled mentally competent child are only living together temporarily, the applicant has the child in care only if he or she is performing personal services and the child is with the applicant for a period of at least 30 consecutive days. The child is in the care of the applicant for the month the 30-day period began or ended if the child was in his or her care for at least one full day of such month, unless a spouse annuitant or O/M beneficiary is required to have the child in care for every day of the first month.

945.15.4 Applicant and Child Not Living Together

A. Child in care - If the applicant and minor or disabled child are not living together, the child is in the applicant's care only if;

1. The child customarily lives with the applicant; and

2. The child is in the applicant's care when they live together; and

3. The separation is expected to be temporary (to end within 6 months from the date it began); or

4. The applicant is exercising parental control and responsibility for a child under age 18 (or 16) or a mentally incompetent child age 18 (or 16) or over while they are separated.

B. Child not in care - An applicant does not have a child in care, even if the conditions shown above are met, if they are not living together and:

1. The applicant is mentally incompetent (regardless of whether or not (s)he is confined in an institution); or

2. A court order has removed the child from the applicant's custody and control; or

3. The child is in the armed forces; or

4. The applicant and his or her spouse are separated and the child is with the spouse; or

5. The child is under the jurisdiction of a court-appointed guardian other than the applicant; or

6. The applicant has relinquished the right to custody and control of the child to some other person or agency.

C. Development - In every case where the applicant and child are separated, regardless of the expected length of separation, obtain a statement of whether the applicant is exercising parental control and responsibility from the applicant and the person with whom the child is living. The statement should include the reason for the separation and, if it is temporary, the expected length of the separation and the date on which it will end.

945.15.5 Parent and Child Separated

A number of situations exist where the parent may have the child in care even though the two are physically separated. The following sections illustrate some circumstances under which the parent and child are separated, but parental control and responsibility are still being exercised.

A. Child away at school - When a child under age 18 (or 16) is away at school, the applicant is exercising parental control and responsibility if:

1. The applicant supervises the child's activities and participates in important decisions about the child's physical and mental needs. (Assume that this is being done in the usual boarding, military, or prep school situation in which the child is not under the exclusive control and jurisdiction of the school); and

2. The child spends an annual vacation of 30 consecutive days or more with the applicant unless it is not feasible for the child to return home during vacation, or to remain with the applicant for that length of time, during vacation; and

3. If the applicant is separated from his or her spouse, the school authorities look to the applicant when they have a question regarding the child. If the applicant has lost custody, the child is in his or her care only during the time the child spends a vacation with him or with her, if the vacation is at least 30 consecutive days.

B. Applicant's employment - When a separation of more than 6 months is caused by the applicant's employment, the applicant has a child under 18 (or 16) in care only if (s)he:

1. Supervises the child's activities; and

2. Participates in the important decisions about the child's physical and mental needs; and

3. Makes regular and substantial contributions to the child's support. (The amount of the contributions, which may be in cash or in kind, must be a material factor in the reasonable cost of the child's support.)

C. Physical illness or disability - In some cases an applicant may be separated from a child under 18 (or 16) due to the child's or the applicant's physical illness or physical disability (e.g., either one may be away at a hospital or nursing home). If the separation is expected to end with 6 months, the applicant has the child in care. If the separation is expected to last more than 6 months, the applicant is exercising parental control and responsibility (has the child in care) if the applicant supervises the child's activities and participates in the important decisions about the child's physical and mental needs.

D. Mental incompetence - An applicant does not have a child in care during a period of separation caused by the applicant's mental incompetence.

E. Court order - When a separation results from a court order removing a child under age 18 (or 16) from the applicant's custody and control, the child is not in the applicant's care. For example, this applies if a juvenile court has placed the child in a reform school.

Secure a certified copy of the court order if the applicant alleges that the child is still under his or her control despite the separation.

If the court order removes the child from the applicant's custody and control, the child is not in his or her care. However, if the order merely removes a child from the custody but not from the control of the applicant and the applicant still exercises parental responsibility, the child is in his or her care.

F. Child enrolled in Job Corps - Whether a child under age 18 (or 16) is in the applicant's care while in the Job Corps depends on whether the child is a resident or non-resident Job Corps enrollee.

1. Child is resident Job Corps enrollee - When the child is a resident of a Job Corps center, the child is not considered to be living with the applicant while at the center. By signing the consent statement, the applicant has relinquished control and custody of the child to the Job Corps. Therefore, the child is not considered to be in the applicant's care while living at the Job Corps center.

   If the child returns home during vacation periods, he or she may be found to be in the applicant's care if they are together for at least 30 consecutive days.

2. Child is non-resident Job Corps enrollee - When the child is a non-resident Job Corps enrollee and returns home to the applicant either weekends or evenings, the child is in the applicant's care if, while the child is at home, the applicant exercises parental control and responsibility.

945.15.6 Posthumous Child in Widow's Care

When the child of the employee is born after the employee's death, the widow will be deemed to have the child in her care when the child is born. If the child is born alive, the child may then become entitled to a CIA and the widow to a WCIA.

950.5 Defined

A legal representative may be anyone appointed by a court of proper jurisdiction and vested with the care of the person or estate of an incompetent or a minor claiming or receiving benefits.

950.10 Proofs

If there is a legal guardian of the estate of the beneficiary, obtain evidence of his authority to act as a legal representative.

950.10.1 Court-Appointed Legal Representative

A court-appointed legal representative should submit:

A. A certified copy of the letters of appointment; or

B. A certified copy of the order of appointment; or

C. A "short" certificate; or

D. An official document issued by the clerk or other proper official of the appointing court.

Certifications of appointment must be 1 year old or less and made by the proper court official. If the court had appointed the representative more than 1 year before the filing of the application, the certification must show that the appointment is still in full force and effect. Where there is any indication of termination of the appointment, even if the appointment took place within the year, obtain a current certification verifying the appointment is still in full effect.

950.10.2 Testamentary Guardian

In states not requiring judicial confirmation, a copy of the parent's will or deed certified by the proper official of the probate court may serve as proof of appointment. Where judicial confirmation is required, submit a copy of the order or decree certified by the custodian of the record.

950.10.3 Statutory Guardian

If the applicant claims to be guardian of the estate of a beneficiary by reason of a statute which vests such authority in a designated agency, office or in the person currently holding a particular office or position without requiring appointment by a court, the supporting evidence of a statutory guardian must contain:

A. His full title;

B. A description of his authority to receive the payments, including citations of the pertinent statutes or ordinances; and

C. Where relevant, a copy of the commitment orders or other document placing the ward within his authority, certified by the proper officer.

950.10.4 Statutory Committees

A statutory committee is a public official or central agency empowered by legislation to act on behalf of a person incapable of handling his own affairs. Such committee will include the care of the dependents of the annuitant or applicant when spending funds received on behalf of such person.

Secure a Form AA-5 and otherwise develop in the same manner as a representative payee case in which a guardian has not been appointed.

955.5 General

If military service is claimed, question the applicant as to whether proof of the claimed service was previously submitted. If not previously submitted, develop for proof of military service. When the proof of military service has been received, enter the information on APPLE and return the original proofs.

955.6 Determining Active Duty Dates

Only active M/S may be credited for compensation or wages under the RR Act. When reviewing primary or secondary proofs of active M/S, apply the following instructions to determine when active M/S began and ended:

A. Active Duty Starting Date - The active duty starting date is usually identified on most forms by one of the following terms:

Date of Entry

Date of Entry on Service

Date of Entry into Active Service

Date of Entry on Current Service

Date and Place of Entry into Active Service

If the document does not show a date which can be identified as an active duty entry date, you may use the "induction date" or enlistment date" as the active duty starting date unless it is apparent the veteran could not have entered active duty on that date.

B. Active Duty Ending Date - Usually, this entry is clearly identified for M/S regular active duty. Use care in determining the ending date for a reservist who had an extended period of active duty (up to several years). Be sure the ending date shown is for the period of active duty and not for the end of the reserve obligation. If the active duty ending date is not clear:

1. Examine the years, months and days of service total on the document.

2. Compare the date in question with the date the document was prepared. If the date in question is later than the date the form was prepared, it cannot be the active service ending date.

The situation in B.2 normally would occur when there is a document showing a transfer to the reserves following a period of active military service.

955.10 Proofs

955.10.1 Primary Proofs

The following proofs of military service are acceptable:

A. An original certificate of discharge or release to inactive duty from a branch of the armed forces that shows the beginning and ending date (as described in sec. 955.6) of the employee's active military service; or a certified copy of the original certificate made by the Federal, state, county or municipal agency or department in which the original certificate is recorded; or,

B. A certification from a branch of the armed forces that shows the beginning and ending dates (as described in sec. 955.6) of an employee's active military service (i.e., a certificate in lieu of discharge).

C. A photocopy of the document described in A and B above.

Once, the proof has been entered onto the APPLE database, it must be imaged.

955.10.2 Unavailable Records

Due to a fire at the National Personnel Records Center at St. Louis in 1973, the following records are not available for servicemen:

A. Discharged from the Army during 1912-1959; or

B. Discharged from the Air Force from September 1947 through December 1963, surnamed "Hubbard" through "Z."

955.10.3 Secondary Proofs

When an applicant is unable to secure one of the proofs in 955.10.1 above, one of the following sources may be contacted for written certification of military service:

A. State unemployment compensation office (if a claim for unemployment compensation based on the M/S was ever filed);

B. State Bonus Office (if a bonus was paid);

C. U. S. Office of Personnel Management, Employee Service and Records Center (if retired from Federal employment);

D. Any employer (Federal, state, local, private) to whom a record of military service was furnished;

E. Nearest DVA, formerly VA Regional Office (if a claim for veterans benefits of any kind was ever filed;

F. State Adjutant General (if any service was performed in the National Guard);

G. Social Security Administration (if a claim for SS Act benefits has been filed and the M/S involved was after September 6, 1939).

It is essential that the beginning and ending dates of M/S be shown in the certification.

When necessary to request secondary proofs from a state or local government and the applicant does not have a full and current address for the agency, make first contact with the vital statistics office listed for the county or state in Appendix A; that office should be able to furnish the address of the office or forward the request.

955.10.4 Evaluating Other Proofs Submitted

When the veteran is not able to furnish a primary or secondary proof (such as a statement of service or discharge and statement of service) verifying a claimed period of active M/S, carefully evaluate any other documents available.

Two or more documents, although individually weak, may support each other sufficiently to prove active M/S. A record of one period may support a claimed prior period for which the veteran has no primary or secondary proof (e.g., show prior service dates or total time). Or, the proof of the later period may show the total time and copies or orders may show either the starting or ending date of the prior period of active M/S. A veterans family may have newspaper clippings that show when the veteran began a period of active M/S; military organizations routinely send releases with service persons' photos for publication in hometown newspapers and the release typically reflects what was in the service record. The Army's "Immunization Register" (Form 81) normally showed immunizations within a day or two of entry upon active duty. The "Soldier's Individual Pay Record" (WD AGO 28), when issued, showed an induction or enlistment date. Because of the variety and numbers of documents and varied circumstances of cases, a brief evaluation showing the logic used to arrive at the determination of the period of active M/S should be included in the file.

When other proofs of the above types are used to establish periods of active M/S and the service organization has records available (see FOM-I-955.10.2 for periods and service organizations for which records are not available), credit the active M/S established by the other proofs and refer the claim to the adjudication unit. Because of the possibility of periods of time lost, other proofs may establish less than the full period of active M/S.

955.15 Types of Military Service and Discharges

955.15.1 Involuntary Military Service

Involuntary M/S may be creditable if the employee was required to enter and continue in such service by call of the President or by any act of Congress or regulations, order or proclamation pursuant thereto. If the employee entered M/S to avoid being drafted, the

M/S may be considered involuntary if the employee can show that he would have been inducted if he had not enlisted.

If any employee claims that M/S was involuntary, develop for proof that the employee was scheduled for induction. Acceptable proof would be a copy of his notice of induction or any other correspondence from the Selective Service System establishing the fact that the employee would have been inducted soon after his date of enlistment if he had not enlisted. Correspondence showing only that he was a candidate for induction when he enlisted will not establish the creditability of his M/S.

The method of entry, whether voluntary or involuntary, is required to determine whether M/S beginning on or after January 1, 1947, through December 15, 1990, is creditable. It is also required to determine whether M/S beginning after September 14, 1978, is creditable.

955.15.2 Active Reserve Duty Claimed

When an applicant claims service in the reserves, determine if (s)he was in active duty reserves. See RCM 5.4.10 for additional details for means of entry to active duty.

A. If the applicant claims one 15-day period of active training duty for each year of service in the overall period of service as a member of the reserves, accept the 15-day period(s) claimed without further proof. (The periods of active duty for training will, however, generally are shown on the employee's discharge papers.) He must, however, submit proof for the overall period as a member of the reserves.

B. If the applicant claims more than one 15-day period of active training duty for each year in the overall period of service as a member of the reserves, the applicant must furnish proof for each 15-day period, in addition to the proof for the overall period as a member of the reserves. Generally, the proof submitted will be the employee's discharge papers, listing the periods of active duty for training. Other acceptable proofs are orders to duty, pay slips or secondary proofs.

   EXAMPLE: An applicant who was in the reserves from August 1969 through August 1973 must submit proof of reserve service for that overall period. If he claims one 15-day training period for each year he was in the reserves, i.e., 4 training periods, he does not have to submit proof for each training period, if they are not shown on his discharge papers. If, however, he claims 5 training periods from August 1969 through August 1973, his discharge papers would have to show the 5 training periods, or he must submit other proof of the individual periods of active reserve duty.

955.15.3 Types of Military Discharges

Outlined and described below are various types of military discharges.

A. Honorable Discharge - The term honorable discharge includes those stated as follows or granted for the following reasons:

- Honorable;
- Under honorable conditions;
- Completion of satisfactory service;
- Retired;
- Army blue discharge unless reason given for discharge is Sec. VII or IX of AR 615-360 or AR 615-366.
- Transfer to the inactive service.
- Ordered by summary court martial.

B. Undesirable Discharge - An undesirable discharge is one issued due to "unfitness."

C. Questionable Discharge or Release - Examples of discharges which require additional information to determine whether they are other than dishonorable include bad conduct discharge as a result of a special court martial order; undesirable discharge other than one showing "unfitness" or "desertion" as a reason; Army "blue" discharge showing Section VII or IX of AR 615-360 or AR 615-366; or a statement on discharge that does not give a reason for discharge or circumstances of release.

D. Dishonorable Discharge - A discharge or release is considered to be dishonorable if it is one of the following types:

- Dishonorable discharge;
- Bad conduct discharge issued pursuant to a sentence of a general court-martial;
- Discharge for desertion;
- A resignation accepted "for the good of the service" in the case of an officer;
- Discharge on the grounds that the person was a conscientious objector who refused to do military duty, to wear the uniform, or otherwise refused to comply with lawful orders of competent military authority; or
- Discharge by reason of conviction by a civil court for treason, sabotage, espionage, murder, rape arson, burglary, robbery, kidnapping or assault.

960.5 General

Burial expenses (B/E) means expenses incurred with the actual burial or other disposition of the remains of the deceased employee. They include the burial plot, casket, clothing, cremation, death certificates, embalming, flowers, hearse and car for funeral procession, minister, monument, newspaper notices, niche, opening and closing of grave, permits, perpetual care of grave, preparation of body for burial, religious services, shows, telegrams, telephone calls, transportation of the body, round trip traveling expenses of the person escorting the corpse or completing burial arrangements, urn, etc.

960.10 Proofs

960.10.1 Primary Proofs

To prove payment of burial expenses the applicant must ordinarily furnish an itemized, receipted statement from the funeral director and other persons furnishing goods or services. The receipt must identify the deceased person involved and must show:

A. The total amount of the ordinary B/E. (This includes professional services, casket, embalming, certificates and permits. The cost of the individual items included in the ordinary B/E need not be shown); and

B. The amount of other B/E not included in A. above. (This may include additional services and goods provided such as: burial plot, opening and closing grave, transportation of body, etc. When cash was advanced for any such items, the itemized statement should be noted to this effect.); and

C. The total amount of all B/E; and

D. The name of each person who paid part of the B/E when there are multiple payers of the B/E; and

E. The amount and date of each payment; and

F. The amount of B/E unpaid, if any.

If it is not the funeral director's practice to give itemized bills or if Form SSA-2872 is submitted, waive the requirement that the bill be itemized. In such a case, furnish a brief statement explaining why an itemized bill cannot be submitted.

Reconcile any discrepancies between the alleged amount paid by the applicant and the amount shown on the receipts. Be sure that all B/E are accounted for, especially when the employee died in one locality and was buried in another.

960.10.2 Acceptable Proofs

Acceptable proofs that B/E were paid are:

A. The original receipted bill or certified copy; or

B. Form G-273a, Statement of Burial Expenses (may also be used as proof of death); or

C. Form SSA-2872, Statement of Death and Burial Expenses by Funeral Director (may also be used as proof of death).

D. In some instances payment may have been made by promissory note. A negotiable promissory note may be accepted as evidence of payment of B/E if supported by statements by the claimant and the undertaker that it is tendered and accepted as payment. Do not suggest this method of paying B/E to a claimant, funeral director or other interested person. It may be explained upon specific inquiry.

960.10.3 Signature on Funeral Home Bill

When the bill carries the words "received payment," "paid in full," "paid," or a phrase with the same meaning, accept it if it is initialed, signed or contains a rubber stamp imprint that includes the name of the funeral director or other person furnishing burial goods or services.

960.10.4 When Receipt Is Not Required

Although securing a receipt is preferred, it is not required for flowers, telegrams, phone calls, payment for religious ceremony, traveling expenses of the person escorting the body during shipment or any other items for which a receipt often may not be given. Listing these expenses and the amounts on the signed application or in a signed statement is acceptable.

965.5 General

If the name entered on an application differs materially from the name as it appears on the evidence submitted, the discrepancy must be reconciled.

965.10 Methods

Discrepant names may be reconciled when:

A. Sufficient information is available.

B. The employer states affirmatively that the service verified under a different name is the service of the claimant.

C. The maiden name of a married woman is shown on the document or other evidence, and that name is also shown on an application for benefits.

D. The variation in names is caused by one of the following:

1. Anglicization or simplifications of spelling;

2. Use of standard nicknames and diminutive forms of names;

3. Literal translation of names from one language to another;

4. Transposition, addition or dropping of names in accordance with established popular or religious customs.

965.15 Types Of Evidence

If reconciliation cannot be accomplished under the preceding section, obtain:

A. A personally executed affidavit from the person involved stating that the names involved refer to one and the same person; and

B. A corroborating affidavit executed by a responsible person which substantiates the applicant's statement and reflects the basis of the affiant's knowledge.

In cases in which the change of name was effected through legal proceedings, obtain the original or a certified copy of the legal authorization.

This chapter explains the basic computations of the Primary Insurance Amount (PIA) under the Social Security Act. It also explains the computations of the various PIAs used to calculate an annuity under the Railroad Retirement Act.

1005.5 Definitions

1005.5.1 Definitions of Social Security Act Terms in Effect Prior to 1977

A. Retirement age - For computational purposes, retirement age for women is age 62. The 1972 Social Security Act amendments changed retirement age for men from age 65 to age 62 beginning January 1, 1973. For men who attain age 62 in 1975 or later, the number of elapsed years is determined up to the year of attainment of age 62 (or, if earlier, the year of death) rather than age 65. Men who attained age 62 in 1973 or 1974, were deemed to have attained age 65 in 1975. Elapsed years for these men will be counted up to 1975. Men who attained age 62 before 1973, were not affected by the 1972 amendments.

B. Average Monthly Wage (AMW) - This is the result of dividing the total of the (non-indexed) earnings in the computation base years by the number of months in the computation base years (commonly known as divisor months).

C. Primary Insurance Benefit (PIB) - This is the result of a formula applied to the AMW under the old start computation. The PIA is determined from the PIB based on a conversion table.

D. Primary Insurance Amount (PIA) - The Primary Insurance Amount (PIA) is the basis of all Social Security Act benefits.

E. Old Start PIA - An old start PIA is a PIA which is computed using earnings before 1951 in addition to earnings after 1950.

F. New Start PIA - A new start PIA is a PIA which is computed without using earnings before 1951.

G. Eligible - The individual meets the requirements for a Social Security Act benefit and has an insured status. (This definition was changed under the 1977 SS Act amendments to delete the reference to an insured status as of eligibility year.)

H. Elapsed Years - Elapsed years include years beginning with the later of:

- 1937 (old start); or
- 1951 (new start); or
- The year the employee attained age 22.

They include the years up to the earlier of:

- The year the employee attains age 62 (EXCEPTION: For male workers who attained age 62 before 1975, elapsed years extend to the earlier of the year he attained age 65 or 1975); or

- The year of death; or

- The year a period of disability (DF) is established; or

- The ABD year of the disability annuity, if there is no DF.

I. Computation Base Years - The base years are the years from which the benefit computation years are chosen for the AMW dividend or AIME dividend. The number of base years depends on the SS Act method of computing the PIA:

- Old Start AMW Computation - The base years are the years since January 1, 1937 through the last computation base year, excluding years wholly within a period of disability.

- "New Start" AMW or AIME Computation - The base years are the years since January 1, 1951, through the last computation base year excluding years wholly within a period of disability.

In life cases, the last computation base year for the initial (old start or new start) AMW or AIME ends on the earlier of December 31, of the year prior to the effective date of the PIA or December 31, of the year of the disability onset.

In death cases, the last computation base year for the old start or new start) AMW or the AIME is the year of the wage earner's death.

EXCEPTION: The AMW computation in life or death cases for the TRANS PIA or for the 1977 old start PIA for eligibilities in 1979 or later cannot include earnings in the "eligibility year" or later years.

J. Benefit Computing Years - Benefit computation years are selected from the computation base years and are equal to the elapsed years minus the dropout years but not less than 2 years.

K. Recalculation - The PIA, once established can be changed by recalculation which:

- Involves the reopening of previous computations to change the factors of the benefit computations; and,

- Can result in an increase or a decrease in the PIA; and,

- May or may not be specifically provided for in the law.

L. Recomputation - The PIA, once established can be changed by recomputation which:

- Involves the use of a new computation period; and,
- Can be effective only to increase the PIA; and,
- Is specifically provided for in the Social Security Act.

M. Life benefits - The benefits payable to the living wage earner and auxiliaries upon filing of an application.

N. Death benefits - The benefits payable on the deceased wage earner's wage record to the eligible survivors upon filing of an application.

O. Drop-out years - Up to 5 years of lowest earnings which are excluded from most PIA computations.

P. Date of entitlement - The initial date of entitlement is the month for which payments are due before adjustment for work deductions or SS Act non-payment provisions. This is similar to the annuity beginning date under the RR Act.

1005.5.2 Definitions of SS Act Terms Effective 1977 or Later

A. Entitled - The person is "entitled" when (s)he meets all the requirements including the insured status and the filing of an application. Entitlement exists even though payments are not being made.

B. Eligible - A wage earner is "eligible" for life benefits with a beginning date of 1-1979 or later under the 1977 SSA Amendments in the earliest of:

- The year of disability onset; or,
- The year of attainment of age 62.

Insured status is not considered at SSA when determining whether an individual is eligible for a life benefit effective 1-1-79 or later under the 1977 SSA amendments. A person age 62 in 1979 and not insured until 1980 is considered "eligible" in 1979 for computational purposes. However, the onset date of a period of disability is contingent upon the meeting of DIB insured status.

If the wage earner dies before becoming eligible for life benefits, survivor benefits are computed using the year of death as the eligibility year.

NOTE: The deeming provisions under the RR Act can make an RR employee "eligible" for the RR Act PIA #1 or PIA #3 even though (s)he would not be eligible under the SS Act. For example, an occupational disability annuitant is deemed to be entitled to a DIB under the SS Act even though there is no SS Act DF. A

60/30 annuitant is deemed to be eligible on the ABD if (s)he is under age 62 on the ABD.

C. Eligibility Year (Benchmark Year) - The "eligibility year" (or benchmark year) is the earliest of:

- The year of death; or,
- The year of disability onset; or,
- The year of attainment of age 62.

D. Average Annual Wage (AAW) - The average annual wage is the average of actual covered and non-covered wages for all workers in a given year. Prior to 1978, this equals four times the average social security earnings reported for the first quarter of each year. After 1977, it is based on earnings reported to the Internal Revenue Service.

E. Indexing - Indexing is a means of expressing prior year's earnings in terms of their current dollar value. The method for accomplishing this involves the multiplying of the previously reported earnings for each year after 1950 up through the indexing year by the quotient of the average annual wage (AAW) of all workers for the indexing year divided by the average annual wage of all workers for the year being indexed.

$$\text{Unindexed earnings for year N} \times \frac{\text{Average annual wage for indexing year}}{\text{Average annual wage for year N}} = \text{Indexed earnings}$$

Earnings for years subsequent to the indexing year are not indexed. The actual reported earnings are considered.

F. Indexing Year - The indexing year is the second year before the individual's year of eligibility as defined in item C.

G. Average Indexed Monthly Earnings (AIME) - This is the result of dividing the total of the indexed and non-indexed earnings in the benefit computation years by the number of months in the computation base years (commonly known as divisor months).

H. Bend Points - Bend points are the amounts of the AIME which are multiplied by the constant percentages in the PIA formula contained in the law. The term also refers to the amounts of the AIME PIA which are multiplied by constant

percentages in the formula used to determine the family maximums applicable to AIME PIAs.

The law provides that by November 1 of each year the Secretary of Health and Human Services will publish in the Federal Register the bend points that will be applicable to workers who become "eligible" for benefits in the following year.

I. Decoupling - Decoupling is a term which denotes that all prior cost-of-living increases are not considered when computing the starting old start, TRANS or AIME PIA under the 1977 SSA Amendment provisions. The PIA is either derived from the June 1978 PIA table or computed by applying a formula to the AIME. Cost-of-living increases are added, generally after the starting PIA has been determined beginning with the year of eligibility.

The special minimum PIA is not subject to the decoupling provision.

J. RAW PIA or RAW Maximum - This is the basic result of applying the PIA formula based on the eligibility year to the AIME amount or the family maximum formula based on the benchmark year to the PIA amount.

K. Variable Dropout - This is a provision of the 1980 Social Security Disability amendments which limits the low years of earnings to be excluded from disability PIA computations.

1005.10 Types Of PIAs Under The SS Act And RR Act

1005.10.1 Types of PIAs

Under the 1977 amendments to the SS Act, the "eligibility year" (sometimes called the "benchmark year") determines the type of PIA to be computed.

The eligibility year is the earliest of:

- The year of death;
- The year of disability onset; or
- The year of attainment of age 62.

NOTE: Insured status is not directly considered at SSA when determining whether an individual is eligible. However, the onset date of a period of disability depends upon the meeting of the insured status requirements for a disability insurance benefit.

A. Eligibility Year Before 1979 - The usual PIA computations for cases with an eligibility year before 1979 are:

1. "New Start" Method (AMW PIA) - The PIA is obtained directly from the Average Monthly Wage (AMW) under the "new start" method.

2. Special Minimum PIA (SPC MIN PIA) - The PIA is obtained by multiplying an amount specified in the law by the number of "years of coverage" under the special minimum guarantee.

3. Old Start PIA - The Primary Insurance Benefit (PIB) is determined according to a formula provided by the 1967 or 1977 amendments to the SS Act and then converted to a PIA.

B. Eligibility Year 1979 or Later - The usual PIA computations for cases with an eligibility year 1979 or later are:

1. AIME PIA - The AIME (average indexed monthly earnings) PIA is determined by means of a formula in which variable portions of the AIME (the bend points established for the employee's eligibility year) are multiplied by constant percentages contained in the law. Cost-of-living increases are added under specific rules after the AIME PIA has been computed.

2. Frozen Minimum PIA (FRZN MIN PIA) - The minimum starting AIME PIA for initial entitlement effective January 1979 was frozen at $122.00 (June 1978 minimum PIA rounded to the next higher multiple of $1.00). Cost-of-living increases are added under specific rules.

   The 1981 SS Act amendments as revised by PL 97-123 eliminated the frozen minimum PIA 1-1-81 for beneficiaries first eligible 1-1-82 or later.

3. Transitional Guarantee PIA (TRANS PIA) - This PIA is obtained directly from the Average Monthly Wage (AMW) under the "new start" method. Earnings in the eligibility year or later years are not included. Cost-of-living increases are added under specific rules.

4. 1977 Old Start PIA (1977 O.S. PIA) - The PIA is determined by computing the PIB and then converting it to the PIA using a conversion chart. However, for eligibilities in 1979 or later, the AMW cannot include earnings in the eligibility year or later years. Cost-of-living increases are added from the eligibility year under specific rules.

5. Special Minimum PIA (SPC MIN PIA) - The PIA is obtained by multiplying an amount specified in law by the number of "years of coverage" under the special minimum guarantee.

6. DIB Guarantee PIA - When an individual has been entitled to monthly disability benefits that terminated more than 12 months before the current disability, age and service, or survivor entitlement, the "eligibility year" of the current entitlement determines the computation to be used. However,

the starting PIA may not be less than the PIA which was in effect in the month of termination of the disability benefits.

NOTE: When an individual has been entitled to monthly disability benefits that terminated within 12 months of the current disability, age and service or survivor entitlement, the previous PIA computation applies.

7. Vow of Poverty Minimum PIA - The December 1981 SS Act amendments retain the minimum PIA's for certain members of religious orders (or an autonomous part of such order) first eligible before 1992, provided:

- The individual was required to take a vow of poverty; and,
- The religious order must have elected Social Security coverage for their members prior to 12/29/81, the enactment date of PL 97-123.

1005.15 RR Act PIAs

The 1974 RR Act requires a number of Primary Insurance Amounts (PIAs) to calculate an annuity. This chapter describes the PIAs and explains how they are calculated.

See Appendix M in the manual for a chart summarizing the RR Act PIAs.

1005.15.1 PIA #1

PIA #1 is used in the computation of the tier I amount.

A. Retirement cases - PIA #1 is computed under current SSA rules except that:

1. An insured status under the SS Act is not required.

2. A 60/30 annuitant (age 60-64) who meets the eligibility requirements for a 60/30 annuity before 7-1-84 is deemed to be age 65 on the ABD (except for the purposes of recomputation) to determine the elapsed years and benefit computation years.

3. A 60/30 annuitant (age 60-61) is deemed to be age 62 on the ABD to determine the initial eligibility year.

4. A 60/30 annuitant (age 60-61) who first meets the eligibility requirements for a 60/30 annuity 7-1-84 or later does not receive any COL increases on the initial PIA #1. Effective with the first month throughout which the employee is age 62, a new PIA #1 is computed using the year of attainment as the eligibility year. COL increases are included beginning with the year the employee attains age 62.

5. A 60/30 annuitant with an ABD 1-1-2002 or later, the PIA is subject to COL increases. Earnings in the ABD year or later cannot be included in

the computation of PIA 1 until the January after the employee attains age 62. The eligibility year does not change.

6. A disability annuitant is deemed entitled to a DIB for the purpose of computing a PIA on his ABD unless an actual DF begins earlier, in which case the actual DF beginning date is used.

   PIA #1 uses combined wages, compensation and self-employment income (SEI) through the last computation base year. PIA #1 is subject to recomputation effective January 1 of the year following the year a 60/30 employee actually attains 62 or when a disabled employee attains age 65, or in cases where there is an actual DF, is deemed to have attained age 65.

   PIA #1 is not computed when there are no wages, compensation or SEI after 1936.

   The current AMW PIA #1, TRANS PIA #1, 1977 old start PIA #1 or AIME PIA #1 is used based on the employee's "eligibility year." However, the SPC MIN PIA #1 will apply if it is higher than these alternative PIA #1 computations.

   Delayed Retirement Credits (DRCs) are added to all PIA #1 computations except the SPC MIN PIA.

   An age reduction is applied to the PIA when an employee age 62-64 with less than 30 years of creditable service applies for an age and service annuity. An age reduction is also applied to the PIA when an employee who first meets the eligibility requirements for a 60/30 annuity 7-1-84 or later applies for a 60/30 annuity which begins before age 62.

   The spouse's share of the PIA is reduced for age as explained in FOM-I-1025.5.1.

   An age reduction is applied to a divorced spouse's share of the PIA if she is age 62-64 on her ABD.

B. Survivor cases - PIA #1 is computed under current SSA rules except that an SS Act insured status is not required if the application filing date, original beginning date or date of death is after 12-31-74. Since there are no other RR Act deeming provisions, the survivor PIA #1 may be different from the retirement PIA #1 in 60/30 cases or disability cases where there are no DF.

   PIA #1 uses combined wages, compensation and SEI through the date of death.

   PIA #1 is not computed when there are no wages, compensation or SEI after 1936, however, a widow(er) is entitled to a tier I amount of $93.80 effective October 1, 1981. This tier I amount is increased by the same percentage as SS

Act COL increases but only for increases after the date the annuity begins to accrue.

The current AMW survivor PIA #1, TRANS survivor PIA #1, 1977 old start survivor PIA #1, or AIME survivor PIA #1 is used based upon the employee's "eligibility year." However, the SPC MIN survivor PIA #1 will apply if it is higher than these alternative survivor PIA #1 computations.

An age reduction is applied to an aged or disabled widow(er)'s share of the survivor PIA #1 if (s)he is under age 65 on his (her) original beginning date. An age reduction is also applied to a remarried widow(er)'s share or a surviving divorced spouse's PIA #1 is (s)he is under age 65 on her ABD.

1005.15.2 PIA #2

PIA #2 is the amount of the employee annuity tier I that is subject to work deductions. PIA #2 is the difference between the gross tier I PIA (PIA #1 or the pass-thru PIA) and PIA #17. If the employee's tier I was reduced for early retirement, the amount subject to work deductions is reduced for age.

The amount of the spouse annuity tier I subject to work deductions is 50% of PIA #2 (rounded down to end in zero). If the spouse's tier I was reduced for early retirement, the amount subject to work deductions is reduced for age.

1005.15.3 PIA #3

PIA #3 is used in determining the net residual lump-sum amount. This PIA is computed under current SSA rules, except that under the 1974 RR Act:

- An insured status is not required if the filing date, original beginning date or date of death is after 12-31-74;
- If the deceased employee had been a 60/30 annuitant and was deemed age 65 on the retirement annuity ABD (except for the purposes of recomputation), this deeming provision applies to the elapsed years and benefit computation years for PIA #3;
- If the deceased employee had been a 60/30 annuitant and was deemed age 62 on the ABD to determine the "eligibility year," the same eligibility year is used for PIA #3;
- If the deceased employee had been a 60/30 annuitant and his tier I was reduced for age, PIA #3 will be computed in the same manner as his tier I and will be reduced for age in the same manner.
- If the deceased employee had been a disability annuitant, (s)he is deemed entitled to a DIB under section 223 of the Social Security Act on the RR annuity ABD for the purpose of computing a PIA only. The employee is

deemed age 62 on the ABD, unless an actual DF is earlier, in which case the actual DF is used; and

- Compensation only through the last benefit computation year is used. PIA #3 is computed in the same way as PIA #1, except that SS earnings are not included.

The current AMW PIA #3, TRANS PIA #3, 1977 old start PIA #3, or AIME PIA #3 computation is used based on the employee's "eligibility year." However, the SPC MIN PIA #3 will apply if it is higher than these alternate PIA #3 computations.

PIA #3 could be subject to recomputation if the employee's compensation in the retirement annuity ABD year is not within a period of disability and is sufficient to create a recomputation effective January 1 of the following year or if the employee had returned to RR service after the retirement annuity ABD and the compensation is sufficient to create a PIA #3 recomputation.

Delayed Retirement Credits (DRCs) are added to all of the PIA #3 computations except the SPC MIN PIA.

1005.15.4 PIA #4

A. Retirement cases - PIA #4 is used to compute the vested dual benefit reduction in the retirement annuity tier II for vested employee's whose annuities were awarded before October 1, 1981. It is also used to compute the vested dual benefit payable to vested employees. This PIA is computed under SSA rules in effect in 12-1974 using the 6-1974 PIA table except:

- The employee must be vested under the RR Act;

- The AMW dividend uses only wages and SEI through 12-31-74 or, if earlier, through the vesting year. The AMW divisor is based on the earlier of the wage earner's disability onset or attainment of SS Act retirement age;

- An age reduction is not applied to the PIA amount. Instead, for RR Act 2(a)(1)(iii) cases, an RR formula age reduction is applied to each tier; and

- DRCs are not added to this PIA.

Only the SS Act PIAs in effect in 12-1974 ("new start" AMW PIA #4, "old start" AMW PIA #4 or SPC MIN PIA #4) are computed. Only regular PIA #4 is used in determining the tier II vested dual benefit reduction. However, SPC MIN PIA #4 can be used in determining the vested dual benefit amount.

If the employee is entitled to a vested dual benefit based on a transitionally insured status on 12-31-74, PIA #4 would be the 12-1974 transitional RIB of $64.40.

In a case where the RRB and the SSA established different periods of disability, or where only one agency established a DF, PIA #4 is computed based on SSA's DF date.

B. Survivor cases - PIA #4 may be used in the computation of the survivor tier II in cases initially paid under the 1981 RR Act amendments. In survivor cases, PIA #4 is computed as explained above except when the employee did not receive a retirement annuity. In such cases, the employee is deemed to be age 65 in the month of his death. The number of QCs required for an insured status is, however, based on the employee's actual age.

1005.15.5 PIA #5

PIA #5 is used in 1974 Act cases awarded before October 1, 1981, to determine the pass-thru increase in the computation of the employee annuity tier II. It is also used in the computation of PIA #17 for the tier I work deduction in 1974 Act 60/30 cases or occupational disability cases with no freeze or a freeze after the ABD year. This PIA is computed under SSA rules in effect in 12-1974 using the 6-1974 PIA Table except:

- An insured status is not required;
- When determining the pass-thru increase, an annuitant is deemed to be age 65 on the ABD regardless of his (her) age or the type of annuity. Correspondingly, (s)he is deemed age 22, 43 years before the ABD;
- The AMW dividend uses only compensation through 12-31-74. If there is no compensation after 1936, the AMC is treated as an AMW for purposes of determining the PIA. The AMW divisor is based on deemed age 65 on ABD;
- An age reduction is applied to the PIA when an employee who first meets the eligibility requirements for a 60/30 annuity 7-1-84 or later applies for a 60/30 annuity which begins before age 62;
- An age reduction is not applied to the PIA amount in RR Act 2(a)(1)(iii) cases instead, an RR formula age reduction is applied to each tier;
- Delayed retirement credits are not added to this PIA; and
- An actual or deemed DF for PIA #1, PIA #3 or PIA #10 does not affect the computation of PIA #5.

Only the SS Act PIAs in effect in 12-1974 ("new start" AMW PIA #5, "old start" AMW PIA #5 or SPC MIN PIA #5) are computed.

In the computation of the employee annuity tier II for pre-1981 amendment cases, this PIA is not affected by the elimination of the minimum social security benefit.

When PIA #5 is used in the computation of PIA #17, the same type of computation used to compute PIA #1 is used to compute PIA #17. The same COL increases that are applied to PIA #1 are applied to PIA #5.

1005.15.6 PIA #6

PIA #6 was used for the 110% O/M and imputed SS benefit reduction in the computation of tier II in 1974 Act cases only.

1005.15.7 PIA #7

A. Retirement cases - PIA #7 is used in the computation of the employee's vested dual benefit. It is also used in the computation of PIA #17 for the tier I work deduction in 1974 Act retirement cases other than 60/30 cases or cases involving a disability freeze period. This PIA is computed under SSA rules in effect in 12-1974 using the 6-1974 PIA table except:

- The AMW dividend uses only compensation through 12-31-74 or, if earlier, through the vesting year. The AMW divisor is based on the earlier of the wage earner's disability onset, or attainment of SS Act retirement age;
- An age reduction is not applied to the PIA amount. Instead, for RR Act 2(a)(1)(iii) cases, an RR formula age reduction is applied to each tier; and
- DRCs are not added to this PIA.

Only the SS Act PIAs in effect in 12-1974 ("new start" AMW PIA #7 or "old start" AMW PIA #7 or SPC MIN PIA #7) are computed. If there is no compensation after 1936, PIA #7 is zero.

PIA #7 is computed in all cases. However, the employee must be vested under the RR Act for the PIA #7 to be used in the employee's vested dual benefit. In the computation of the vested dual benefit, PIA #7 is not affected by the elimination of the minimum social security benefit.

If the RR employee has a work deduction insured status, PIA #7 may be used to determine the PIA #17 amount regardless of the employee's vested status. The same type of computation used to compute PIA #1 is used to compute PIA #17. This may result in an amount less than $93.80 for work deduction purposes.

B. Survivor cases - PIA #7 may be used in the computation of the survivor tier II in cases initially paid under the 1981 RR Act amendments. In survivor cases, PIA #7 is computed as explained above except when the employee did not receive a retirement annuity. In such cases, the employee is deemed to be age 65 in the month of his death. The number of QCs required for an insured status is, however, based on the employee's actual age.

1005.15.8 PIA #8

A. Retirement cases - PIA #8 is used in the computation of the employee's vested dual benefit. PIA #8 is computed under SSA rules in effect in 12-1974 using the 6-1974 PIA table except:

- The employee must be vested under the RR Act;
- The AMW uses only combined SS earnings and compensation through 12-31-74 or, if earlier, through the vesting year. The AMW divisor is based on the earlier of the wage earner's disability onset, or attainment of SS Act retirement age;
- An age reduced is not applied to the PIA amount. Instead, for RR Act 2(a)(1)(iii) cases, an RR formula age reduction is applied to the gross vested dual benefit amount; and
- DRCs are not added to this PIA.

Only the SS Act PIAs in effect in 12-1974 ("new start" AMW PIA #8, "old start" AMW PIA #8 or SPC MIN PIA #8) are computed.

B. Survivor cases - PIA #8 is used in the computation of the survivor tier II EE Annuity Restored Amount. It is also used in the computation of survivor annuity vested dual benefits for eligibilities prior to 8-13-81. It may be used in the computation of the survivor tier II in 1981 RR Act amendment cases. PIA #8 is computed under SSA rules in effect in 12-1974 using the 6-1974 PIA table except:

- The AMW dividend uses only combined SS earnings and compensation through 12-31-74. The AMW divisor is based on the earlier of the wage earner's disability onset, death or attainment of SS Act retirement age;
- If the employee did not receive a retirement annuity, he is deemed to be age 65 in the month of his death. The number of QCs required for an insured status is, however, based on the employee's actual age;
- If the deceased employee had no earnings after 1936 but his annuity began to accrue before 1948 based on at least 120 months of service and a current connection, the AMC is used as the AMW to determine the 6-1974 PIA or, if available, the employee's 6-1974 Pass-thru PIA is used;
- An age reduction is not applied to the PIA amount, an RR formula age reduction is applied to each tier; and,
- DRCs are not added to this PIA.

Only the SS Act PIAs in effect in 12-1974 ("new start" AMW PIA #8, "old start" AMW PIA # 8 or SPC MIN PIA #8 are computed.

1005.15.9 PIA #9

PIA #9 is used in the computation of the Retirement 100% O/M benefit and the survivor employee fictional RIB amount. This PIA is computed under current SSA rules for life cases. There are no RR Act deeming provisions.

PIA #9 uses combined wages, compensation and SEI through the last computation base year and is subject to recomputation under SSA rules for life cases.

In 60/30 cases, the AIME PIA #9 on the G-90, for the initial annuity award may be estimated PIA. If the O/M could apply in cases where an IPI spouse or child is involved, the module examiner will have to secure a subsequent G-90 with the actual PIA #9 amount. Since there are no deeming provisions for PIA #9, this PIA will be computed with an eligibility year based on the employee's actual attainment of age 62. The resulting AIME PIA bend points for employee's who attain 62 in 1979 or later will differ from the formula used to compute PIA #1.

In RR Act survivor cases, the PIA #9 for the fictional RIB PIA will differ from the survivor PIA #1 if the employee had earnings in the year of death. In these cases, the earnings in the year of death will not be used in the initial fictional RIB PIA #9 that is effective in the month of death. These earnings may be considered to recompute the fictional RIB PIA #9 effective January 1 of the year after the employee's death under the recomputation procedure for age and service cases.

The current AMW PIA #9, TRANS PIA #9, 1977 old start PIA #9 or AIME PIA #9 computation is used based on the employee's "eligibility year." However, the SPC MIN PIA #9 is still an alternate PIA computation and will apply if it exceeds the other PIA #9 computations.

An age reduction is applied to this PIA when the earliest possible effective date of the age and service O/M is in a month in which the employee is under age 65. DRCs are added as appropriate.

NOTE: Under the 1937 Railroad Retirement Act, the PIA computed at death for the survivor annuity was used to determine the EE RIB Limitation amount. This PIA was chosen because it was closer to the SSA PIA formula amount that the O/M PIA as limited by the 1972 Technical Amendments.

1005.15.10 PIA #10

PIA #10 was used in the computation to test for the 1937 RR formula guarantee amount. Since the regular RR annuity rate with appropriate COL increases will exceed the grandfather RR rate, this PIA is no longer computed.

1005.15.11 PIA #11

PIA #11 is used in the computation of the Retirement 110% Grandfather O/M benefit of the 1974 Railroad Retirement Act. This PIA is computed under the 1937 RR Act rules in effect in 12-1974 for the O/M PIA based on the 6-1974 PIA table. For years after 1971, only SS earnings through the year before the ABD year and compensation up to the ABD are used. PIA #11 is not subject to recomputation. SS earnings and compensation for 1974 or later years are subject to the 1974 earnings maximum.

Only the SS Act PIAs in effect in 12-1974 ("new start" AMW PIA #11, "old start AMW PIA #11, or SPC MIN PIA #11) are computed.

An age reduction is applied to this PIA when the earliest possible effective date of the age and service 110% O/M is in a month in which the employee is under age 65. Delayed retirement credits are added as appropriate.

1005.15.12 PIA #15

PIA #15 is used only in conversion cases in the computation of the retirement annuity tier II and it is also used as PIA #17 for the tier I work deduction component. PIA #15 is computed similar to the 6-1974 pass-thru PIA, but is based on railroad compensation only through 12-31-74. If there is no compensation after 1936, no PIA #15 is computed.

The following deeming provisions are applied to the computation of PIA #15:

A. Male 2(a)3 annuitant under 1937 RR Act with ABD before July 1, 1974 - A 2(a)3 annuitant age 60-61 in 1974 is deemed to be age 62 in 1974. He is then subject to the SS Act transitional provision for setting the retirement age for males who attain 62 in 1974. Male 2(a)3 annuitants who attained age 62 in 1973 are also subject to the SS Act transitional provision. The new start EY (elapsed years) and BCY (benefit computation years) for computing the AMW for the PIA #15 in these cases are as follows:

EY	BCY
1951-1974	19

If the 2(a)3 annuitant attained age 62 before 1973, the deeming provision is not applicable. Beginning 7-1974, an employee who has less than 30 years of service can qualify for a reduced annuity only if (s)he has attained age 62.

B. 2(a)2 annuitant (with ABD 7-1974 or later, if male,) under 1937 RR Act - A 2(a)2 60/30 annuitant age 60-64 in 1974 is deemed to be age 65 in 1974. The new start elapsed years (EY) and benefit computation years (BCY), for PIA #15 for 60/30 annuitants deemed to be age 65 in 1974 are as follows:

1. 60/30 male annuitants - (Based on SS Act Transitional Provision).

EY	BCY
1951-1973	18

2. 60/30 female annuitants

EY	BCY
1951-1970	15

If the 2(a)2 annuitant is age 65 or over in 1974 this deeming provision is not applicable.

C. 2(a)4 or 2(a)5 annuitant under 1937 RR Act - An RR Act disability annuitant is deemed to have a DF beginning on his (her) ABD unless an actual DF is earlier, in which case the actual DF is used. This provision applies even if the actual DF terminates after the ABD.

NOTE: If an actual DF terminated prior to the ABD, the ABD is the deemed DF onset date.

Only the SS Act PIAs in effect in 12-1974 ("new start" AMW PIA #15, "old start" AMW PIA #15 or SPC MIN PIA #15) are computed. The AMW dividend is based on compensation only through 12-31-74. The AMW divisor is based on the earlier of an actual or deemed DF and the actual or deemed retirement age.

1005.15.13 PIA #17

PIA #17 is used in the computation of the amount of the employee and spouse annuities subject to work deductions.

PIA #17 is based on one of three compensation-only PIAs (PIA #5, PIA #7 or PIA #15 as indicated in the chart below). With the exception of 1974 Act disability cases, if an RR Act deeming provision was applied to the gross Tier I PIA, the same deeming provision is used to compute the elapsed years and benefit computation years for the PIA #5, PIA #7 or PIA #15 used for the PIA #17 computation. The appropriate PIA amount is increased by the percentage of any COL increase added to the gross Tier PIA.

Where the employee's "eligibility year" is 1979 or later and (s)he has a Work Deduction Insured Status and the AIME PIA #1 is used in the employee's tier I computation, the

decoupling provisions of the 1977 Social Security Act Amendments apply to the PIA #17 computation. In these cases, the AIME PIA #17 is calculated as follows:

1. Compensation prior to 1975 is indexed. The same indexing year used to index the earnings for AIME PIA #1 is used; and

2. The elapsed years and benefit computation years (BCY) are set the same as those set for AIME PIA #1;

   Exception: The elapsed years and benefit computation years (BCY) for PIA #5 are always based on deemed age 65 on the ABD regardless of his (her) age;

3. The AIME is calculated using the earnings for the appropriate number of BCY from the indexed compensation years prior to 1975;

4. The PIA is calculated using the same AIME bend points used to calculate the AIME PIA #1;

5. This PIA is multiplied by the percentage of any COL increase added to the AIME PIA #1.

   If the employee's tier I is based on his TRANS PIA #1, 1977 old start PIA #1, or SPC MIN PIA #1, then his PIA #17 would be computed under the same formula as the PIA #1 amount (i.e., TRANS PIA #1 - TRANS PIA #17). However, since both the REG PIA #5 and REG PIA #7 contain RR compensation through 12-1974 only, computations under the TRANS or 1977 O.S. (old start) formula will result in the same amount as the REG PIA #5 or REG PIA #7 updated to the 6-1978 table PIA amount.

   The appropriate PIA amount, once computed, is then updated by the same cost-of-living percentage increases applied to the tier I PIA. The resulting PIA is PIA #17.

   See Appendix N. in the manual for a chart indicating the compensation only PIA that is used to determine PIA #17.

1005.15.14 PIA #21

PIA #21 is used, when the beneficiary meets all the requirements for an auxiliary vested dual benefit prior to August 13, 1981, to compute the employee, spouse or widow(er) vested dual benefit and for the vested dual benefit reduction in tier II of a spouse annuity. It is based on the wage record of someone other than the RR employee. This PIA is computed under SSA rules in effect in 12-1974 using the 6-1974 PIA Table except:

- The annuitant must be vested;

- The AMW dividend uses only wages and SEI through 1974 or, if earlier, through the vesting year. (The spouse or widow(er) may have railroad service on their own wage record totaling less than 120 service months, including military service. The employee may be entitled to a widow's benefit at SSA on a wage record that includes RR compensation but for which a WIA is not payable due to less than 120 railroad service months, including military service, or due to lack of an RR current connection. The RR compensation in these cases is used as wages). The AMW divisor is based on the earlier of the wage earner's disability onset, death or attainment of SS Act retirement age.

- An age reduction is not applied to the PIA amount; and

- Delayed Retirement Credits are not added to the PIA amount.

Only the SS Act PIAs in effect in 12-1974 ("new start" AMW PIA #21, "old start" AMW PIA #21, or SPC MIN PIA #21) are computed. Only regular PIA #21 is used in determining the spouse tier II vested dual benefit reduction. However, SPC MIN PIA #21 can be used in determining vested dual benefit amounts.

NOTE: A date of death will not affect the computation of PIA #21 if it is in a year:

- After the onset of a current DF; or,

- After the year in which the wage earner attained SS Act retirement age.

1005.15.15 The 6-1974 Pass-Thru PIA

The 6-1974 pass-thru PIA is computed in conversion cases only. This PIA established under the 1973 RR Act amendments was originally computed to determine the dollar amount of the 3-1974 and 6-1974 cost-of-living increase (pass-thru increase) that would have been payable under the Social Security Act if SSA had jurisdiction of the case. It is also used to establish the gross tier I amount in 1974 RR Act conversion cases.

The pass-thru PIA is based on combined wages, compensation and SEI through the last computation base year.

A. 1937 Railroad Retirement Act Deeming Provisions - Special deeming provisions were enacted because some employees who were entitled to annuities under the RR Act formula would have insufficient quarters of coverage or would not be eligible for a PIA computation under the Social Security Act.

1. Employee - If a PIA could not be computed under SSA rules due to insufficient earnings after 1936, the AMC (rounded to next lower dollar) in annuity cases or AME (rounded to next lower dollar) in pension cases is treated as an AMW for purposes of determining the PIA.

In cases where the employee or pensioner is transitionally insured under the SS Act, there is no AMW computation. However, instead of deeming the AMC or AME to be the AMW, the special age 72 SS Act benefit is considered as the PIA for the pass-thru increase. That special age 72 benefit must be used even though a deemed AMW based on the AMC or AME always produces a higher PIA and a higher pass-thru increase.

2. Employee Ineligible under SS Act - The deeming provisions explained below must be applied for the purpose of computing the AMW for the pass-thru PIA.

(a) Male 2(a)3 annuitant under 1937 RR Act with ABD before July 1, 1974 - A 2(a)3 annuitant age 60-61 in 1974 is deemed to be age 62 in 1974. He is then subject to the transitional provision for setting the retirement age for males who attain 62 in 1974. The new start EY (elapsed years) and BCY (Benefit computation years) for computing the AMW for the pass-thru PIA are as follows:

EY	BCY
1951-1974	19

If the 2(a)3 annuitant attained age 62 before 1973, the deeming provision is not applicable. Beginning 7-1974, an employee who has less than 30 years of service can qualify for a reduced annuity only if (s)he has attained age 62.

(b) 2(a)2 annuitant (female or male with ABD 7-1974 or later under 1937 RR Act) - A 2(a)2 60/30 annuitant age 60-64 in 1974 is deemed to be age 65 in 1974. The Pass-thru PIA is used for pass-thru increase, even though the employee annuitant has attained age 62 and is eligible for or is receiving a reduced annuity under the O/M. This is so because the deeming provisions produce a higher PIA than the regular O/M PIA.

(c) 2(a)4 or 2(a)5 annuitant under 1937 RR Act - An RR Act disability annuitant is deemed to have a DF beginning on his (her) ABD unless an actual DF is earlier, in which case the actual DF is used. This provision applies even if the actual DF terminates after the ABD.

NOTE: If an actual DF terminated prior to the ABD, the ABD is the deemed DF onset date.

B. Recomputation of the Pass-thru PIA - The pass-thru PIA is subject to recomputation under SS Act rules when the employee actually attains SS Act

retirement age in age and service cases or when a disabled employee is deemed age 65 or, if earlier, attains age 65 in cases where there is actually a DF.

C. Updating the 6-1974 Pass-thru PIA - The 6-1974 Pass-thru PIA is updated for cost-of-living increases in the same way as an "AMW PIA" in force before 1-1979.

1005.20 RR Act Deeming Provisions

The 1974 Railroad Retirement Act deems certain groups of employees to be entitled to PIA computations even though they could not qualify under SSA rules because they have not attained the required age, do not have a disability freeze in disability cases, or do not have an insured status under the Social Security Act.

1005.20.1 60/30 Annuitants

A 60/30 annuitant (age 60-64) who meets the eligibility requirements for a 60/30 annuity before 7-1-84 is deemed to be age 65 on the ABD (except for the purpose of recomputation) to determine the elapsed years and benefit computation years for PIA #1, PIA #3, PIA #17 and the Pass-thru PIA.

A 60/30 annuitant (age 60-61) who becomes eligible 7/1/84 or later is deemed to be age 62 on the ABD to determine the "initial eligibility year" for PIA #1, PIA #3, or PIA #17.

An employee (age 60-64), regardless of the type of annuity, is deemed to be age 65 on the ABD to determine the benefit computation years and divisor months for PIA #5 and PIA #15 when determining the pass-thru increase.

1005.20.2 2(a)3 Annuitant Under 1937 RR Act with ABD Before July 1, 1974

A 2(a)3 annuitant under the 1937 RR Act who was age 60-61 in 1974 was deemed to be age 62 in 1974 in the computation of the pass-thru PIA.

1005.20.3 Disability Annuitant

Under the 1937 RR Act, if a disability annuitant did not have a period of disability onset prior to the ABD, (s)he is deemed to have a period of disability on the ABD in the computation of the pass-thru PIA.

Under the 1974 RR Act, a disability annuitant is deemed to be entitled to a DIB under the Social Security Act as of the ABD for the purpose of computing PIA #1, PIA #3 and PIA #10. The employee is deemed age 62 on the ABD unless an actual period of disability is earlier in which case the actual period of disability is used. This provision applies even if the actual period of disability terminates after the ABD.

NOTE: If an actual period of disability terminates prior to the ABD, the ABD is the deemed onset date.

An employee under age 65 is deemed to be age 65 on the ABD to determine the benefit computation years and divisor months for PIA #5 and PIA #15.

1005.20.4 Insured Status

An insured status is not required in the computation of PIA #1, PIA #3, PIA #5 and PIA #6 in cases initially paid under the 1974 RR Act. An insured status is not required in the computation of the Pass-thru PIA under the 1937 RR Act.

1005.20.5 PIAs Under the RR Act Subject to 1977 SS Act Amendments

The PIAs designated under the RR Act as PIA #1, PIA #3, PIA #9 and PIA #17 are subject to the SS Act rules based on the eligibility year.

1005.20.6 PIAs Under the Railroad Retirement Act Not Subject to 1977 SS Act Amendments or 1981 SS Act Amendments

The PIAs designated under the RR Act as PIA #4, PIA #5, PIA #6, PIA #7, PIA #8, PIA #10, PIA #11, PIA #15 and PIA #21 are frozen under the computation in effect on 12-1974.

The elimination of the minimum benefit under the 1981 SS Act amendments does not affect these PIAs.

1005.25 General Computational Data For AMW Or AIME PIA

1005.25.1 Determining the Elapsed Years

The elapsed years for the "new start" AMW or for the AIME are the years since January 1, 1951, up to the earlier of the end of the year before the year of attainment of retirement age, the end of the year before the year the period of disability begins, or the end of the year before the year of death, but excluding:

- Any years prior to the year in which the individual attained age 22; and,
- Any years partly or wholly within a previous period of disability unless including these years would result in a higher AMW or would result in a higher AIME.

1005.25.2 Determining the Divisor Months

The divisor months are determined from the elapsed years. The months in up to 5 years of lowest earnings are deducted from the elapsed years. The divisor months used in computing the AMW or AIME equal the number of months in the elapsed years minus the number of months in the years deducted ((elapsed years - 5) x 12 = divisor months). However, the minimum divisor is 24. If the number of months remaining after excluding the years of disability and up to 5 low years is less than 24, the divisor will be 24.

EXAMPLE 1: The employee was born 8-17-14 and therefore has 25 elapsed years under the "new start computation" before the year he attains age 62 (1976). The months in the 5 years of lowest earnings are dropped from the AMW divisor months. The 20 remaining years times 12 months per year equal 240 divisor months.

EXAMPLE 2: The employee was born 9-27-17 and therefore has 28 elapsed years under the AIME computation before the year he attains age 62 (1979). The months in the 5 years of lowest earnings are dropped from the AIME divisor months. The 23 remaining years times 12 months per year equal 276 divisor months.

Once determined, the divisor months remain constant regardless of whether or not a living employee keeps working.

The chart in Appendix O in the manual illustrates the determination of divisor months for employees born before 1-2-30.

1005.25.3 Determining Base Years

The base years are the years since January 1, 1951, through the last computation base year excluding years wholly within a period of disability.

In life cases, the last computation base year for the initial AMW or AIME ends on the earlier of December 31 of the year prior to the effective date of the PIA, or December 31 of the year of the disability onset.

In death cases, the last computation base year for the AMW or the AIME is the year of the wage earner's death.

EXCEPTION: The AMW computation in life or death cases for the TRANS PIA cannot include earnings in the "eligibility year" or later years.

1005.25.4 Determining Benefit Computation Years

The benefit computation years for the AMW or for the AIME computation are chosen from the base years. The total number of benefit computation years equal the number of years used in the AMW or AIME divisor (elapsed years minus up to 5 years of lowest earnings). However, earnings for a base year prior to the year of attainment of age 22, after the year of attainment of retirement age, or a base year partly within a period of disability may be substituted for a benefit computation year in which the individual had lower earnings.

EXCEPTION: The AMW computation for the TRANS PIA cannot include earnings in the "eligibility year" or later years.

Example 1: The employee was born 8-17-14. He attained age 62 in 8-1976 but did not file for benefits until 8-1979. The AMW PIA is effective 8-1979. The last computation base year for the initial AMW ends on December 31, 1978. Earnings for 1976, 1977 and 1978 are used only if they are higher than some other benefit computation year.

Example 2: The employee was born 11-14-18. He attained age 62 in 11-1980 but did not file for benefits until 11-1982. The AIME or TRANS PIA is effective 11-1982. The last computation base year for the initial AIME ends on December 31, 1981. Earnings for 1980 and 1981 are used only if they are higher than some other benefit computation year. The last computation base year for the TRANS PIA ends on December 31, 1979.

1005.25.5 Yearly Earnings Maximums

The Social Security Act limits the yearly reported earnings that may be considered in the AMW PIA computation or indexed for the AIME PIA computation. These earnings include all wages, self-employment income, creditable compensation and creditable military service up to the maximum for each year.

The yearly earnings maximums for the PIA computations are as follows:

YEARS	MAXIMUM	YEARS	MAXIMUM	YEARS	MAXIMUM
1951-1954	$3,600	1986	42,000	2005	90,000
1955-1958	4,200	1987	43,800	2006	94,200
1959-1965	4,800	1988	45,000	2007	97,500
1966-1967	6,600	1989	48,000	2008	102,000
1968-1971	7,800	1990	51,300	2009	106,800
1972	9,000	1991	53,400	2010	106,800
1973	10,800	1992	55,500	2011	106,800
1974	13,200	1993	57,600	2012	110,100
1975	14,100	1994	60,600	2013	113,700
1976	15,300	1995	61,200	2014	117,000
1977	16,500	1996	62,700	2015	118,500
1978	17,700	1997	65,400	2016	118,500
1979	22,900	1998	68,400	2017	127,200
1980	25,900	1999	72,600	2018	128,400
1981	29,700	2000	76,200		

1982	32,400	2001	80,400		
1983	35,700	2002	84,900		
1984	37,800	2003	87,000		
1985	39,600	2004	87,900		

1005.25.6 Excluding Period of Disability

A. When a period of disability is established - When a period of disability is established, the worker's wage record is frozen and the period during which he is rated disabled (and not likely to have substantial earnings) is usually excluded from the AMW computation or the AIME computation. However, the disability period is not excluded unless dropping these years produces a higher AMW or AIME than would otherwise be possible. If the period of disability is disregarded in the AMW or AIME computation, the DF cannot be used to establish a DIB insured status or to pay a DIB vested dual benefit.

Part of a disability freeze period cannot be excluded and another part of the disability freeze period included in order to compute a higher AMW or AIME.

B. Effect on AMW or AIME computation

1. Effect on AMW or AIME divisor - When the period of disability is applied to the AMW or AIME computation, all months in years partly or wholly within the period of disability are excluded from the divisor.

2. Effect on AMW or AIME dividend - When the period of disability is applied to the AMW or AIME computation, earnings from years wholly within a period of disability are excluded from the dividend. For eligibilities prior to 1-1-79, earnings from years partly within the disability period can be considered for inclusion in the AMW dividend if they are higher than some other benefit computation year.

For eligibilities 1-1-79 or later, earnings for years partly within a disability period can be considered for inclusion in the AIME dividend if they are higher than some other benefit computation year.

C. When period of disability affects PIA computation

1. Male employee - A period of disability could increase the PIA if:

- He is born before 1910 and had a disability onset before the earlier of attainment of age 65 or death; or

- He is born 1910-1913 and has disability onset before the earlier of 1975 or death; or

- He is born after 1913 and had disability onset before the earlier of attainment of age 62 or death.

2. Female employee - A period of disability could increase the PIA if she had disability onset date before the earlier of attainment of age 62 or death.

D. Period of Disability Conflicts at RRB and SSA - There are cases in which the RRB grants a period of disability to an employee but the Social Security Administration (SSA) either denies the period of disability or establishes a different disability onset date. These cases are handled as follows:

1. SSA's onset date is earlier than RRB's onset date for actual period of disability. SSA's onset date is used for all PIA computations unless the RRB previously determined that the employee was not disabled as of SSA's onset date and denied an RRB D/A application. In that case, RRB's onset date is used for all PIA computations.

2. SSA's onset date is later than RRB's onset date for actual period of disability. SSA's onset date is used to compute the vested dual benefit (VDB) PIAs. RRB's onset date is used to compute all PIA's other than VDB PIAs.

3. SSA denied the period of disability, but RRB granted an actual period of disability. RRB's onset date is used to compute all PIAs other than VDB PIAs. The period of disability cannot be used to determine VDB entitlement or to compute the VDB PIAs.

4. SSA paying benefit without a period of disability but joint actual period of disability granted. RRB's onset date is used to compute all PIAs other than VDB PIAs. The period of disability cannot be used to determine VDB entitlement or to compute the VDB PIAs.

5. RR Act deemed period of disability for 2(a)1(IV) and 2(a)1(V) annuitants.

(a) Deemed period of disability to compute PIA - All 2(a)l(IV) and 2(a)1(V) annuitants are deemed to be entitled to a disability insurance benefit under the SS Act as of their RR annuity ABD and are deemed to be age 62 on that date unless an actual period of disability is earlier, in which case the actual onset date is used. This deeming provision is for the computation of PIA #1, PIA #3, PIA #10, PIA #17 and the pass-thru PIA only.

(b) Period of disability for HI coverage only - Section 7(d)(3) of the 1974 RR Act deems certain 2(a)1(IV) or 2(a)1(V) annuitants to be

entitled to HI coverage. This deemed period of disability does not apply to PIA computations.

1005.25.7 Excluding Up to 5 Years of Lowest Earnings (Drop out Years)

A. Age and Service Annuities - The months and earnings in up to 5 full calendar years with the lowest earnings may be excluded from the dividend and divisor when computing the AMW or the AIME. These years are called dropout years. This provision applies only to determining the dividend and divisor. It does not prevent the use of the affected years in determining quarters of coverage or insured status.

Up to 5 years of lowest earnings can be excluded in every case, including those in which a disability freeze has been established, as long as at least 2 benefit computation years remain.

EXAMPLE 1: An employee's date of birth is 11-10-05. The 5 lowest years of earnings (indicated with an asterisk) are excluded from the AMW divisor and AMW dividend. The earnings for 1971 are used in place of the 1955 earnings.

1951 - 2714.76*	1958 - 863.16*	1965 - 4908.55
1952 - 3140.76	1959 - 2600.00*	1966 - 5357.75
1953 - 3059.76	1960 - 2600.00*	1967 - 4751.55
1954 - 3136.75	1961 - 3656.25	1968 - 6016.18
1955 - 2804.76**	1962 - 4218.29	1969 - 6849.22
1956 - 3298.75	1963- 4350.46	1970 - 6610.71
1957 - 2759.75*	1964 - 4832.52	1971 - 7100.77

Therefore, his dividend is 71,288.28 and his divisor is 168. The AMW is $424.

** Not used.

EXAMPLE 2: An employee's date of birth is 7-5-18, so his eligibility year is 1980. The earnings are indexed for the AIME computation. The 5 lowest years of earnings (indicated with an asterisk) are excluded from the AIME divisor and AIME dividend.

1951 - 9173.25*	1961 - 10673.12	1971 - 11027.16

1952 - 9871.62*	1962 - 10976.15	1972 - 10716.53
1953 - 10651.63*	1963 - 11716.53	1973 - 9975.65*
1954 - 11721.56	1964 - 11517.62	1974 - 10797.56
1955 - 11978.13	1965 - 10719.73	1975 - 11268.34
1956 - 12157.62	1966 - 11718.75	1976 - 10713.55
1957 - 11718.56	1967 - 11613.52	1977 - 10918.76
1958 - 11316.75	1968 - 9615.73*	1978 - 11519.39
1959 - 10713.62	1969 - 10715.95	1979 - 11918.75
1960 - 11791.65	1970 - 11917.31	1980 - 12716.72

Therefore, his dividend is 284,563.33 and his divisor is 288. The AIME is 988.

B. Disability Annuities

1. Prior to 1980 Social Security Disability Amendments - For individuals who first became entitled to a disability before 7-1-80, the provisions for excluding the 5 full calendar years with the lowest earnings were the same as those explained in section A., above.

   EXAMPLE 1: An employee date of birth is 5-24-31. He is rated disabled from 9-30-76 and his SS Act initial PIA is effective 3-1-77. The 5 lowest years of earnings (indicated with an asterisk) are excluded from the AMW divisor and AMW dividend. Since they do not exceed another benefit computation year, earnings prior to attaining 22 are not used. The earnings for 1976, a year partly within a period of disability, are used because they are higher than the earnings for 1957.

1951 - 2453.27**	1960 - 4655.79	1968 - 5374.94
1952 - 2998.48**	1961 - 4549.44	1969 - 6205.70
1953 - 3452.48*	1962 - 4663.89	1970 - 6304.10
1954 - 3243.48*	1963 - 4730.91	1971 - 7095.93
1955 - 3745.48*	1964 - 4800.00	1972 - 7945.49

1956 - 3374.48*	1965 - 4800.00	1973 - 9029.86
1957 - 3947.49**	1966 - 5476.57	1974 - 7757.68
1958 - 3714.49*	1967 - 5478.50	1975 - 8011.36
1959 - 4389.93		1976 - 6196.14

Therefore, his dividend is 107,466.23 and his divisor is 216. The AMW is $497.00.

** Not used.

EXAMPLE 2: An employee's date of birth is 7-9-32. He is rated disabled from 9-30-79 and his SS Act initial PIA is effective 3-1-80. The earnings are indexed for the AIME computation.

The 5 lowest years of earnings (indicated with an asterisk) are excluded from the AIME divisor and AIME dividend. Since they do not exceed another benefit computation year, earnings for 1951 and 1952 (prior to attaining 22) are not used, but earnings for 1953 are used in place of 1968 earnings. The earnings for 1979, a year partly within a period of disability, are not used because they are not higher than the earnings in another benefit computation year.

1951 - 6172.53**	1961 - 11487.34	1970 - 10521.54
1952 - 9042.75**	1962 - 11211.99	1971 - 11268.34
1953 - 11344.85	1963 - 11103.45	1972 - 11489.18
1954 - 10602.94	1964 - 10819.20	1973 - 12289.62
1955 - 11704.63	1965 - 10632.00	1974 - 9968.62
1956 - 9853.48*	1966 - 11440.55	1975 - 9573.58*
1957 - 11183.24	1967 - 10841.95	1976 - 6927.28*
1958 - 10430.29	1968 - 9954.39**	1977 - 8266.19*
1959 - 11747.45	1969 - 10866.18	1978 - 8917.65*
1960 - 11988.66		1979 - 6217.92**

** Not used.

Therefore, his dividend is 222,942.04 and his divisor is 300. The AIME is 743.00.

2. Changes Under 1980 Social Security Disability Amendments - PL 96-265

a. General - Under the "variable dropout" provision of the 1980 Social Security disability amendments, the number of years dropped out of the calculation of disability PIAs for individuals who first become entitled to a disability benefit July 1, 1980, or later are computed under the "1 for 5 rule." This provision does not apply to workers who were never entitled to disability benefits prior to July 1, 1980. The dropout equals the total number of elapsed years divided by 5, but not to exceed 5 drop-out years. Any fraction is disregarded.

The variable dropout can apply to the AIME or 1977 old start PIA computations.

This provision currently reduces the number of dropout years for employees who become disabled (onset date) between the ages of 27 and 46 and completely eliminates the dropout years for disabled employees under age 27.

Worker's Age In Year of Disability Onset	**Number of Dropout Years**
Under age 27	0
Ages 27 through 31	1
Ages 32 through 36	2
Ages 37 through 41	3
Ages 42 through 46	4
Ages 47 and over	5

EXCEPTION: The "Child Care Dropout Year" provision effective July 1, 1981 provides an additional dropout year for any year after 1950 in which the disabled worker is under age 37, is not employed and is living in the same household with a child less than 3 years old of the employee or spouse. However, the total dropout years in these cases cannot exceed 3.

b. Effect On Railroad Retirement Act PIAs - The computation of PIA #1, PIA #3 and PIA #17 is effective on the ABD. The PIA #9 computation is effective in the first full month after the waiting period. Therefore these amendments may result in a PIA #1 with dropout years that differ from those excluded from PIA #9.

The pre-amendment rules for determining the dropout years will apply to the survivor PIA #1 at the disabled employee's death. Therefore, the survivor PIA will always have 5 dropout years, provided at least 2 benefit computation years remain.

The PIAs are subject to recomputation under regular procedure. The number of dropout years used in the initial PIA computation is used in the recomputation.

EXAMPLE: The employee (DOB 7-10-43) has disability onset 9-6-80. She received a disability annuity from that date. The dropout years determined under the 1 for 5 rule are 3. The employee dies in April 1981. The survivor PIA #1 is computed under pre-amendment rules with 5 dropout years.

1005.30 Computation Of AMW PIA

1005.30.1 Entitled to AMW (New Start) Method

Before the 1977 Social Security Act Amendments, the 1965 AMW (new start) method was used to compute the PIA if considering the earnings after 1950 only would result in the highest AMW and corresponding PIA, and the wage earner:

A. Became entitled to an annuity on the basis of an application filed after 1965; or,

B. Qualified for an automatic recomputation after 1965 (see FOM1-1-1005.30.3).

NOTE: If the AMW is less than $250 and there are significant earnings before 1951, an "old start PIA" may apply (see FOM-1-1-1005.40).

Benefits based on an "eligibility year" before 1979 are based on the AMW PIA. The AMW PIA conversion table is updated for each cost-of- living increase.

Benefits paid on the wage records of employees who attain age 62 (or 60/30 annuitants who have an ABD) in the years 1979-1983 can be computed using an AMW computation for the Transitional PIA (TRANS PIA) as an alternative to the AIME computation, or the Special Minimum PIA computation.

NOTE: The AIME PIA will exceed the TRANS PIA when the employee attains age 62 (or a 60/30 annuitant has an ABD) after 1980.

1005.30.2 Initial Computation of AMW

The basic benefit computation years for the AMW are chosen from the base years from the later of 1951 or the year of attainment of age 22 up to the last computation base year (see FOM-1-1005.25.3). Up to 5 years of lowest earnings are dropped as explained in FOM-1-1005.25.7. The AMWs computed for cases in which the employee attained age 62, had a date of disability onset or died before 1979 may include as a benefit computation year: years prior to year the employee attained age 22, a year partly within a period of disability, the year in which the employee attains age 62 or later years, or the year of death if the employee's earnings in these years are higher than earnings in some other benefit computation year. The year of lower earnings is dropped.

The AMWs computed for the Transitional PIA for employees who attain age 62 after 12-31-78 but before 1-1-84 can include as a benefit computation year earnings in a year prior to the year in which the employee attained age 22. The year of lower earnings is dropped. The TRANS PIA cannot include earnings in the eligibility year or later years.

Example: Two employees file for benefits payable 1-1982. One employee (DOB 5-7-14) has an "eligibility year" of 1976 and is entitled to the AMW PIA computation. The 1-1982 AMW PIA can include earnings after the "eligibility year." The other employee (DOB 7-10-17) has an "eligibility year" of 1979 and is entitled to the TRANS PIA computation. The 1-1982 TRANS PIA cannot include earnings in or after the "eligibility year." Assuming both had the same earnings, their benefit computation years are indicated by "X" in the following chart:

		AMW PIA Benefit	**TRANS PIA Benefit**
Year	**Combined Wage Record Subject to Yearly Maximum**	**Computation Years For Employee DOB 5-7-14**	**Computation Year For Employee DOB 7-10-17**
1951	3,600.00		
1952	3,600.00		
1953	3,400.00		
1954	3,600.00		
1955	4,200.00		X
1956	3,241.00		X

1957	4,100.00		X
1958	4,200.00		X
1959	4,800.00		X
1960	4,780.92		X
1961	4,800.00		X
1962	4,800.00	X	X
1963	4,800.00	X	X
1964	4,800.00	X	X
1965	4,800.00	X	X
1966	6,600.00	X	X
1967	6,600.00	X	X
1968	7,800.00	X	X
1969	7,800.00	X	X
1970	7,800.00	X	X
1971	7,800.00	X	X
1972	8,800.00	X	X
1973	10,800.00	X	X
1974	11,800.00	X	X
1975	11,500.07	X	X
1976	12,793.60	X	X
1977	15,921.80	X	X
1978	17,653.78	X	X
1979	19,317.92	X	
1980	20,713.65	X	

1981	23,927.13	X	

Employee with 5-7-14 DOB

Total Earnings	216,827.95		AMW	6/81 PIA
_____	_____	=	903	775.30
Divisor Months	240			

Employee with 7-10-17 DOB

Total Earnings	179,750.17		AMW	6/81 PIA
_____	_____	=	651	665.70
Divisor Months	276			

The number of benefit computation years for the AMW dividend will be the same as the number of years (elapsed years minus dropout) used to determine the AMW divisor months.

The actual reported earnings from the benefit computation years, subject to the yearly maximums, are added together to obtain the dividend used in computing the AMW.

The Average Monthly Wage (AMW) is the quotient obtained by dividing the total earnings in the benefit computation years after 1950 by the number of months in the elapsed years minus up to five years of lowest earnings. Amounts of less than $1 in the quotient are dropped.

1005.30.3 Recomputation of AMW

A. Age and Service Cases - The AMW computed for employees who attained age 62 before 1-1-79 may be recomputed to include as a benefit computation year the ABD year or any later year in which the employee has earnings higher than some other benefit computation year. The year of lower earnings is dropped. Therefore, the number of benefit computation years in the AMW dividend will be the same as the number of years used to determine the AMW divisor months. The current AMW PIA table is used to determine the recomputed AMW PIA. In employee cases, the recomputation is effective January 1 of the year following the year for which the earnings are credited.

EXAMPLE: The employee's date of birth is 5-20-15. The date of entitlement of his age and service benefit is 5-1-77. His earnings since 1951 are as follows:

1951 - 2,671.47	1960 - 4,091.72	1970 - 6,314.72
1952 - 2,892.79	1961 - 4,371.92	1971 - 7,190.93
1953 - 3,120.72	1962 - 4,420.72	1972 - 7,540.93
1954 - 3,201.91	1963 - 4,572.80	1973 - 9,103.71
1955 - 3,745.27	1964 - 4,691.73	1974 - 8,172.90
1956 - 3,017.29	1965 - 4,800.00	1975 - 8,703.12
1957 - 3,321.56	1966 - 5,374.75	1976 - 9,079.31
1958 - 3,702.19	1967 - 5,478.50	1977 - 6,150.76
1959 - 3,891.72	1968 - 5,392.94	1978 - 4,120.76
	1969 - 6,110.92	

Under SSA rules, the initial AMW for benefits payable 5-1-77 was computed based on earnings through December 31, 1976. Earnings for the years 1951, 1952, 1953, 1954 and 1956 were dropped. The AMW is recomputed effective 1-1-78 to include earnings for 1977 and to drop earnings for 1957. The AMW is again recomputed effective 1-1-79 to include earnings for 1978 and to drop earnings for 1958.

The AMW computed for the TRANS PIA for employees who attain age 62 after 12-31-78 but before 1-1-84 is not subject to recomputation. Therefore, it is possible for a recomputed AIME PIA or special minimum PIA to exceed an initial TRANS PIA.

B. Disability Cases - The AMW computed for employees with a disability onset date before 1-1-79 may be recomputed if the employee's reported earnings in the ABD year prior to the first month of the waiting period, or DIB effective date if there is no waiting period, or the employee's partial year after actual or deemed attainment of age 65 or a subsequent year are higher than earnings in some other benefit computation year. The year of lower earnings is dropped. Therefore, the number of benefit computation years will be the same.

EXAMPLE: The employee's date of birth is 5-24-29. He is rated disabled from 6-20-76 and deemed to be age 62 on that date for PIA computation purposes. The DIB O/M effective date is 12-1-76. For purposes of the PIA computation, the employee is deemed age 65 on 6-20-79.

The yearly earnings are as follows:

1951 - $2,453.27	1961 - 4,549.44	1970 - 6,304.10
1952 - 2,998.49	1962 - 4,663.89	1971 - 7,095.93
1953 - 3,452.48	1963 - 4,730.91	1972 - 7,945.49
1954 - 3,243.48	1964 - 4,800.00	1973 - 9,029.86
1955 - 3,745.48	1965 - 4,800.00	1974 - 7,757.68
1956 - 3,374.48	1966 - $5,476.57	1975 - 8,011.36
1957 - 3,947.48	1967 - 5,476.57	1976 - 4,210.70
1958 - 3,714.49	1968 - 5,374.94	1977 - 976.00
1959 - 4,389.93	1969 - 6,205.70	1978 - 1,909.00
1960 - 4,655.79		1979 - 3,995.48

The initial AMW for Retirement O/M benefits payable 12-1-76 was computed based on earnings through 12-31-75. Earnings for the years 1951, 1952, 1953, 1954 and 1956 were dropped. The AMW is recomputed effective 1-1-77 to include the 1976 earnings and to drop the earnings for 1958.

The employee does some odd jobs beginning in 1977, which were not sufficient to terminate his disability. Since 1979 is not wholly within a period of disability, the AMW is recomputed for benefits payable effective 1-1-80 to include the 1979 earnings in the AMW dividend and to drop the earnings for 1958 from the AMW dividend.

C. Survivor Cases - The AMW computed for employees who attained age 62 or died before 1-1979 may be "recomputed" if the "lag" earnings in the year of death are higher than some other benefit computation year. The year of lower earnings is dropped. Therefore, the number of benefit computation years will be the same. The recomputation is effective in the month of death.

The AMW computed for the TRANS PIA for employees who attain age 62 after 12-31-78 but before 1-1-84 is not subject to recomputation for lag earnings in the year of death.

1005.30.4 Determining the Primary Insurance Amount for Pre-1977 SS Act Amendment Cases - (AMW PIA)

To find the PIA when the AMW is figured under the 1965 AMW method, refer to the table in FOM-I-1005, Appendix A. Find the AMW in the first column. The PIA is on the

same line as the AMW under the appropriate effective date. The PIA is increased for each cost-of-living increase.

The AMW PIA is not affected by the elimination of the minimum social security benefit.

1005.30.5 Determining the Primary Insurance Amount Under the Transitional Guarantee PIA (TRANS PIA)

The Transitional Guarantee PIA is computed for wage records in which the employee attains age 62 in the years 1979 - 1983 (before death in survivor cases). The TRANS PIA is derived from the June 1978 PIA Table. The PIA is increased for the cost-of-living from the "eligibility year" as explained in FOM-I- 1005.55.2.

The TRANS PIA for eligibility years 1982 and 1983 is subject to the 1981 SS Act Amendments. Therefore, the AMW for these PIAs is based on the actual amount of earnings. The minimum does not apply unless the vow of poverty rule applies as explained in FOM-I-1005.10.1B.

1005.35 Computation Of AIME PIA

1005.35.1 Entitlement to AIME Method

The 1977 Amendments to the Social Security Act provide a formula for computing the PIA. This formula is applied to the average indexed monthly earnings (AIME) which is computed for employees who in 1979 or later, attain age 62, have a 60/30 retirement annuity which begins at age 60 or 61, have a date of disability onset, or die before becoming eligible for a retirement benefit.

The AIME PIA is an alternative to the SPC MIN PIA or the TRANS PIA (when applicable).

The RR Act PIA #1, PIA #3, PIA #9 or PIA #17 may be computed under the AIME method for eligibilities 1979 or later. The deeming provisions of the RR Act can, however, make an employee eligible at an earlier year than the "eligibility year" under SS Act rules (see FOM-1-1005.20).

1005.35.2 Indexing Reported Earnings for AIME Computation

Under the 1977 Social Security Act amendments, the Social Security Act limits the actual reported yearly earnings that may be considered in the AIME computation. However, indexing is used as a mechanism for expressing prior year’s earnings in terms of their current dollar values.

For purposes of computing benefits that require the indexing of wages, the "average annual wages" will be defined by the following series of amounts.

YEAR	AVERAGE ANNUAL WAGES	YEAR	AVERAGE ANNUAL WAGES	YEAR	AVERAGE ANNUAL WAGES
1951	2,799.16	1952	2,973.32	1953	3,139.44
1954	3,155.64	1955	3,301.44	1956	3,532.36
1957	3,641.72	1958	3,673.80	1959	3,855.80
1960	4,007.12	1961	4,086.76	1962	4,291.40
1963	4,396.64	1964	4,576.32	1965	4,658.72
1966	4,938.36	1967	5,213.44	1968	5,571.76
1969	5,893.76	1970	6,186.24	1971	6,497.08
1972	7,133.80	1973	7,580.16	1974	8,030.76
1975	8,630.92	1976	9,226.48	1977	9,779.44
1978	10,556.03	1979	11,479.46	1980	12,513.46
1981	13,773.10	1982	14,531.34	1983	15,239.24
1984	16,135.07	1985	16,822.51	1986	17,321.82
1987	18,426.51	1988	19,334.04	1989	20,099.55
1990	21,027.98	1991	21,811.60	1992	22,935.42
1993	23,132.67	1994	23,753.53	1995	24,705.66
1996	25,913.90	1997	27,426.00	1998	28,861.44
1999	30,469.84	2000	32,154.82	2001	32,921.92
2002	33,252.09	2003	34,064.95	2004	35,648.55
2005	36,952.54	2006	38,651.41	2007	40,405.48
2008	41,334.97	2009	40,711.61	2010	41,673.83
2011	42,979.61	2012	44,321.67	2013	44,888.16
2014	46,481.52	2015	48,098.63	2016	48,642.15
2017*	50,101.41	2018*	51,604.45	2019*	53,152.58
2020*	54,747.16	2021*	56,389.57	2022*	58,081.26

* Years after 2016 are estimated using an average 3% yearly wage increase.

The indexing year for the AIME PIA is the second year before the employee's eligibility year. To adjust the reported earnings for each year after 1950 up through the indexing

year, the reported earnings are multiplied by the quotient of the average annual wage of all workers for the indexing year dividend by the average annual wage of all workers for the year being indexed. The result is rounded to the nearest penny.

$$\text{Unindexed Earnings for year N} \times \frac{\text{Average annual wage for indexing year}}{\text{Average annual wage for year N}} = \text{Indexed Earnings}$$

Earnings for years subsequent to the indexing year are not adjusted. The actual reported earnings for these years are considered.

EXAMPLE: The employee's DOB is 9-15-42. He has 18 years RR service. The ABD is 10-1-2004. The indexing year is 2002 based on his attainment of age 62 in 2004. The year 2002 has an average wage of $33252.09. The earnings record is adjusted as follows:

YEAR	REPORTED EARNINGS	INDEXED EARNINGS
1959	$8.75	$75.46
1960	$271.50	$2252.98
1961	$315.00	$2563.01
1962	$153.00	$1185.53
1963	$2959.91	$22386.00
1964	$3007.08	$21849.80
1965	$2678.83	$19120.42
1966	$2943.28	$19818.36
1967	$3518.09	$22438.90
1968	$5117.16	$30539.05
1969	$6182.84	$34883.05
1970	$6679.87	$35905.44
1971	$6746.52	$34528.73

YEAR	REPORTED EARNINGS	INDEXED EARNINGS
1972	$7391.64	$34453.93
1973	$6854.51	$30068.86
1974	$7395.63	$30622.28
1975	$7915.00	$30493.89
1976	$8883.69	$32016.68
1977	$9709.98	$33015.91
1978	$10688.14	$33668.24
1979	$11414.82	$33064.85
1980	$12663.58	$33651.00
1981	$13382.97	$33396.63
1982	$15160.63	$34692.10
1983	$15739.20	$34343.00
1984	$15752.00	$32462.64
1985	$16708.72	$33027.17
1986	$17190.00	$32999.04
1987	$18161.90	$32774.58
1988	$19189.85	$33004.10
1989	$20047.50	$33165.98
1990	$20688.00	$32714.47
1991	$21554.88	$32860.72
1992	$17020.25	$24676.19
1994	$6619.78	$9266.90
1995	$3856.40	$5190.44

YEAR	REPORTED EARNINGS	INDEXED EARNINGS
1996	$10001.26	$12833.38
1997	$10262.77	$12442.88
1998	$11324.91	$13047.75
1999	$12196.46	$13310.14
2000	$14207.38	$14692.20
2001	$17093.06	$17264.48
2002	$15629.11	$15629.11
2003	$15888.98	$15888.98

1005.35.3 Initial Computation of AIME

The benefit computation years for the average indexed monthly earnings (AIME) are chosen from the indexed (or unindexed if after indexing year) base years (see FOM-1-1005.30.3. Up to 5 years of lowest earnings are dropped as explained in FOM1-1005.25.7.

The AIME may include as a benefit computation year indexed earnings for years prior to the year in which the W/E attained age 22, actual reported earnings in a year partly within a period of disability (if after the indexing year), actual reported earnings in the year in which the employee attains age 62 or later years, or actual reported earnings in the year of death if they are higher than the indexed earnings (or actual earnings for years after the indexing year) in some other benefit computation year. The year of lower earnings is dropped.

The indexed (or unindexed if after indexing year) earnings from the benefit computation years are added together to obtain the dividend used in computing an AIME.

The number of benefit computation years for the AIME dividend will be the same as the number of years (elapsed years minus up to 5 years of lowest earnings) used to determine the AIME divisor months.

The Average Indexed Monthly Earnings (AIME) is the quotient obtained by dividing the total earnings in the benefit computation years by the divisor months. Cents in the quotient are dropped.

1005.35.4 Recomputation of AIME

A. Age and Service Cases - The AIME may be recomputed to include, as a benefit computation year, the ABD year or each subsequent year in which the actual reported earnings are higher than the indexed earnings (or actual earnings for year after indexing year) in some other benefit computation year. The year of lower earnings is dropped. The number of benefit computation years will be the same.

The same "bend points" used in the initial AIME PIA computation, based on the employee's year of attainment of age 62, are used to determine the amount of the recomputed AIME PIA. The AIME PIA must be increased by at least a $1.00 for the recomputation to apply. Subsequent cost-of-living increases are added from the eligibility year after the AIME PIA is determined.

The recomputation is effective January 1 of the year following the year for which the earnings are reported.

Since the AMW for the transitional PIA cannot be recomputed, it is possible for an AIME PIA calculation in a life case to overtake and pass the TRANS PIA because of a recomputation.

EXAMPLE: The employee's date of birth is 10-17-39. The effective date of his age and service benefit is 11-1-2001. His earnings since 1951 indexed to the 1999 average wage of $30,469.84 are as follows:

1956 - $2367.81	1968 - $41236.13	1980 - $62873.97
1957 - $4873.96	1969 - $40324.81	1981 - $64748.77
1958 – $4254.73	1970 - $38418.29	1982 - $66226.48
1959 - $11527.85	1971 - $36580.24	1983 - $68590.55
1960 - $27620.73	1972 – $38440.74	1984 - $68646.07
1961 -$21634.26	1973 - $43412.58	1985 - $69889.05
1962 - $28608.24	1974 - $50082.67	1986 - $67826.28
1963 - $29988.95	1975 - $49777.40	1987 - $49975.32
1964 - $31959.14	1976 - $50527.24	1993 - $15107.14
1965 - $31393.87	1977 - $51409.12	1998 $10000.00

1966 - $40455.05	1978 - $51090.81	1999 - $10000.00*
1967 - $38573.56	1979 - $60783.18	2000 - $10000.00*
		2001 - $10000.00*

*Actual Reported Earnings

The initial AIME for benefits payable 11-1-2001 was computed based on earnings through December 31, 2000 using the highest 35 years of indexed earnings years. Earnings for the year 1956, was dropped from the AIME dividend. The first cost-of-living percentage increase of 2.6% is added effective from 12-1-2001. The AIME is recomputed effective 1-1-2002 to include earnings for 2001 and to drop the earnings for 1958. The same "bend points" plus COL increase percentage are used for the AIME PIA recomputation effective 1-1-2002.

B. Disability Cases - A disability PIA (except those paid under the non-exclusion provision) is recomputed based on including earnings years not wholly within the period of disability. The period of disability begins at deemed age 62, which is the first full of the waiting period and ends at the end of the month prior to the month the employee attains deemed FRA (age 65 if the disability ABD is prior to 1/1/2000). The deemed FRA is based on actual DOB.

The AIME may be recomputed to include as a benefit computation year:

- the ABD year prior to the first month of the waiting period, or
- the ABD year prior to the disability benefit effective date if there is no waiting period, or
- the partial year after the actual or deemed attainment of FRA (actual or deemed age 65 if the ABD is prior to 1/1/2000), and
- each subsequent year in which the actual reported earnings are higher than the indexed (or unindexed if after indexing year) earnings of some other benefit computation year.

The year of lower earnings is dropped. The number of benefit computation years will be the same. The recomputed AIME is rounded down to the nearest whole dollar amounts.

The same "bend points" used in the initial AIME PIA computation, based on the employee's year of disability onset, are used to determine the amounts of the recomputed AIME PIA. The AIME PIA must be increased by at least a $1.00 for the recomputation to apply. Subsequent cost-of-living increases are added from the eligibility year after the AIME PIA is determined.

The recomputation is effective January 1, of the year following the year for which the earnings are credited.

1) Disability Exclusion Cases with ABD 1/1/2000 or later: Effective with ABD's 1/1/2000 and later, the end of the employee's period of disability is the month before the month the employee attains deemed FRA (based on actual DOB). The existence of entitlement prior to 1/1/2000 on a prior claim is immaterial.

EXAMPLE: The employee born 1/10/1962 has a disability onset of 6/10/2001 (ABD is 12/1/2001), and is deemed age 62 on the onset date. FRA for a person born in 1962 is 67. This employee is deemed to be age 67 (FRA) in 6/2006, five years after deemed age 62. Earnings years beginning 2002 through 2005 cannot be used in a disability exclusion computation because those years are wholly within the period of disability. Possible recomp effective dates for this employee are January 1, 2002, January 1, 2007, and every January 1 thereafter.

2) Disability Exclusion Calculation with ABD prior to 1/1/2000: The end of the employee's period of disability is the month before the month the employee attains deemed age 65.

EXAMPLE: The employee born 12/9/1946 has a disability onset of 5/20/1999 (ABD is 11/1/1999), and is deemed age 62 on that date. Age 65 is used as the FRA for all employees having a disability ABD prior to 2000. This employee is deemed to be age 65 in 5/2002, three years after deemed age 62. Earnings years from 2000 through 2001 cannot be used in a disability exclusion computation because those years are wholly within the period of disability. Possible recomp effective dates for this employee are January 1, 2000, January 1, 2003, and every January 1 thereafter.

3) Disability Non-exclusion Calculation – any ABD: Disability annuities paid under the non-exclusion provision allow PIA recomputations for all years beginning with January 1 of the year after the ABD. A period of disability is ignored for these type cases.

EXAMPLE: The employee born 2/19/1956 has a disability onset of 12/7/2004 (ABD is 6/1/2005). Because the period of disability is not a factor under the non-exclusion provision, PIA recomputations are payable effective immediately after the ABD year. This employee's annuity can be recomputed as early as January 1, 2006, and every January 1 thereafter.

C. Survivor Cases - The AIME computed for employees who attain age 62 or who have a disability onset date in 1979 or later or who die 1979 or later before becoming entitled to life benefits may be "recomputed" if the "lag" earnings in the year of death are higher than some other benefit computation year. The year of lower earnings is dropped. The number of benefit computation years will be the same. The recomputation is effective in the month of death.

EXAMPLE: The employee whose DOB is 2/19/43 dies in 8/2004, without ever having been entitled to life benefits. The employee's widow is entitled to a WIA on 8/1/2004. The employee's earnings in 2004 are higher than in some other years used in the initial PIA calculation. The 2004 earnings year replaces the lowest year of earnings used in the PIA calculation. The recomputed PIA is effective with the WIA effective date (8/1/2004).

1005.35.5 Determining the Primary Insurance Amount Based on the AIME - (AIME PIA)

The 1977 SS Act amendments established a three-step formula to compute the AIME PIA for wage earners who have an eligibility year of 1979 or later. The percentages in the formula are constant but the cutoff amounts, "bend points," in each step will be adjusted each year as average wages rise. The "bend points" will be published by SSA in November before the eligibility year to which they apply.

The AIME PIA is determined with "bend points" based on the year of first eligibility (benchmark year), regardless of date of filing. When the ABD is on or after the effective date of a COL increase, the cost-of-living percentage increase is applied to the initial AIME PIA amount. Subsequent cost-of-living percentage increases are payable from the benchmark year. Each cost-of-living increase is computed and rounded before the next cost-of-living is applied.

Under the 1981 SS Act amendments, AIME PIAs for eligibility years before 1982, if not a multiple of $0.10, are rounded up to the next higher multiple of $0.10 in the initial computation and any recomputation or cost-of-living increase through 5-31-82. Effective with the 6-1-82 COL, adjustments to these PIAs, if not a multiple of $0.10, are rounded down to the next lower multiple of $0.10.

The AIME PIAs computed for eligibility years 1982 or later are subject to the 1981 SS Act amendments from the initial computation. If the result is not a multiple of $0.10, it is rounded down to the next lower multiple of $.10.

SUMMARY OF AIME BEND POINTS

	90% of the AIME	**32% of the AIME**	**15% of the AIME**
YEAR	**FIRST**	**OVER THROUGH**	**OVER**
1979	$180	$180 - $1,085	$1,085
1980	194	194 - 1,171	1,171
1981	211	211 - 1,274	1,274

1982	230	230 - 1,388	1,388
1983	254	254 - 1,528	1,528
1984	267	267 - 1,612	1,612
1985	280	280 - 1,691	1,691
1986	297	297 - 1,790	1,790
1987	310	310 - 1,866	1,866
1988	319	319 - 1,922	1,922

SUMMARY OF AIME BEND POINTS			
	90% of the AIME	**32% of the AIME**	**15% of the AIME**
YEAR	**FIRST**	**OVER THROUGH**	**OVER**
1989	$339	$339 - $2,044	$2,044
1990	356	356 - 2,145	2,145
1991	370	370 - 2,230	2,230
1992	387	387 - 2,333	2,333
1993	401	401 - 2,420	2,420
1994	422	422 - 2,545	2,545
1995	426	426 - 2,567	2,567
1996	437	437 - 2,635	2,635
1997	455	455 - 2,741	2,741
1998	477	477 - 2,875	2,875
1999	505	505 - 3,043	3,043
2000	531	531 - 3,202	3,202
2001	561	561 - 3,381	3,381

2002	592	592 - 3,657	3,567
2003	606	606 - 3,653	3,653
2004	612	612 – 3,689	3,689
2005	627	627 - 3,779	3,779
2006	656	656 – 3,955	3,955
2007	680	680 – 4,100	4,100
2008	711	711 – 4,288	4,288
2009	744	744 – 4,483	4,483
2010	761	761 – 4,586	4,586
2011	749	749 - 4,517	4,517
2012	767	767 – 4,624	4,624
2013	791	791 - 4,768	4,768
2014	816	816 – 4,917	4,917
2015	826	826 – 4,980	4,980
2016	856	856 – 5,157	5,157
2017	885	885 – 5,336	5,336
2018	895	895 – 5,397	5,397

Add the results together. If the sum is not a multiple of $0.10, round it as explained above. If it is less than $122.00, see FOM-I-1005.35.6.

1005.35.6 Adjustment For a Non-covered Service Pension

An employee's life PIA #1, O/M PIA #9 and SS PIA will be reduced if the employee becomes eligible for a periodic payment based on service not covered by the Social Security Act or the Railroad Retirement Act after 1985 and the employee becomes eligible for a tier I benefit after 1985. The employee's death PIA #1 is not affected.

The reduction will not apply, however, if the employee:

1. Becomes entitled to a disability annuity before 1986 and remains entitled to it in any of the 12 months immediately before he attains age 62; or,

2. Has 30 or more years of coverage as defined in FOM I-1005.50.2; or,

3. Is a newly hired Federal employee or is an employee of a non-profit organization whose service becomes covered by the SS Act on 1-1-84; or,

4. Meets the requirements for his pension prior to 1986, even if he does not elect to receive the pension until after 1985. In determining if this exemption applies, the individual must meet all requirements for the pension (e.g., years of service, age, amount of contributions) prior to 1986.

5. Receives a totalization benefit effective January 1995 or later from one of the agreement countries listed in 120.45.3(c).

6. Is a military reservist who is entitled to a pension based, in part, on non-covered reserve duty before 1988, but after 1956, for annuities payable after December 1994.

The life PIA #1, as of the month the employee becomes entitled to the periodic payment, is the larger of the following amounts:

(a) An AIME PIA computed using the following percentage, rather than 90% of the AIME up to the first bend point:

Table for Eligibility Year

- 80% for an employee who becomes eligible for a tier I benefit in 1986.
- 70% for an employee who becomes eligible for a tier I benefit in 1987.
- 60% for an employee who becomes eligible for a tier I benefit in 1988.
- 50% for an employee who becomes eligible for a tier I benefit in 1989.
- 40% for a person who becomes eligible for a tier I benefit in 1990 or later.

(b) Table for Years of Coverage

YEARS OF COVERAGE	REPLACEMENT RATE, 1ST BEND POINT
29	80%
28	70%
27	60%

26	50%
25	40%

Effective January 1, 1989, the 1988 SSA Amendments allow lesser benefit reductions for employees with between 21 and 29 years of railroad retirement or social security covered employment, as opposed to 26 to 29 years of coverage under prior law. The revised formula is as follows.

YEARS OF COVERAGE	**REPLACEMENT RATE, 1ST BEND POINT**
29	85%
28	80%
27	75%
26	70%
25	65%
24	60%
23	55%
22	50%
21	45%
20	40%

(c) Guaranty Amount - There is a guaranty amount, designed to protect workers with low pensions based on non-covered employment, that provides that the pension reduction is guaranteed not to be more than the amount computed based on the following formula:

The guaranty amount is **not** recomputed for any change in pension amount, or entitlement to an additional pension. Only if the pension ceases would the PIA be recomputed, and then without consideration for the NCSP, effective with the first month in which the employee is no longer entitled to the pension.

The AIME PIA computed with the regular bend points minus one-half of the portion of the monthly periodic payment which is based on non-

covered public service after 1956. The portion of the payment based on non-covered service after 1956 is deemed to be:

$$\frac{\text{years of non-covered service after 1956 (monthly / periodic)}}{\text{total years of non-covered service}} \times \text{payment.}$$

1005.35.7 Determining the Primary Insurance Amount Based on the Frozen Minimum - (FRZN MIN PIA)

The 1977 amendments to the SS Act provided that an employee's AIME PIA may not be less than $122.00, known as the FRZN MIN PIA.

The 1981 Social Security Act amendments eliminated the frozen minimum PIA for earnings based on an eligibility year of 1982 or later. However, the computation remains in effect for earnings records based on an eligibility year before 1982 and for "vow of poverty" cases with an eligibility year before 1992.

Tier I benefits will be based on the employee's AMW or AIME; the Special Minimum PIA is an alternative tier I PIA. Vested dual benefits are not affected.

1005.40 Computation Of Old Start PIA

1005.40.1 Use of "Old Start" PIA

The old start PIA is an alternative to the new start AMW PIA if the AMW is less than $250.00 or to the special minimum PIA if the employee had significant earnings between 1-1-37 and 12-30-50.

This section explains the 1967 simplified old start PIA and the 1977 simplified old start PIA.

1005.40.2 1967 Simplified "Old Start" Method

The 1967 simplified "old start" method is used for benefits initially payable before January 1977 whenever the "old start" computation would yield a higher benefit than the "new start" AMW method.

A. Social Security Act Requirements - Under the Social Security Act, the 1967 simplified old start method is applicable if:

1. At least one-quarter prior to 1951 is a QC; and,

2. The wage earner attained age 21 either:

   - In or before 1936; or,

   - After 1950, but less than 6 quarters elapsing after 1950 are QCs; and,

3. The wage earner did not have a period of disability which began before 1951 unless such a period of disability is entirely disregarded (i.e. the PIA is computed as though the period of disability had not been established); and,

4. The wage earner:

   - Became entitled to an RIB or DIB after January 2, 1968;

   - Died after 1-2-68 without having been entitled to an RIB or DIB; or

   - Qualifies for an automatic recomputation of the PIA after the 1967 amendments, and,

5. The wage earner is not eligible for the 1977 simplified old start.

   A last computation base year based on first eligibility or death before 1961 cannot be used to compute the PIA under the 1967 simplified old start method.

B. The Railroad Retirement Act Provisions - In order to meet the requirements for the 1967 simplified "Old Start" computation, the 1968 Amendments to the 1937 Railroad Retirement Act deemed any employee (except an employee who died before 1939) on whose service and compensation an annuity is based, to have:

   1. become entitled (assumed filing) to social security benefits after January 2, 1968; or,

   2. died after January 2, 1968 without having been entitled to social security benefits.

   Under the 1974 Railroad Retirement Act, the deeming provision applies to the "Old Start" calculation of the 1937 Act O/M PIA only. It does not apply to "New Start" or SPC MIN calculations of the O/M PIA or the calculation of any other PIA.

1005.40.3 1977 Simplified "Old Start" Method

The 1977 simplified "old start" method is used for benefits initially payable after Dec. 1977 for employees whose eligibility year is 1978 when this computation would yield a higher benefit than the "New Start" AMW PIA or SPC MIN PIA methods. For benefits

based on eligibility year 1979 or later, the 1977 Simplified Old Start is an alternative to the TRANS PIA (when applicable), AIME PIA, and SPC MIN PIA.

A. The 1977 simplified old start method is applicable if:

1. At least one-quarter prior to 1951 is a QC and,

2. The wage earner either:

- Attained age 22 after 1950 and had less than 6 QCs after 1950; or

- Attained age 21 after 1936 and before 1950; and,

3. The wage earner did not have a period of disability which began before 1951 unless such a period of disability is entirely disregarded (i.e., the PIA is computed as though the period of disability had not been established).

1005.40.4 Use of the AMW

The Average Monthly Wage (AMW) is the result of dividing the total earnings in benefit computation years by the number of divisor months. Its use in the PIB computation depends on the "old start" computation that applies.

1005.40.5 Base Years Before 1951

The base years are the years from which the benefit computation years are chosen.

A. 1967 Simplified "Old Start" Computation - A formula is applied to the total pre-1951 wages, self-employment income, creditable compensation and creditable M/S to determine the yearly earnings of each base year. This eliminates the need for a manual search of microfilm records to obtain a yearly breakdown of pre-1951 earnings.

The total of all credited pre-1951 earnings are broken down into base years as follows:

1. If the total pre-1951 earnings are $27,000.00 or less, the total amount of the pre-1951 earnings is divided by 9. The result represents the yearly earnings for each of 9 base years; or

2. If the total pre-1951 earnings exceed $27,000.00, but are less than $42,000.00, the total amount of the pre-1951 earnings is divided by $3,000.00. The resulting whole number represents the number of pre-1951 base years. Remaining earnings (i.e., any excess of the total pre-1951 earnings over $3,000.00 times the whole number derived above) represents the earnings for an additional base year; or

3. Total pre-1951 earnings of at least $42,000.00 represents 14 base years with earnings of $3,000.00 for each year.

B. 1977 Simplified "Old Start" Computation - The total pre-1951 wages self-employment income, creditable compensation and creditable M/S will be equally divided by the number of years elapsing after attainment of age 20 and prior to 1951. (In the case of an individual who attains age 20 in 1949, the earnings divided by 1 year elapsed after 1949 and before 1951 equals the amount of the earnings.) The amount so obtained for each year subject to the maximum will be deemed to be the individual's wages credited to each year used in the AMW dividend. If the amount exceeds $3,000.00 for each year, only $3,000.00 will be deemed to be the individual's wages for each of those years. The remainder of the individual's total wages prior to 1951 will be credited as follows:

1. If the wages are less than $3,000.00, they are credited to the year in which the individual attained age 20; or,

2. If the wages are $3,000.00 or more, they are credited in $3,000 increments to the year starting with the year in which the individual attained age 20 and, subsequently, to each year consecutively preceding that year with any remainder less than $3,000.00 being credited to the year immediately preceding the earliest year to which a full $3,000.00 increment was credited; but

3. No more than $42,000.00 may be taken into account as total wages after 1936 and prior to 1951.

1005.40.6 Base Years After 1950

Under all "old start" Computations, the actual reported earnings after 1950 subject to the yearly maximums indicated in FOM-I-1005.30.5 are used. These earnings are not indexed, even if the wage earner's eligibility year is 1979 or later.

1005.40.7 Determining Benefit Computation Years for Initial "Old Start "AMW

The benefit computation years are chosen from the base years from 1-1937 up to the last computation base year (see FOM-I-1005.25.3). Up to 5 of the years with the lowest earnings are excluded as explained in FOM-I-1005.25.7. Years wholly within a period of disability after 1-1951 are excluded as explained in FOM-I-105.25.6.

A. Employee Eligibility Year Before 1979 - A year prior to attainment of age 22, after attainment of age 62 or termination of disability freeze, or a year partly within a period of disability after 1-1951 (or after 1-1937 if 1965 "old start" method) is included only if the earnings in that year are higher than earnings in some other benefit computation year. The year of lower earnings is dropped. Therefore, if there are 35 years used to determine the divisor months, there will be 35 benefit computation years for the AMW dividend.

B. Employee Eligibility Year 1979 or Later - Under the 1977 Social Security Act amendments, the AMW cannot include earnings in the eligibility year or later years. A year prior to the year of attainment of age 22 or a year partially within a period of disability after 1-1951 and before the eligibility year, is included only if the earnings in that year are higher than earnings in some other benefit computation year. The year of lower earnings is dropped. Therefore, if there are 37 years used to determine the divisor months, there will be 37 benefit computation years for the AMW dividend.

C. Employee Was Previously Paid an "Old Start PIA" Disability Benefit Within 12 Months - If the employee becomes disabled or attains age 62 or dies 1-1-79 or later and was previously paid a disability annuity with an "old start" PIA that terminated within 12 months of the current eligibility, the benefit computation years and eligibility year of the previous PIA computation apply. (Recomputation allowed if previous eligibility year is before 1979.)

The earnings from the benefit computation years, subject to the yearly maximum, are added together to obtain the dividend used in computing the AMW. The amounts less than $1.00 in the quotient are dropped so that the AMW is expressed in whole dollar amounts.

1005.40.8 Determining Benefit Computation Years for Recomputed "Old Start" AMW When Eligibility Is Before 1979

Under the 1967 SS Act amendments, an "automatic" recomputation for benefits payable 1-1966 or later can be made if earnings in the ABD year or later years in life cases or earnings in the wage earner's year of death in survivor cases (lag earnings) are sufficient to cause an increase in the AMW if it is recomputed. If the earnings in a year after the last year used in the previous computation, excluding years fully within a period of disability, are higher than the lowest earnings year in the benefit computation years, the higher earnings are added to the AMW dividend and the lower earnings are deducted from the AMW dividend. The AMW divisor and the number of benefit computation years remain the same.

The effective date of the recomputation in life cases is January 1 of the year following the year for which the earnings are reported. The effective date of recomputation in survivor cases is the month of death. Earnings in the year of death may be used in the initial survivor PIA computation if the earnings are reported timely.

The 1977 SS Act amendments limit the recomputation of the "old start" AMW to wage earners whose eligibility year is before 1979.

EXAMPLE: The female employee's date of birth is 5-20-13. The ABD of her age and service benefit is 5-1-75. Her earnings record (wages and compensation) is as follows:

The total earnings before 1951 = $16,678.60

Earnings 1951 - 1970 = -0-

Year	Earnings
1971	$3,000.00
1972	$3,172.90
1973	$5,691.20
1974	$6,921.70
1975	$4,291.80
1976	$4,770.00

The initial AMW for benefits payable 5-1-75 was computed using earnings through December 31, 1974. Earnings (of zero) for the years 1951, 1952, 1953, 1954, 1955 were dropped from the AMW dividend. The AMW is recomputed for benefits payable effective 1-1-76 to include the earnings for 1975 in the AMW dividend and to drop the zero earnings for 1956 from the AMW dividend. The AMW is again recomputed for benefits payable effective 1-1-77 to include the earnings for 1976 in the AMW dividend and drop the zero earnings for 1957 from the AMW dividend.

1005.40.9 Determination of Increment Years

Under the 1977 Simplified "old start" method, the increment year is computed as part of the PIB computation.

The number of increment years is the number, no more than 14 or less than 4, that is equal to the individual's total pre-1951 earnings (wages, self-employment, creditable compensation and creditable M/S) divided by $1,650.00 dropping any remainder.

EXAMPLE 1: The employee's total pre-1951 earnings are $28,000.00. His increment years would be 14 ($28,000.00 -: 1,650 = 16 reduced to 14 increment years).

EXAMPLE 2: The employee's total pre-1951 earnings are $2,050. His increment years would be 4 ($2,050.00 -: 1,650 = 1 raised to 4 increment years).

1005.40.10 Computation of the PIB

A. 1967 Simplified "Old Start" Method - The PIB is the sum of 45.6% of the first $50.00 of the AMW and 11.4% of the next $200.00 of the AMW. Round the PIB to the nearest whole cent.

B. 1977 Simplified Old Start Method - The PIB is the sum of 40% of the first $50.00 of the AMW and 10% of the next $200.00 of the AMW which is increased by 10% for each increment year. Round the PIB to the nearest whole cent.

1005.40.11 Conversion of PIB to PIA

The method of converting the PIB to the PIA depends upon the employee's eligibility year.

A. Eligibility Year Before 1979 - 1967 "Old Start" - To determine the 6/78 PIA, locate the amount of the PIB on the conversion chart in FOM-I-10, Appendix C. Use Appendix A to update the 6/78 PIA for subsequent COL increases.

B. Eligibility Year 1979 or Later - 1977 "Old Start" - Locate the amount of the PIB on the conversion chart in FOM-I-1005, Appendix C. The starting PIA is the 6-1978 or 1-1982 PIA. Cost-of-living percentage increases are added from the eligibility year.

The 1981 Social Security Act amendments eliminated the minimum PIB benefit for eligibility years after 1981 unless the "vow of poverty" rule applies.

An employee's life PIA #1, Retirement O/M PIA #9 and SS life benefit PIA will be reduced if the employee becomes eligible for a periodic payment based on service not covered by the Social Security Act or the Railroad Retirement Act after 1985 and the employee becomes eligible for a tier I benefit after 1985. The employee's death PIA #1 is not affected.

The PIA is computed in the usual way. Then it is reduced by the smaller of:

- One-half of the PIA; or
- One-half of the amount of the pension attributable to non-covered work performed after 1956 (see FOM-1-1005.35.5).

The reduction will not apply, however, if the employee:

1. Becomes entitled to a disability annuity before 1986 and remains entitled to it in any of the 12 months immediately before he attains age 62; or
2. Has 30 or more years of coverage as defined in FOM-1-1005.50.2; or
3. Is a Federal employee covered under the FERS retirement system or is an employee of a non-profit organization whose service becomes covered by the SS Act on 1-1-84; or
4. Meets the requirements for his pension prior to 1986, even if he does not elect to receive the pension until after 1985. In determining if this exemption applies, the individual must meet all requirements for the

pension (e.g., years of service, age, amount of contributions) prior to 1986.

1005.45 Computation Of PIAs Based On Prior Disability

1005.45.1 Prior Disability Termination Within 12 Months

When the employee was entitled to a disability annuity for any part of the 12 months immediately preceding the month of current disability, the month of death or the month of entitlement to an age and service benefit, the "eligibility year" is the year of the disability onset for the prior disability annuity.

The PIA #1, PIA #3, PIA #9 or PIA #17 for the current retirement annuity is the greater of the PIA with the "eligibility year" upon which the previous disability annuity was based, increased by intervening general and automatic benefit increases or recomputations that would have applied to the PIA had the individual remained entitled to that benefit; or, the special minimum PIA computed under the 1977 SS Act amendments.

If a minimum PIA applied for the prior disability annuity, it will continue to apply for the current annuity.

The survivor annuity gross tier I is based on the higher of the PIA computed with the "eligibility year" which was established for the prior disability annuity with increases or recomputations that would have applied to the PIA had the individual remained entitled to that benefit until the month in which (s)he died; or the special minimum PIA computed under the 1977 SS Act amendments.

1005.45.2 Prior Disability Entitlement Ended Before 12 Month Period Preceding Current Entitlement

A. Determining PIA Computation - When the employee was entitled to a disability annuity that terminated before the 12-month period immediately preceding the month of current disability, the month of death or the month of entitlement to an age and service annuity, the "eligibility year" is based on the year of current disability onset, year of attainment of age 62 or the year of death if prior to eligibility to a new retirement benefit. The PIA must be computed under the method applicable to the new eligibility year. The AIME computation "bend points" are based on this eligibility year (if 1979 or later). The prior period of disability can be excluded as explained inSection 1005.25.6.

B. DIB PIA Guarantee - The 1977 SS Act amendments guarantee that the amount of the PIA computed for life or death benefits based on the current "eligibility year" cannot be less than the amount of the PIA that was in force when the former disability annuity ended. This amount is not increased for intervening general and automatic benefit increases or recomputation after the termination of the prior disability and before the current entitlement. Therefore, the elimination

of the minimum PIA (1981 SS Act amendments) would have no effect on persons who previously were awarded a DIB based on a minimum PIA.

The PIAs designated under the Railroad Retirement Act as PIA #1, PIA #3, PIA #9 and PIA #17 are subject to the DIB PIA guarantee.

1005.50 Special Minimum PIA

1005.50.1 Use of Special Minimum PIA

The Special Minimum PIA (SPC MIN PIA) was established to provide a higher benefit for wage earners who had consistently low earnings.

The 1974 Railroad Retirement Act Pass-thru PIA, PIA #5, PIA # 11 or PIA #21 are computed under the SS Act rules in effect in 12-1974. For these PIAs, the SPC MIN PIA computed as of 12-1974 is an alternative to the AMW PIA computation.

The 1974 Railroad Retirement Act PIA #1, PIA #3, PIA #9, or PIA #17 are computed under the current SS Act rules:

- The employee attained age 62, had a disability onset date or died (before entitlement to a life benefit) before 1-1979, the SPC MIN PIA is an alternative to the AMW PIA and will be the PIA upon which all benefits are based until it is exceeded by the AMW PIA. If for any month the AMW PIA exceeds the SPC MIN PIA, the AMW PIA will be used to determine benefit amounts.

- If the employee attained age 62, had a disability onset date or died (before entitlement to a life benefit) on 1-1-79 or later, the SPC MIN PIA is an alternative to the AIME PIA (including FRZN MIN PIA) and, if a non-disabled employee attained age 62 in 1979-1983, is an alternative to the corresponding TRANS PIA. The SPC MIN PIA will be the PIA upon which all benefits are based until it is exceeded by one of the alternate PIAs. If for any month one of these alternate PIAs exceed the SPC MIN PIA, the alternate PIA will be used to determine benefit amount; and

- Under the 1977 SS Act amendments, the SPC MIN PIA (used for RR Act PIA #1, PIA #3, PIA #9, or PIA #17) is subject to automatic cost-of-living increases effective June 1979 or later without special eligibility requirements.

The increased range of SPC MIN PIAs and increased range of SPC MIN PIA family maximums will be published with each cost-of-living increase.

1005.50.2 Years of Coverage for Initial Computation of Special Minimum PIA

The special Minimum PIA "years of coverage" are the base years since 1937 in which the wage earner is credited with the amount of earnings indicated as follows:

A. For 1937-1950 Period - The total earnings credited to the individual in the 1937-1950 period is divided by $900, (disregarding any fraction). The result (up to a maximum of 14 years) is the number of years of coverage in the 1937-1950 period.

B. For Period After 1950 Through 1977 - One year of coverage is credited for each base year in which the wage earner has wage, compensation and SEI equal to or more than 25% of the maximum creditable earnings for that year (15% of the maximum for years after 1990).

Earnings are not indexed for the SPC MIN PIA. The years and amounts necessary to establish a "year of coverage" after 1950 through 1977 are as follows:

YEAR(S)	25% MAXIMUM	YEAR	25% MAXIMUM
1951-1954	$ 900	1973	$2,700
1955-1958	1,050	1974	3,300
1959-1965	1,200	1975	3,525
1966-1967	1,650	1976	3,825
1968-1971	1,950	1977	4,125
1972	2,250		

In determining a year of coverage for years after 1977, it is necessary to use the amounts that would have been computed if the 1977 SS Act amendments had not prescribed maximum creditable amounts.

YEAR	25% MAXIMUM	YEAR	25% MAXIMUM
1978	$4,425	1985	$ 7,425
1979	4,725	1986	7,875
1980	5,100	1987	8,175
1981	5,550	1988	8,400

1982	6,075	1989	8,925
1983	6,675	1990	9,525
1984	7,050		

Effective for years after 1990, 15% of the maximum creditable earnings for that year is used.

YEAR	15% MAXIMUM	YEAR	15% MAXIMUM	YEAR	15% MAXIMUM
1991	$5,940	2001	8,955	2011	11,880
1992	6,210	2002	9,450	2012	12,285
1993	6,435	2003	9,675	2013	12,645
1994	6,750	2004	9,765	2014	13,050
1995	6,795	2005	10,035	2015	13,230
1996	6,975	2006	10,485	2016	13,230
1997	7,290	2007	10,890	2017	14,175
1998	7,605	2008	11,385	2018	14,310
1999	8,055	2009	11,880		
2000	8,505	2010	11,880		

If it is necessary to exclude a period of disability to provide an "insured status," the years wholly within the period of disability cannot be counted as years of coverage to establish a special minimum PIA. Otherwise, years within a period of disability may be credited as years of coverage even if they are not used for the regular PIA computation.

Under SS Act rules, the last base year for the initial computation of the special minimum PIA for life benefits ends on December 31 of the year before the effective date of the PIA. For death benefits, the SPC MIN PIA last computation base year is the year of death.

EXAMPLE 1: The wage earner (DOB 7-11-14) is paid life benefits effective 7-1-79. The last computation base year for the SPC MIN PIA effective 7-1-79 ends on December 31, 1978.

EXAMPLE 2: The wage earner dies 9-25-78. The last computation base year for the SPC MIN PIA effective 9-1-78 is 1978.

1005.50.3 Additional Years of Coverage Due to Earnings in or After ABD Year

Under SSA rules, in life cases when the wages, compensation and SEI of the date of entitlement (ABD) year or later years equal or exceed 25% of the yearly maximum, (15% of the yearly maximum after 1990), these earnings are used effective January 1 of the following year to add years of coverage to increase the SPC MIN PIA.

1005.50.4 Amount of Special Minimum PIA Based on Year of Coverage

A. Months Prior to 3-1974 - The SPC MIN PIA is equal to $8.50 multiplied by the number of "years of coverage" in excess of 10, up to the maximum of 30 years.

B. 3-1974 through 12-1978 - For months from 3-1974 through 12-1978, the special minimum PIA will equal $9.00 for each year of coverage in excess of 10 up to the maximum of 30 years.

C. 1-1979 through 5-1979 - For months from 1-1979 through 5-1979, the special minimum PIA will equal $11.50 for each year of coverage in excess of 10 up to the maximum of 30 years.

D. 6-1979 and Later Months - The SPC MIN PIA is subject to automatic cost-of-living increase effective 6-1979 and later months. A table of the increased SPC MIN PIA amounts is published by SSA.

1005.50.5 Possible Special Minimum PIAs and Family Maximum Amounts

The possible special minimum PIAs and family maximum amounts may be found in FOM-I, Article 10, Appendix B.

1005.55 Cost-Of-Living Increases Under Social Security Act

1005.55.1 General

Beginning in 1975, the SS Act provides for a general automatic cost-of-living increase whenever the average monthly consumer price index for the base quarter of the year exceeds the average monthly consumer price index for the base quarter in a prior year by 3%.

From 1975 through 1982, the base quarter was the first quarter (January-March) and the COL increase was affective June 1. For 1983, the base quarter was the first quarter

and the COL increase is effective December 1. Beginning in 1984, the base quarter is the third quarter (July-September) and the COL increase is effective December 1.

From 1975 through 1983, the COL increase percentage was the same as the CPI increase percentage. Beginning in 1984, the COL increase percentage will be the same as the CPI increase percentage unless SSA's retirement and survivor and disability trust funds drop below a certain percentage of the benefit payments for the year. If this occurs, the COL increase is based on the smaller of the CPI increase or the average national wage (ANW) increase from the previous year to the year before the most recent year in which a COL increase or a general benefit increase was effective. However, no COL increase will be payable if the smaller increase is less than 3%.

The SS Act contains a mechanism to pay part of the COL increase withheld because the ANW increase percentage was less than the CPI increase percentage in a subsequent year if the trust fund balances rise to 32% of the benefit payments for the later year.

1005.55.2 Automatic Cost-of-Living Increases for Cases with Eligibility Year Before 1979

The PIA computations in effect under the SS Act before 1979 are increased for cost-of-living as explained in this section. Only the RR Act PIA #1, PIA #3, PIA #9 and PIA 17 are increased for cost-of-living under SS Act rules. The remaining RR Act PIAs are frozen at the 6-1974 PIA Table amount.

A. Cost-of Living Increase for AMW PIA - Employees who attained (or are deemed) age 62 before 1-1-79 or who have a disability onset date before 1-1-79 are entitled to an AMW PIA. SSA calculates the amount of the increased AMW PIAs and family maximums. The revised AMW PIAs and corresponding family maximums may be found in FOM-I, Article 10, Appendix A.

B. Cost-of-Living Increase for Special Minimum PIA - Prior to 1979, the Special Minimum PIA was not subject to automatic cost-of-living increases. Effective June 1979, regardless of the "eligibility year," the SPC MIN PIA and family maximum is subject to automatic cost-of-living increases. The revised SPC MIN PIAs and corresponding family maximums may be found in FOM-I, Article 10, Appendix B.

1005.55.3 Cost-of-Living Increases for Cases with Eligibility Year 1979 or Later

The PIA computations under the Social Security Act based on an eligibility year of 1979 or later are increased for the cost-of- living as explained in this section. The Railroad Retirement Act PIA #1, PIA #3, PIA #9 and PIA #17 are increased for cost-of-living under SS Act rules. The remaining RR Act PIAs are frozen at the 6-1974 PIA table amount.

A. Effect of the 1977 SS Act Amendments - Under the provisions of the 1977 Social Security Act amendments, benefits, other than the SPC MIN PIA and corresponding auxiliary benefits, for wage earners who attain age 62 or have disability onset 1-1-79 or later, are not automatically increased for the cost-of-living.

The initial PIA is either derived from the 6-1978 PIA table based on the AMW for the TRANS PIA, or is computed by applying the formula based on the "eligibility year" to the amount of the AIME for the AIME PIA. COL's are added to this PIA as follows:

1. Transitional PIA - The cost-of-living increases, beginning with the "eligibility year," are applied to the TRANS PIA and family maximum. If eligibility exists by December 31 of the calendar year, the TRANS PIA can be increased by the cost-of-living percentage for that year.

2. AIME PIA In general, the "bend points" (portions of AIME to which the percentages are applied) are adjusted each year if the average annual wage increases. The "bend points" which apply to the individual wage record, on the other hand, are established in the employee's "eligibility year" and do not change. Once established, the AIME PIA and family maximum are subject to cost-of-living increases from the "eligibility year." If eligibility exists by December 31 of the calendar year, the AIME PIA can be increased by the cost-of-living percentage for that year.

   EXAMPLE 1: The employee (DOB 9-4-18) does not cease last person service until 8-31-82. His "eligibility year" is 1980 based on attainment of age 62. Therefore, the AIME PIA is computed based on the bend points for 1980. The employee is entitled to all subsequent cost-of-living percentage increases.

   EXAMPLE 2: The employee (DOB 4-9-28) died 5-7-79 before eligibility to an annuity. His eligibility year is 1979. Therefore, the AIME PIA is computed based on the bend points for 1979 even though the widow does not attain age 60 until 1989. Cost-of-living percentages from 1979 through the widow's ABD are added to the amount of the initial AIME PIA. Since the employee died before attaining age 62 and while the widow was under age 60, an original rate (OR) computation must be made. The OR is determined by running through the PIA computations with the same earnings but using 1987 as the indexing year. The OR is compared to the AIME PIA and the higher of the two is used. The widow is entitled to all subsequent COL increases.

B. Effect of Railroad Retirement Solvency Act of 1983 - A 60/30 annuitant (age 60-61) who first meets the eligibility requirements for a 60/30 annuity 7-1-84 or later does not receive any COL increases on the initial PIA #1. Effective with the first month throughout which the employee is age 62, a new PIA #1 is computed

using the year of attainment as the eligibility year. COL increases are added beginning with the year the employee attains age 62.

C. Effect of Railroad Retirement and Survivors' Improvement Act (RRSIA) – 60/30 employees with an ABD of 1/1/2002 or later, as well as 60/30 spouses based on the entitlement of a 60/30 employee having an ABD of 1/1/2002 or later, receive COL increases from the eligibility year (EY), which can be as early as age 60. PIA #1 is computed using the employee's ABD year as the EY (but no later than actual age 62), deeming the employee to be age 62 in the ABD year. Both employee and spouse retain the employee ABD EY complete with COL increases from the EY throughout entitlement to the RRSIA 60/30 annuity.

Exception: Should a 60/30 spouse with an ABD of 1/1/2002 or later be entitled on the record of a **60/30 employee having an ABD prior to 1/1/2002**, the spouse annuity is paid under the rules of the Railroad Retirement Solvency Act of 1983 (see B. above), same as the employee.

1005.55.4 COST-OF-LIVING INCREASE AMOUNTS

A. The following cost-of-living percentages have been paid:

EFF.DATE	%	EFF.DATE	%	EFF.DATE	%
6/75	8%	12/90	5.4%	12/05	4.1%
6/76	6.4%	12/91	3.7%	12/06	3.3%
6/77	5.9%	12/92	3.0%	12/07	2.3%
6/78	6.5%	12/93	2.6%	12/08	5.8%
6/79	9.9%	12/94	2.8%	12/09	0.0%
6/80	14.3%	12/95	2.6%	12/10	0.0%
6/81	11.2%	12/96	2.9%	12/11	3.6%
6/82	7.4%	12/97	2.1%	12/12	1.7%
12/83	3.5%	12/98	1.3%	12/13	1.5%
12/84	3.5%	12/99	2.4%	12/14	1.7%
12/85	3.1%	12/00	3.5%	12/15	0.0%
12/86	1.3%	12/01	2.6%	12/16	0.3%

12/87	4.2%	12/02	1.4%	12/17	2.0%
12/88	4.0%	12/03	2.1%		
12/89	4.7%	12/04	2.7%		

B. Cumulative cost-of-living increases are applied to PIA 1 on the ABD from the eligibility year (benchmark year). The following cumulative percentages can be used to compute the Tier 1 PIA that would be effective on the ABD for annuity estimates only. Be sure to use the cumulative percentage listed for the eligibility year. The resulting PIA should be accurate to within one dollar:

PIA CONVERSION CHART FOR ANNUITY ESTIMATES AFTER NOVEMBER 2017

ELIGIBILITY YEAR	CUMULATIVE COL %	ELIGIBILITY YEAR	CUMULATIVE COL %
		2003	133.38%
2017	100.2%	2002	135.25%
2016	100.5%	2001	138.77%
2015	102.21%	2000	143.63%
2014	102.21%	1999	147.08%
2013	103.74%	1998	148.99%
2012	105.5%	1997	152.12%
2011	109.3%	1996	156.53%
2010	115.64%	1995	160.6%
2009	115.64%	1994	165.1%
2008	115.64%	1993	169.39%
2007	118.3%	1992	174.47%
2006	122.2%	1991	180.93%

2005	127.21%	1990	190.7%
2004	130.64%	1989	199.66%

For example, if the employee attained age 62 in 2014, and the estimated ABD is January 1, 2018, use the cumulative cost-of living increase for the benchmark year 2014 of 102.21%.

Initial PIA of $1250.00 X 102.21% = $1277.60.50 effective 1-1-2018.

1005.60 Delayed Retirement Credits

Delayed Retirement Credits (DRCs) increase PIAs (except the SPC MIN PIA) for certain individuals who did not receive benefits for months after attainment of FRA. They can be applied to all employee annuities. [Historical Note: The General Counsel held in Legal Opinion L78-561 (dated 9/28/1978) that under the SSA Amendments of 1977 (Public Law 95-216) DRC's can be applied to employee annuities which began prior to the employee's attainment of age 65 (FRA 2003 and later), including 60/30 annuities. This provision of PL 95-216 became effective with monthly benefits payable for months after May 1978. Prior to PL 95-216, DRC's could be applied only to employee annuities which began after the employee's attainment of age 65.]

1005.60.1 Increment Months

A. Increment months under the Social Security Act or RR Act formula 1-1-79 or later - For benefits payable 1-1-79 or later, regardless of the date of entitlement, an increment month is credited under the Social Security Act for each month for which a fully insured wage earner who has attained the age at which a full RIB can be paid to him under the SS Act (65 prior to 2003), but has not attained age 70 (72 before 1983) is not paid an RIB or a tier I because:

- His first month of entitlement to the RIB or to a tier I is after the month in which he attained FRA/age 65; or
- A full work deduction applies after the employee attains FRA/age 65, regardless of the first month of entitlement (for years prior to 2000).
- The employee's annuity is withheld due to "return to railroad service" for months after attaining FRA/age 65 and age 70.
- The employee's full tier I is waived. A DRC is NOT earned if tier I is reduced for SS benefits or if the tier I is reduced to zero for some other deduction besides work deductions as stated above.

Increment months can be credited in reduced age cases. The age reduction factor will remain the same but the amount of the age reduction will increase based on the gross pia increase due to the inclusion of

DRC(s). However, the increase due to these increment months cannot be paid before 1-1-79. Example: Mr. Smith retires at age 62 with an age reduction factor of .24583 applied to his annuity. At age 66 (his FRA), he waives his entire tier 1 in order to earn DRC's. At age 70 he revokes his waiver. As a result, he has earned 48 DRC's. The age reduction factor of .24583 is applied to the entire tier 1 gross amount (which includes DRC's).

PIA 1 amount of $1894.70

Tier 1 gross amount of $2501.00 (1894.7 x 48 x 2/3 of 1% + 1894.7)

Age reduction amount of $614.82 (.24583 x 2501)

Tier 1 net amount of $1886.18 (2501 – 614.82)

EXCEPTION: DRCs are not payable to those employees entitled on the basis of 5 years of railroad service after 1995 (RRSIA), who are entitled to an SSA old-age (RIB) or SSA disability (DIB), when that SSA entitlement is prior to or equal to the employee's full retirement age. See RCM 1.1.7D for more details.

B. Increment months under the O/M

1. 100% O/M - The delayed retirement benefit under the 1974 Railroad Retirement Act 100% O/M is computed under Social Security Act rules. An increment month is credited for each month for which an employee insured for the O/M who has attained the age at which a full RIB can be paid to him under the SS Act (65 prior to 2003), but has not attained age 70 (72 before 1983) is not paid an employee O/M benefit because:

   - His O/M effective date is after the month in which he attained FRA/age 65; or,
   - A full work deduction under the social security formula applies after employee attains FRA/age 65, even if the RR formula annuity is not subject to work deductions, regardless of the O/M effective date. (However, if the O/M is not paid in a month solely because the RR formula is higher, a DRC is not creditable.)

2. 110% Grandfather O/M - The 1973 amendments to the 1937 Railroad Retirement Act limited the increment months to be used in computing the delayed retirement bonus in 110% Grandfather O/M cases to months in which the employee:

   - Has actually attained age 65 (but has not attained age 72); and
   - Is insured for the O/M; and

- Has not filed for an RR employee annuity.

Months after the ABD for which work deductions would have been applied under the social security formula were not counted.

1005.60.2 Amount of DRC

A. For employees born before 1917, each DRC is equal to 1/12 of 1% of the regular AMW PIA. Special Minimum PIAs are not increased by DRCs.

B. For employees born between 1916 and 1925, each DRC is equal to 1/4 of 1% of the regular PIA. (The first month an employee can benefit from the increased percentage is 1-1983).

C. For employees who were born between 1924 and 1943, and each DRC is equal to the amount shown in the following chart:

YEAR EMPLOYEE BORN	%	DRC FIRST MONTH EMPLOYEE BENEFIT FROM INCREASED PERCENTAGE
1925	7/24 of 1%	1-1991
1926	7/24 of 1%	1 -1992
1927	1/3 of 1%	1-1993
1928	1/3 of 1%	1-1994
1929	3/8 of 1%	1-1995
1930	3/8 of 1%	1-1996
1931	5/12 of 1%	1-1997
1932	5/12 of 1%	1-1998
1933	11/24 of 1%	1-1999
1934	11/24 of 1%	1-2000
1935	1/2 of 1%	1-2001
1936	1/2 of 1%	1-2002
1937	13/24 of 1%	1-2003

YEAR EMPLOYEE BORN	%	DRC FIRST MONTH EMPLOYEE BENEFIT FROM INCREASED PERCENTAGE
1938	13/24 of 1%	1-2004
1939	7/12 of 1%	1-2005
1940	7/12 of 1%	1-2006
1941	5/8 of 1%	1-2007
1942	5/8 of 1%	1-2008

D. For employees born after 1942, each DRC is equal to 2/3 of 1% of the regular PIA. (The first month an employee can benefit from the increased percentage is 1-2009.)

1005.60.3 Effective Date of DRC

The earliest date DRCs can be credited is January 1 of the year after they are earned, except when attaining age 70 (see below). Those DRCs earned prior to the ABD year are credited on the ABD. The earliest date a full age or disability annuity can be increased is 1-1-73. The earliest date a reduced age annuity can be increased is 1-1-79.

a) DRCs earned on the ABD: DRC months are counted for those months over full retirement age (FRA) where the employee is eligible for annuity but did not receive payments. Only those DRCs earned through December of the year prior to the ABD year are payable on the ABD. (See exception for age 70 in c) below.)

Example: The employee (DOB 5/3/1946) has a RR ABD of 3/1/2013, having earned 8 DRCs from his attainment of FRA (5/2012) through the prior December (2012) and payable on the ABD. He'd be entitled to an additional 2 DRCs (for the months of 1/2013 and 2/2013) for a total of 10 DRCs payable January 1, 2014.

b) DRCs earned in year(s) prior to the year of attainment of age 70: for DRCs earned in *years* prior to age 70, the DRC increase is payable effective January of the following year. For DRCs earned in the year of attainment of age 70, the DRC increase is payable beginning with the month the employee attains age 70.

Example: the employee (DOB 5/14/1943) has a RR ABD of 3/1/2013, having earned 44 DRCs (FRA – 5/2009) through the prior December (2012) and payable on the ABD. His annuity is increased 5/1/2013, the month he attains age 70, to include an additional 2 DRC months, those earned in the year of attainment of age 70 (1/2013 & 2/2013). Therefore, 46 DRCs are payable effective 5/1/2013.

c) DRCs earned with ABD at age 70 or later: for those applicants entitled at age 70 or older, all earned DRCs are included on the ABD.

Example: The employee (DOB 5/28/1943) has a RR ABD of 5/1/2013. Since he attains age 70 in his ABD month, he's entitled to the full 48 DRCs (FRA age 66) on his ABD. (This would also be true if his ABD was later than 5/1/2013.)1005.60.4 DRCs for Widow(er)s

The 1977 SS Act Amendments provided that a widow(er) is entitled to any delayed retirement credits (DRCs) that the deceased employee would have received had he been alive at the time of the widow(er)'s entitlement.

A fictional retirement insurance benefit (RIB) is computed for the deceased employee. It is equal to PIA #9 plus DRCs minus any age reduction (for the employee). The widow(er)'s tier I will be based on the higher of the fictional RIB or the special minimum PIA (the special minimum PIA cannot be increased by DRCs).

1010.5 SSA Family Maximum Defined

The Social Security Act limits the amount of monthly benefits which can be paid for any month on an employee's earnings record. The limited amount is called the SSA Family Maximum. This chapter explains the various SSA Family Maximums.

The 1980 SS Act amendments established a separate family maximum computation for disability O/M cases when the disability onset date is after 1978 and the DIB O/M effective date is 7-1-80 or later (see FOM-I-1010.35). Before 7-1-80, age and service and DIB O/M SSA family maximums were the same.

Under the RR Act, survivor benefits or retirement O/M benefits will usually be reduced to the SSA family maximum if:

A. Three or more individuals are included in the family group, or

B. Two persons are included in the family group, and

- One of them is an aged or disabled widow(er), or
- It is a disability case and the onset date is after 1978 and the DIB O/M effective date is 7-1-80 or later.

  NOTE: Divorced spouses and surviving divorced spouses are not considered in the SSA family maximum. Surviving divorced mothers/fathers and remarried widow(er)s are considered in the SSA family maximum.

1010.10 Table PIA Maximum

The PIA for an employee who attained age 62, became disabled or died before 1979 is based on his average monthly earnings and is determined from a table defined in the SS Act. The SSA family maximums for employees eligible before 1979 are also found in this table in the law.

From 1971-1978, the table PIA maximums were increased with each amendment increase. After 1978, the automatic COL increases also increase the table PIA maximums because the employee was eligible before 1979.

A summary of the table PIAs and current maximums is found in Appendix A to this article.

1010.15 Special Minimum PIA Maximum

1010.15.1 Prior to 1-1979

If the special minimum PIA applied prior to 1-1-79, the monthly SPC MIN maximum was the table maximum indicated in the AMW PIA table for the AMW PIA that is either equal to the SPC MIN PIA or immediately greater than the SPC MIN PIA.

1010.15.2 1-1979 or Later

Effective 1-1979, the special minimum PIA table maximums are published separately from the AMW PIA tables. The 1980 Social Security Disability amendments later excluded from the family maximum computation, disability annuitants whose onset date is 1978 or later and whose DIB O/M effective date is July 1980 or later. The SPC MIN PIA family maximum tables continue to apply for survivor and disability cases payable prior to 7-1-80 with onset after 1978.

The 1981 SS amendments retained the special minimum provision.

1010.15.3 Summary of SPC MIN PIA Maximums

A summary of SPC MIN PIA family monthly maximums is found in Appendix B to this article.

1010.20 Basic Family Maximum Benefit for AIME Or TRANS PIA

The 1977 SS Act amendments established a four-step formula to compute the family maximum benefit for the AIME PIA or TRANS PIA for all employees who have an eligibility year of 1979 or later. The 1980 Social Security Disability amendments later excluded from this family maximum computation disability annuitants whose first eligibility is after 1978 and whose first month of entitlement to the DIB O/M payment is July 1980 or later (see FOM-I-1040.5.9). The formula continues to apply for age and service cases, survivor cases, disability cases payable prior to 7-1-80 with onset after 1978 and disability entitlement cases payable 7-1-80 or later in which disability benefits were previously paid before 7-1-80.

Under this family maximum computation, the percentages in the formula are constant but the amounts, "bend points," in each step will be adjusted each year as average wages rise. The "bend points" will be published by SSA in November before the eligibility year to which they apply.

The AIME, TRANS or "1977 old start" family maximum benefit is determined with "bend points" based on the benchmark year regardless of date of filing. When the date of entitlement is on or after the tier I cost-of-living increase effective date in the benchmark year, a cost-of-living percentage increase is applied to the initial family maximum benefit amount. Subsequent cost-of-living percentage increases are payable from the benchmark year.

AIME, TRANS or 1977 old start PIAs for eligibility years before 1982, if not a multiple of $0.10, are rounded up to the next higher multiple of $0.10 in the initial computation and any recomputation or cost-of-living increase through 5-31-82. Effective with the 6-1-82 COL adjustments to these PIAs, if the result is not a multiple of $0.10, it is rounded down to the next lower multiple of $0.10.

The family maximum benefit computed for PIA #9 for eligibility years 1982 or later is subject to the 1981 SS Act amendments from the initial computation. Add the results of the calculations listed below together. If the result is not a multiple of $0.10, it is rounded down to the next lower multiple of $0.10.

SUMMARY OF FAMILY MAXIMUM BEND POINTS						
Year	**150% of the PIA Up To**	**272% of the PIA Over**	**Through**	**134% of the PIA Over**	**Through**	**175% of the PIA Over**
1979	$230	$230	$332	$332	$433	$433
1980	248	248	358	358	467	467
1981	270	270	390	390	508	508
1982	294	294	425	425	554	554
1983	324	324	468	468	610	610
1984	342	342	493	493	643	643
1985	358	358	517	517	675	675
1986	379	379	548	548	714	714
1987	396	396	571	571	745	745
1988	$407	$407	$588	$588	$ 767	$ 767
1989	433	433	626	626	816	816
1990	455	455	656	656	856	856
1991	473	473	682	682	890	890
1992	495	495	714	714	931	931
1993	513	513	740	740	966	966

SUMMARY OF FAMILY MAXIMUM BEND POINTS						
Year	**150% of the PIA Up To**	**272% of the PIA Over**	**Through**	**134% of the PIA Over**	**Through**	**175% of the PIA Over**
1994	539	539	779	779	1,016	1,016
1995	544	544	785	785	1,024	1,024
1996	559	559	806	806	1,052	1,052
1997	581	581	839	839	1,094	1,094
1998	609	609	880	880	1,147	1,147
1999	645	645	931	931	1,214	1,214
2000	679	679	980	980	1,278	1,278
2001	717	717	1,034	1,034	1,349	1,349
2002	756	756	1,092	1,092	1,424	1,424
2003	774	774	1,118	1,118	1,458	1,458
2004	782	782	1,129	1,129	1,472	1,472
2005	801	801	1,156	1,156	1,508	1,508
2006	838	838	1,210	1,210	1,578	1,578
2007	869	869	1,255	1,255	1,636	1,636
2008	909	909	1,312	1,312	1,711	1,711
2009	950	950	1,372	1,372	1,789	1,789
2010	972	972	1,403	1,403	1,830	1,830
2011	957	957	1,382	1,382	1,803	1,803
2012	980	980	1,415	1,415	1,845	1,845
2013	1,011	1,011	1,459	1,459	1,903	1,903
2014	1,042	1,042	1,505	1,505	1,962	1,962

SUMMARY OF FAMILY MAXIMUM BEND POINTS						
Year	**150% of the PIA Up To**	**272% of the PIA Over**	**Through**	**134% of the PIA Over**	**Through**	**175% of the PIA Over**
2015	1,056	1,056	1,524	1,524	1,987	1,987
2016	1,093	1,093	1,578	1,578	2,058	2,058
2017	1,131	1,131	1,633	1,633	2,130	2,130

1010.25 Benefit Conversion And Cost-Of-Living Savings Clause Family Maximums

When the SS Act was changed to add new categories of beneficiaries or to increase benefits, "savings clauses" were included to prevent the reduction of the benefits of persons already on the rolls or to make sure they received the full, intended increase.

1010.25.1 Benefit Conversion Savings Clause

Prior to the 1971 Social Security Act amendments, the SSA table maximums were not always increased by the same percentage as the PIA increase. The amendments that increased the SSA Act benefits in 1972 and earlier, provided for a benefit conversion savings clause that guaranteed the family group on the rolls the same percentage increase in the amount of the family monthly maximum as the regular PIA increase for the same years.

1010.25.2 Cost-of-Living Savings Clause

The 1972 amendments to the Social Security Act established a cost-of-living savings clause which guaranteed the family group the full amount of any percentage increase to the previous family monthly maximum amount whenever a cost-of-living or general benefit increase occurred provided:

- Two or more persons currently included in the computation were included in the family group for 1-1971 or any prior month based upon an application filed (or deemed to be filed) on or before 2-1-71; and,
- The family monthly maximum was in effect for such months; and,
- A prior savings clause maximum is in effect in the month before the cost-of-living increase.

The following cost-of-living percentage increases have been paid to date:

Effective Date	Percentage		Effective Date	Percentage
3/74	7%	(11% increase to 9/72 rate in two steps)	12/98	1.3%
6/74	4%		12/99	2.4%
6/75	8%		12/00	3.5%
6/76	6.4%		12/01	2.6%
6/77	5.9%		12/02	1.4%
6/78	6.5%		12/03	2.1%
6/79	9.9%		12/04	2.7%
6/80	14.3%		12/05	4.1%
6/81	11.2%		12/06	3.3%
6/82	7.4%		12/07	2.3%
2/83	3.5%		12/08	5.8%
12/84	3.5%		12/09	No COLA
12/85	3.1%		12/10	No COLA
12/86	1.3%		12/11	3.6%
12/87	4.2%		12/12	1.7%
12/88	4.0%		12/13	1.5%
12/89	4.7%		12/14	1.7%
12/90	5.4%		12/15	No COLA
12/91	3.7%		12/16	0.3%
12/92	3.0%			
12/93	2.6%			
12/94	2.8%			
12/95	2.6%			
12/96	2.9%			
12/97	2.1%			

This guaranteed amount could be payable under the SSA formula until:

- A table maximum for a new PIA is higher (e.g., recomputation); or,

- A new cost-of-living savings clause maximum is established for a subsequent year; or,

- The family group is no longer subject to the family monthly maximum (although the savings clause may re-apply later).

1010.25.3 Computation of Savings Clause Family Maximum

In 1974 Railroad Retirement Act cases, the savings clause rates are determined by increasing each beneficiary's rounded pre-COL original or reduced for maximum rate in the month of the cost-of-living increase by the COL percentage. The result is then rounded if necessary to end in $0.10. If the sum of the rounded increased original or reduced for maximum rates exceeds the table maximum, it is considered a savings clause maximum.

1010.25.4 The Family Payment Savings Clause

A. General - The Family Payment Savings clause guarantees that total family benefits are not decreased due to a PIA increase. The savings clause protection is maintained even when the family composition changes, as long as the maximum still applies.

The Family Payment Savings clause can apply in any case in which benefits are limited to the family monthly maximum.

B. Computation of Family Payment Savings Clause - The Family Payment Savings clause originally computed under the 1969 Social Security Act amendments was determined by computing the total monthly benefits payable under the SS Act under the 1967 and the 1969 amendments. The higher of the two amounts was payable to the family group.

Under the July 1972 SS Act amendments, the total monthly benefits on the earnings record under the increased PIA are adjusted by the amount which will assure that the total monthly payment (after reduction for the maximum and for age) is not less than the total monthly benefits (after reduction for the maximum and for age) for the month immediately preceding the month of the PIA increase.

1010.25.5 Redetermination Savings Clause

The October 1972 amendments to the Social Security Act established a Redetermination Savings clause for survivor cases in which the widow(er) is included in a family in both 12-1972 and 1-1973 and the benefits of the family require a reduction for the family maximum. Under this savings clause, other beneficiaries will not have their benefits decreased because the widow(er)'s benefit was increased in 1-1973.

1010.30 Combined Family Maximum Amount

If a child is entitled to benefits as a child on two wage records, a combined family maximum may apply. All children eligible on the same earnings records must be handled as an indivisible group. If children are eligible on both their mother's and father's earnings records, all of the children must be actually entitled on one parent's earnings record.

When a combined maximum is initially established it equals the sum of the table or formula family maximums (not savings clause maximums) on the earnings records on which the child is simultaneously entitled. The combined maximum cannot exceed:

- The highest possible table maximum when all the PIAs are AMW PIAs (i.e., eligibility before 1979). The combined maximum can be changed by both COL increases and any increase in the PIA table in January.

- 1 3/4 times the AIME PIA based on an AIME based on the current monthly creditable tier I earnings, using the bend points for the year for which the maximum is being computed, when one or more of the PIAs is an AIME or TRANS PIA. Once the combined maximum is determined, it will be changed only by COL increases.

1010.35 Family Maximum Benefit For Disability Cases Under 1980 SS Act Amendments

Prior to the 1980 Social Security Disability amendments, the computation of the family maximum was the same for both age and service and disability cases.

Under the 1980 Social Security Act disability amendments, the total family benefits of disability claimants whose first eligibility is after 1978 and whose first month of entitlement to the DIB O/M payment is July 1980 or later are limited as follows:

A. Payments based on AIME PIA - This comparison is made based on the AIME. The DIB O/M MAX is 85% of the employee's average indexed monthly earnings (AIME), but not less than 100% of the employee's AIME PIA, nor more than 150% of the employee's AIME PIA.

   The SSA family maximum is determined based upon the eligibility year (benchmark year) regardless of the date of filing. When the date of entitlement is on or after the tier I cost-of-living increase effective date in the benchmark year, a cost-of-living percentage increase is applied to the initial family maximum benefit amount. Subsequent COL percentage increases are payable from the eligibility year.

B. Payments based on SPC MIN PIA - This comparison is based on the actual PIAs effective on the DIB O/M effective date (including cost-of-living). The DIB O/M MAX is the smaller of:

- 85 percent of the AIME multiplied by the percentages of all intervening COL increases up to the DIB O/M effective date, but no less than the SPC MIN PIA on the DIB O/M effective date; or,

- 150 percent of the SPC MIN PIA effective on the DIB O/M effective date.

After the DIB O/M MAX is determined, subsequent percentage cost-of- living increases are applied to both the PIA and the DIB O/M MAX amounts.

Effective 9-1-81 or later, if the result of the DIB O/M MAX computation is not a multiple of $0.10, it is rounded down to the next lower multiple of $0.10.

If the PIA is recomputed, the above tests are also applied to the new PIA.

The DIB O/M MAX will apply for eligible family groups until the employee dies or becomes entitled to an age and service O/M. At that time, the regular family maximum can apply.

In the case of an employee who is entitled to either a reduced age and service O/M or DIB O/M which begins July 1, 1980, or later, based on first eligibility after 1978, BRB will determine if the age and service monthly family maximum would provide a higher rate. If it does, BRC will send an assignment requesting you to explain this to the employee and to give the employee the opportunity to elect a reduced age and service O/M. If the A&S O/M is elected, entitlement to the disability freeze is still applicable for Medicare purposes.

1015.5 Actual Computation

This section provides a detailed explanation of all the steps involved in computing a regular employee retirement annuity. It is not an easy section to follow because of the complexities of the 1974 Railroad Retirement (RR) Act. It should, however, prove useful in understanding and explaining the computation.

1015.5.1 Tier I

The first tier is an amount computed under the social security benefit formula using the employee's combined railroad and social security earnings. Any social security benefit payable to the employee is subtracted from the tier I amount.

A. Tier I PIA

1. In a 1974 RR Act case (ABD and/or application filing date after 1974), the tier I PIA is the higher of the employee's:

   - Regular PIA #1, with delayed retirement credits (DRCs), if applicable; or
   - Special Minimum PIA #1.

   The tier I PIA may be found:

   - On the MARC under the heading "tier I, PIA 1"; or
   - For retired employees, screen 3210 of PREH.

2. In most conversion cases (ABD and application filing date before 1975), the tier I PIA is the higher of the employee's:

   - Regular pass-thru PIA; or
   - Special minimum pass-thru PIA.

   In some cases, the tier I PIA is the 12-1974 annuity rate plus COL subsequent increases.

B. Delayed Retirement Credits (DRCs) - DRCs may be added to all types of employee annuities.

1. Increment Months - One DRC is given for each increment month. An increment month is any month after 12-1970 in which the employee:

   a. Under the 1937 RR Act:

- Is not paid an RR annuity for the month of attainment of age 65 and later months up to the earlier of the ABD month or the month of attainment of age 72; and,

- Is fully insured under SS Act rules considering combined wages and compensation; or,

b. Under the 1974 RR Act and 1983 SS Act amendments:

- Has attained the age at which a full RIB can be paid to him under the SS Act (65 prior to 2003); and,

- Has not attained age 70 (72 before 1983); and,

- Is fully insured under the SS Act based on combined wages and compensation for months before the ABD month; and,

- Either 1) is not entitled to a retirement annuity, 2) has filed for the retirement annuity but the full amount of the tier I and vested dual Benefit (VDB) W/D components are not payable due to permanent work deductions under SS Act rules, or 3) the employee annuity was not paid for months where there was a return to railroad service. If the employee is in last person pre-retirement employment the amount of earnings must be sufficient to cause full withholding of the tier I and VDB components under Social Security (SS) Act rules, in order to credit increment months. The employee must have a work deduction insured status to receive DRCs based on work deductions; or,

c. Under the Railroad Retirement Improvement Act of 2001 (RRSIA):

- If the employee is entitled to an RR annuity based on 60-119 months of service acquired after 1995 under the Railroad Retirement Act of 2001, see RCM 1.1.7D for special rules on computing DRCs.

2. The employee's date of birth is the basis for the employee's full retirement age (FRA), his DRC percentage increase, and the maximum number of DRCs which an employee can earn. See the following chart for this data:

Date of Birth	EE attains FRA	Delayed Retirement Percent	Maximum number of DRC months
Before 2/2/12	65 years	1/12 of 1%	84
2/2/12 – 3/1/12	65 years	1/12 of 1%	83
3/2/12 – 4/1/12	65 years	1/12 of 1%	82

4/2/12 – 5/1/12	65 years	1/12 of 1%	81
5/2/12 – 6/1/12	65 years	1/12 of 1%	80
6/2/12 – 7/1/12	65 years	1/12 of 1%	79
7/2/12 – 8/1/12	65 years	1/12 of 1%	78
8/2/12 – 9/1/12	65 years	1/12 of 1%	77
9/2/12 – 10/1/12	65 years	1/12 of 1%	76
10/2/12 – 11/1/12	65 years	1/12 of 1%	75
11/2/12 – 12/1/12	65 years	1/12 of 1%	74
12/2/12 – 1/1/13	65 years	1/12 of 1%	73
1/2/13 – 2/1/13	65 years	1/12 of 1%	72
2/2/13 – 3/1/13	65 years	1/12 of 1%	71
3/2/13 – 4/1/13	65 years	1/12 of 1%	70
4/2/13 – 5/1/13	65 years	1/12 of 1%	69
5/2/13 – 6/1/13	65 years	1/12 of 1%	68
6/2/13 – 7/1/13	65 years	1/12 of 1%	67
7/2/13 – 8/1/13	65 years	1/12 of 1%	66
8/2/13 – 9/1/13	65 years	1/12 of 1%	65
9/2/13 – 10/1/13	65 years	1/12 of 1%	64
10/2/13 – 11/1/13	65 years	1/12 of 1%	63
11/2/13 – 12/1/13	65 years	1/12 of 1%	62
12/2/13 – 1/1/14	65 years	1/12 of 1%	61
1/2/14 – 1/1/17	65 years	1/12 of 1%	60
1/2/17 – 1/1/25	65 years	¼ of 1%	60
1/2/25 – 1/1/27	65 years	7/24 of 1%	60
1/2/27 – 1/1/29	65 years	1/3 of 1%	60
1/2/29 – 1/1/31	65 years	3/8 of 1%	60
1/2/31 – 1/1/33	65 years	5/12 of 1%	60
1/2/33 – 1/1/35	65 years	11/24 of 1%	60
1/2/35 – 1/1/37	65 years	½ of 1%	60
1/2/37 – 1/1/38	65 years	13/24 of 1%	60
1/2/38 – 1/1/39	65 years 2 months	13/24 of 1%	58
1/2/39 – 1/1/40	65 years 4 months	7/12 of 1%	56
1/2/40 – 1/1/41	65 years 6 months	7/12 of 1%	54
1/2/41 – 1/1/42	65 years 8 months	5/8 of 1%	52
1/2/42 – 1/1/43	65 years 10 months	5/8 of 1%	50
1/2/43 – 1/1/55	66 years	2/3 of 1%	48
1/2/55 – 1/1/56	66 years 2 months	2/3 of 1%	46

1/2/56 – 1/1/57	66 years 4 months	2/3 of 1%	44
1/2/57 – 1/1/58	66 years 6 months	2/3 of 1%	42
1/2/58 – 1/1/59	66 years 8 months	2/3 of 1%	40
1/2/59 – 1/1/60	66 years 10 months	2/3 of 1%	38
After 1/1/60	67 years	2/3 of 1%	36

3. Effective date of DRC - The earliest date DRCs can be credited is January 1 of the year after the year they are earned, except when the DRC(s) is earned in the year the employee attains age 70. In that case, DRCs are payable effective with the month the employee attains age 70. The earliest date a full age or disability annuity can be increased is 1-1-73. The earliest date a reduced age or 60/30 annuity can be increased is 1-1-79.

C. Gross tier I - The gross tier I is equal to the sum of the tier I PIA plus any DRCs.

The gross tier 1 is rounded down to the nearest dollar except in reduced 60/30 cases in which the gross tier 1 is not rounded until after the age reduction.

D. Age reduction - An age and service annuity, other than an unreduced 60/30 annuity, which begins prior to the month the employee attains full retirement age is reduced for age.

1. Employee with less than 30 years of service first awarded on 10-1-81 or later - The tier I PIA is reduced by 1/180 for each month the employee is under full retirement age on his ABD. For employees born before 1938, retirement age is defined as age 65. If the employee filed an application for an annuity before September 1, 1983, the tier I could have been reduced for months before it became payable due to the limitations on tier I retroactivity which resulted from the 1981 SS Act amendments.

Example 1: An employee born on 6/5/19 filed an application on 6/4/82 for a reduced age and service annuity to begin on the earliest date permitted by law. He did not work in RR or last person service after 5/30/81.

His tier I was reduced by 36/180 even though it could not begin until 6/1/82 because of the restriction on retroactivity. His tier II retroacted 12 months and began on 6/1/81.

Example 2: An employee born on 6/3/20 filed an application for a reduced age and service annuity to begin on the earliest date permitted by law. His date last worked was 5/31/82.

His tier I was reduced by 36/180 even though it could not begin until 7/1/82 because no tier I was payable for the month of a reduced age and service employee's 62nd birthday unless he was born on the first or second day of the month. His tier II began 6/1/82, the day after his DLW.

When the tier I PIA is increased or decreased, the age reduction in the amount of the increase or the decrease will be computed using the age reduction factor which applied on the ABD.

2. Employee first eligible for a 60/30 annuity 7-1-84 or later with an ABD before age 62 and that ABD occurs before 1-1-2002 - If the employee first becomes eligible for a 60/30 annuity after 6-30-84 and before 1-1-86, his initial tier I PIA is reduced by 10% for early retirement. The initial PIA is not subject to COL increases. Effective with the first month, throughout which the employee is age 62, a new tier 1 PIA is computed using the year of attainment as the eligibility year. That PIA is subject to COL increases and is reduced for early retirement. The reduction is 35/360 if the employee's DOB is not on the first or second day of the month.

   If the employee first becomes eligible for a 60/30 annuity 1-1-86 or later with an ABD before 1-1-2002, his initial tier I PIA is reduced by 20% for early retirement. The initial PIA is not subject to COL increases. Effective with the first month, throughout which the employee is age 62, a new tier I PIA is computed using the year of attainment as the eligibility year. That PIA is subject to COL increases and is reduced for early retirement. The reduction is 35/180 if the employee's DOB is not the first or second day of the month.

   The age reduction factor is rounded up to the next dime. The result of the AIME PIA minus the rounded age reduction factor is rounded down to the next dollar.

   Examples:

   1. An employee born on 10/12/24 with over 360 months of creditable railroad service files an application for a 60/30 annuity to begin 10-1-84.

	10/1/84	**12/1/84**	**12/1/85**	**11/1/86**
PIA # 1	694.00	694.00	694.00	760.00
10% age reduction	69.40	69.40	69.40	-73.90*
Net Tier I	624.00	624.00	624.00	686.00
Tier II	350.00	353.85	353.85	353.85

Annuity Rate	974.00	977.85	977.85	1039.85

*Based on 35/180 divided by 2 times PIA 1, rather than 10%.

2. An employee born 11/4/25 acquires his 360th month of creditable railroad service in 9/86 and files an application for an annuity to begin 10/1/86.

	10/1/86	**12/1/86**	**12/1/87**
PIA # 1	680.00	680.00	713.00
Age reduction	136.00	136.00	138.70
Net Tier I	544.00	544.00	574.00
Tier II	340.00	341.36	346.14
Annuity Rate	884.00	885.36	920.14

When the tier I PIA is increased or decreased, the age reduction in the amount of the increase or decrease will be computed using the age reduction factor which applied on the ABD until the employee is 62 for one full month. The age reduction factor is then recomputed and the recomputed age reduction factor is applied to future tier I rate changes. (If the employee was born on the 1st or 2nd of the month, the age reduction factor does not change at age 62).

3. Employee eligible under the 60/30 provisions with an ABD 1-1-2002 or later. Under the provisions of RRSIA, the employee may be entitled to a full 60/30 annuity effective with the first full month the employee is age 60. No age reduction is applied. The initial PIA is subject to COL increases. Earnings in the ABD year or later cannot be included in the computation of PIA 1 until the January after the employee attains age 62. The eligibility year does not change.

4. Employee entitled under the Railroad Retirement Improvement Act of 2001 (RRSIA) with 60-119 months of service. If the employee is entitled to an RR annuity based on 60-119 months of service acquired after 1995 under the Railroad Retirement Act of 2001, see RCM 1.1.7D for special rules on computing age reduction.

E. Worker's Compensation and Public Disability Pension Offset - An offset for WC or public disability benefits may be applied to tier I of employee disability

annuities or the DIB O/M, and spouse or divorced spouse annuities on the same account. The reduction is first applied to the spouse and/or divorced spouse annuity tier I (in equal amounts if both are entitled), then to the employee annuity tier I. The WC reduction does not apply to a retirement age and service annuity, even if the employee has a disability freeze (DF).

1. Annuity beginning date 9-1-81 or later - These conditions will apply if the employee does not have a DF or if the DF begins 3-2-81 or later. The effect of a DF before 3-2-81 has not been determined.

    - Public disability benefit offset - Tier I of a disability annuity or the DIB O/M is reduced for entitlement to a worker's compensation payment and/or a public disability benefit. If there is entitlement to both WC and a public disability benefit, the total of both benefits is used to compute the annuity reduction.

    - Effective date of reduction - The date that we receive notice of entitlement to WC or public disability benefits does not affect the annuity reduction. Tier I is reduced in any month the offset applies regardless of the date the RRB is informed of the entitlement to WC or public disability benefits.

    - Offset removed at age 65 - Offset for WC or public disability benefits no longer applies beginning the month the employee attains age 65 for those annuitants who attain age 65 before December 19, 2015 .

- Offset removed at full retirement age (FRA) - Effective December 19, 2015, those annuitants who attain age 65 **on** December 19, 2015 (DOB of 12/20/1950) or later, the removal of the WC/PDB offset will occur at FRA.

2. Annuity beginning date before 9-1-81 - These conditions apply if the employee does not have a DF or if the DF begins before 3-2-81. The effect of a DF 3-2-81 or later has not been determined.

    - Only WC reduction - There is no reduction for a public disability benefit. Tier I may be reduced only for entitlement to WC payments.

    - No reduction before notice received - The annuity reduction for WC is not effective until the month after the month in which the RRB receives notice of the WC entitlement.

    - Offset removed at age 62 - Offset for WC no longer applies beginning the month the employee attains age 62.

3. Formula for offset - The WC offset only applies if the sum of the WC and/or public disability benefit plus the total family tier I amount is more than 80% of the employee's average current earnings (ACE). If the

earnings used in computing the ACE are sufficiently high, there is no reduction, even if the employee is receiving WC benefits.

The following formula is used to determine the amount of the WC offset, which is then deducted from the spouse/divorced spouse gross tier I and the employee gross tier I:

Tier I total + WC/public disability benefit
-Higher of tier I total or 80% of ACE
WC/public disability benefit offset

Definitions of terms used in formula:

Tier I total - The tier I total is the total of the employee, spouse and/or divorced spouse tier I amounts payable in the first month of reduction for WC/public benefit. The gross tier I is used, before any reduction.

If the family composition changes after the first reduction month, the tier I total is recomputed as if the annuitants to be included were entitled in the first month of reduction for WC/public benefit.

WC/public disability benefit amount - The actual monthly rate is used for offset if the WC/public disability benefit amount is verified. If the employee does not submit evidence of the amount, such as an award letter, the maximum WC payable in the state of the employee's residence will be used for reduction if it is higher than the amount claimed by the employee.

The offset:

Equals the WC/public disability benefit if the tier I total is higher than 80% of the ACE.

Is less than the WC/public disability benefit if 80% of the ACE is higher than the tier I total.

Equals zero if the tier I total plus the WC/public disability benefit is lower than 80% of the ACE.

Is never greater than the amount of the WC/public disability benefit.

The monthly rate is calculated if the benefit is paid weekly or biweekly. A lump-sum award is prorated to determine the monthly rate. Legal, medical and related expenses may be excluded from the WC amount if they were incurred in connection with the WC claim.

4. Average Current Earnings (ACE) - The employee's earnings may determine whether the reduction for WC/public disability benefit applies or

the amount of a reduction. The ACE is the highest of the following amounts:

(a) The AMW (average monthly wage) on which the employee's tier I PIA is based. If the tier I PIA is an AIME PIA instead of a table PIA, the employee's earnings are used to compute a fictitious AMW;

(b) The average monthly earnings for the 5 consecutive years after 1950 with the highest earnings; or

(c) The average monthly earnings for the one calendar year of highest earnings in the period consisting of the year the annuity begins (or the DF year, if earlier) and the 5 preceding years.

The earnings used in the computation of the ACE under option (a) or (b) are not limited by the yearly maximum. The total actual earnings (RR compensation and SS wages) are used in computing the ACE, regardless of the yearly maximum.

F. SS benefit reduction - The SS benefit reduction is the amount of any SS benefit(s) payable to the employee.

NOTE: An SS benefit withheld because of excess earnings is considered to be "payable." If the employee's SS benefit is reduced because of receipt of a public service pension, or worker's compensation/public disability benefits, the SS benefit reduction is based on the amount of the SS benefit payable after the offset for those benefits.

G. Military service reduction - Prior to September 1, 1983, if the employee was receiving a monthly benefit from another Federal agency based on military service included as RR compensation in the computation of his annuity, his tier I was reduced (see FOM-1-1015.5.5).

H. Net tier I - The net tier I is equal to the difference between the gross tier I and the amount of any SS benefit payable to the employee.

NOTES:

1. Under the 1981 SS Act amendments, tier I is not payable in a reduced age and service case until the first full month the employee is age 62. To be entitled to a tier 1 for the month of his 62nd birthday, a reduced for age employee must be born on the first or second day of the month.

2. Under the 1983 RR Act amendments, a reduced age and service annuity (this term does not include reduced 60/30 annuities) is not payable until the first full month the employee is age 62.

3. Tier I is not payable in 60/30 cases until the first full month the employee is age 60. To be entitled to a tier I for the month of his 60th birthday, a 60/30 employee must be born on the first or second day of the month.

4. Under the 1988 SS Act amendments, the employee's tier I benefit is not payable if the employee is deported effective 11-10-89 or later due to associations with the German Nazi government during World War II. Suspension of tier I is effective with the month after the month the final orders of deportation are received.

For additional information on Workers' Compensation/Public Disability Benefit offset provisions see SSA DI 52101.005.

1015.5.2 Tier II for Employees First Awarded on October 1, 1981 or Later

A. 1) Basic tier II - The basic tier II is equal to the employee's high 60 AMC (average monthly compensation) times .7 of 1% times his unrounded years of service. Expressed mathematically, the gross tier II is:

AMC x .007 x YOS

The high 60 AMC is equal to the employee's total raw compensation for his highest 60 months of compensation (subject to the tier II maximum) divided by 60. If it is not a multiple of $1.00, it is rounded down to the next lower multiple of $1.00.

The 60 months do not need to be consecutive. If RRB records do not show monthly compensation amounts for a given year, the total tier II compensation is divided by the number of months of service credited for that year to determine the monthly compensation.

2) Indexed tier ll -The compensation used in determining the AMC for an employee who has not worked in the railroad industry for the 60-month period before his ABD and whose major employment during that period was for one of the Federal agencies which does not break a current connection, is indexed as explained in FOM-I-1005.35.2, but using the ABD year as the eligibility year. The AMC so computed cannot exceed the highest possible regular "high 60" AMC for an employee retiring on January 1 of the ABD year.

Example: The employee's ABD is 3/1/2006. The maximum indexed earnings that can be used for this employee is $319,200 (2005 = $66,900, 2004 = $65,100, 2003 = $64,500, 2002 = $63,000, 2001 = $59,700). The employee's indexed earnings from actual compensation (using 1990-1994 earnings) totals $328,430.35. The employee's high 60 month total must be cutback to $319,200. Divide that total by 60 months = $5320, the indexed AMC.

B. Reduction for Vested Dual Benefit Entitlement - The basic tier II is reduced by 25% of the vested dual benefit amount before reduction for age and before any vested dual benefit cutback.

C. COL Increase After Retirement - Cost-of-living (COL) increases are paid on a cumulative basis from the ABD. If the ABD is on the first of the month in which the COL increase is due, the increase for that year is applied to the tier II amount. Otherwise, the first COL increase is applied at the next COL adjustment.

The following tier II COL increases have been paid to date:

Effective Date	COL %	Effective Date	COL %
6/77	1.9%	12/96	0.9%
6/78	2.1%	12/97	0.7%
6/79	3.2%	12/99	0.8%
6/80	4.6%	12/00	1.1%
6/81	3.6%	12/01	0.8%
6/82	2.4%	12/02	0.5%
6/83	1.1%	12/03	0.7%
12/84	1.1%	12/04	0.9%
12/85	1.1%	12/05	1.3%
12/86	0.4%	12/06	1.1%
12/87	1.4%	12/07	0.7%
12/88	1.3%	12/08	1.9%
12/89	1.5%	12/09	No COLA
12/90	1.8%	12/10	No COLA
12/91	1.2%	12/11	1.2%
12/92	1.0%	12/12	0.6%
12/98	0.4%	12/13	0.5%
12/93	0.8%	12/14	0.6%
12/94	0.9%	12/15	No COLA
12/95	0.8%	12/16	0.1%

NOTE: Under the 1981 Amendments, a tier II cost-of-living increase is not payable until 6-1-82 even if the ABD is before 6-2-81.

D. Age Reduction - If the employee is under retirement age on his ABD and is entitled to an age and service annuity other than a 60/30 annuity, the tier II must be reduced for age. For employees born before 1938, retirement age is defined as age 65. If an employee was born after 1937 and had performed creditable railroad service before 8-12-83, retirement age for tier II benefits also is age 65.

When the tier II is increased or decreased, the age reduction in the amount of the increase or the decrease will be computed using the age reduction factor that applied on the ABD.

E. Military service reduction - Prior to 9-1-83, if the employee was receiving a monthly benefit from another Federal agency based on military service included as RR compensation in the computation of his annuity, his tier II was reduced (see FOM-1-1015.5.5).

F. Tier II Solvency Reduction - Employees with an ABD before January 1, 1984, will have their tier II reduced (but not below $10.00) effective 12/83 and 12/84. The total reduction cannot exceed 5% of the employee's 11/83 net tier I amount.

When the employee's tier I date of entitlement is in December 1983, a fictitious 11/83 tier I rate must be computed. If such an employee's social security date of entitlement also is in December 1983, a fictitious 11/83 social security rate must be computed and subtracted from the fictitious tier I. To obtain the fictitious 11/83 rate, divide the actual 12/83 rate by 1.035. The total reduction will equal to 5% of the fictitious 11/83 net tier I amount. The solvency reduction effective 12/83 in this type of case is equal to the increase in the net tier I amount from 11/83 to 12/83, as long as the tier II is not reduced below $10.00.

The solvency reduction is subtracted from the last computed tier II rate. It cannot, however, reduce the tier II below $10.00. Also, there is no reduction if the employee's last computed tier II is less than $10.00.

Examples:

Employee A had an ABD of 1-1-83. His social security date of entitlement is 11-1-83.

	11/83	**12/83**	**12/84**
Tier I	$500.00	$517.00	$535.00
SS	-400.00	-414.00	-428.00
Net tier I	100.00	103.00	107.00
Tier II	300.00	300.00	300.27
Solvency Reduction	_____	-3.00	-2.00
Net tier II	300.00	297.00	298.27
RR	400.00	400.00	405.27
SS	400.00	414.00	428.00
Total	$800.00	$814.00	$833.27

Total solvency reduction amount	$5.00
12/83 solvency reduction	-3.00
Subtotal:	$2.00
12/84 solvency reduction	-2.00
Balance	$0.00

Employee B had an ABD of 12-1-83. His social security date of entitlement is 12-1-83.

	11/83 fictitious rates	**12/83**	**12/84**
Tier I	500.00	517.00	535.00
SS	-400.00	-414.00	-428.00
Net tier I	100.00	103.00	107.00
Tier II	300.00	300.00	300.27
Solvency Reduction		-3.00	-2.00
Net tier II	300.00	297.00	298.27
RR	400.00	400.00	408.27
SS	400.00	414.00	428.00
Total	800.00	814.00	833.27

Total solvency reduction	$5.00
12/83 solvency reduction	-3.00
	$2.00
12/84 solvency reduction	-2.00
Balance	$0.00

G. The net tier II is the last computed rate.

1015.5.3 Tier II for Employees Awarded Before October 1, 1981

Tier II is the sum of three separate components. COL increases are applied only to components 1 and 3.

A. Component 1 (past service annuity) - This is computed under the 1937 RR Act regular annuity formula using railroad service before 1975. There is no reduction for receipt of a supplemental annuity in 1974 RR Act cases. This component is reduced by an imputed SS benefit (based only on railroad service before 1975) to eliminate the duplication that would otherwise occur because the same railroad service is used in computing the tier I amount.

1. Basic annuity - The basic annuity is obtained by multiplying the employee's years of pre-1975 service (unrounded, if he has post-74 service) times the following percentages of his pre-1975 average monthly compensation (AMC #l):

   3.58% of the first $50 ($1.79)
   2.69% of the next $100 ($2.69)
   1.79% of the next $950 ($17.05)

   Example: An employee had 400 service months thru 1974. His AMC #1 is $413. His basic annuity is computed as follows:

   3.58% of $ 50 = 1.79
   2.69% of $100 = 2.69
   1.79% of $263 = 4.7077
   $9.1477
   x 400 months
   $3675.08
   divided by 12 months
   $ 304.92 basic annuity

   The minimum basic annuity is the lesser of:

   $5.35 times the employee's years of pre-1975 service; or

   118% of the employee's AMC #1; or $89.35.

2. 1968 and 1970 increases

   (a) The gross table increase can be determined from the following chart

Average Monthly Compensation	**Increase**
(AMC #1)	
Up to $100	$ 9.13
101 – 150	11.22
151 – 200	12.87
201 – 250	14.63
251 – 300	16.17
301 – 350	17.82
351 – 400	19.47
401 – 450	20.90
451 – 500	22.55
501 – 550	24.09
551 – 600	27.83

Over $600	31.46

(b) If the employee is not vested on his earnings record:

- The 1968 rate is the sum of the basic rate and the gross table increase;
- The 1970 rate is the sum of the 1968 rate and 15% of the 1968 rate (but not more than $50.00). Proceed to step 3.

(c) If the employee is vested on his own earnings record, the table increase is subject to reduction as explained below:

- The reduction is 10.27% of the employee's 6/74 PIA on SS wages only (PIA #4).
- The net table increase is the gross table increase minus the reduction.

(d) If the net table increase is:

- $10.00 or more; the 1968 rate is the sum of the basic rate and the net table increase. Proceed to step 2(f).
- Less than $10.00; the 1968 rate is the sum of the basic rate and the higher of:
  - The net table increase; or
  - The net minimum increase.

(e) The gross minimum increase is $10.00.

- The reduction to be applied to the minimum increase is the smaller of:
  - 3.44% of the employee's 6/74 PIA on SS wages only (PIA #4); or
- 5.8% of the employee's basic annuity
- The net minimum increase is $10.00 minus the reduction.

(f) 1970 rate: The 1970 rate is the sum of the 1968 rate plus the net 1970 increase.

- The gross 1970 increase is 15% of the 1968 rate but not more than $50.00.

- The reduction is 8.87% of the employee's 6/74 PIA on SS wages only (PIA #4).

- The net 1970 increase is the gross increase minus the reduction but not less than the smaller of:

  - $10.00; or

  - 15% of 1968 rate.

3. Combined 1971 and 1972 increases - The increased rate is 132% of the 1970 rate.

4. Pass-thru increase - The pass-thru increase is 9.9099% of the pass-thru PIA (conversion cases) or PIA #5 (1974 RR Act cases). If DRCs are added to the pass-thru PIA, the pass-thru increase is 9.9099% of the pass-thru PIA including the DRCs.

   EXCEPTION: If the pass-thru PIA is less than $189.90 (rare), the following special rules apply:

   - If the 9/72 regular pass-thru PIA exceeds the 1/73 special minimum pass-thru PIA, the pass-thru increase is 9.9099% of the regular pass-thru PIA.

   - If the 9/72 regular pass-thru PIA is less than the 1/73 special minimum pass-thru PIA, the special minimum PIA affects the amount of the pass-thru increase.

     - If the 3/74 special minimum pass-thru PIA is higher than the 6/74 regular pass-thru PIA, the pass-thru increase is the difference between the 3/74 and 1/73 special minimum pass-thru PIAs.

     - If the 3/74 special minimum pass-thru PIA is less than the 6/74 regular pass-thru PIA, the pass-thru increase is the difference between the 6/74 regular pass-thru PIA and the 1/73 special minimum pass-thru PIA.

5. Imputed SS benefit reduction

   (a) In a 1974 Act case, the rate after the pass-thru increase is reduced by the employee's 6/74 PIA on pre-75 compensation only (PIA #6), but not below 10% of PIA #6.

   (b) In a conversion case, the rate after the pass-thru increase is reduced by:

- The higher of the 6/74 regular or special minimum pass-thru PIA if the employee is not vested on his own earnings record; or

- The 6/74 regular or special minimum pass-thru PIA on compensation only (PIA #15) if the employee is vested on his own earnings record.

6. COL increase before retirement. When the employee's ABD is 1-1-78 through 9-30-81 and his annuity is computed under the 1974 Act, the first component of tier II is increased by the percentage shown below:

ABD YEAR	INCREASE
1978	4.3%
1979	10.0%
1980	19.2%
1981	29.8%

7. Cost-of-living increases (COL) are paid on a cumulative basis from the ABD. If the ABD is on the first of the month in which the COL increase is due, the increase for that year is applied to the tier II amount. Otherwise, the first increase is applied at the next COL adjustment.

The following tier II COL increases have been paid to date:

Effective Date	COL %	Effective Date	COL %
6/77	1.9%	12/97	0.7%
6/78	2.1%	12/98	0.4%
6/79	3.2%	12/99	0.8%
6/80	4.6%	12/00	1.1%
6/81	3.6%	12/01	0.8%
6/82	2.4%	12/02	0.5%
6/83	1.1%	12/03	0.7%
12/84	1.1%	12/04	0.9%
12/85	1.1%	12/05	1.3%
12/86	0.4%	12/06	1.1%
12/87	1.4%	12/07	0.7%
12/88	1.3%	12/08	1.9%
12/89	1.5%	12/09	No COLA
12/90	1.8%	12/10	No COLA
12/91	1.2%	12/11	1.2%
12/92	1.0%	12/12	0.6%
12/93	0.8%	12/13	0.5%
12/94	0.9%	12/14	0.6%
12/95	0.8%	12/15	No COLA
12/96	0.9%	12/16	0.1%

B. Component 2 - past service bonus - This component is computed using the employee's unrounded years of pre-1975 service. It is $1.50 for the employee's first 10 years of service plus $1.00 for each year over 10.

This component is payable only to employees with creditable railroad service after 1974. To qualify for this component, an employee who retired before 1975 and returned to railroad service after 1974 must:

- Have 12 months of service after 1974; or
- Be a medically recovered disability annuitant.

C. Component 3 - future (post-1974) service annuity - This component is computed based on the employee's tier II AMC and years of service after 1974.

1. Determining years of service

(a) The employee's total service is divided by 12.

(b) The employee's post-1974 service is divided by 12.

The employee's unrounded post-1974 service without lag may be found on the MARC file under "RRA Service After 1974, SM."

(c) If the step (a) result includes a fraction of less than 6 months, the years of service are the step (b) result.

(d) If the step (a) result includes a fraction of 6 or more months, the years of service are the sum of:

- 12 months minus the fraction from step (a); and
- The step (b) result.

2. Calculation of the third component

(a) Post-1974 service component - The post-1974 component is calculated as follows:

Step 1 - .005 x AMC based on all creditable compensation after 1974 not in excess of the tier II maximum (AMC 2) x years of service after 1974.

AMC 2 can be found on the MARC file under "Tier 2 Data, AMC."

Step 2 - $4 x years of service after 1974.

Step 3 - The post-1974 service component is the sum of Steps 1 and 2.

(b) COL increase before retirement - When the employee's ABD is 1-1-78 through 9-30-81 and his annuity is computed under the 1974 RR Act, the third component of tier II is increased as explained below.

(i.) COL increase for post-1974 years of service.

This portion of the COL increase is determined by multiplying $2.60 times the post-1974 years of service times the percentage shown below:

ABD YEAR	INCREASE
1978	6.6%
1979	15.4%
1980	29.6%
1981	45.9%

(ii.) COL increase for post-1974 average monthly compensation.

Step 1 - The employee's average monthly compensation after 1974 (AMC 3), using creditable tier II earnings, but not in excess of the 1980 maximum ($1700), is multiplied by the percentage shown below:

ABD YEAR	INCREASE
1978	4.29%
1979	10.01%
1980	19.24%
1981	29.84%

Step 2 - The employee's average monthly compensation after 1974 (AMC 4), using creditable tier II earnings but not in excess of the 1976 maximum ($1275), is subtracted from the AMC used in step 1.

Step 3 - The step 2 result is subtracted from the step 1 result. (If the step 2 result exceeds the step 1 result, the step 3 result equals zero.)

Step 4 - .005 is multiplied by the years of service after 1974 and by the step 3 result. The result is the COL increase for the post-1974 average monthly compensation.

(iii) Cost-of Living (COL) Increase after retirement - COL increases are paid on a cumulative basis from the ABD. If the ABD is on the first of the month in which the COL increase is due, the increase for that year is applied to the tier II amount. Otherwise, the first increase is applied at the next COL adjustment.

The following tier II COL increases have been paid to date:

Effective Date	COL %	Effective Date	COL %
6/77	1.9%	12/97	0.7%
6/78	2.1%	12/98	0.4%
6/79	3.2%	12/99	0.8%
6/80	4.6%	12/00	1.1%
6/81	3.6%	12/01	0.8%
6/82	2.4%	12/02	0.5%
6/83	1.1%	12/03	0.7%
12/84	1.1%	12/04	0.9%
12/85	1.1%	12/05	1.3%
12/86	0.4%	12/06	1.1%
12/87	1.4%	12/07	0.7%
12/88	1.3%	12/08	1.9%
12/89	1.5%	12/09	No COLA
12/90	1.8%	12/10	No COLA
12/91	1.2%	12/11	1.2%
12/92	1.0%	12/12	0.6%
12/93	0.8%	12/13	0.5%
12/94	0.9%	12/14	0.6%
12/95	0.8%	12/15	No COLA
12/96	0.9%	12/16	0.1%

D. Age reduction - If the employee was under age 65 on his ABD and was entitled to an age and service annuity other than a 60/30 annuity, the tier II was reduced for age.

The age reduction was initially applied to the sum of the net annuity components. When the annuity was increased, the age reduction in the amount of the increase was computed using the age reduction factor that applied on the effective date of the adjustment. Decreases were based on a factor of the previous age reduction amount divided by the previous rate before age reduction.

Effective October 1, 1981, the existing age reduction was prorated into the tier amounts. The amount of the reduction in tier II was determined by dividing the sum of component l, 2 and 3 by the total of the annuity components and multiplying the result by the existing age reduction.

The formula for determining the prorated age reduction amount is:

Components 1, 2 & 3 Existing age = tier II age
_____ x reduction reduction
Net tier 1, net tier II & VDB

When the tier II is increased or decreased after October 1, 1981, the age reduction in the amount of the increase or decrease will be computed using the age reduction factor that applied on the ABD.

E. Military service reduction - Prior to 9-1-83, if the employee was receiving a monthly benefit from another Federal agency based on military service included as RR compensation in the computation of his annuity, his tier II was reduced (see FOM-1-1015.5.5).

F. Tier II Solvency Reduction - Employees with an ABD before January 1, 1984, will have their tier II reduced effective 12/83 and 12/84. The total reduction cannot exceed 5% of the 11/83 net tier I amount.

The solvency reduction effective 12/83 cannot exceed the increase in the net tier I amount from 11/83 to 12/83. The solvency reduction can neither reduce the tier II below $10.00, nor reduce a tier II that is already less than $10.00.

Examples: Employee A has a social security date of entitlement of 12-1-83.

	11/83	**12/83**	**12/84**
Tier I PIA	00.00	517.00	535.00
-SS	-0.00	-414.00	-428.00
Net tier I	500.00	103.00	107.00

TIER II	**11/83**	**12/83**		**12/84**	
1)	150.00	150.00 - 8.50 =	141.50	143.06 - 2.00 =	141.06
2)	50.00	50.00 - 2.83 =	47.17	47.17 - 0.66 =	46.51
3)	100.00	100.00 - 5.67 =	94.33	95.37 - 1.34 =	94.03
		300.00	283.00		281.60

RR	800.00	386.00	388.60
SS	0.00	414.00	428.00
Total	800.00	800.00	816.60

Total solvency reduction = $500.00 x 5% = $25.00
12/83 solvency reduction -17.00
8.00
12/84 solvency reduction -4.00
The balance will not be recovered $ 4.00

in future COLs

Employee B has a social security date of entitlement of 11-1-83.

	11/83	12/83	12/84
Tier I PIA	500.00	517.00	535.00
-SS	-400.00	-414.00	-428.00
Net tier I	100.00	103.00	107.00

TIER II	**11/83**	**12/83**		**12/84**	
1)	150.00	150.00 - 1.50 =	148.50	150.13 - 1.00 =	149.13
2)	50.00	50.00 - 0.50 =	49.50	49.50 - 0.25 =	49.25
3)	100.00	100.00 - 1.00 =	99.00	100.09 - .75 =	99.34
		300.00	297.00		297.72

RR	400.00	400.00	404.72
SS	400.00	414.00	428.00
Total	800.00	814.00	832.72

Total solvency reduction = $100.00 x 5% =	$5.00
12/83 solvency reduction	-3.00
	2.00
12/84 solvency reduction	-2.00
Balance	$0.00

1015.5.4 Vested dual benefit

An employee is eligible for a vested dual benefit (VDB) if (s)he is vested for both railroad retirement and social security benefits. The earliest date that the vested dual benefit is payable is when the employee would be eligible for an SS RR Act benefit.

A. RIB/DIB vested dual benefit - If the employee is vested on his own earnings record, the RIB/DIB VDB is equal to the sum of PIA #4 plus PIA #7 minus PIA #8.

The RIB/DIB VDB is not payable until:

1. The month the employee attained age 62 if (s)he attained age 62 before 9-2-81.

2. The first month the employee was at least age 62 for the entire month if (s)he attained age 62 after 9-2-81. (An employee born on the first or second of the month would meet this requirement in the month of his or her 62nd birthday.)

3. The employee has met the social security requirements for a disability benefit (i.e., the employee has met the SS Act disability requirements for at least 5 months and has at least 20 quarters of coverage under the SS Act in the last 10 years).

B. Wife/widow VDB - An employee vested on someone else's earnings record can be awarded a wife/widow VDB if:

- The employee's initial annuity (partial or final) was authorized for payment before 8-13-81; and
- The employee's DOB is before 8-14-19 (except as noted below); and
- The person on whose earnings record the employee is vested must have filed for SS benefits and have an SS benefit DOE of 8-1981 or earlier and we would had to have known that SSA awarded the SS benefit prior to 8-13-81. Also in order for a female employee under age 62 to be entitled to an auxiliary VDB based on being a disabled widow at SSA, we would had to have known that SSA had awarded the disabled widow's benefit prior to 8-13-81.

NOTE: The wife/widow VDB may not be paid if it was erroneously denied before 8-13-81. The 1981 RR Act amendments prohibit payment of a VDB in all cases in which entitlement was not determined prior to 8-13-81, including cases when entitlement was denied incorrectly.

The wife/widow VDB is the lesser of:

- PIA #8, or
- 50% of PIA #21 if the employee was vested as a wife or remarried widow(er) or 100% of PIA #21 if the employee was vested as a widow.

Before 8-13-81, a male employee could be awarded a VDB as the husband or widower of a person who was insured under the SS Act only if he met one-half support requirement at the time the wage earner:

- Became entitled to a period of disability (DF); or
- Became entitled to an RIB; or
- Became entitled to a DIB; or
- Died.

C. Equalization - In a conversion case (both ABD and application filing date before 1-1-75), the VDB cannot be more or less than the amount necessary to make the January 1975 rate equal to the December 1974 rate if the employee was receiving SS Act benefits in December 1974.

Exception: If the employee became entitled to a different type of SS benefit before 8-13-81 the VDB was recomputed (e.g., the husband of an employee who was receiving a wife's benefit at SSA dies and the employee becomes entitled to a widow's benefit). In such a case, equalization does not apply beginning with the month of the husband's death.

D. COL increase prior to ABD - If the employee's ABD is 6-1-75 or later, the VDB is increased as shown below:

ABD	INCREASE
6-1-75 thru 5-31-76	8.00%
6-1-76 thru 5-31-77	14.91%
6-1-77 thru 5-31-78	21.69%
6-1-78 thru 5-31-79	29.06%
6-1-79 thru 5-31-80	42.43%
6-1-80 thru 5-31-81	62.80%
6-1-81 or later	81.00%

E. Age reduction - If the employee is under retirement age on his ABD and is entitled to an age and service annuity other than a 60/30 annuity, the VDB must be reduced for age. Retirement age for employees born before 1938 is defined as age 65.

1. Employee first awarded on October 1, 1981 or later - The VDB is reduced by 1/180 for each month the employee is under age 65 on his ABD. In a reduced age and service annuity case where the employee's VDB is not payable for the month of his 62nd birthday because he was not born on the first or second day of the month, the age reduction factor is nevertheless 36/180.

   Since the VDB amount is frozen, the amount of the age reduction will not change. The VDB cutback is made after the age reduction.

2. Employees awarded before October 1, 1981 - The age reduction was initially applied to the sum of the net annuity components. When the annuity was increased, the age reduction in the amount of the increase was computed using the age reduction factor that applied on the effective date of the adjustment. Decreases were based on a factor of the previous age reduction amount divided by the previous rate before age reduction.

   Effective October 1, 1981, the existing age reduction was prorated into the tier amounts. The amount of the reduction in the VDB was determined by dividing the VDB after any COL increases before retirement but before the VDB cutback by the total of the net annuity components and multiplying the result by the existing age reduction.

The formula for determining the prorated age reduction amount is:

$$\frac{\text{VDB x Existing age red}}{\text{Net tier I, net tier II \& VDB}} = \text{VDB age reduction}$$

Since the VDB amount is frozen, the amount of the age reduction will not change.

F. Military service reduction - Prior to 9-1-83, if the employee was receiving a monthly benefit from another Federal agency based on military service included as RR compensation in the computation of his annuity, his VDB was reduced:

G. VDB Cutback - Under the 1981 RR Act amendments, the vested dual benefit must be cut back whenever Congress appropriates less to the dual Benefits Payment Account for a fiscal year than what is needed to make full VDB payments. This reduction is made after any other reductions.

H. Net VDB - The net vested dual benefit is the rate after the VDB cutback.

Note: Under the 1981 SS Act amendments, the VDB is not payable until the first full month the employee is age 62 or entitled to a DIB under the SS Act. To be entitled to a VDB for the month of his 62nd birthday, an employee who is not entitled to a DIB under the SS Act must be born on the first or second day of the month.

1015.5.5 Military Service Reduction

Prior to 9-1-83, if the employee was receiving a monthly benefit from another Federal agency based on military service included as RR compensation in the computation of his annuity, his annuity was reduced by the lesser of:

- The number of months of creditable military service divided by the total service months times the annuity rate; or
- The amount of the other benefit.

The annuity rate could not, however, be reduced below what it would have been without using the military service.

Note: If military service was needed to establish eligibility, the annuity rate payable would have been the rate using the military service with the appropriate military service reduction.

The amount of the military service reduction was prorated into the tiers and VDB before the cutback in the same manner as, but after the age reduction.

1015.5.6 Grandfather Increase

A grandfather clause provides that, for cases in which an employee's annuity begins before 1-1-83, he and his spouse will not receive less than the amount they would have received under the 1937 Act, not counting any SS Act benefits to which they may be entitled. Few, if any, cases are increased under the grandfather clause because of the cumulative effect of the COL increases since 1-1-75.

1015.5.7 Annuity Rate

The employee's regular annuity rate is the sum of net tiers I and II and the vested dual benefit.

1015.10 Impact (Initial Monthly Partial Certification In Tiers) Rate

To expedite payment in initial employee cases, compute a partial rate at the time you take an application. Enter this partial rate as the annuity components on the Form G-626 screen as the IMPACT tier components for the APPLE System. Although entering a partial rate may not expedite payment in advance file cases, because the final award will usually be ready to pay by the end of the month of the annuity beginning date, it may be that some piece of evidence is still outstanding at that point in time and payment of the partial may allow us to meet our customer service standards.

Do not compute an IMPACT amount if the employee indicates on the AA-1 that (s)he has filed for "Another RR Act Annuity," and the other annuity, spouse or survivor, is in current pay status. Notate the other annuity entitlement in "Remarks." Advise the applicant that any overpayment to the spouse or survivor annuity must be recovered from the employee annuity accrual as explained in FOM-I-120.

If the employee is filing for the employee annuity and either a spouse annuity or a survivor annuity at the same time, you may enter an IMPACT amount for the employee annuity. RASI will set a manual OP code and release a message to notify the examiner of the other annuity. However, that manual OP code will not prevent payment of the IMPACT rate. The applicant's other annuity will be reduced for the employee annuity entitlement.

If you are aware that a court decree or property settlement ordering payments to a spouse or former spouse has been delivered to the Office of General Council, omit Tier 2 and the VDB when entering an IMPACT. You may enter a Tier 1 only IMPACT. Do not mark the application for manual review, unless it is required for another reason. Enter “Community property settlement” in the Remarks section of the Form G-626 screen.

1015.10.1 Restrictions on Use of IMPACT Rate

Be sure to code the "manual review" item on the Form G-626 screen in any case in which you enter an IMPACT rate and have a doubt about the employee's eligibility. This

will prevent payment of the IMPACT amount until an examiner reviews the case. For instance:

A. PROOFS OUTSTANDING - When the employee did not submit acceptable proof of age (e.g., when you are releasing Form G-256 to the Bureau of Census); and, age is a factor of eligibility (e.g., a D/A may be awarded before verification of POA when age is not a factor of eligibility).

B. FOREIGN ADDRESS - When the employee has a foreign address (outside the 50 states or D.C.), unless one of the conditions cited in FOM-I-1015.10 exists.

C. DISABILITY WORK DEDUCTIONS COULD APPLY-If the disabled employee applicant expects to earn over $790.00 per month (after deduction for disability related work expenses) after the ABD, the monthly annuity payments should not be received. RASI is not able to apply disability work deductions. Therefore, on the APPLE summary screen under manual review, enter code 3 and indicate in Remarks on Form G-626 that work deductions apply and that examiner action is needed.

Do not enter a manual review code for the following type cases:

1. LAG OR MILITARY SERVICE MAKES ELIGIBILITY QUESTIONABLE-If the latest MARC file shows that the employee needs lag service for eligibility (i.e., 60/30, occupational disability, 5 year vesting), informally verify with the employer that the employee has sufficient lag service before entering an IMPACT. If informal verification is not obtained, do not enter an IMPACT.

If the employee needs military service for eligibility, do not compute an IMPACT unless EDMA indicates that the military service is creditable.

Notate the lag or military service verification in the Remarks section of Form G-626.

D. COURT ORDER IN EFFECT - If you are aware that a court decree or property settlement ordering payments to a spouse or former spouse has been delivered to the Office of General Council, omit Tier 2 and the VDB when entering an IMPACT. You may enter a Tier 1 only IMPACT. Do not mark the application for manual review, unless it is required for another reason. Enter “Community property settlement” in the Remarks section of the Form G-626 screen.

1015.10.2 How to Compute an IMPACT Rate USING THE MARC FILE

Make a copy of the data on the MARC file. Then take the following steps to determine the annuity components and IMPACT rate.

Tier I

Step 1 - Gross Tier I:

a. Enter the tier I PIA 1

b. Enter PIA 17 if the employee expects excess earnings after the ABD, and the employee's tier I is not reduced for social security benefits. Enter PIA 17 even if the earnings are expected to cease (DLW-LPE) in the ABD month.

Step 2 - Adjustment to Tier I:

a. Non-Covered Service Pension (NCSP):

If the employee is receiving a non-covered service pension that is not exempt, reduce the tier I PIA by the guaranty amount that is explained in FOM-I-1005.35.6. If the guaranty amount is used, the reduction would be one/half of the NCSP amount.

b. DOB discrepancy between MARC and AA-1:

If the employee is younger or older, reduce Tier 1 $30.00 for each discrepant year.

c. Duplicate RR/SS earnings (erroneously posted wages):

The tier I on the MARC may be invalid if the employee worked for one of the following employers, because SSA may have posted RR compensation as wages during the years shown:

RAILROAD	BA NUMBER	YEARS BEG. - END
A.T. & S.F. Employees' Benefit Assn.	9702	1978 to 80
Atlantic Land and Improvement Co.	9517	1972 or later*
Association of American Railroads	7304	1985 - 85
Baltimore and Annapolis RR Co.	5402	1978 - 78

* ALSO SEE THE VDB INSTRUCTIONS IF * IS SHOWN

RAILROAD	BA NUMBER	YEARS BEG. - END
Bessemer and Lake Erie RR Co.	1303	1978 or later
Brotherhood of Railway and Airline Clerks	8922	1978 - 85
Canton Railroad Co.	4310	1978 - 89

Clarendon and Pittsford RR Co.	2103	1978 - 78
Colorado and Wyoming Railway Co.	1724	1980 - 85
Conemaugh and Black Lick RR Co.	4320	1984 - 85
Cybernetics and Systems, Inc.	9518	1972 or later *
Delaware and Hudson Railway Co.	1203	1987 - 88
Florida East Coast Inspection, Inc.	7529	1969 or later *

* ALSO SEE THE VDB INSTRUCTIONS IF * IS SHOWN

RAILROAD	BA NUMBER	YEARS BEG. - END
Fruit Growers Express	6401	1978 - 85
Genesee and Wyoming RR Co.	2209	1989 - 89
Gettysburg Railroad Co.	2331	1982 - 89
Graysonia, Nashville & Ashdown RR Co.	2807	1987 or later
Hamburg Industries	9512	1974 or later*
International Association of Machinists and Aerospace Workers	8907	1978 - 84
International Brotherhood of Boilermakers and Blacksmiths	8909	1978 - 78
Livingston Rebuild Center, Inc.	9619	1990 or later

* ALSO SEE THE VDB INSTRUCTIONS IF * IS SHOWN

RAILROAD	BA NUMBER	YEARS BEG. - END
Maine Central RR Co.	1107	1988 or later
National Railroad Passenger Corp.	8301	1978 - 80
New Orleans Public Belt Railroad	4525	1985 - 89
New York, Susquehanna and Western RR	3251	1978 or later
Northern Railroad	8056	1988 or later
Philadelphia, Bethlehem & New England RR Co.	4343	1984 – 84
Pittsburg and Conneaut Dock Co.	4249	1979 - 79
Pittsburg and Shawmut RR Co.	2234	1983 - 83
Port Authority Trans-Hudson Corp.	5219	1978 - 78

RAILROAD	BA NUMBER	YEARS BEG. - END
Providence and Worcester RR Co.	8093	1987 or later
RSTX, Inc.	9831	1978 - 78
Railroad Concrete Crosstie Corp.	9515	1981 - 84
Railway Employee's Department of the American	8913	1980 - 80

Federation of Labor		
Sheet Metal Workers International Assn.	8911	1978 or later
Soo Line Railroad	1606	1978 - 78
Southwest Railway Equipment Corp.	9832	1967 or later*
Springfield Terminal Ry. Co.	2112	1987 or later
Texas City Terminal Ry. Co.	4820	1989 or later

* ALSO SEE THE VDB INSTRUCTIONS IF * IS SHOWN

RAILROAD	**BA NUMBER**	**YEARS BEG. - END**
Texas Mexican Railway Co.	1821	1978 - 80
Trans Kentucky Transportation	3587	1989 or later
United Transportation Union	8936	1978 or later
Vermont Railway, Inc.	2114	1978 - 84
Wabash Valley RR Co.	3326	1978 - 78
Washington Terminal Co.	4353	1981 - 81
Western Weighing Inspection Bureau	7225	1978 - 88
Wichita Terminal Assn.	4737	1989 - 89
Winchester and Western RR Co., Inc.	3412	1987 - 89

Note: The MARC file will show an "S" in column "D" if the employee worked for an employer which incorrectly reported compensation under both the SS and RR Acts. (Disregard codes "I" and "T;" the PIA will not be overstated.)

Deduct $10.00 from the gross tier I amount for each year that SSA may have posted RR compensation as wages. This amount assures that the IMPACT will be underestimated.

Example: A former employee of Hamburg Industries had a date last worked in 1979; SSA could have erred in 6 years. $60.00 should be deducted from the tier I component on the MARC.

d. WC/PDB – If the applicant is filing for disability underFRA, and receives or will receive workers compensation (WC) or public disability benefit (PDB), reduce Tier 1 to zero.

e. Minimum PIA of $122 – If the MARC shows this minimum AIME PIA, reduce Tier I to zero.

Step 3 - Age Reduction

If the age and service applicant is under FRA and has less than 30 years of service, reduce Tier I by the age reduction per the table inFOM 1 10, Appendix G. Since only a

slight underestimate would apply, you may use this same table for individuals born before 1938 (FRA equals age 65).

Step 4 - SS Benefit:

Subtract the amount of the social security benefit if the amount is known. Use the rate shown on the SSA MBR.

If the amount of the SS benefit is unknown, assume it equals the gross tier 1 and do not include a tier I in the IMPACT.

Question the applicants carefully about their intent to file at SSA especially in advance filing situations. Make sure they understand that they may be overpaid if the temporary rate is not reduced for SS entitlement.

If the employee claims filing or possible filing (i.e., over 65 and enrolled for Medicare), but also indicates that (s)he has cancelled or never received an SS benefit payment, continue to apply the SS benefit reduction. The final rate will accurately reflect current SS entitlement status.

Step 5 - Safety Factor:

Subtract $20.00 as a margin for error. Round the net Tier I down to the dollar.

TIER II

Adjustments to the tier 2 as shown on the MARC file are discussed below. Do not adjust the IMPACT tier II for lag, military service, or prior service.

Step 1 - Gross Tier II:

Enter the "Tier II AMT" from the MARC.

Step 2 - Adjustment for VDB Excluded from IMPACT:

Add the MARC's "WF RED" back into the IMPACT tier II if you exclude the vested dual benefit (VDB) from the IMPACT for any of the following reasons:

- The EE is under age 62;
- The EE is younger than indicated on the MARC and might not be eligible for a VDB; or
- Erroneously posted wages could have given the employee an erroneous vested status or VDB amount.

Do not increase tier II if the VDB is withheld as a work deduction.

Step 3 - Age Reduction:

If the age and service applicant is under FRA and has less than 30 years of service, reduce the Tier II amount by the age reduction per the table in FOM 1-10, Appendix G However, if the employee had railroad service before August 12, 1983, FRA for the Tier II component will be age 65. Since only a slight underestimate will occur, you should use the same Appendix G table.

Step 4 - LPE WD:

If the applicant has earnings from his/her last pre-retirement non railroad employer (LPE) after the annuity beginning date, deduct the lesser of one dollar for each two dollars of the average monthly salary from all LPE employers, or one-half of the Step 3 result. Deduct this amount even if the LPE is expected to cease in the ABD month.

Apply an LPE work deduction to the IMPACT tier II if the employee's claimed self-employment could be LPE.

Step 5 - Safety Factor:

Subtract $20.00 as a margin for error. Round the Tier II down to the dollar.

VESTED DUAL BENEFIT

Step 1 - Gross VDB:

Enter zero if:

- The EE is under the age of 62 years and 1 month; or,
- There could be duplicate RR/SS earnings before 1975 (erroneously posted wages from the following employers):

RAILROAD	**BA NUMBER**
Atlantic Land and Improvement Co.	9517
Cybernetics and Systems	9518
Florida East Coast Inspection	7529
Hamburg Industries	9512
Lambert's Point Docks	4408
Southwest Railway Equipment Corp.	9832; or

- The employee expects excess earnings after the ABD; or
- There is an asterisk (*) on the MARC file after the "SSA DF PIA" and after the "SSA AGE PIA" amount. The asterisks signify that possibly discrepant earnings were used in computing the VDB PIAs and therefore the VDB amount may be incorrect.

- The employee is younger than indicated on the MARC and may not be eligible for the VDB amount indicated on the MARC.

Otherwise, enter the MARC "WF BEFORE CUTBACK."

Step 2 - Age Reduction:

If the age and service applicant is under FRA and has less than 30 years of service, reduce the VDB amount by the age reduction per the table in FOM-1-10, Appendix G.

Step 3-Safety Factor

Subtract $20.00 as a margin for error. Round the VDB down to the dollar.

1015.10.3 Reasons For Delay of IMPACT Payment

Before an IMPACT can be paid, the initial claims application data must be accepted by RASI. REQUEST shows the date of acceptance under the caption, "INTO RASI." RASI may process a partial annuity within a week, but there are many reasons for delays of 30 days or more:

- SEARCH reply: a match of SSA number and code name with RASI's data, or reconciliation of the employee's claimed date last worked with RRB's service and compensation records (this might require examiner correction);
- A name or address change (this requires an examiner's correction);
- The case was coded by the RRB field office for manual review (this requires an examiner's eligibility determination and, if necessary, reentry of the IMPACT);
- A disability rating (and, in occupational disability cases, a CC determination and either attainment of age 60 or confirmation of 20 years of service);
- The employee expects a workers compensation or public disability benefit (this requires an examiner's review and, if necessary, reentry of the IMPACT);
- The ABD is in a current or future month;
- RUIA clearance is required;
- The case is coded by RASI for final certification (the IMPACT will not be paid at all).

1015.10.4 How IMPACT Will Be Handled in RBD

More information about IMPACT processing is outlined below:

A. Beginning date of payment - All beginning dates for payment of IMPACT rates are established on the first day of the month. Partial months will not be paid until the award is finalized.

After RASI accepts the summary screen of APPLE with the IMPACT, RASI will establish an assumed ABD on:

1. The first day of the month in which the application was filed if:

    a. That month is later than the month the employee last worked in railroad service; and

    b. The employee is entitled to an annuity for the entire month.

2. The first day of the first month:

    a. After the month the employee last worked in railroad service; and

    b. The employee is entitled to an annuity for the entire month.

Only current month accruals will be paid. If the ABD established under "1" or "2" above results in more than one month's accrual being due, RASI will change the ABD so that only one month's accrual will be payable.

Exception: If RUIA clearance is not received by the cut-off date for the current month, the case will be paid the following month, which would result in more than 1 month's accrual being paid.

When a case previously paid a partial rate is ready for recertification to the final rate, the actual ABD will be used instead of the assumed ABD. In some cases, however, the ABDs can be identical.

B. RUIA clearance - All cases will be cleared with RUIA before payment is made. The IMPACT ABD is furnished to RUIA. If there is a RUIA overpayment which exceeds the partial accrual, RASI will not pay an IMPACT rate. RASI will, however, continue processing the case for final payment.

C. REQUEST - Cases pending on RASI will be shown on REQUEST until a final payment has been made or the case is dropped from RASI for manual handling.

D. Award notification - The annuitant will receive a RL-20/RL-20e award letter showing the assumed ABD, the total amount of the monthly award (no tier breakdown) and a paragraph telling him that this is only the partial rate.

The award letter will be released about 2 days before the Treasury Department releases the check.

A monthly listing is provided to requesting railroad employers which contains annuity data (formerly Form RL-5a, obsolete June, 1977) which they need for internal processing.

1020.5 Purpose Of Chapter

This chapter explains how a supplemental Annuity (SUPP ANN) is calculated.

1020.10 Full SUPP ANN Rate

The full SUPP ANN rate is based on the employee's years and months of service and can be determined from the following chart:

Years of Service	1937 Act Supplemental Annuity Rate (Rounded)	1974 Act Supplemental Annuity Rate
25	$45.05	$23.00
25-1/12	45.45	23.33
25-2/12	45.85	23.67
25-3/12	46.25	24.00
25-4/12	46.75	24.33
25-5/12	47.15	24.67
25-6/12	50.05	25.00
25-7/12	50.05	25.33
25-8/12	50.05	25.67
25-9/12	50.05	26.00
25-10/12	50.05	26.33
25-11/12	50.05	26.67
26	50.05	27.00
26-1/12	50.45	27.33
26-2/12	50.85	27.67
26-3/12	51.25	28.00
26-4/12	51.75	28.33
26-5/12	52.15	28.67
26-6/12	55.05	29.00
26-7/12	55.05	29.33
26-8/12	55.05	29.67
26-9/12	55.05	30.00
26-10/12	55.05	30.33
26-11/12	55.05	30.67
27	$55.05	$31.00
27-1/12	55.45	31.33
27-2/12	55.85	31.67
27-3/12	56.25	32.00
27-4/12	56.75	32.33
27-5/12	57.15	32.67
27-6/12	60.05	33.00

27-7/12	60.05	33.33
27-8/12	60.05	33.67
27-9/12	60.05	34.00
27-10/12	60.05	34.33
27-11/12	60.05	34.67
28	60.05	35.00
28-1/12	60.45	35.33
28-2/12	60.85	35.67
28-3/12	61.25	36.00
28-4/12	61.75	36.33
28-5/12	62.15	36.67
28-6/12	65.05	37.00
28-7/12	65.05	37.33
28-8/12	65.05	37.67
28-9/12	65.05	38.00
28-10/12	65.05	38.33
28-11/12	65.05	38.67
29	65.05	39.00
29-1/12	65.45	39.33
29-2/12	65.85	39.67
29-3/12	66.25	40.00
29-4/12	66.75	40.33
29-5/12	67.15	40.67
29-6/12	70.00	41.00
29-7/12	70.00	41.33
29-8/12	70.00	41.67
29-9/12	70.00	42.00
29-10/12	70.00	42.33
29-11/12	70.00	42.67
30	70.00	43.00

While supplemental annuities awarded under the 1937 Railroad Retirement Act were and will continue to be paid at higher rates, they were accompanied by a reduction in the regular employee annuity which is not made under the 1974 RR Act. Consequently, the net amounts received are about the same.

1020.15 Reduction for Employer Pension

An employee's SUPP ANN is reduced when he is entitled to a pension from his former employer based in any part on employer contributions. Part of a "contributory" pension is based on employer contributions, whereas all of a "non-contributory" pension is based on employer contributions. FOM Part I, Article 3, Appendix A, indicates whether a particular plan is contributory or non-contributory.

There are two rules for computing the reduction:

A. If the employer supplemental pension is not reduced because of entitlement to a SUPP ANN, the reduction in the SUPP ANN is the amount of the employer supplemental pension based on employer contributions.

For purposes of the reduction requirement, the amount of the employer pension is as follows:

1. When the pension plan has a joint and survivor option, the amount before the reduction for the joint and survivor option;

2. When the pension is reduced for early retirement,

- If the SUPP ANN begins on or after age 65, the pension equals the amount before reduction for age;

- If the SUPP ANN begins before age 65 and the pension begins at the same time as or later than the SUPP ANN, the pension equals the amount after reduction for age;

- If the pension begins before age 65 and before the SUPP ANN, the pension equals the net pension plus a portion of the age reduction;

3. When a lump-sum is paid in lieu of monthly payments, the monthly amount that would be payable if the pension had not been paid in a lump-sum.

B. If the employer supplemental pension is reduced because of entitlement to a SUPP ANN, the reduction in the SUPP ANN is limited to the difference between the full SUPP ANN and the amount by which the employer supplemental pension is reduced.

1020.20 Pensions Which Do Not Cause Reduction In SUPP ANN

The following types of employer pensions do not cause a reduction in SUPP ANN payments:

A. Pensions paid by railway labor organizations (identified by the symbol (L) in FOM Part I, Article 3, Appendix A).

B. Pensions that are not paid under a formal plan (identified by the symbol (NP) in FOM Part I, Article 3, Appendix A).

C. Pensions that are based on 100% employee contributions (identified by a footnote in FOM Part I, Article 3, Appendix A).

D. Pensions based entirely on non-creditable service when this information is verified by the employer. (If a pension is based on both creditable and non-creditable service, only that part of the pension based on creditable service can be used as a deduction from the SUPP ANN.)

1020.30 SUPP ANN Rate

The SUPP ANN rate is the full rate minus any reduction(s) for an employer pension.

1025.10 SPAR (Spouse Partial Annuity Rate)

Purpose - To expedite payment in initial spouse cases, compute a partial rate at the time you take an application and enter the rate on the Form G-626 screen except when:

1. The spouse's entitlement is based on a minor or disabled child; or

   NOTE: For this exception, contact RIS by e-mail to have them review the case to determine if a possible partial payment can be made once eligibility is determined.

2. The application is for a divorced spouse annuity; or

3. The spouse is included in the O/M computation of the employee's annuity or is entitled to a remarried widow(er)'s insurance annuity.

1025.10.1 How to Compute SPAR Amount

For spouses of retired employees, use the data available on PREH of the RRAPID Main Menu to determine the employee's tier I, tier II and other entitlement data. For spouses of retiring employees, use the Tier data available on the latest MARC file.

Step 1

Gross Tier I - Tier I should not be included in the SPAR in certain cases. Enter zero if:

- The EE is disabled, under FRA, with a worker's compensation (WC) or public disability benefit (PDB).

In other cases, enter one-half the employee's tier I PIA before:

- Delayed retirement credits (DRC); or

- Age reduction, when both the employee and spouse are over age 62.

DRC consideration - When the employee is over FRA on his ABD, and thus entitled to DRCs, use the tier I PIA from the MARC or the PREH screen TIER I INFORMATION (T1).

Reduced 60/30 exception - In reduced 60/30 cases, if the employee or spouse is under age 62 on the spouse's ABD, enter one-half the employee's ABD tier I amount after age reduction. This reduced tier 1 applies even if the spouse's annuity is based on age or a child in care.

NOTE: If the employee is in final payment status, you should be able to secure the ABD PIA I and 60/30 age reduction amount for the ABD tier I from the PREH screen

entitled RHHSKP (3270) 1 of 1. The reduced 60/30 spouse Tier I is one-half of the net ABD Tier I (PIA-I-AT-ABD-AMT less ABD-AGE-RED-AMT).

Round the resulting gross tier 1 down to the dollar.

Step 2

Adjustment for EE's Duplicate Earnings and/or NCSP:

A. EE's Duplicate earnings - Make a reduction for erroneously posted wages if you use the MARC tier I and the employee worked for one of the following employers during the years shown:

ALSO SEE THE VDB INSTRUCTIONS in Section 1015.10.2 IF BEG. & END "*" IS SHOWN

RAILROAD	**BA #**	**YEARS**
A.T. & S.F. Employees' Benefit Assn.	9702	1978 to 80
Atlantic Land and Improvement Co.	9517	1972 or later*
Association of American Railroads	7304	1985 - 85
Baltimore and Annapolis RR Co.	5402	1978 - 78
Bessemer and Lake Erie RR Co.	1303	1978 or later
Brotherhood of Railway and Airline Clerk	8922	1978 - 85
Canton Railroad Co.	4310	1978 - 89
Clarendon and Pittsford RR Co.	2103	1978 - 78
Colorado and Wyoming Railway Co.	1724	1980 - 85
Conemaugh and Black Lick RR Co.	4320	1984 - 85
Cybernetics and Systems	9518	1972 or later*
Delaware and Hudson Railway Co.	1203	1987 - 88
Florida East Coast Inspection, Inc.	7529	1969 or later*
Fruit Growers Express	6401	1978 - 85
Genesee and Wyoming RR Co.	2209	1989 - 89

Gettysburg Railroad Co.	2331	1982 - 89
Graysonia, Nashville & Ashdown RR Co.	2807	1987 or later
Hamburg Industries	9512	1974 or later*
International Association of Machinists and Aerospace Workers	8907	1978 - 84
International Brotherhood of Boilermakers and Blacksmiths	8908	1978 - 78
Livingston Rebuild Center, Inc.	9619	1990 or later
Maine Central RR Co.	1107	1988 or later
National Railroad Passenger Corp.	8301	1978 - 80
New Orleans Public Belt Railroad	4525	1985 - 89
New York, Susquehanna and Western RR	3251	1978 or later
Northern Railroad	8056	1988 or later
Philadelphia, Bethlehem and New England RR Co.	4343	1984 - 84
Pittsburgh and Conneaut Dock Co.	4249	1979 - 79
Pittsburgh and Shawmut RR Co.	2234	1983 - 83
Port Authority Trans-Hudson Corp.	5219	1978 - 78
Providence and Worcester RR Co.	8093	1987 or later
RSTX, Inc.	9831	1978 - 78
Railroad Concrete Crosstie Corp.	9515	1981 - 84
Railway Employee's Department of the American Federation of Labor	8913	1980 - 80
Sheet Metal Workers Int'l. Assn.	8911	1978 or later
Soo Line Railroad	1606	1978 - 78
Southwest Railway Equipment Corp.	9832	1967 or later*

Springfield Terminal Ry. Co.	2112	1987 or later
Texas City Terminal Ry. Co.	4820	1989 or later
Texas Mexican Railway Co.	1821	1978 - 80
Trans Kentucky Transportation RR Co.	3587	1989 or later
United Transportation Union	8936	1978 or later
Vermont Railway, Inc.	2114	1978 - 84
Wabash Valley RR Co.	3326	1978 - 78
Washington Terminal Co.	4353	1981 - 81
Western Weighing Inspection Bureau	7225	1978 - 88
Wichita Terminal Assn.	4737	1989 - 89
Winchester and Western RR Co., Inc.	3412	1987 - 89

NOTE: The MARC file will show an "S" in column "D" if the employee worked for an employer which incorrectly reported compensation under both the SS and RR Acts. (Disregard codes "I" and T;" the PIA will not be overstated.)

Subtract $5.00 for each year that SSA may have posted RR compensation as wages. This reduction assures that the SPAR will be underestimated.

EXAMPLE: A former employee of Hamburg Industries had a date last worked in 1979. He and his spouse are now filing simultaneously. SSA could have erred in 6 years. $30 should be deducted from the tier I amount.

B. Employee Entitled to a Non-covered Service Pension If the spouse is filing at the same time as the employee, or the employee has filed but is not yet in final pay status, the SPAR tier I amount must be reduced if the employee is receiving a non-covered service pension that does not qualify for exemption. Reduce the SPAR Tier I by one-half of the employee reduction amount.

If the employee is in final pay status, the reduction is incorporated into the employee's tier I amount, and therefore, no additional reduction needs to be applied to the SPAR amount.

Step 3Spouse PSP Reduction - Subtract 2/3 (.66667) of any public service pension being received or expected by the spouse.

If the spouse has filed for PSP benefits, and has no idea of the amount due, or received a lump sum in lieu of monthly payments, deduct tier I in full.

NOTE 1: No reduction is necessary if the spouse received a lump-sum payment that was strictly a refund of contributions plus interest.

NOTE 2. No reduction in the final award is necessary in certain cases (see FOM-I-120.40.4). Most commonly, a spouse annuity is exempt from PSP offset if the spouse was employed by a unit of state or local government, or a branch of the military service and had FICA taxes deducted on the last day of employment.

Step 4

Age Reduction - Calculate an age reduction in the following cases, if the spouse does not have a child in care:

- Reduced 60/30 - The employee was awarded a reduced 60/30 annuity, and both the employee and spouse attained age 62 before the month the spouse's annuity begins;

- Other reduced age cases - The spouse is age under FRA on her ABD and is not eligible for a 60/30 annuity.

Use the table in Appendix I of this article to determine the correct age reduction factor, which is based on the number of months the spouse is under FRA on the annuity beginning date.

Step 5

SS Benefit - Subtract the amount of the SS benefit being received or expected by the spouse. Use the rate shown on the SSA MBR. If the spouse has filed for SS benefits and has no idea of the amount due, subtract tier I in full and do not include a tier I in the SPAR.

Applicants should be questioned carefully concerning their intent to file at SSA, especially in advance filing situations. Make sure they understand that they could be overpaid if the temporary rate is not reduced for potential SS entitlement based on their own or any earnings record.

If the spouse claims filing or possible filing (i.e., age 65 and enrolled for Medicare), but also indicates that (s)he has cancelled or never received an SS benefit payment, continue to apply the SS benefit reduction. The final rate will accurately reflect current SS entitlement status.

Step 6

Reduction For Own EE Annuity - Subtract the amount of the spouse's own railroad retirement employee annuity net tier I. If both the employee and spouse started railroad work after 1974, deduct the full amount of the spouse's own employee annuity.

Step 7

Work Deduction - When either the employee or spouse has excess earnings (from LPE or S/E), and the spouse's tier I is not reduced for social security benefits, subtract one-half of the portion of the employee tier I subject to work deductions. Apply work deductions even if the earnings are expected to cease (DLW-LPE) in the ABD month.

On the MARC, the employee work deduction amount is the difference between PIA 1 and PIA 17, also referred to as PIA 2.

If the employee annuity is in final payment status, you may secure the employee's TierI-Subt-WD-Amt from the RHTier I (3210) Screen 1 of 2 in PREH.

In reduced 60/30 cases, if the spouse is under age 62 on the spouse's ABD, the spouse work deduction component should be based on one-half of the EE's ABD PIA 1 after age reduction, less the ABD PIA 17 amount after age reduction. However, to simplify handling in this type of instance and to ensure an underpayment of the SPAR amount, use the PIA-1-AT-ABD-AMT and the PIA-17-AT-ABD-AMT located on screen RHHSKP(3270) of PREH. Subtract the PIA 17 amount from the PIA 1 amount before age reduction and divide the result by 2 to obtain the spouse work deduction component.

If you are unable to determine the portion of the employee tier I subject to work deductions do not include a tier I in the SPAR.

Safety Factor - Subtract $20.00 as a margin for error. Round the net Tier 1 down to the dollar.

TIER II

Step 1

The spouse's basic tier II is 45% of the employee's tier II before age reduction. If the employee has not retired, you may use 45% of the Tier II amount on the MARC file. If the employee has retired as a 60/30, use 45% of the Tier II amount indicated as T2-NET-AMT on screen RHTIER2(3215) 1 of 2 on PREH. If the employee has retired as a reduced age, use 45% of the Tier II amount indicated as T2-AFT-VDB-RED-AMT on screen RHTIER2(3215) 1 of 2 on PREH. Since this amount does not include cumulative employee T2 COLAs, the Tier 2 amount for spouses of reduced age employees will be slightly understated. NOTE: The Tier II amount is zero for a male spouse whose entitlement is based on a minor child.

Step 2 See Step 6 for the SPAR Tier I. If the spouse is not a dual annuitant, omit this step.

EE Annuity Restored Amount - Add the amount of the spouse's tier I that was reduced for the spouse's own employee annuity, if either the employee or spouse had some railroad service before 1975.

Please realize that marking a case for manual review will increase the time lapse to a partial payment being made to the spouse, but do not let this deter use of this procedure when necessary.

1025.10.2 How SPAR Will Be Handled at Headquarters

Before a SPAR can be paid, the APPLE application data must be accepted by RASI. REQUEST shows the date of acceptance under the caption "INTO RASI." RASI may process a partial annuity award within a week, but there are many reasons for delays of 30 days or more:

- RASI has not determined the spouse's ABD;
- The actual ABD is other than the first day of the month or a future date. RASI will not process a partial award earlier than the first of the month following the first full month of entitlement.
- The employee has not been paid at least a partial rate;
- The case is coded for manual review (this requires an examiner's eligibility determination and, if necessary, reentry of the SPAR.);
- RASI puts the spouse into "final mode." REQUEST shows "TRACE" as the pending action (Note: a claims examiner may be able to force a partial payment to be made);
- A name or address change is required;
- No employee data has been found in the Research record for use in a spouse-only case in RASI.

Usually, the SPAR rate will be paid with no retroactivity. The partial spouse payments will show up on REQUEST if paid on RASI.

1025.10.3 Award Notification

The annuitant will receive an RL-20/RL-20e award letter showing the assumed ABD, the total amount of the monthly award (no tier breakdown) and a paragraph explaining that this is only the partial rate.

The award letter will be released about 2 days before the Treasury Department releases the check.

1030.5 Actual Computation

This section provides a detailed explanation of the steps involved in computing a divorced spouse annuity.

The divorced spouse annuity consists only of a tier I. Tier I is an amount computed under the social security benefit formula, using the employee's combined railroad and social security earnings. The tier I is reduced for entitlement to other benefits.

NOTE: If the divorced spouse is entitled to a retirement insurance benefit (RIB) or disability insurance benefit (DIB) on the divorced spouse's own earnings record, based on a Primary Insurance Amount (PIA) which is equal to or greater than one-half of the employee's tier 1 PIA, the divorced spouse is not eligible for an annuity.

1030.5.1 Gross Tier I

The divorced spouse's gross tier I is one-half (1/2) of the employee's gross tier I PIA (before any delayed retirement credits and any age reduction).

Exception: If, in a conversion case, the employee is not vested for an RIB/DIB VDB, his gross tier I cannot exceed his 12-1974 annuity rate (before any age reduction) plus any COLs. In such case, the divorced spouse's gross tier I benefit is one-half of the employee's 12-1974 annuity rate plus any COLs.

1030.5.2 Worker's Compensation/Public Disability Pension Reduction

A reduction for workman's Compensation (WC) or public disability benefits may be applied to the tier I of a divorced spouse annuity if the employee is receiving a disability annuity and is entitled to worker's compensation or a public disability benefit. The reduction is first applied to the spouse and/or divorced spouse tier I (in equal amounts if both are entitled), then to the employee annuity tier I. The WC reduction does not apply if the employee is receiving an age and service annuity, even if the employee has a disability freeze (DF).

See FOM-I-1015.5E for an explanation of when the offset applies and the formula for determining the amount of the offset.

1030.5.3 Reduction for Public Service Pension

The divorced spouse's tier I is subject to reduction for entitlement to a public service pension (PSP) based on the divorced spouse's own earnings payable to the divorced spouse. The reduction does not apply, however, if social security (FICA) taxes were deducted from her government earnings on the last day of her government employment.

A.	**Beginning:**	**The reduction applies to:**

	12-1-77	Divorced spouses married to the employee less than 20 years. The offset does not apply beginning 12-1-82 if dependency is established.
	12-1-82	Divorced wives married to the employee 20 years or more first eligible for a PSP 12-1-82 or later. If the divorced wife is dependent on the employee and first eligible for the PSP before 7-1-83, no offset will be applied.
	7-1-83	All divorced spouses first eligible for a PSP 7-1-83 or later.

NOTES:

1. When the individual filed before December 1977 but the annuity beginning date is 12-1-77 or later, the application is deemed to be filed in December 1977. This covers applications filed in September through November for entitlement in December 1977. Since those applications are considered to be filed in December 1977, the PSP reduction may apply. If an application was filed in December 1977 or later for annuities that are retroactive before December, the PSP reduction applies to annuities payable for December 1977 on.

2. A divorced spouse who would have been eligible for a PSP in November 1982 or June 1983 except for a requirement which delayed payment of the PSP until December 1982 or July 1983 is exempt from the reduction beginning in December 1984.

   For example, a Federal employee last worked on June 10, 1983. Although she was over 55 and had more than 30 years of service, her civil service annuity could not begin before July because she worked past the third of June. Her tier I is exempt from the PSP reduction beginning in December 1984.

B. The amount of the reduction is equal to:

- 100% of the PSP for months before December 1984 if the divorced spouse is first eligible for the PSP before 7-1-83; 66 2/3% of the PSP beginning in December 1984.

- 66 2/3% of the PSP if the divorced spouse is first eligible for the PSP 7-1-83 or later.

1030.5.4 Age Reduction

A divorced spouse's gross tier I is reduced for age if she is under FRA on her ABD. An age reduction applies to the divorced spouse even when the employee qualified for an unreduced 60/30 annuity.

A. Initial award or adjustment from ABD

1. Divorced spouses first awarded before August 12, 1983. The age reduction is equal to 1/144 of the gross tier I for each month the divorced spouse is under age 65 on her divorced spouse's ABD. If the divorced spouse previously received a spouse annuity, receipt of that benefit is not considered in determining the divorced spouse's age reduction.

2. Divorced spouses first awarded August 12, 1983, or later. The age reduction is equal to 1/144 of the gross tier I for each month up to 36 months plus 1/240 for each additional month beyond 36 that the divorced spouse is under FRA on her divorced spouse's ABD if:

   a. The divorced spouse was not previously entitled to a spouse annuity; or

   b. The divorced spouse was previously entitled to a spouse annuity that was not reduced for age. (This includes full or reduced 60/30 annuities.)

      The annuity of a divorced spouse who was previously entitled to a reduced age spouse annuity is reduced using the same reduction factor that applied to the spouse annuity, even if there is a break in entitlement.

B. Rate increase after the ABD - Any increase in the gross tier I amount is reduced by the same factor which was used in the initial award.

1030.5.5 Reduction for Other Benefits

The divorced spouse's tier I is reduced by the following other benefits:

A. Any SS benefit to which the divorced spouse is entitled. If the SS benefit is reduced because of entitlement to a public service pension, the reduction in tier I would be based on the amount of the SS benefit after offset for the public service pension.

B. The full amount of the net tier I, tier II and vested dual benefit of any RR Act employee annuity payable to the divorced spouse.

1030.5.6 Net Tier I/Annuity Rate

The net tier I, or the annuity rate, is the last computed rate. The divorced spouse's entitlement is not considered in determining the SSA family maximum or the RRA maximum.

Note:

- No annuity is payable for the month of a divorced spouse's 62nd birthday unless she was born on the first or second day of the month. Also, if the divorced spouse is applying for a reduced age annuity, no annuity is payable for months prior to the month the application is filed.

- Under the 1988 SS Act amendments, a divorced spouse tier I benefit is not payable for any month in which the employee is deported on or after 11-10-88, due to associations with the Nazi government of Germany during World War II, and the divorced spouse is an alien who is not living in the U.S.

1035.5 Overview of RRA Maximum Prior to November 01, 2005

The RRA Maximum limited the total benefits paid to an employee and a spouse when the ABD was after June 1, 1977. Introduced in the 1974 Railroad Retirement Act, this provision ensured that monthly retirement annuities did not exceed an employee's pre-retirement earnings, which are the basis for these benefits. The RRA Maximum was repealed effective January 1, 2002. However, in certain cases, it was necessary for examiners to review payments made prior to January 1, 2002, to see if the RRA Maximum calculations were correct.

Legal Opinion 2005-09 has now made testing and retesting of the RRA Maximum obsolete. Beginning November 1, 2005, examiners will no longer review payments made prior to January 1, 2002 for this purpose. The previously determined RRA Maximum reductions for the date breaks before January 1, 2002, will continue to apply; even if the previous reduction was erroneous or was determined that it should not have applied.

IMPORTANT: FOM 1035.5 through 1035.35 remains in procedure for historical reference and to explain how the previous RRA Maximum reduction was computed.

The RRA maximum was one of three amounts:

1. $1200.00, **or**

2. the employee's Final Average Monthly Compensation (FAMC), **or**

3. the sum of:

    - 80% of the FAMC, and

    - 10% of a monthly taxable earnings limit for tier 1.

The RRA maximum may could be tested several times as an employee and spouse had changes in entitlement to annuities or other benefits. However, annuity components compared in each test were always treated as if they were in effect on the employee's ABD.

Annuity components considered in the maximum test are tier 1, tier 2 and the supplemental annuity. When used in the test, these components exclude reductions for early retirement and most cost-of-living increases. However, the components must sometimes reflect reductions for other benefits.

An estimated RRA maximum was shown on MARC files.

Reductions for the RRA maximum are applied to annuities in this order:

- Spouse tier 2

- Supplemental annuity
- Employee tier 2.

1035.10 When the RRA maximum was tested

Unless a case met an exception listed in subsection 1035.10.1, the RRA maximum was tested on the following annuity beginning dates:

- the employee's ABD
- the spouse's ABD
- the employee's supplemental annuity beginning date.

When these beginning dates coincide, it was possible for an RRA maximum test to be made only once. However, changes in components or in entitlement required retesting of the RRA maximum as follows:

Tier 1 Event	Effective Date for Test
WC/PDB	• the employee's initial offset date for workers compensation or public disability benefits • the benefit termination date
NCSP	• the effective date of the employee's noncovered service pension • the date PIA 1 is no longer reduced for the NCSP
PSP	• the spouse's initial offset date for a public service pension • the pension termination date
Alien Nonresidence	• the date from which the spouse's tier 1 is not payable for alien nonresidence • when tier 1 is again payable
T1 DOE	• the tier 1 date of entitlement, if later than the ABD (This was possible in 1981 Amendment cases with applications filed before 9/1/1983.)

End of Nonpayment Period for EE Imprisonment	• the date from which tier 1 is again payable, if the employee had been incarcerated on the ABD. (Prisoner/felony nonpayment periods were possible from May 1983 through January 1995.)
Other events	**Effective Date for Test**
VDB DOE	• the employee's RIB/DIB vested dual benefit date of entitlement
Own EE Annuity	• the ABD of the spouse's own employee annuity
Spouse Termination	• the termination date of the spouse annuity, when the employee's annuity remains payable.

1035.10.1 Test exceptions

- There was no need to test the RRA maximum if: the effective date of the annuity calculation is after December 31, 2001 (The RRA maximum was repealed effective January 1, 2002.); or
- the employee's ABD is before June 1, 1977, or
- the ABD PIA is less than $450.00, or
- the sum of annuity components in the test is $1200.00 or less, or
- the only consideration is the entitlement of a divorced spouse. A divorced spouse's tier 1 is not included in the RRA maximum test.

1035.10.2 Annuity components in the RRA maximum test

Although the RRA maximum could be retested after the employee's ABD, annuity components for each test were always treated as if they were in effect on the employee's ABD. All components in the test were the amounts before any COL increase or tier 2 solvency reduction (takeback).

These annuity components were:

Component	Qualification
EE tier 1	1. gross amount on: • the ABD,

	• the NCSP effective date, or • the tier 1 DOE, or • the termination date of a WC/PDB offset 2. gross amount after reduction for WC/PDB 3. zero if tier 1 was not payable (incarceration for felony before February 1995)
EE tier 2	• gross tier 2 on the ABD, or • tier 2 after reduction for VDB on the vested dual benefit date of entitlement
Supplemental annuity	• gross amount before reduction for employer pension
Spouse tier 1	1. gross amount after reduction for: • a public service pension, or • the spouse's own EE annuity 2. zero if tier 1 was not payable for alien nonresidence
Spouse tier 2	gross amount: • on the EE's ABD, or • on the EE's vested dual benefit date of entitlement, or • after inclusion of a restored amount, or • after reduction for a potential RIB/DIB VDB before 8/13/1981

Historical Note: When a legal spouse and a deemed spouse were entitled to annuities at the same time, both spouses' tiers were added in the test.

1035.10.3 Component changes in RRA maximum tests

The RRA maximum was recalculated as an "initial" test when the ABD was changed, when lag earnings were credited from the ABD, etc.

When the RRA maximum was retested after the ABD, usually only one annuity component changed. If two or more events coincided, each corresponding component below may could change:

Event	**Component Changing in Test**
Supplemental annuity entitlement	• Gross supplemental annuity
Spouse entitlement	• Spouse gross tier 1 • Spouse tier 2
EE entitlement to WC/PDB	• Employee gross tier 1 after workers compensation or public disability benefits
WC/PDB termination	• Employee gross tier 1
NCSP effective date	• Employee gross tier 1 (PIA 1 reduced for NCSP) • Spouse gross tier 1
Termination of NCSP reduction	• Employee gross tier 1 • Spouse gross tier 1
PSP entitlement	• Spouse tier 1 after public service pension
PSP termination	• Spouse gross tier 1
Tier 1 not payable for alien nonresidence	• Spouse tier 1 (zero)
Tier 1 is again payable (alien residence)	• Spouse gross tier 1
Tier 1 date of entitlement (1981 Amendment case filed before 9/1/1983)	• Gross tier 1

Tier 1 not payable for a felony nonpayment period (5/1983 through 1/1995), if the A&S employee was incarcerated on the ABD and was not undergoing court approved rehabilitation	• Employee tier 1 (zero)
Tier 1 is again payable after a felony nonpayment period	• Employee gross tier 1
VDB date of entitlement	• Employee tier 2 after reduction for vested dual benefit • Spouse tier 2
Spouse entitled to own employee annuity	• Spouse tier 1 after reduction for own EE annuity • Spouse tier 2, with a restored amount not exceeding one-half the EE's ABD PIA
Spouse annuity terminates (and the employee's annuity remains payable)	• Employee tier 1 • Employee tier 2 • Supplemental annuity • Deemed spouse tier 1, if any • Deemed spouse tier 2, if any

1035.10.4 Special rules for including components

In some circumstances, the RRA maximum test included an annuity component, even though it was reduced or not payable:

Type of Case	**Amount Used in Test**
Spouse WC/PDB	The spouse's gross tier 1 was the amount before reduction for workers compensation or public disability benefit offset.
Male Spouse with Child in Care	Tier 2 for a male spouse was included when the annuity is based on a child in care, and the

	spouse will attain full age (60 or FRA) by the month the child attains age 18. This procedure applied even though the spouse may not have been entitled to the tier 2 when the RRA maximum was being tested.
Spouse Tier 1 not payable for a felony nonpayment period	From 5/1983 through 1/1995, if the spouse was in prison and not undergoing court approved rehabilitation, the spouse's gross tier I was used in the RRA maximum test, even though tier I was not payable.
Spouse with child in care age 16-17, spouse attains full age before child is 18	Before 1/1986: a spouse gross tier 1 was included in the RRA maximum test, even though not payable, if: • a female spouse's annuity was initially based on a minor child age 16-17 in care, and • the spouse attained full age (60 or 65) by the month the child attained age 18.
Spouse Tier 2 Reduced for Future VDB	Before 8/13/1981, a spouse's tier 2 in the RRA maximum test was reduced for future RIB/DIB vested dual benefit entitlement. This tier 2 reduction was not removed in subsequent tests, even if the spouse's VDB was never paid. (The 1981 amendments eliminated auxiliary vested dual benefits.)
Waiver	Annuity components were included in the RRA maximum test, even if the employee or spouse waived all or part of an annuity.

1035.10.5 Excluding spouse T1 component

Before 1986, under the 1981 amendments, a spouse entitled on the basis of a child in care had no tier 1 component after the child reached age 16.

In the RRA maximum test, the spouse's tier 1 is excluded (i.e., tier 1 is zero), if:

- the spouse was initially entitled based on a minor child who was age 16 to 17, and
- the spouse was not entitled to a full age (60 or 65) spouse annuity before the child attained age 18.

1035.10.6 "Spouse Invokes Max" estimate

Before the RRA maximum was repealed effective January 1, 2002, if a spouse had not yet filed an application for an annuity, the RRA maximum was tested twice on the employee's ABD:

- as an employee-only computation, and
- as an employee and spouse computation, using an estimated spouse annuity.

If an RRA maximum reduction applied with the spouse's components, the employee's case was coded with an indicator that the spouse invoke the RRA maximum reduction.

1035.15 How the RRA Maximum was Calculated Prior to November 01, 2005

The RRA maximum was one of three amounts:

1. $1200.00, **or**
2. the Final Average Monthly Compensation (FAMC), **or**
3. the sum of:
   - 80% of the FAMC, and
   - 10% of a monthly taxable earnings limit for tier 1.

The procedure for how the maximum was once determined is discussed in sections 1035.15.1 through 1035.15.6.

1035.15.1 Step 1- Final Average Monthly Compensation

The Final Average Monthly Compensation (FAMC) is an amount based on recent earnings under railroad retirement and social security, but limited to taxable limits for tier 2. The FAMC is calculated as follows:

A. Find the employee's creditable RR and SS covered earnings in the employee's ABD year and the 9 preceding calendar years. Limit each year's amount to the maximum taxable tier 2 compensation (see the table following "C." below).

   In cases paid before April 28, 1994, the FAMC was based on the monthly maximum for tier 2 and the number of months the employee worked in each year. For example, if an employee worked only 11 months in 1982, his tier 2 creditable compensation for the year was $22,275.00 (11 months times $2,025.00).

B. Select the two highest earnings years in the 10-year period.

Exception for Indexed FAMC: if the employee's annuity is initially awarded after 9/30/1983, and the AMC is indexed for government service, as discussed in FOM-I-214.1, there is no ten year limit for selecting the two highest indexed earnings years.

C. Divide the total of the earnings in those 2 years by 24. The result is the FAMC.

Year	T2 Taxable Earnings Monthly Maximum	T2 Taxable Earnings Annual Maximum
2001	4,975	59,700
2000	4,725	56,700
1999	4,475	53,700
1998	4,225	50,700
1997	4,050	48,600
1996	3,875	46,500
1995	3,775	45,300
1994	3,750	45,000
1993	3,575	42,900
1992	3,450	41,400
1991	3,300	39,600
1990	3,175	38,100
1989	2,975	35,700
1988	2,800	33,600
1987	2,725	32,700
1986	2,625	31,500
1985	2,475	29,700
1984	2,350	28,200

1983	2,225	26,700
1982	2,025	24,300
1981	1,850	22,200
1980	1,700	20,400
1979	1,575	18,900
1978	1,475	17,700

1035.15.2 Step 2 - T1 earnings limit comparison

In the table below, find the EE's ABD year and note the amount in column 3 (50% of Monthly Limit).

A. If the FAMC is less than 50% of the monthly tier I taxable earnings limit, the RRA maximum is the higher of:

- the FAMC, **or**
- $1,200.00.

B. If the FAMC is greater than 50% of the monthly tier I taxable earnings limit, proceed with step 3.

ABD Year	Monthly T1 Taxable Earnings Limit	50% of Monthly Limit	10% of Monthly Limit
2001	6,700.00	3,350.00	670.00
2000	6,350.00	3,175.00	635.00
1999	6,050.00	3,025.00	605.00
1998	5,700.00	2,850.00	570.00
1997	5,450.00	2,725.00	545.00
1996	5,225.00	2,612.50	522.50
1995	5,100.00	2,550.00	510.00
1994	5,050.00	2,525.00	505.00

1993	4,800.00	2,400.00	480.00
1992	4,625.00	2,312.50	462.50
1991	4,450.00	2,225.00	445.00
1990	4,275.00	2,137.50	427.50
1989	4,000.00	2,000.00	400.00
1988	3,750.00	1,875.00	375.00
1987	3,650.00	1,825.00	365.00
1986	3,500.00	1,750.00	350.00
1985	3,300.00	1,650.00	330.00
1984	3,150.00	1,575.00	315.00
1983	2,975.00	1,487.50	297.50
1982	2,700.00	1,350.00	270.00
1981	2,475.00	1,237.50	247.50
1980	2,158.33	1,079.17	215.83
1979	1,908.33	954.17	190.83
1978	1,475.00	737.50	147.50

1035.15.3 Step 3 - 80% of FAMC

If the FAMC is greater than 50% of the monthly tier 1 taxable earnings limit, multiply the FAMC by .80.

1035.15.4 Step 4 - 10% of monthly T1 limit

If the FAMC is greater than 50% of the monthly tier 1 taxable earnings limit, take 10% of the monthly tier 1 taxable earnings limit. (The product for this step is shown above in step 2, column 4.)

In some calculation instructions, this calculation is expressed as 20% times 50% of the monthly tier I taxable earnings limit.

1035.15.5 Step 5 - Add results for RRA maximum

Add the results of steps 3 and 4. The total is the RRA maximum.

Examples of the RRA maximum computation are shown below, followed by a table of the upper limits of RRA maximum amounts.

1035.15.6 Example 1: RRA maximum equals FAMC

This example summarizes the initial calculation of the RRA maximum for an employee with:

- an ABD of 1/1/2000, and
- last RR service in 1987, and
- SS wages reported through 1998, and
- the highest earnings years in 1998 and 1992. (When lag wages are reported, the FAMC may be recomputed with 1999 replacing 1992.)

Computation Step	Description	Amount
1. FAMC	1998 Taxable Earnings	24,420.05
	1992 Taxable Earnings	21,670.26
	Sum	46,090.31
	Divisor	/ 24
	FAMC	1,920.43
2. T1 Limit Comparison	50% of 2000 monthly T1 Earnings Limit	3,175.00
3. RRA Maximum	Step 2 exceeds step 1. The RRA maximum is the FAMC, which exceeds $1200.	1,920.43

1035.15.7 Example 2 - Full RRA maximum calculation

The calculation of the 1999 upper limit of the RRA maximum is summarized below (the complete table of upper limits is in subsection 1035.15.8):

Computation Step	Description	Amount
1. FAMC	1999 T2 Taxable Earnings Limit	53,700
	1998 T2 Taxable Earnings Limit	50,700
	Sum	104,400
	Divisor	/ 24
	FAMC	4,350
2. T1 Limit Comparison	50% of 1999 monthly T1 Earnings Limit (Since less than FAMC, go to Step 3.)	3,025
3. 80% of FAMC	FAMC	4,350
	Multiplier	* .8
	Product	3,480
4. 10% T1 Limit	20% of Step 2 amount (or 10% of 1999 monthly taxable T1 earnings limit)	605
5. RRA Maximum	Sum of Step 3 and Step 4	4,085

1035.15.8 Upper limit of RRA maximum

The upper limit of the RRA Maximum is based on maximum creditable earnings in the ABD year and the 2 preceding calendar years:

ABD	Upper Limit of RRA Maximum	ABD	Upper Limit of RRA Maximum
2002 or later	Not applicable	Jan - Oct 1987	2,405.00
2001	4,550.00	December 1986	2,390.00
2000	4,315.00	November 1986	2,302.50
1999	4,085.00	Jan - Oct 1986	2,280.00
1998	3,880.00	December 1985	2,260.00
1997	3,715.00	November 1985	2,177.50

December 1996	3,582.50	Jan - Oct 1985	2,160.00
Jan - Nov 1996	3,532.50	December 1984	2,145.00
December 1995	3,520.00	November 1984	2,066.67
Jan - Nov 1995	3,440.00	Jan - Oct 1984	2,015.00
December 1994	3,435.00	December 1983	1,997.50
Jan - Nov 1994	3,315.00	November 1983	1,923.33
December 1993	3,290.00	Jan - Oct 1983	1,847.50
Jan - Nov 1993	3,180.00	December 1982	1,820.00
December 1992	3,162.50	November 1982	1,752.50
Jan - Nov 1992	3,052.50	Jan - Oct 1982	1,690.00
December 1991	3,035.00	December 1981	1,667.50
November 1991	2,925.00	November 1981	1,605.83
Jan - Oct 1991	2,905.00	Jan - Oct 1981	1,557.50
December 1990	2,887.50	December 1980	1,523.83
November 1990	2,781.67	November 1980	1,469.17
Jan - Oct 1990	2,737.50	Jan - Oct 1980	1,435.83
December 1989	2,710.00	December 1979	1,410.83
November 1989	2,610.83	November 1979	1,358.33
Jan - Oct 1989	2,610.00	Jan - Oct 1979	1,330.83
December 1988	2,585.00	December 1978	1,287.50
Jan - Nov 1988	2,515.00	November 1978	1,238.33
December 1987	2,505.00	Jan - Oct 1978	1,207.50
November 1987	2,414.17	Before 1978	1,200.00

1035.15.9 Comparing the RRA maximum to annuity totals

The RRA maximum was computed based on the individual circumstances of each case. The upper limits in the table above were only possible when the employee had consistent maximum earnings in the two-year period ending with the ABD year.

Annuitants would sometimes question the discrepancy between the upper limit of the RRA maximum and the total of annuities actually payable to the employee and spouse. Below are some reasons that annuities could be smaller than the annual upper limits:

- The FAMC was based on the two highest earnings years in the ten-year period ending with and including the ABD year. An employee with maximum earnings often had his highest two earnings years before the ABD year. For example, an employee retiring in the first half of the year was unlikely to have the ABD year as one of his two highest earnings years.

- There were two maximum earnings limits in the RRA maximum formula. An employee might have had earnings exceeding the taxable earnings limit for tier 2 but not for tier 1. For example, an employee earning $60,000 in 1999 exceeded the tier 2 limit but not the tier 1 limit.

- The upper limit of the RRA maximum was based on total family benefits. The employee comparing his regular annuity to the maximum total benefit would have had to consider his supplemental annuity and his spouse's annuity, even if she was not yet receiving benefits.

  Historical Note: A reduction for the RRA maximum was based only on the components actually payable at the time of the test. Therefore, the RRA maximum calculation in an employee-only case excluded the spouse.

- The RRA maximum did not include reductions for early retirement, social security benefits, work deductions, etc. The employee could not necessarily compare the RRA maximum formula to the net annuity amounts payable to the family.

- Annuity components might not have credited lag earnings until a later date. When an employee annuity was initially calculated, tier 1 and tier 2 are based on reported earnings, which sometimes omitted up to two years of lag earnings. RRB mass adjustments eventually recomputed annuities to include these additional earnings.

  ABD year wages and compensation are not credited in PIA 1 until January of the year after the ABD. (In reduced 60/30 cases, the recalculation does not occur until the first full month the employee is age 62. If the spouse is not yet 62, her recalculation is delayed until she is age 62 for a full month.)

  Lag compensation for a given year is not posted until May of the following year. The RRA maximum was be retested when tier 2 is recalculated from the ABD. The updated FAMC may include a higher two-year sum of tier 2 taxable earnings limits.

Therefore, annuitants were advised not compare total family maximum benefits to annuity components that are likely to increase after lag earnings are reported.

1035.20 Reductions for the RRA maximum

Annuities payable to an employee or the spouse had to be adjusted when the affected portions exceed the RRA maximum applicable to the case. Reductions were made only to certain components of the annuity, in the following order:

1. Spouse tier 2

2. Supplemental annuity

3. Employee tier 2.

1035.20.1 Components reduced for RRA maximum

The reduction for the RRA maximum is subtracted from components as follows:

1. Spouse tier 2

   - ABD after 1983: tier 2 after restored amount and takebacks, but before COL increases and age reduction.

   - ABD before 1984: tier 2 after reduction for RIB/DIB VDB, COL increase before 1984, and restored amount, but before age reduction, takebacks, and COL increases after 1983.

   - Deemed and legal spouses: the tier 2 reduction is divided equally between the spouses. However, after one spouse's tier 2 has been reduced to zero, a second spouse with a greater tier 2 is subject to further reductions for the RRA maximum.

2. Gross supplemental annuity before reduction for an employer pension.

3. Employee tier 2 after reduction for a RIB/DIB VDB.

   If the employee annuity was awarded under the 1974 RR Act, the reduction in tier 2 is applied in sequential order to components 1, 2, and 3.

   The RRA maximum reduction could not exceed the sum of the components listed above. No other annuity components, such as tier 1 or the vested dual benefit, were reduced for the RRA maximum.

1035.20.2 Example of RRA maximum reduction

In this example, total benefits to the employee and spouse exceed the RRA maximum by $164.00. Reductions are made as follows:

COMPONENT SUBJECT TO REDUCTION	COMPONENT BEFORE REDUCTION	RRA MAX REDUCTION	COMPONENT AFTER REDUCTION
Spouse tier 2	$144.00	$144.00	0
Supplemental Annuity	$43.00	$20.00	$23.00
Employee tier 2	$323.00	0	$323.00

1035.20.3 RRA maximum reduction and employer tax credits

When the employee's supplemental annuity had to be reduced for the RRA maximum, the reduction was applied to the gross amount, before any reduction for a railroad pension. In some cases, the railroad will lose tax credits equaling the RRA maximum reduction amount.

In the example above, the gross supplemental annuity is $43.00, but the railroad employer's tax credit would be $23.00.

1035.25 RRA maximum and ABD selection before 2002

When selecting an ABD before 2002, a railroad employee had to consider:

- what his maximum would be in a possible month of retirement
- how much his family's benefit will be adjusted for the maximum
- if retiring earlier or later would result in a different maximum reduction.

The employee also had to consider tier I and tier 2 COL increases. The next two sections provide information about how the ABD and COL increases affected the RRA maximum.

1035.30 Advantages of January ABD before 2002

Before the RRA maximum was repealed effective January 1, 2002, an employee considering retirement in December or January usually maximized family benefits by selecting an ABD in January. The RRA maximum may be higher in January if the employee has maximum earnings in the ABD year and the 2 preceding years.

1035.35 Advantages of May ABD before 1983

Before 1983, an employee had to consider the RRA maximum in selecting an ABD in May or June. An ABD before June 1 was generally advantageous to certain employees

who had spouses. The RRA maximum was considered before the June COL increase was added to tier 1. This tended to lessen the impact of the maximum reduction.

When selecting an ABD in May or June, an employee no longer needed to consider the interaction of the cost-of-living increase and the RRA maximum. Annual COL increases have been applied in December since 1983.

1040.5 Retirement Overall Minimum (O/M) Provision Of The 1937 RR Act

The overall minimum (O/M) provision of the 1937 Railroad Retirement Act guaranteed that the total annuities payable to an employee and his family under the 1937 RR Act would not be less than 110% of the amount which would have been payable under the Social Security Act if railroad service after 1936 were credited as employment under that act.

To be entitled to this O/M computation, the employee must have filed an annuity application and have an ABD before 1-1-75.

These benefits were converted to 1974 Act rates effective 1-1-75.

1040.10 O/M Provisions of The 1974 RR Act

A. 110% Grandfather O/M - The 110% Grandfather O/M provision of the 1974 RR Act guarantees that in cases where the employee's ABD is during the period from 1-1-75 through 12-31-82, the total monthly annuities (including any supplemental annuity payable before age 65 but excluding any vested dual benefit) payable to an employee and his family will not be less than the total amount that would be payable under the O/M provision of the 1937 RR Act.

To be entitled to this O/M computation, the employee must have filed an annuity application or have an ABD after 12-31-74.

The employee's service and earnings after 1974 can be included in the computation of the 110% Grandfather O/M PIA (PIA #11). However, the maximum creditable yearly earnings for years after 1974 are frozen at the 1974 maximum. PIA #11 cannot be recomputed to include earnings after the employee's ABD, nor can it be increased for COL increases after 1974.

B. 100% O/M - The 100% O/M provision of the 1974 RR Act guarantees that the total monthly benefits payable (including any vested dual benefit, but excluding the supplemental annuity) to an employee and his family will not be less than the monthly amount which would be payable under the SS Act if railroad service after 1936 were credited as employment under that act.

To be entitled to this O/M computation, the employee must have filed an annuity application or have an ABD after 12-31-74.

The current PIA based on combined wages and compensation (PIA #9) is used for this computation. PIA #9 is subject to increases for COLs and recomputation for earnings after the employee's ABD.

1040.15 Basic Type Of Retirement O/M

There are three basic types of O/M payments possible under the 110% and 100% O/M depending upon the employee's status. A divorced spouse can be included in the O/M only if she is entitled to a divorced spouse's annuity.

A. Full O/M - The employee may be entitled to the full age and service O/M if (s)he has attained age 65 on or before the O/M effective date.

The share attributable to a spouse (without a child in care) or a divorced spouse annuitant (effective 10-1-81 or later), would be subject to an age reduction if (s)he is age 62-64 11/12 on the date (s)he is included in the O/M computation.

B. Reduced O/M - The employee may be entitled to a reduced age and service O/M computation if (s)he has attained age 62, but not age 65 on or before the O/M effective date.

The share attributable to a spouse (without a child in care) or a divorced spouse annuitant (effective 10-1-81 or later), would be subject to an age reduction if (s)he is age 62-64 11/12 on the date (s)he is included in the O/M computation.

In the case of a disabled employee, who is age 62-64 11/12, the age reduced O/M may produce a higher rate than the DIB O/M. This is true because the TRANS PIA may be used and because the A&S O/M maximum may be higher than the DIB O/M maximum.

C. DIB O/M - The DIB O/M can be paid to an employee with a DIB insured status at any age up to age 65 without an age reduction. At age 65, the DIB O/M is converted to a full age and service O/M.

The share attributable to a spouse (without a child in care) would be subject to an age reduction if (s)he is age 62-64 11/12 on the date (s)he is included in the O/M computation.

NOTE: A divorced spouse cannot be included in the DIB O/M based on a "child in care." The employee must be age 62 before a divorced spouse annuitant age 62 or over can be included in the DIB O/M.

1040.20 Basic O/M Computation

A. The first step in determining the O/M amount is to select the proper PIA.

1. 1974 Act 100% O/M - The PIA to be used is the highest applicable PIA from the following list at the current COL increase level:

- AMW PIA #9 - If the employee attained age 62 before 1979;

- TRANS PIA #9 - If the employee attains age 62 after 1978, but before 1984, and an age and service O/M rate is being computed;

- AIME PIA #9 - If the employee attains age 62 after 1978 and the AIME PIA is higher than the TRANS PIA or if a DIB O/M rate is being computed.

2. 1974 Act 110% O/M - The PIA to be used is the 6/74 AMW PIA #11.

3. 1937 Act 110% O/M - The 6/74 AMW PIA #11 is used until the current AMW PIA #9 produces a higher 100% O/M rate.

B. The second step in determining the O/M amount is to select the proper SSA family maximum.

1. Age and Service O/M

- If an AMW PIA applies, the SSA family maximum which corresponds to that PIA will be used. In 1974 Act 110% O/M cases, the 6/74 SSA family maximum is used.

- If an AIME or TRANS PIA applies, the SSA family maximum is computed in accordance with the formula in effect in the year the employee attained age 62. Any subsequent COL increases are added.

2. DIB O/M - Prior to the 1980 SS Act Disability Amendments, the computation of the family maximum was the same for both age and service and disability cases.

The SSA family maximum is determined based upon the eligibility year (benchmark year) regardless of the date of filing. When the date of entitlement is on or after the tier I cost-of-living increase effective date in the eligibility year, a cost-of-living percentage increase is applied to the initial Family Maximum Benefit amount. Subsequent COL percentage increases are payable from the benchmark year.

The SSA family maximum for disability annuitants whose first eligibility year is after 1978 and whose first month of entitlement to the DIB O/M is July 1980 or later is limited as follows:

SUMMARY OF AIME DISABILITY FAMILY MAXIMUMS BEFORE COST OF LIVING INCREASES

	DIB FAM MAX BASED ON 100% AIME PIA	**DIB FAM MAX BASED ON 85% OF AIME**	**DIB FAM MAX BASED ON 150% OF AIME PIA**

	AIME PIA Before COL	AIME PIA Before COL		AIME PIA Before COL
Elig Year	**Under**	**From**	**Through**	**Over**
1984	$248.60	$248.60	$355.50	$355.50
1985	260.60	260.60	372.90	372.90
1986	276.50	276.50	395.60	395.60
1987	288.60	288.60	412.70	412.70
1988	297.00	297.00	425.00	425.00
1989	315.34	315.30	451.60	451.60

SUMMARY OF AIME DISABILITY FAMILY MAXIMUMS BEFORE COST OF LIVING INCREASES

	DIB FAM MAX BASED ON 100% AIME PIA	DIB FAM MAX BASED ON 85% OF AIME		DIB FAM MAX BASED ON 150% OF AIME PIA
	AIME PIA Before COL	AIME PIA Before COL		AIME PIA Before COL
Elig Year	**Under**	**From**	**Through**	**Over**
1990	$331.20	$331.20	$474.30	$474.30
1991	344.20	334.20	493.00	493.00
1992	360.10	360.10	515.30	515.30
1993	373.00	373.00	534.00	534.00
1994	392.60	392.60	562.20	562.20
1995	396.50	396.50	567.40	567.40

SUMMARY OF AIME DISABILITY FAMILY MAXIMUMS BEFORE COST OF LIVING INCREASES

	DIB FAM MAX	DIB FAM MAX BASED ON 85%	DIB FAM MAX

	BASED ON 100% AIME PIA	OF AIME		BASED ON 150% OF AIME PIA
	AIME PIA Before COL	AIME PIA Before COL		AIME PIA Before COL
Elig Year	**Under**	**From**	**Through**	**Over**
1996	$406.70	$406.70	$582.10	$582.10
1997	423.30	423.30	605.90	605.90
1998	443.70	443.70	635.30	635.30
1999	469.80	469.80	673.00	673.00
2000	494.20	494.20	707.30	707.30
2001	532.70	532.70	747.40	747.40
2002	550.70	550.70	788.40	788.40
2003	563.90	563.90	807.10	807.10
2004	569.30	569.30	815.40	815.40
2005	583.50	583.50	835.30	835.30
2006	610.20	610.20	874.20	874.20
2007	633.30	633.30	949.20	949.20
2008	647.90	647.90	971.10	971.10
2009	685.40	685.40	1,027.40	1,027.40
2010	701.10	701.10	1,050.90	1,050.90

C. The third step in determining the O/M amount is to compute the benefit each beneficiary would receive under the SS Act.

1. The employee's SS formula benefit is computed as follows:

- The dollar amount of any delayed retirement credits is added to the employee's PIA;

- If the employee is under age 65 on the effective date of the age and service O/M, the previous rate is reduced by 1/180 for every month he

is under age 65. Effective January 1978, the age reduction months remain constant on subsequent awards. Effective September 1981 or later, the age reduction amount is rounded up to the nearest $0.10;

- If the employee is entitled to social security benefits:
  - 100% O/M - the amount of the current social security benefit, after any reduction for worker's compensation, public disability benefit or age is subtracted from the previous rate;
  - 110% O/M - 110% of the amount of the 12/74 social security benefit, after any reduction for worker's compensation, public disability benefit or age is subtracted from the previous rate.
- The result of the previous steps is the employee's SS formula benefit. Effective September 1981 or later, the SS formula benefit is rounded down to the nearest $1.00.

2. The spouse's SS formula benefit is computed as follows:

- The spouse's original benefit is 50% of the employee's PIA;
- The spouse's original rate must be reduced for the family maximum if the sum of the employee's PIA, the spouse's original rate and the child(ren)'s original rate(s) exceed the SSA family maximum. In such cases the spouse's and such child's original rates are equal shares of the difference between the SSA maximum and the employee's PIA. A divorced spouse's entitlement is not considered in computing family maximum;
- If a spouse (without a child in care) is under age 65 on the date (s)he is included in the O/M, the previous rate is reduced by 1/144 for every month (s)he is under age 65. Effective January 1978, the age reduction months remain constant on subsequent awards. Effective September 1981 or later, the age reduction amount is rounded up to the nearest $0.10;
- If the spouse is entitled to a public service pension (PSP) based on the spouse's own earnings payable to the spouse, her O/M is subject to reduction. The reduction does not apply, however, if social security (FICA) taxes were deducted from her government earnings on the last day of her government employment and/or the spouse filed for and became entitled to an annuity before 12-1-77:
  - **Beginning: The reduction applies to:**

12-1-77 Non-dependent husbands;

12-1-82 Non-dependent wives first eligible for a PSP 12-1-82 or later.

Note: A non-dependent wife who would have been eligible for a PSP before December 1982, except for a requirement which postponed eligibility for the PSP until the month after the month in which all other requirements were met, is exempt from the offset beginning December 1984.

7-1-83 All spouses first eligible for a PSP 7-1-83 or later.

Note: A spouse who would have been eligible for a PSP before July 1983 except for a requirement which postponed eligibility for the PSP until the month after the month in which all other requirements were met is exempt from the offset -676- beginning December 1984.

- The amount of the reduction is equal to:
  - 100% of the PSP for months before December 1984 if the spouse is first eligible for the PSP before 7-1-83. 66 2/3% of the PSP beginning in December 1984;
  - 66 2/3% of the PSP if the spouse is first eligible for the PSP 7-1-83 or later.
- If (s)he is entitled to a social security benefit:
  - 100% O/M - The amount of the current SS benefit is subtracted from the previous rate.

    NOTE: If the spouse is entitled to a DIB that is reduced for worker's compensation or public disability benefits, the amount of the SS offset will be determined on a case by case basis. If a worker's compensation or public disability offset is being applied to the spouse's SS benefit which is based on someone other than the RR employee's or the spouse's own earnings record, the amount of the SS off-set is the SS rate after reduction for worker's compensation or public disability benefits.
  - 110% O/M - 100% of a fictitious 6/74 SS benefit is subtracted from the previous rate. Earnings after 1974, but not in this excess of the 1974 maximum, are used in computing this fictitious SS benefit.

NOTE: If the spouse is entitled to a DIB that is reduced for worker's compensation or public disability benefits, the amount of the SS offset will be determined on a case by case basis. If a worker's compensation or public disability offset is being applied to the spouse's SS benefit which is based on someone other than the RR employee's or the spouse's own earnings record, the amount of the SS offset is the SS rate after reduction for worker's compensation or public disability benefits.

Effective September 1981 or later, the SS formula benefit is rounded down to the nearest $1.00.

3. The divorced spouse's SS formula benefit is computed as follows:

- The divorced spouse's original benefit is 50% of the employee's PIA;
- The divorced spouse's original rate is not reduced for the family maximum nor is the rate considered in computing the family maximum;
- The divorced spouse's O/M share is subject to reduction for entitlement to a public service pension (PSP) based on the divorced spouse's own earnings payable to the divorced spouse. The reduction does not apply, however, if social security (FICA) taxes were deducted from her government earnings on the last day of her government employment:

- **Beginning:** **The reduction applies to:**

  12-1-77 Divorced wives married to the employee less than 20 years and divorced husbands.

  Note: If the divorced spouse is dependent on the employee and first eligible for the PSP before 7-1-83, a current PSP reduction will be removed beginning 12-1-82 or no offset will be applied.

  12-1-82 Divorced wives married to the employee 20 years or more first eligible for a PSP 12-1-82 or later.

  Note: If the divorced spouse is dependent on the employee and first eligible for a PSP before 7-1-83, a current PSP reduction will be removed beginning 12-1-82 or no offset will be applied.

  7-1-83 All divorced spouses' first eligible for a PSP 7-1-83 or later.

- The amount of the reduction is equal to:

- 100% of the PSP if the divorced spouse is first eligible for the PSP before 7-1-83.

- 66 2/3% of the PSP if the divorced spouse is first eligible for the PSP 7-1-83 or later.

- 110% O/M - 100% of a fictitious 6/74 SS benefit is subtracted from the previous rate. Earnings after 1974, but not in excess of the 1974 maximum, are used in computing this fictitious SS benefit.

  Effective September 1981 or later, the SS formula benefit is rounded down to the nearest $1.00.

4. The child's SS formula benefit is computed as follows:

   - The child's original benefit is 50% of the employee's O/M PIA;

   - The child's original rate must be reduced for the family maximum if the sum of the employee's O/M PIA, the spouse's original rate, and the child(ren)'s original rate(s) exceed the SSA family maximum. In such case, each child's and the spouse's original rates are equal shares of the difference between the SSA maximum and the employee's O/M PIA. A divorced spouse's entitlement is not considered in computing the family maximum;

   - If the child is entitled to social security benefits:

     - 100% O/M - The amount of the current SS benefit is subtracted from the previous rate;

     - 110% O/M - 100% of the 6/74 SS benefit is subtracted from the previous rate.

       Effective September 1981 or later, the SS formula benefit is rounded down to the nearest $1.00.

5. The employee's, spouse's, divorced spouse's and child(ren)'s O/M benefits are totaled.

6. If the 110% O/M applies, the family total is increased by 10% of the total family benefits before offset for other benefits.

7. If the employee and/or the spouse received a reduced age and service annuity for any month(s) before the effective date of the O/M, the family's O/M total must be reduced.

- The employee's RR annuity rate is reduced by 1/180 times the number of months he received a reduced annuity;

- The spouse's RR annuity rate is reduced by 1/180 times the number of months (s)he received a reduced annuity, if her spouse annuity was initially awarded prior to 10-1-81;

- The spouse's RR annuity rate is reduced by 1/144 times the number of months (s)he received a reduced annuity, if her spouse annuity was initially awarded after 9-30-81;

- The sum of the above reductions is subtracted from the family O/M total.

8. Reduction for RR Act survivor annuity - If the employee is entitled to a widow(er)'s insurance annuity, a reduction must be made for entitlement to the survivor annuity:

   - When the employee annuity is initially awarded under the 1974 RR Act, the amount of the reduction is determined on a case to case basis;

   - When the employee annuity was initially awarded under the 1937 RR Act, the reduction is equal to the difference between the survivor's O/M rate and the survivor's RR rate.

9. Worker's Compensation and Public Disability Pension Offset - An offset for WC or public disability benefits may be applied to the DIB O/M. The reduction is first applied to the spouse's and/or divorced spouse's O/M share (in equal amounts if both are entitled), then to the employee's O/M share. The WC reduction does not apply to a retirement age and service annuity, even if the employee has a disability freeze (DF).

   a. Annuity beginning date 9-1-81 or later - These conditions will apply if the employee does not have a DF or if the DF begins 3-2-81 or later. The effect of a DF before 3-2-81 has not been determined.

      - Public disability benefit offset - The DIB O/M is reduced for entitlement to a worker's compensation payment and/or a public disability benefit. If there is entitlement to both WC and a public disability benefit, the total of both benefits is used to compute the DIB O/M reduction;

      - Effective date of reduction - The date that we receive notice of entitlement to WC or public disability benefits does not affect the DIB O/M reduction. The DIB O/M is reduced in any month the offset applies, regardless of the date the RRB is informed of the entitlement to WC or public disability benefits;

- Offset removed at age 65 - Offset for WC or public disability benefits no longer applies beginning the month the employee attains age 65.

b. Annuity beginning date before 9-1-81 - These conditions apply if the employee does not have a DF or if the DF begins before 3-2-81. The effect of a DF 3-2-81 or later has not been determined.

- Only WC reduction - There is no reduction for a public disability benefit. The DIB O/M may be reduced only for entitlement to WC payments;

- No reduction before notice received - The DIB O/M reduction for WC is not effective until the month after the month in which the RRB receives notice of the WC entitlement;

- Offset removed at age 62 - Offset for WC no longer applies beginning the month the employee attains age 62.

c. Formula for offset - The WC offset only applies if the sum of the WC and/or public disability benefit plus the total family shares is more than 80% of the employee's average current earnings (ACE). If the earnings used in computing the ACE are sufficiently high, there is no reduction, even if the employee is receiving WC benefits.

The following formula is used to determine the amount of the WC offset, which is then deducted from the spouse/divorced spouse's O/M share and the employee's O/M share:

O/M total + WC/public disability benefit

-Higher of O/M total or 80% of ACE

WC/public disability benefit offset

Definitions of terms used in formula:

- O/M total - The O/M total is the total of the O/M shares employee, spouse and/or divorced spouse payable in the first month of reduction for WC/public benefit. The gross O/M share is used, before any reduction.

If the family composition changes after the first reduction month, the O/M total is recomputed as if the annuitants to be included were entitled in the first month of reduction for WC/public disability benefit.

- WC/public disability benefit amount - The actual monthly rate is used for offset if the WC/public disability benefit amount is verified. If the employee does not submit evidence of the amount, such as an award letter, the maximum WC payable in the state of the employee's residence will be used for reduction, if it is higher than the amount claimed by the employee.

  The offset:

  - Equals the WC/public disability benefit if the O/M total is higher than 80% of the ACE;
  - Is less than the WC/public disability benefit if 80% of the ACE is higher than the O/M total;
  - Equals zero if the O/M total plus the WC/public disability benefit is lower than 80% of the ACE;
  - Is never greater than the amount of the WC/public disability benefit.

  The monthly rate is calculated if the benefit is paid weekly or biweekly. A lump-sum award is prorated to determine the monthly rate. Legal, medical and related expenses may be excluded from the WC amount if they were incurred in connection with the WC claim.

d. Average Current Earnings (ACE) - The employee's earnings may determine whether the reduction for WC/public disability benefit applies, or the amount of a reduction. The ACE is the highest of the following amounts:

- The AMW (average monthly wage) on which the employee's tier I PIA is based. If the tier I PIA is an AIME PIA instead of a table PIA, the employee's earnings are used to compute a fictitious AMW;
- The average monthly earnings for the 5 consecutive years after 1950 with the highest earnings; or

- The average monthly earnings for the 1 calendar year of highest earnings in the period consisting of the year the annuity begins (or the DF year, if earlier) and the 5 preceding years.

  The earnings used in the computation of the ACE under the first two options are not limited by the yearly maximum. The total actual earnings (RR compensation and SS wages) are used in computing the ACE, regardless of the yearly maximum.

10. If the spouse is not entitled to an annuity, the employee's annuity is increased to the O/M rate.

11. If the spouse is entitled to an annuity, the family's O/M rate is divided between the employee and the spouse.

    - 1974 RR Act 100% O/M - The employee receives 2/3 of the family's O/M rate; the spouse receives 1/3.

    - 1974 RR Act 110% O/M

      - No Social Security entitlement - The employee receives 2/3 of the family's O/M rate, the spouse receives 1/3;

      - Social Security Entitlement - The family's O/M rate is prorated according to the following formulae:

        $$\frac{EE(T1 + T2)}{EE(T1 + T2) + MA(T1 + T2)} \times \text{O/M rate} = \text{EE's share}$$

        O/M rate - EE's share = MA's share

    - 1937 Act 110% O/M - The family's O/M rate was prorated according to the following formulae:

      $$\frac{\text{EE RR rate}}{\text{EE RR rate} + \text{MA RR rate}} \times \text{O/M rate} = \text{EE's share}$$

O/M rate - EE's share = MA's share

- Conversion Case When 100% O/M Exceeds 110% O/M - The 110% O/M amount will continue to be prorated according to the rules for 1937 Act 110% O/M cases. The increase will be prorated according to the following formulae:

$$\frac{\text{EE (T1, T2 + VDB)}}{\text{EE (T1, T2 + VDB) + MA (T1, T2 + VDB)}} \times \text{EE's Share O/M increase} = \text{share of of the increase}$$

O/M increase - EE's share = MA's share of the increase

12. A divorced spouse's annuity is not increased under the O/M.

1045.5 Purpose of Chapter

This chapter explains how survivor annuities are computed and contains instructions for estimating survivor benefits.

1045.10 Widow(er)'s Insurance Annuities

1045.10.1 Tier I

A. Original rate - An aged or disabled widow(er)'s original rate is the highest applicable PIA from the following list. A young widow(er)'s original rate is 75% of the highest applicable survivor PIA from the following list:

1. AIME PIA #1 - if the employee's eligibility year is 1979 or later.

2. Alternative PIA – The 1983 social Security Act Amendments provide an alternative method of computing the PIA for aged and disabled widow(er)s, (including remarried widow(er)s and surviving divorced spouses), if the employee died before attainment of age 62 and the widow(er) first meets all criteria to an annuity, other than filing an application, in January 1985 or later.

   The alternative PIA is an AIME PIA which must be considered if:

   - The employee died before attainment of age 62 but after 1978, and
   - An aged or disabled widow(er), (including remarried widow(er)s and surviving divorced spouses), first meet all eligibility requirements January 1, 1985 or later, (OBD must be 1/85 or later).

3. TRANS PIA #1 - if the employee's eligibility year is 1979-1983.

4. AMW PIA #1 - if the employee's eligibility year is before 1979.

5. Special Minimum PIA #1 - if the employee had RR Act or SS Act covered employment or self-employment for many years at low earnings.

6. Frozen Minimum PIA #1 - if the employee had low earnings. The 1981 SS Act amendments eliminated the frozen minimum PIA 1-1-82 for beneficiaries in cases in which the employee's year of eligibility is 1982.

   Note: The employee's year of eligibility is the earlier of:

   - The month he attained age 62;
   - The month he received a disability freeze; or

- The month he died.

7. Deemed PIA - if the employee was entitled to delayed retirement credits, the amount he would have received under the SS Act (PIA #9 plus DRCs) is calculated.

   Note: A deemed PIA cannot be used in computing a young mother/young father's or divorced young mother's annuity.

8. 1977 O.S. PIA - If the employee's eligibility year is 1979 or later and a PIA larger than the AIME PIA can be obtained by using the actual earnings before 1951.

B. Reduced for maximum rate - A reduction for the SSA family maximum is always involved when there are three or more beneficiaries. It may be involved when there are two beneficiaries and one of them is an aged or disabled widow(er). See FOM-I-1050.10.

C. First adjusted rate - Ordinarily, the widow(er)'s first adjusted rate is:

- The widow(er)'s reduced for age rate if that rate is less than the RIB limitation rate; or

- The widow(er)’s age adjusted rate if (s)he is entitled to an SSA DIB based on her own earnings record; or,

- The RIB limitation rate if that rate is less than the reduced for age or age adjusted rate; or

- The sole survivor minimum rate if it is higher than age reduced rate, the age adjusted rate or the RIB limitation rate;

  Note: The 1981 SS Act amendments eliminated the SSM rate effective 1-1-82 in cases in which the employee's eligibility year is 1982 or later; or

- The lesser of the original rate or the reduced for maximum rate if the above adjustments do not apply.

1. Reduced for Age Rate Prior to the Year 2000 - If the widow(er) is under full retirement age on her annuity beginning date, the annuity is subject to an age reduction. An aged widow(er) under age 62 on the annuity beginning dated is deemed to be age 62. This deeming provision does not apply to remarried widow(er)s and surviving divorced spouses. The age reduced rate is determined by multiplying the original rate or the reduced for maximum rate by the appropriate decimal from the chart in FOM-I-10, Appendix K.

2. Reduced for Age Rate Effective With the Year 2000.- For widow(er)s born January 2, 1940 or later with annuity beginning dates of January 1, 2000, and later, new age reduction factors apply, however, the deeming provisions applicable prior to the year 2000 still apply. Refer to appendices "M" through "X" for the age reduction factors for widow(er)s born January 2, 1940 or later with annuity beginning dates of January 1, 2000, and later.

   An aged widow(er)'s age reduction is adjusted at full retirement age to take into consideration any months her annuity was not paid between ages 62 and full retirement age due to excess earnings.

3. The age adjusted rate - Under the provisions of the Social Security Act, if an age reduced widow(er) is entitled to a disability benefit based on her own earnings record, (s)he may be entitled to the tier 1 age adjusted rate. If this provision applies, only the amount of the widow(er)'s tier 1 which exceeds the amount of the disability annuity is reduced for early retirement.

   a. This provision applies if the following conditions are met:

      - The widow(er)'s annuity is age reduced; and,
      - The widow(er) is entitled to a disability insurance benefit (DIB) under the SS Act and the date of entitlement is the same as, or earlier than, the OBD; and,
      - The DIB PIA is less than the death PIA (increased for DRC's) or the widow(er)'s share of the maximum, if applicable; and,
      - The widow(er)'s tier 1 is not reduced by an additional amount (i.e., PSP or EE tier 1) which, when added to the SS DIB, exceeds the death PIA; and,
      - The OBD is 1/1978 or later

   b. Attainment of Full Retirement Age - Under the SS Act, a disability insurance benefit is converted to a retirement insurance benefit at full retirement age. Therefore, when the widow(er) attains full retirement age, the tier 1 age reduction is removed.

   c. Tier 2 - Entitlement to this provision has no effect on the 1981 Act tier 2.

   d. RIB Limit - If the employee's annuity was age reduced, the RIB limit must be considered. If the tier 1 age adjusted rate is higher than the RIB limit, either the RIB limit amount or 82.5% of the PIA,

whichever is greater, becomes the tier 1 age adjusted rate. If the RIB limit applies, there is no change in the age reduction at full retirement age.

e. Notifying the Widow That the Age Adjusted Rate Applies - Code paragraph 504.5 is included on the award letter. It reads as follows:

"Since you are entitled to a Social Security disability insurance benefit, we have applied an age reduction to only a portion of your Tier 1. When you attain full retirement age, your Tier 1 age reduction will be removed."

f. Example - The widow(er)'s date of birth is 6-15-1936. Her ABD will be 3-1-1999. (S)he is receiving a disability annuity based on her own earnings record from SSA. The age adjusted rate would be computed as follows:

Death PIA	$1500.00
SS PIA	- 850.00
Difference	650.00
Times age reduction factor	X .87175
Age reduced difference	566.63 rounds to 566.60

Age reduced difference	$ 566.60
SS PIA	+ 850
Age adjusted rate	1416.60

When the widow(er) attains full retirement age, the age adjusted rate becomes the full death PIA, $1500.00.

4. If the employee received a reduced age and service annuity under either the 1937 or 1974 RR Act, the RIB limitation must be considered.

The chart in Appendix L, sometimes called the screening guide, can be used to determine if the RIB limitation will apply.

The RIB limitation provides that an aged widow(er)'s first adjusted rate cannot exceed the higher of:

- 82 1/2% of the tier I PIA; or

- The amount the employee would have received under the SS Act. The employee's tier I including any age reduction must be recalculated from his ABD.

The RIB limitation will not apply in initial DWIA cases because the widow(er)'s age reduced rate will always be less than the RIB limit amount.

5. Sole survivor minimum - The 1981 SS Act amendments eliminated the Sole Survivor Minimum (SSM) rate effective 1-1-82 for beneficiaries in cases in which the employee's year of eligibility is 1982 or later.

   The SS Act provided that an aged widow(er)'s first adjusted rate would not be less than $84.50 if (s)he was the sole survivor. A disabled widow(er)'s first adjusted rate would not be less than $84.50 reduced by 43/240 of 1% for each month the widow(er) was under age 60 on her ABD.

   The sole survivor minimum did not apply if the annuity of another entitled beneficiary was being withheld because of work deductions.

   The sole survivor minimum did not apply in aged widow(er) cases when the ABD was after May 1976. It did not apply in disabled widow(er) cases when the ABD was after May 1977. The frozen minimum PIA after reduction for age and/or application of the RIB limit produced a higher rate.

   The first adjusted rate is rounded down to the dollar before it is reduced for other benefits.

D. Reduction for other benefits

1. Public service pension - The widow(er)'s first adjusted rate is subject to reduction for entitlement to a public service pension (PSP) based on the widow(er)'s own earnings payable to the widow(er). The reduction does not apply, however, if social security (FICA) taxes were deducted from her government earnings on the last day of her government employment and/or the widow(er) filed for and became entitled to an annuity (including a retirement annuity which was "converted" to a survivor annuity) before 12-1-77.

   a. The reduction applies to widow(er)s who:

   - Do not meet the January 1977 SS Act eligibility requirements (see FOM-I-120.40.4). However, the reduction does not apply beginning 12-1-82 if the annuitant is dependent and eligible for the PSP before 7-1-83; or

- Are eligible for the PSP 12-1-82 or later, and are not dependent; or

- Are eligible for the PSP 7-1-83 or later. Dependency does not matter in this situation.

b. The amount of the reduction is equal to:

- 100% of the PSP for months before December 1984 and 66 2/3% of the PSP beginning in December 1984 if the survivor is first eligible for the PSP before 7-1-83;

- 66 2/3% of the PSP if the survivor is first eligible for the PSP 7-1-83 or later.

2. Social security benefits - The widow(er)'s first adjusted rate is reduced by the full amount of any social security benefit to which she is entitled. This is true even though the full amount is not payable because of excess earnings.

   Remarried widow(er)s who were awarded an annuity prior to August 12, 1983, will not be reduced for any social security auxiliary benefit to which they become entitled.

3. Employee annuity tier I - The widow(er)'s first adjusted rate is reduced for any RR retirement annuity as follows:

   a. If the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or if the case is reopened 10-1-88 or later, the widow(er)'s first adjusted rate is reduced by the amount of the employee annuity tier I, after age reduction, for all date breaks.

   b. If the reduction for the employee tier I is first applied on an award with a final voucher date prior to 10-1-88, the widow(er)'s first adjusted rate is reduced by the amount of the employee annuity tier I, before any age reduction, through 9-30-88. Effective 10-1-88, the widow(er)'s first adjusted rate is reduced by the amount of the employee annuity tier I, after any age reduction.

   c. If both the employee and widow(er) started railroad work after 1974, the full amount of the survivor annuity is reduced by the full amount of the employee annuity to which the widow(er) is entitled.

E. Net tier I - The widow(er)'s net tier I is what is left after reducing her first adjusted rate for entitlement to other benefits.

   Note: Conviction and confinement for a criminal offense or being one of the categories defined in FOM1 150 may require the suspension of an individual's

O/M share or the conversion of his Tier 1 tax status to all NSSEB. See FOM1 150 for further information on prisoner procedures.

Under the 1988 SS Act amendments, a widow(er)'s tier I benefit is not payable from the annuity beginning date if the deceased employee had been removed/deported on or after 11-10-88, due to associations with the Nazi government of Germany during World War II, and the widow(er) is an alien who is not living in the U.S.

1045.10.2 Tier II

A. Basic rate - The widow(er)'s basic tier II rate is:

1. 30% of her dollar rounded tier I rate after offset for any public service pension for rates payable before 11-1-87, or 30% of her dollar rounded tier I rate before offset for any public service pension for rates payable 11-1-87 or later, if the employee was awarded a RRA payment or died before 10-1-81 and the widow(er)'s annuity is awarded before 10-1-86; or

2. 50% of the employee's tier II if the employee was not awarded a RRA payment and did not die before 10-1-81 or the widow(er)'s annuity is first awarded 10-1-86 or later. A reduction for the family maximum is involved if there are more than two entitled children. If the widow(er) is under age 65 on her ABD, her tier II is reduced for age. The reduced for age rate is determined by multiplying the basic rate or the reduced for maximum rate by the appropriate decimal from the chart in FOM-I-10, Appendix J. Effective 1-1-84, a disabled widow(er)'s age reduction cannot exceed a 60 month reduction. This applies to cases on the rolls and new cases. For months before 1-1984, a disabled widow(er)s reduced for age rate was determined using the chart in FOM-I-10, Appendix K.

B. COL Increases

1. June 1, 1982 or later:

a. Widow(er) receiving a tier II based on 30% of her tier I rate:

In 1982 and 1983, a widow(er) received a COL increase on her tier II effective June 1 equal to 32.5% of the rise in the Consumer Price Index (CPI) between the first quarter of the previous year and the first quarter of the current year if her ABD was June 1 or earlier.

Beginning in 1984, a widow(er) will receive a COL increase on her tier II effective December 1 equal to 32.5% of the tier I COL, provided her ABD is December 1 or earlier.

If the family composition changes and causes a change in the widow(er)'s tier I amount, her tier II must be recomputed. First,

fictitious tier I amounts are computed for currently eligible family members as of May 1982, or the ABD if later. Second, the widow(er)'s "new" basic tier II is 30% of her dollar rounded fictitious first adjusted tier I rate. Third, the new basic tier II is increased by the amount of all tier II COL increases from June 1, 1982, or the ABD if later, through the current date. The tier II takeback is not, however, recomputed unless the actual tier I rate paid in November 1983 was incorrect.

b. Widow(er) receiving a tier II based on 50% of the employee's tier II.

In 1982 and 1983 the widow(er) received a COL increase on her tier II effective June 1 equal to 32.5% of the rise in the Consumer Price Index (CPI) between the first quarter of the previous year and the first quarter of the current year if her ABD was June 1 or earlier.

Beginning in 1984, a widow(er) will receive a COL increase on her tier II effective December 1 equal to 32.5% of the tier I COL, provided her ABD is December 1 or earlier.

The COL increase is applied to her basic rate after any reduction for the family maximum or age.

If the family composition changes and causes a change in the widow(er)'s share of the employee's tier II, the widow(er)'s tier II must be recomputed. First, "new" tier II amounts are computed for currently eligible family members as of May 1982, or the ABD if later. Second, the widow(er)'s new tier II is increased by the amount of all tier II COL increases from June 1, 1982, or the ABD if later, through the current date.

2. June 1, 1981 or earlier - The tier II was recomputed whenever the tier I rate after offset for any public service pension changed. This means that the widow received the benefit of a full cost-of-living increase, not only in tier I, but also tier II.

Dual Annuity Adjustment Amount – This was previously called the widow(er)'s employee annuity restored amount.

a. A young mother, an aged or disabled widow, or a dependent aged or disabled widower is entitled to an increase in the dual annuity adjustment amount if the following conditions are met:

- The widow(er) is entitled to her own employee annuity; and
- Either the widow(er) or the deceased employee had 120 months of creditable railroad service before 1975.

In these cases, the dual annuity adjustment amount dual annuity adjustment amount is computed the same way as the vested dual benefit is computed for a vested widow or a vested dependent widower. See FOM-1-1045.10.3.

The dual annuity adjustment amount is increased by the cumulative tier I COL percentage increase after 1974 but not beyond the later of the widow(er)'s employee annuity ABD or the WIA OBD. It is not increased or decreased after that date.

b. If both the employee and widow(er) have less than 120 months of creditable railroad service before 1975, the dual annuity adjustment amount does not apply.

c. If neither the employee nor the widow(er) have any creditable railroad service before 1975, the entire employee annuity is deducted from the widow(er)'s annuity. The employee annuity is first deducted from the widow(er)'s tier 1. If the employee annuity is greater than the widow(er)'s tier 1, the dual annuity adjustment amount is a negative number. It will be the lower of the amount of the employee annuity that could not be deducted from tier 1 or the widow(er)'s net tier 2 before the WIMA increase. It is recomputed every time there is a change in either the widow(er)'s annuity or the widow(er)'s own employee annuity

D. Additional amount - spouse minimum - Under the 1976 amendments to the RR Act, the spouse minimum guaranty provides that a spouse who was entitled to an annuity the month before the death of an employee who was insured for survivor benefits, will receive a WIA of not less than the amount (s)he received the month before the employee died. If the spouse annuity was increased under the O/M, the additional amount payable under the O/M is not included in the spouse minimum guarantee rate. The spouse minimum rate is the spouse's rate after age and other benefit reductions, but before SMIB or any actuarial adjustment.

1. Cases awarded before 8-13-81 - The tier II will be increased for the spouse minimum if:

a. The total WIA net tier I, the tier II basic rate and any employee annuity dual annuity adjustment amount is less than the spouse annuity tier I, tier II and wife's vested dual benefit (VDB) after the VDB cutback;

AND

b. One or more of the following conditions exist:

- The employee had no earnings after 1936; or
- The widow(er) is entitled to an employee annuity; or

- The widow(er) is entitled to a remarried widow(er)'s benefit at SSA; or

- The widow(er)'s original tier I rate was reduced for:

- The SSA family maximum; or

- An age reduction; or

- An RIB limitation.

The additional amount is computed as follows:

- No age reduction in the spouse annuity or the age reduction was based on the spouse tier I, tier II and wife's VDB, if any.

  Step 1 - The widow(er)'s net tier I, basic tier II and dual annuity adjustment amount, if any, are added together.

  Step 2 - The step 1 result is subtracted from the spouse's annuity rate in the month before the employee's death. The result is the additional amount due to the spouse minimum.

- The spouse annuity was reduced for age and the age reduction was based on the spouse tier I, tier II and an RIB/DIB VDB.

  Step 1 - The age reduction on the spouse annuity VDB is subtracted from the total spouse annuity age reduction.

  Step 2 - The step 1 result is subtracted from the sum of the spouse annuity net tier I and tier II amounts for the month before the employee's death.

  Step 3 - The widow(er)'s net tier I, basic tier II and dual annuity adjustment amount, if any, are added together.

  Step 4 - The step 2 result is subtracted from the step 3 result. The result is the additional amount due to the spouse minimum.

  The additional amount due to the spouse minimum does not increase because of COL increases. On the contrary, it decreases as the net tier I and the tier II basic rate increase. It is intended to preserve only the amount that the widow(er) was receiving as a spouse in the month before the employee's death. It is possible, after one or more COL increases, that the net tier I, the basic tier II and the dual annuity adjustment amount, if any, will exceed the spouse minimum rate. At that

time, the additional amount due to the spouse minimum will be zero.

2. Cases awarded 8-13-81 or later - The tier II will be increased for the spouse minimum if the sum of the total WIA net tier I, the basic tier II and any dual annuity adjustment amount is less than the spouse annuity tier I, tier II and any VDB after the VDB cutback.

   The additional amount is computed as follows:

   Step 1 - The spouse annuity net tier I and tier II amounts, the VDB after cutback, and any RR grandfather increase for the month before the employee's death are added together.

   Step 2 - The widow(er)'s net tier I, the basic tier II and any dual annuity adjustment amount are added together.

   Step 3 - The step 2 result is subtracted from the step 1 result. The result is the additional amount due to the spouse minimum.

   The spouse minimum computation must be made on a case by case basis when:

   - The spouse annuity was an initial 1974 Act award (ABD or filing date after 12-1974) that was increased for O/M increase (grandfather or 100% O/M increases); or

   - The spouse annuity was a conversion case (ABD and filing date before 1-1975) and the spouse was entitled to an O/M grandfather equalization amount in the month before the employee died.

   The additional amount due to the spouse minimum does not increase because of COL increases. On the contrary, it decreases as the net tier I and the basic tier II increase. It is intended to preserve only the amount that the widow(er) was receiving as a spouse in the month before the employee's death. It is possible, after one or more COL increases, that the net tier I, the basic tier II, and the dual annuity adjustment amount, if any, will exceed the spouse minimum rate. At that time, the additional amount due to the spouse minimum will be zero.

   If the widow(er) becomes entitled to a RIB or DIB in or after the month of the employee's death, the tier II spouse guaranty rate must be reduced. This reduction is the lesser of the gross spouse annuity tier I amount or RIB/DIB amount.

   If the spouse annuity was reduced for public pension, the spouse minimum rate reflects this reduction. However, if the widower becomes

entitled to a public pension in or after the month of the employee's death, the spouse minimum rate is not recomputed.

E. Additional amount - equalization - If the widow(er)'s insurance annuity was initially awarded under the 1937 RR Act and the widow(er) is not entitled to a vested dual benefit, she may be entitled to an additional amount due to equalization.

If the amount that (s)he would have received in January 1975 under the 1937 RR Act exceeds the net tier I, the basic tier II and the dual annuity adjustment amount, if any, in January 1975; the excess is the additional amount due to equalization.

The additional amount due to equalization does not increase because of COL increases. On the contrary, it decreases as the net tier I and the other components of tier II (except the additional amount spouse minimum) increase. It is intended only to preserve the amount that the beneficiary would have received in January 1975 under the 1937 RR Act. It is possible, after one or more COL increases, that the net tier I and the other components of tier II will exceed the equalized rate. At that time, the additional amount due to equalization will be zero.

F. Solvency Reduction - A chart in the appendix summarizes the effect of the tier II solvency reduction on widow(er)s and other survivors.

The first solvency reduction is effective on 12-1-83 or the survivor's ABD, if later. The first solvency reduction cannot exceed the difference between the survivor's 12/83 and 11/83 net tier I amounts if the survivor's ABD was before 12/83. The first solvency reduction is equal to the difference between the employee's 12/83 and 11/83 net tier I amounts as explained in the above chart if the survivor's ABD is after 11/83 and the solvency reduction provisions are applicable.

The full amount of the employee's solvency reduction is deducted from the last computed tier II rate of each survivor annuity. The survivor's tier II cannot, however, be reduced below $10.00. Also, there is no reduction if the survivor's last computed tier II rate is less than $10.00.

If the survivor's ABD was before 12-1-84, a second and final solvency reduction was effective on 12-1-84. It was equal to the difference between the total solvency reduction and the reduction made on 12-1-83 or the survivor's ABD. The survivor's tier II could not, however, be reduced below $10.00. Also, there was no reduction if the survivor's last computed tier II rate was less than $10.00.

Examples: Employee A died in 8/81; his widow will attain age 60 in 1/84 and has filed an application for an annuity to begin in that month. She is entitled to a 1974 Act tier II which is not subject to the solvency reduction.

Employee B was awarded a 60/30 annuity beginning 6/83; he died in 12/83. His widow filed an application for an annuity to begin in 1/84, the month she will attain age 60. She is entitled to a 1981 amendment tier II. Her annuity is subject to the solvency reduction.

Employee C died in 1/84; he never applied for an annuity. His widow's tier II will not be subject to a solvency reduction.

G. The Widow(er)'s Initial Minimum Amount (WIMA) – Effective February 1, 2002, a widow(er) who is paid under the 1981 Amendments may receive an additional tier II amount called the "Widow(er)'s Initial Minimum Amount", (WIMA). The WIMA guaranty provides that the widow(er)'s annuity will be calculated using 100 percent of the tier II that would have been used to compute the annuity for the deceased employee on the survivor OBD.

The WIMA is computed as follows:

1. The statutory share of the OBD PIA is determined.

2. The statutory share of the OBD PIAis adjusted for the family maximum, the widow(er)'s age reduction and/or the employee's RIB limit. NOTE: A maximum of 60 months is used to compute the age reduction for disabled widow(er)s with an OBD before January 1984.

3. 100 percent of the employee tier II on the survivor OBD reduced for the tier 2 maximum, age and takeback(s). (If the tier II family maximum applies, 130 percent of the tier II is payable. The widow(er) is entitled to a 100 percent proportional share.)

4. Add the result of step two, rounded down to the dollar, to step three. This is the WIMA guaranty amount.

Once the WIMA has been determined, it will be compared to the widow(er)'s regular annuity rate effective the later of February 1, 2002 or the OBD and on each datebreak thereafter to determine if a WIMA increase is payable. If the WIMA is higher than the regular annuity rate, the additional amount is added to the widow(er)'s tier II.

The WIMA is recomputed if there is a change in the family group or a young mother/father switches to a widow(er)'s annuity. If there is a break in entitlement, (for instance, a young mother's annuity terminates when her child attains age 18, but the young mother has future entitlement as a widow), the WIMA will be recomputed based on the new survivor OBD.

The WIMA is also recomputed for ARFs and RIB/DIB adjustments effective November 2006 and later. SURPASS has been programmed for these calculations.

H. Net Tier II - The net tier II is the last computed rate.

1045.10.3 Vested Dual Benefit (VDB)

A vested widow or a vested dependent widower can be paid a vested dual benefit (VDB) if the annuity was authorized for payment before August 13, 1981, and:

- The widow(er)'s date of birth is before August 14, 1919; or
- The widow(er)'s date of entitlement to a disability insurance benefit under the SS Act is August 1981 or earlier.

A widow(er) cannot be paid a vested dual benefit if it was erroneously denied before 8-13-81. The 1981 RR Act amendments prohibited payment of a VDB in all cases in which entitlement was not determined prior to 8-13-81, including cases when entitlement was denied incorrectly.

A widow(er) who was born before August 14, 1919, and whose annuity was authorized for payment before August 13, 1981, can be paid a VDB when (s)he becomes entitled to a retirement insurance benefit under the SS Act even if the date of entitlement is after August 1981. The reason for this is that her VDB was technically awarded before August 13, 1981, even though the VDB amount at that time was zero.

Example: A vested widow born on August 13, 1919 was awarded an RR Act annuity effective August 1, 1979 (age 60). She later applies for her SS Act retirement insurance benefit and selects a January 1, 1982, date of entitlement. She can be paid a VDB from January 1, 1982.

Under the November 1976 Amendments to the RR Act, the VDB was equal to the 1937 RR Act WIA plus the COL increases after 1974 through the later of the widow(er)'s SS ABD or RR ABD minus the sum of the net tier I and the tier II payable.

The widow(er)'s dual annuity adjustment amount is equal to the 1937 RR Act WIA plus the COL increases after 1974 through the later of the widow(er)'s employee ABD or WIA ABD minus the sum of the net tier I and the basic tier II.

The 1937 RR Act WIA was computed as follows:

A. Basic rate - The basic rate is the WIA basic amount. This is generally slightly less than the lump-sum basic amount which is shown on the MARC because the lump-sum basic amount deems the employee to have died on 1-1-75.

B. 1968 table increase - The basic rate is increased by the amount shown in the following chart which corresponds to the employee's AMW:

AMW	Increase

Up to 100	7.53
101 - 150	9.26
151 - 200	10.62
201 - 250	12.07
251 - 300	13.34
301 - 350	14.70
351 - 400	16.06
401 - 450	17.24
451 - 500	18.60
501 - 550	19.87
551 - 600	22.96
Over 600	25.95

C. 1968 SS benefit reduction - An SS benefit reduction is made in the 1968 and 1970 rate computations if the following conditions are met:

- Widow(er) not entitled to an employee annuity VDB.
- The widow(er) is eligible for an SS benefit on her own account (i.e., she is either age 62 or entitled to a DIB).
- Widow(er) entitled to an employee annuity VDB.
- The widow(er)'s employee annuity was initially awarded under the 1974 RR Act; and
- The widow(er) is eligible for an SS benefit on her own account (i.e., she is either age 62 or entitled to a DIB); and
- The widow(er)'s employee annuity PIA #4 (PIA based on SS earnings through her vesting year) is less than her regular PIA #21 (PIA based on SS earnings through the employee's vesting year).

The reduction is equal to:

- 10.27% of PIA #21 if the widow is not entitled to an employee annuity VDB;

OR

- 10.27% of the difference between PIA #21 and PIA #4 if the widow is entitled to an employee annuity VDB.

D. Net table increase - The net table increase is the result of step B minus step C. If the result is $5.00 or more, it is added to the basic rate. Skip to step H.

E. Minimum increase - The minimum increase is $5.00 and must be considered when the step D result is less than $5.00.

F. 1968 SS benefit reduction - If an SS benefit reduction was made in step C, it must also be made here. The SS benefit reduction to be applied to the minimum increase is:

- 3.44% of PIA #21 if the widow(er) is not entitled to an employee annuity VDB;

OR

- 3.44% of the difference between PIA #21 and PIA #4 if the widow(er) is entitled to an employee annuity VDB;

BUT NOT MORE THAN

- 5.8% of the basic rate.

G. Net minimum increase - The net minimum increase is the result of step E minus step F. The net minimum increase is compared to the net table increase. The higher increase is added to the basic rate.

H. 1970 increase - The gross 1970 increase is 15% of the last computed rate but not more than $25.00. If the result is less than $5.00, it is added to the 1968 rate. Skip to step K.

I. 1970 SS benefit reduction - If an SS benefit reduction was made in step C, it must also be made here. The SS benefit reduction to the 1970 increase is:

- 8.87% of PIA #21 if the widow(er) is not entitled to an employee annuity VDB;

OR

- 8.87% of the difference between PIA #21 and PIA #4 if the widow(er) is entitled to an employee annuity VDB.

J. Net 1970 increase - The net 1970 increase is the result of step H minus step 1. If the result is less than $5.00, it is increased to $5.00. The result is added to the 1968 rate.

K. Combined 1971/1972 increase - The combined 1971/1972 increase is obtained by multiplying the 1970 rate by 1.32.

L. 1974 increase - The 1974 increase is obtained by adding 9.9099% of PIA #8 to the step K result.

M. 1937 Act rate - The step L result, if it does not end in 5c/, is rounded up to the next 5c/. The result is the 1937 Act WIA rate.

N. COL increase - The 1937 Act WIA rate is multiplied by the appropriate percentage in the chart located in the appendix.

O. VDB computation - The VDB was the difference between:

- The 1937 RR Act WIA rate plus appropriate COL increases;

  AND

- The total of the net tier I and the net tier on the later of the VDB date of entitlement or the widow(er)'s RIB/DIB date of entitlement.

VDB cutback - Under the 1981 RR Act amendments, the VDB must be cut back whenever the Congress appropriates less to the Dual Benefits Payment Account for a fiscal year than what is needed to make full VDB payments.

P. Additional amount - VDB equalization - If the widow(er)'s insurance annuity was initially awarded under the 1937 RR Act and the widow(er) was entitled to SS benefits on December 31, 1974, (s)he may be entitled to an additional amount due to equalization.

If the amount that (s)he would have received in January 1975 under the 1937 RR Act exceeds the net tier I and the tier II in January 1975, the excess is the additional amount due to equalization.

The additional amount due to equalization is frozen and does not increase or decrease.

Q. Additional Amount - Spouse Minimum - (Cases awarded before 8-13-81 only.) The VDB will be increased for the spouse minimum if the widow(er) was entitled to a spouse annuity RIB/DIB VDB based on her own earnings, in the month before the employee died.

NOTE: In some cases, both the tier II and the VDB can be increased due to the spouse minimum guarantee.

The additional amount is computed as follows:

Step 1 - The sum of the widow(er)'s net tier I, net tier II and VDB benefit is subtracted from the spouse's railroad retirement formula annuity rate (before any actuarial reduction) for the month before the employee's death. The result is the additional amount due to the spouse minimum.

Step 2 - The additional amount due to the spouse minimum is added to the VDB. Unlike the tier II spouse minimum amount, the VDB spouse minimum amount is frozen.

R. Dual annuity adjustment amount - The employee annuity dual annuity adjustment amount is the difference between:

- The 1937 RR Act WIA rate plus appropriate COL increases;

  AND

- The total of the net tier I and the basic tier II on the later of 1-1-75, the WIA ABD or the widow(er)'s employee annuity ABD.

1045.10.4 WIA Rate

The WIA rate is the sum of the net tier I, net tier II and the VDB, if any.

1045.15 Remarried Widow(er)'s Annuity

A remarried widow(er)'s annuity consists of a tier I amount only. The tier I is computed as explained in FOM-I-1045.10.1 except that:

- When the remarried widow(er) previously received a WIA, the age reduction in her remarried widow(er)'s annuity is based on the number of months she was actually under age 65 on her WIA ABD.

- A remarried widow(er) age 60-61 is not deemed to be age 62 when computing the age reduction.

- A remarried widow(er)'s annuity may be recomputed at age 62 if she did not receive payment for month(s) between her ABD and attainment of age 62 due to excess earnings.

A remarried widow(er)'s tier I amount will be less than her WIA tier I if (s)he began to receive a WIA prior to attainment of age 62.

1045.20 Surviving Divorced Spouse's Annuity

- A surviving divorced spouse's annuity consists of a tier I amount only. The tier I is computed as explained in FOM-I-1045.10.1 except that:

- The public service pension offset applies to a surviving divorced spouse who was married to the employee for 10, but less than 20 years.

- The surviving divorced spouse's annuity is not reduced for the SSA family maximum nor is her annuity rate considered in computing the SSA family maximum.

1045.25 Divorced Young Mother's Or Father's Annuity

A divorced young mother's or father's annuity consists of a tier I amount only. The tier I is computed as explained in FOM-I-1045.10.1, except that the public pension offset applies to a divorced young mother who was married to the employee for 10, but less than 20 years.

A divorced young mother's or father's annuity rate is considered in computing the SSA family maximum and her annuity can be reduced for the SSA family maximum.

1045.30 Child's Insurance Annuity (CIA)

1045.30.1 Tier I

A. Original rate - A child's original rate is 75% of the highest applicable survivor PIA from the following list:

1. AIME PIA #1 - if the employee's eligibility year is 1979 or later.

2. TRANS PIA #1 - if the employee's eligibility year is 1979- 1983.

3. AMW PIA #1 - if the employee's eligibility year is before 1979.

4. Special Minimum PIA #1 - if the employee had RR Act or SS Act covered employment or self-employment for many years at low earnings.

5. Frozen Minimum PIA #1 - if the employee had low earnings. The 1981 SS Act amendments eliminated the frozen minimum PIA 1-1-82 for beneficiaries in cases in which the employee's year of eligibility is 1982.

   Note: The employee's year of eligibility is the earlier of:

   - The month he attained age 62;

   - The month he received a disability freeze; or

   - The month he died.

6. 1977 O.S. PIA - If the employee's eligibility year is 1979 or later and a PIA larger than the AIME PIA can be attained by using the actual earnings before 1951.

B. Reduced for maximum rate - A reduction for the family maximum is always involved when there are three or more beneficiaries. It may be involved when there are two beneficiaries and one of them is an aged or disabled widow(er) or a remarried aged or disabled widow(er).

C. First adjusted rate - Ordinarily, the child's first adjusted rate is the lesser of:

1. The original rate (75% of the PIA); or

2. The reduced for maximum rate; but not less than

The 1981 SS Act amendments eliminated the SSM rate effective 1-1-82 in cases in which the employee's eligibility year is 1982 or later.

The SS Act provided that a child's first adjusted rate would not be less than the amount shown in the following charts if (s)he was the sole survivor.

The sole survivor minimum did not apply if the annuity of another beneficiary was being withheld because of work deductions.

- Employee's eligibility year was before 1979.

SSM Rate	**Effective**
$114.30	6-1-77
121.80	6-1-78
133.90	6-1-79
153.10	6-1-80
170.30	6-1-81
182.90	6-1-82
189.30	12-1-83
195.90	12-1-84
201.90	12-1-85

- Employee's eligibility year was after 1978. The sole survivor minimum rate was equal to the frozen minimum PIA of $122.00 increased for months after May of the year in which the employee died. Since the frozen minimum PIA did not receive a COL increase during a year in which no individual was

entitled to a benefit, the sole survivor minimum rate could not receive a COL increase for any year in which no individual was entitled to an annuity.

D. Reduction for other benefits - The child's first adjusted rate must be reduced, but not below zero, by the full amount of any social security benefit (s)he is entitled to. This is true even though the full amount is not payable because of excess earnings.

E. Net tier I - The child's net tier I is what is left after reducing the first adjusted rate for entitlement to social security benefits and rounding down to the next dollar.

Note: Conviction and confinement for a criminal offense or being one of the categories of individuals defined in FOM1 150 may require the suspension of an individual's O/M share or the conversion of his Tier 1 tax status to all NSSEB. See FOM1 150 for further information on criminal activity procedures. Under the 1988 SS Act amendments, a child's tier I benefit is not payable from the annuity beginning date, if the deceased employee had been removed/deported on or after 11-10-88, due to associations with the Nazi government of Germany during World War II, and the child is an alien who is not living in the U.S.

1045.30.2 Tier II

A. Basic rate - The child's basic rate is:

- 30% of his (her) first adjusted tier I rate if the employee was awarded a RRA payment or died before 10-1-81 and the child's annuity was awarded before 10-1-86; or

- 15% of the employee's tier II if the employee was not awarded a RRA payment before 10-1-81 and died after 9-30-81 or the child's annuity is first awarded 10-1-86 or later. This tier II amount is subject to the family maximum tier II of 80% of the employee's tier II and minimum of 35% of the employee's tier II.

B. COL Increases

1. June 1, 1982 or later

a. Child receiving a tier II based on 30% of tier I rate - In 1982 and 1983, a child received a COL increase on tier II effective June 1 equal to 32.5% of the rise in the Consumer Price Index (CPI) between the first quarter of the previous year and the first quarter of the current year if his ABD was June 1 or earlier.

Beginning in 1984, a child will receive a COL increase on his tier II effective December 1 equal to 32.5% of the tier I COL, provided his ABD is December 1 or earlier.

If the family composition changes and causes a change in the child's tier I amount, his tier II must be recomputed. First, fictitious tier I amounts are computed for currently eligible family members as of May 1982, or the ABD if later. Second, the child's "new" basic tier II is 30% of his dollar rounded fictitious first adjusted tier I rate. Third, the new basic tier II is increased by the amount of all tier II COL increases from June 1, 1982, or the ABD if later, through the current date.

b. Child receiving a tier II based on 15% of the employee's tier II - In 1982 and 1983, a child received a COL increase on his tier II effective June 1 equal to 32.5% of the rise in the Consumer Price Index (CPI) between the first quarter of the previous year and the first quarter of the current year if his ABD was June 1 or earlier.

Beginning in 1984, a child will receive a COL increase on his tier II effective December 1 equal to 32.5% of the tier I COL, provided his ABD is December 1 or earlier.

The COL increase is applied to his basic rate after any reduction for the family maximum.

If the family composition changes and causes a change in the child's share of the employee's tier II, the child's tier II must be recomputed. First, "new" tier II amounts are computed for currently eligible family members as of May 1982, or the ABD if later. Second, the child's new tier II is increased by the amount of all tier II COL increases from June 1, 1982, or the ABD if later, through the current date. The solvency reduction is not, however, recomputed unless the actual tier I rate paid in November 1983 was incorrect.

2. June 1, 1981 or earlier - The tier II was recomputed whenever the tier I first adjusted rate changed due to COL inclusion. This gave the effect of getting a full cost-of-living percentage increase to the combined tier I and tier II.

C. Additional amount - equalization - If the child's insurance annuity was initially awarded under the 1937 RR Act, the child may be entitled to an additional amount due to equalization.

If the amount that (s)he would have received in January 1975 under the 1937 RR Act exceeds the net tier I and the basic tier II rate, in January 1975, the excess is the additional amount due to equalization.

The additional amount due to equalization does not increase because of COL increases. On the contrary, it decreases as the net tier I and the basic tier II increase. It is intended only to preserve the amount that the beneficiary would

have received in January 1975 under the 1937 RR Act. It is possible, after one or more COL increases, that the net tier I and the basic tier II will exceed the equalized rate. At that time, the additional amount due to equalization will be zero.

D. Solvency Reduction - See FOM-I-1045.10F for an explanation of the solvency reduction.

E. Net Tier II - The net tier II is the last computed rate.

1045.30.3 CIA Rate

The CIA rate is the sum of the net tier I and the net tier II.

1045.35 Parent's Insurance Annuity

1045.35.1 Tier I

A. Original rate - A parent's original rate is 82 1/2% (75%, if two parents are entitled) of the highest applicable PIA from the following list:

1. AIME PIA #1 - if the employee's eligibility year is 1979 or later.

2. TRANS PIA #1 - if the employee's eligibility year is 1979- 1983.

3. AMW PIA #1 - if the employee's eligibility year is before 1979.

4. Special Minimum PIA #1 - if the employee had RR Act or SS Act covered employment or self-employment for many years at low earnings.

5. Frozen Minimum PIA #1 - if the employee had low earnings. The 1981 SS Act amendments eliminated the frozen minimum PIA 1-1-82 for beneficiaries in cases in which the employee's year of eligibility is 1982.

   Note: The employee's year of eligibility is the earlier of:

   - The month he attained age 62;
   - The month he received a disability freeze; or
   - The month he died.

6. 1977 O.S. PIA - If the employee's eligibility is 1979 or later and a PIA larger than the AIME PIA can be obtained by using the actual earnings before 1951.

B. Reduced for maximum rate - A reduction for the SSA family maximum is not involved when there are one or two entitled parents.

C. First adjusted rate - Ordinarily, the parent's first adjusted rate is the original rate. It may be the sole survivor minimum rate if the parent is the sole survivor.

The 1981 SS Act amendments eliminated the SSM rate effective 1-1-82 in cases in which the employee's eligibility year is 1982 or later.

The SS Act provides that a parent's first adjusted rate will not be less than the amount shown in the following charts if (s)he is the sole survivor.

The sole survivor minimum did not apply if both parents were entitled and one parent's annuity was being withheld because of work deductions.

- Employee's eligibility year is before 1979

SSM Rate	Effective
$114.30	6-1-77
121.80	6-1-78
133.90	6-1-79
153.10	6-1-80
170.30	6-1-81
182.90	6-1-82
189.30	12-1-83
195.90	12-1-84
201.90	12-1-85
204.50	12-1-86
213.10	12-1-87
221.60	12-1-88
232.00	12-1-89
244.00	12-1-90
253.00	12-1-91
260.50	12-1-92

- Employee's eligibility year is after 1978 - The sole survivor minimum rate was equal to the frozen minimum PIA of $122.00 increased for months after May of the year in which the employee died. The sole survivor minimum rate did not receive a COL increase for any year in which no individual was entitled to an annuity.

D. Reduction for other benefits - The parent's first adjusted rate must be reduced by the amount of the following benefits:

1. Social Security benefit - The parent's first adjusted rate is reduced by the full amount of any social security benefit to which (s)he is entitled. This is true even though the full amount is not payable because of excess earnings or a worker's compensation offset.

2. Employee annuity tier I - The parent's first adjusted rate is reduced for any RR retirement annuity, as follows:

a. If the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or if the case is reopened 10-1-88 or later, the parent's first adjusted rate is reduced by the amount of the employee annuity tier I, after age reduction, for all date breaks.

b. If the reduction for the employee tier I is first applied on an award with a final voucher date prior to 10-1-88, the parent's first adjusted rate is reduced by the amount of the employee annuity tier I, before any age reduction, through 9-30-88. Effective 10-1-88, the parent's first adjusted rate is reduced by the amount of the employee annuity tier I, after any age reduction.

If the parent's employee annuity net tier I is zero, there is no reduction in the parent's insurance annuity.

E. Net tier I - The parent's net tier I is what is left after reducing the first adjusted rate for entitlement to other benefits and rounding down to the next dollar.

Note: Conviction and confinement for a criminal offense or being one of the categories of individuals defined in FOM1 150 may require the suspension of an individual's O/M share or the conversion of his Tier 1 tax status to all NSSEB. See FOM1 150 for further information on prisoner procedures.

1045.35.2 Tier II

A parent's insurance annuity includes a tier II only when the employee was not survived by a widow(er) or child who could ever qualify for monthly benefits.

Under the 1988 SS Act amendments, a parent's tier I benefit is not payable from the annuity beginning date if the deceased employee had been deported on or after 11-10-

89, due to associations with the Nazi government of Germany during World War II, and the parent is an alien who is not living in the U.S.

A. Basic rate - The parent's basic rate is:

- 30% of his(her) first adjusted rate if the employee was awarded a RRA payment or died before 10-1-81 and the parent's annuity was awarded before 10-1-86; or

- 35% of the employee's tier II if the employee was not awarded a RRA payment before 10-1-81 and died after 9-30-81 or the parent's annuity is first awarded 10-1-86 or later.

B. COL Increases

1. June 1, 1982 or later

a. Parent receiving a tier II based on 30% of her tier I rate - In 1982 and 1983, a parent received a COL increase on her tier II effective June 1 equal to 32.5% of the rise in the Consumer Price Index (CPI) between the first quarter of the previous year and the first quarter of the current year if her ABD was June 1 or earlier.

Beginning in 1984, a parent will receive a COL increase on her tier II equal to 32.5% of the tier I COL, provided her ABD is December 1 or earlier.

If the family composition changes and causes a change in the parent's tier I amount, her tier II must be recomputed. First, fictitious tier I amounts are computed for currently eligible family members as of May 1982, or the ABD if later. Second, the parent's "new" basic tier II is 30% of her dollar rounded fictitious first adjusted tier I rate. Third, the new basic tier II is increased by the amount of all tier II COL increases from June 1, 1982, or the ABD if later, through the current date. The tier II takeback is not, however, recomputed unless the actual tier I rate paid in November 1983 was incorrect.

b. Receiving a tier II based on 35% of the employee's tier II - In 1982 and 1983, a parent received a COL increase on her tier II effective June 1 equal to 32.5% of the rise in the Consumer Price Index (CPI) between the first quarter of the previous year and the first quarter of the current year if her ABD was June 1 or earlier.

Beginning in 1984, a parent will receive a COL increase on her tier II equal to 32.5% of the tier I COL, provided her ABD is December 1 or earlier.

The COL increase is applied to her basic rate after any reduction for the family maximum.

2. June 1, 1981 or earlier - The tier II was recomputed whenever the tier I rate after offset for any public service pension changed.

C. Additional amount - equalization - If the parent's insurance annuity was initially awarded under the 1937 RR Act, the parent may be entitled to an additional amount due to equalization.

If the amount that (s)he would have received in January 1975 under the 1937 RR Act exceeds the net tier I and the basic tier II rate, in January 1975, the excess is the additional amount due to equalization.

The additional amount due to equalization does not increase because of COL increases. On the contrary, it decreases as the net tier I and the basic tier II increase. It is intended only to preserve the amount that the beneficiary would have received in January 1975 under the 1937 RR Act. It is possible, after one or more COL increases, that the net tier I and the basic tier II will exceed the equalized rate. At that time, the additional amount due to equalization will be zero.

D. Solvency Reduction - See FOM-I-1045.10F for an explanation of the solvency reduction.

E. Net Tier II - The net tier II is the last computed rate.

1045.35.3 Parent's Insurance Annuity Rate

The parent's insurance annuity rate is the sum of the net tier I and the net tier II.

1045.40 Survivor Estimates

1045.40.1 General

This section explains how to estimate survivor benefits. It is designed to be used with RRB Form G-308, Worksheet for Estimating Survivor Benefits.

When furnishing a survivor estimate, explain that the actual annuity rate will probably be different from the estimate because all the facts are not available at the time you are preparing the estimate. Also, if the date of entitlement is not immediate, possible amendments to the law could result in changes. Do not request survivor annuity estimates except when you do not have PIA and basic amount data available or when there are unusual circumstances.

1045.40.2 Tier I

A. Tier I PIA

1. If the employee has not retired or death occurs before the employee appears on the BIC, the approximate amount of the tier I PIA may be found on the MARC under "tier I, PIA 1."

2. If the employee has retired and appears on the BIC, the approximate amount of the tier I PIA may be found on the BIC under "SUR PIA."

   - If the SUR PIA field is blank, use the tier I PIA shown on the COL microfiche.

   - See FOM I-1005.55.4 for the COL increase amounts.

B. Deeming adjustment - Certain RR Act deeming provisions do not carry over from retirement benefits to survivor benefits. Therefore, the PIA may have to be adjusted as explained below.

   1. If the SUR PIA from the BIC is not shown and the tier I PIA shown on the COL microfiche is used, and the employee was receiving a 60/30 annuity or an occupational disability annuity, subtract $30.00:

      a. If an occupational disability annuity began after 1978, also subtract $50.00 for each COL increase the employee received prior to the earlier of:

         - The year of his death;

         - The year he was granted a DF; or

         - The year he attained age 62.

      b. If an occupational disability annuity began before 1979, also subtract $10.00 for each year the employee received an annuity prior to the earlier of:

         - The year of his death;

         - The year he was granted a DF; or

         - The year he attained age 62.

      c. If the employee met the 60/30 requirements before 7-1-84 and the 60/30 began after 1978, also subtract $30.00 for each COL increase the employee received prior to the earlier of:

         - The year of his death;

         - The year he was granted a DF; or

- The year he attained age 62.

2. If the tier I PIA from the MARC is used, subtract:

   a. $30.00 when the employee was eligible for a 60/30 annuity before 7-1-84.

   b. An additional $100.00 if the MARC shows a table PIA due to an incorrect date of birth and the employee is entitled to an AIME PIA based on his actual date of birth.

C. Age discrepancy adjustment

1. If an employee born before 1930 is younger than shown on the MARC, subtract an additional $30.00 for each year (s)he is younger than shown on the MARC.

2. If an employee born after 1929 is older than shown on the MARC, subtract an additional $30.00 for each (s)he is older than shown on the MARC.

D. Estimate Tier I PIA - If adjustments occur as described in B or C above, this figure represents the appropriate PIA, after those adjustments, to be used in determining survivor annuity estimates.

E. Original rate - The original rate is the following percentage of the tier I PIA after any deeming adjustment:

Beneficiary	**Share**
Widow(er) - aged or disabled	100%
Widow(er) - mother or father	75%
Remarried widow(er)	100%
Surviving divorced spouse	100%
Surviving divorced young mother/father	75%
Child	75%
One parent	82½%
Two parents	75%

F. Reduced for maximum rate - A reduction for the SSA family maximum is always involved when there are three or more beneficiaries not counting a surviving

divorced spouse, but counting a surviving divorced mother/father. The SSA family maximum may be involved when there are two beneficiaries not counting a surviving divorced spouse, but counting a surviving divorced mother/father and one of the beneficiaries is an aged or disabled widow(er).

Add all of the original rates except the surviving divorced wife's original rate. If the total exceeds the SSA family maximum for the PIA (or the closest PIA if you adjusted the PIA as explained in step B), multiply the SSA family maximum by the appropriate factor from the following charts to obtain the reduced for maximum rate. A surviving divorced wife's rate is not reduced for the SSA family maximum. Be sure to use the appropriate AIME or TRANS table to determine the family maximum if the employee actually attained age 62, met the SS Act disability standards (i.e., the employee was awarded a period of disability) or died after 1978. If the employee actually attained age 62, met the SS Act disability standards (i.e., the employee was awarded a period of disability) or died before 1979, use the AMW PIA table.

Family Composition Share Factors (Including a 100% Beneficiary)		
Type of Shares	100% Share	75% Share
1-100% Share and 1-75% Share	.57143	.42857
1-100% Share and 2-75% Shares	.40000	.30000
1-100% Share and 3-75% Shares	.30769	.23077
1-100% Share and 4-75% Shares	.25000	.18750
1-100% Share and 5-75% Shares	.21053	.15789

Family Composition Share Factors	
# of Shares	Each Share
3 - 75% Shares	.33333

4 - 75% Shares	.25000
5 - 75% Shares	.20000
6 - 75% Shares	.16667

The family composition above does not include the surviving divorced spouse and/or a legal widow found entitled after a deemed widow.

G. First adjusted rate (for the following beneficiaries only: aged, disabled, remarried widow(er) and surviving divorced spouse)

1. If the survivor will be under age 65 on her ABD, her first adjusted rate is the result of multiplying the original rate or the reduced for maximum rate by the decimal for the reduced rate from the chart in FOM-I-10, Appendix K. A disabled widow(er), remarried disabled widow(er) or a surviving disabled divorced spouse is deemed to be age 60 effective 1-1984. Use the chart in FOM-I-10, Appendix L to determine a disabled beneficiary's age reduced rate for months before 1-1984.

2. If the employee received a reduced age and service annuity, a further adjustment for the RIB limitation may be necessary. (Disregard this step if the survivor is applying for a DWIA.)

   Compare the number of months the employee's annuity was reduced for age to the number of months the survivor's annuity is reduced for age using the chart click button to view chart. 

   a. If the WIA reduction months equal or exceed the number in the chart, no adjustment is necessary.

   b. If the WIA reduction months are less than shown in the chart, further reduce the first adjusted rate to 82 1/2% of the PIA after any deeming adjustment.

3. Applying the Age Adjusted Rate - If the survivor is under age 65 on her ABD and (s)he is entitled to a SS disability benefit based on her own earnings record, (s)he may be entitled to the tier 1 age adjusted rate. If this provision applies, only the amount of the widow(er)’s tier 1 which exceeds the amount of the disability annuity is reduced for early retirement.

   a. This provision applies if the following conditions are met:

      - The widow(er)’s annuity is age reduced; and,

- The widow(er) is entitled to a disability insurance benefit (DIB) under the SS Act and the date of entitlement is the same as, or earlier than, the OBD; and,

- The DIB PIA is less than the death PIA (increased for DRC's) or the widow(er)'s share of the maximum, if applicable; and,

- The widow(er)'s tier 1 is not reduced by an additional amount (i.e., PSP or EE tier 1) which, when added to the SS DIB, exceeds the death PIA; and,

- The OBD is 1/1978 or later

b. Attainment of Full Retirement Age--Under the SS Act, a disability insurance benefit is converted to a retirement insurance benefit at full retirement age. Therefore, when the widow(er) attains full retirement age, the tier 1 age reduction is removed.

c. RIB Limit. - The age adjusted rate may be higher than the RIB limit amount. If this is the case, the RIB limit becomes the age adjusted rate.

As the RIB limit cannot accurately be estimated, do not apply this provision if the employee received an age reduced age and service annuity.

d. Calculating the Tier 1 Age Adjusted Rate

- Take the PIA, deemed PIA or share of the maximum

- Subtract the SS PIA

- Multiply the result by the by the appropriate decimal from the chart in FOM-I-10, Appendix J or K. Round down to the dime.

- Add the result to the SS PIA. The total is the tier 1 age adjusted rate.

e. Example. - The widow(er)'s date of birth is 6-15-1936. Her ABD will be 3-1-1999. (S)he is receiving a disability annuity based on her own earnings record from SSA. The age adjusted rate would be computed as follows:

Death PIA	$1500.00
SS PIA	- 850.00

Difference	650.00
Times age reduction factor	X .87175
Age reduced difference	566.63 rounds to 566.60

Age reduced difference	$ 566.60
SS PIA	+ 850
Age adjusted rate	1416.60

At age 65, the age adjusted rate becomes the full death PIA, $1500.00.

H. Reduction for entitlement to other benefits

1. Public service pension - The widow(er)'s first adjusted rate is subject to reduction for entitlement to a public service pension (PSP) based on the widow(er)'s own earnings payable to the widow(er). The reduction does not apply, however, if social security (FICA) taxes were deducted from her government earnings on the last day of her government employment and/or the widow(er) filed for and became entitled to an annuity (including a spouse annuity which was "converted" to a survivor annuity) before 12-1-77.

   a. The reduction applies to widow(er)s who:

      - Do not meet the January 1977 SS Act eligibility requirements (see FOM-I-120.40.4). However, the reduction does not apply beginning 12-1-82 if the annuitant is dependent and eligible for the PSP before 7-1-83; or

      - Are eligible for the PSP 12-1-82 or later, and are not dependent; or

      - Are eligible for the PSP 7-1-83 or later. Dependency does not matter in this situation.

   b. The amount of the reduction is equal to:

      - 100% of the PSP for months before December 1984 and 66 2/3% of the PSP beginning December 1984 if the survivor is first eligible for the PSP before 7-1-83;

- 66 2/3% of the PSP if the survivor is first eligible for the PSP 7-1-83 or later.

2. Subtract the amount of any social security benefit to which the survivor is entitled.

3. Subtract the amount of any employee annuity tier I, after any age reduction, to which the survivor is entitled.

   If both the employee and survivor started railroad work after 1974, the full amount of the survivor annuity is reduced by the full amount of the employee annuity.

I. Net tier I - The survivor's net tier I is what is left after any reduction for entitlement to other benefits, rounded down to the next dollar.

Note: Conviction and confinement for a criminal offense or being one of the categories of individuals defined in FOM1 150 may require the suspension of an individual's O/M share or the conversion of his Tier 1 tax status to all NSSEB. See FOM1 150 for further information on criminal activity procedures.

1045.40.3 Basic Tier II Rate

A. EE 1981 Amendment T-2 - Since 9-30-86 all survivor annuity tier II rates are based on the employee's 1981 amendment tier II; this amount is shown on the MARC or BIC. Do not try to estimate an annuity if the employee's 1981 amendment tier II is not shown; send these cases to Headquarters for handling.

Note: Refer to FOM-I-1015.5.2 for more information about the EE 1981 Amendment tier II.

B. Show 25% of the unreduced vested dual benefit (VDB) - If the records show a reduced VDB, multiply that amount by 31.25%, then enter that result. In cases that show possibly insured (PI) on the MARC, enter $42.45.

C. Subtract the applicable amount shown in step B from step A - This figure represents the survivor annuity bases for tier II.

D. Multiply "C" by the percentage appropriate to the beneficiary for whom the estimate is being calculated:

(1) 50% for widow(er)

(2) 35% for parent

(3) 15% for child

II. Family Maximum/Minimum - When the survivor tier II is based on the employee's tier II, the family maximum tier II is 80% of the employee's tier II and the family minimum tier II is 35% of the employee's tier II.

The following charts can be used to determine an individual beneficiary's share of the employee's high 60 tier II:

Family Composition Widow(er) and Children	**Widow(er)'s Share**	**Child's Share**
Widow(er) and 1 Child	50%	15%
Widow(er) and 2 Children	50%	15%
Widow(er) and 3 Children	42.105%	12.632%
Widow(er) and 4 Children	36.364%	10.909%
Widow(er) and 5 Children	32.000%	9.6%
Widow(er) and 6 Children	28.572%	8.571%

Family Composition Child(ren)	**Child's Share**
1 Child	35%
2 Children	17.5%
3 Children	15%
4 Children	15%
5 Children	15%
6 Children	13.33%

Family Composition	**Parent's Share***
1 Parent	35%
2 Parents	35%

*A parent's insurance annuity includes a tier II only when the employee was not survived by a widow(er) or child who could ever qualify for monthly benefits.

III. WIA Guaranty Rate - Under the 1976 Amendments to the RR Act, a widow or a dependent widower who is also entitled to an employee annuity will receive a dual annuity adjustment amount if either the deceased employee or the widow(er) had 10 years of railroad service before 1975. The amount of the tier II restoration is the difference between what the widow(er) would have received under the 1937 RR Act, including any COL increases from 1975 through 1981 but not later than the later of the WIA ABD or the employee annuity ABD, and the sum of her net tier I and basic tier II.

To compute the WIA guarantee rate add $20.00 to the lump sum basic amount on the MARC. Multiply the result by the appropriate factor from the chart below.

Later of RR WIA6/75

ABD or EE ANN ABD Before 6/75 5/76

Factor132%142%

6/76-6/77-6/78-6/79-6/80-6/81-

5/775/785/795/805/815/82

151%160%171%188%214%238%

6/82-12/83-12/84- 12/85-12/86 or

11/8311/8411/8511/86later

256%265%274%282%285%

The result is the WIA guarantee rate. Compare it to the WIA net tier I and basic tier II. If the WIA guarantee rate is greater, the tier II restoration will be the amount by which the WIA guarantee rate exceeds the net tier I and basic tier II. The tier II dual annuity adjustment amount is frozen, it is neither increased nor decreased.

IV. Spouse Minimum - Under the 1976 amendments to the RR Act, the spouse minimum guarantee provides that a spouse who was entitled to an annuity the month before the employee's death, who was insured for survivor benefits, will receive a widow(er)'s insurance annuity of not less than the amount (s)he received the month before the employee died. If the spouse annuity was

increased under the O/M, the additional amount payable under the O/M is not included in the spouse minimum guarantee. The spouse minimum rate is the spouse's rate after age and other benefit reductions, but before SMIB or any actuarial adjustment.

Compare the WIA net tier I, basic tier II and any dual annuity adjustment amount to the spouse's rate (after the VDB cutback) for the month before the employee died. If the spouse's rate is greater, the difference between it and the WIA components is the additional amount due to the spouse minimum. The additional amount will be added to tier II.

G. Solvency Reduction - If the employee's ABD or DOD was before 1-1-84, the survivor's tier II will have to be reduced as a result of the solvency reduction.

To estimate the total solvency reduction amount, divide the 12/86 PIA by 21.6.

Example: The employee died in 10/83 and the survivor's ABD is 1-1-87.

The 12/86 tier I PIA is $680.00.

The total solvency reduction amount would be 680.00 divided by 21.6 = $31.48.

Subtract the full amount of the estimated solvency reduction amount from each survivor's last computed tier II rate. Do not reduce the tier II below $10.00. Also, do not reduce the tier II rate if it is less than $10.00.

H. Net Tier II - The net tier II is the last computed rate.

1045.40.4 Survivor Estimate

The survivor's estimate annuity rate is the sum of the net tier I and net tier II.

1050.5 General

This chapter explains how the Social Security Administration (SSA) family maximum affects survivor family groups, when the maximum is involved, and how to determine individual rates.

1050.10 Application of the SSA Family Maximum

1050.10.1 When Two Beneficiaries Will Produce Maximum Rates

A. Two 75% Shares – The SSA family maximum may be involved when there are two beneficiaries (two children, one mother/father or surviving divorced mother/father and a child, or two parents) Although the maximum may be reached, there is no reduction because the maximum will not be exceeded.

B. One 75% Share and One 100% Share – The SSA family maximum may be involved when there are two beneficiaries (one aged, disabled or remarried widow(er) and one child) and a reduction will be necessary. A surviving divorced spouse or a legal widow(er) found entitled after a deemed widow(er) is not considered in computing the SSA family maximum and that annuity rate is not reduced for the SSA family maximum.

1050.10.2 When Three Beneficiaries Will Produce Maximum Rates

Three beneficiaries will always produce maximum rates and a reduction will almost always be necessary. However, a surviving divorced spouse or a legal widow(er) found entitled after a deemed widow(er) is not considered in computing the SSA family maximum and that annuity rate is not reduced for the SSA family maximum.

1050.15 Determining Beneficiary's Share of The Maximum

1050.15.1 Original Rate

The original rate (i.e., the beneficiary's unreduced share of the PIA) is the following percentage of the tier I PIA:

Beneficiary	**% Share**
Widow(er) - aged or disabled	100%
Widow(er) - mother or father	75%
Remarried Widow	100%
Surviving Divorced Wife	100%

Divorced Young Mother	75%
Child	75%
One parent	82 ½%
Two parents	75%

1050.15.2 Reduced for Maximum Rate

Use the following charts to determine the beneficiary's reduced for maximum rate (i.e., the beneficiary's share of the SSA family maximum):

Family Composition*	**100% Share**	**75% Share**
1-100% Share and 1-75% Shares	.57143	.42857
1-100% Share and 2-75% Shares	.40000	.30000
1-100% Share and 3-75% Shares	.30769	.23077
1-100% Share and 4-75% Shares	.25000	.18750
1-100% Share and 5-75% Shares	.21053	.15789

Family Composition*	**Each**
3-75% Shares	.33333
4-75% Shares	.25000
5-75% Shares	.20000
6-75% Shares	.16667

1050.15.3 Determining the Maximum When the Widow(er) is Entitled to the ALT PIA

These charts cannot be used if a widow(er) is entitled to the ALT PIA. When the ALT PIA applies, the widow(er)'s tier 1 is computed using a PIA that is higher than the death PIA used for the other payees.

Even though the ALT PIA is greater than the death PIA, individual shares are computed using the family maximum computed for the death PIA. Therefore, the maximum will

generally apply if a widow(er) entitled to an ALT PIA and any beneficiary, other than a surviving divorced spouse, is payable.

Example: There is a widow and initial child payable:

- Death PIA $ 1214.10
- ALT PIA 1622.30
- Widow(er)'s full share 1622.30
- Child's full share: 910.50
- Family max: 2476.50
- Total shares: 2532.80 (ALT PIA, 1622.30 plus child's full share, 910.50)
- Widow's adjusted: share 1586.20 (1622.30/2532.80 times 2476.50)
- Child's adjusted share: 890.20 (910.50/2532.80 times 2476.50)

1050.15.4 Parisi Redistribution of the Family Maximum

In L-00-26, the Office of General Counsel determined that we must change the calculation of an individual's share of the family maximum if the following conditions are met:

- The tier one family maximum applies; and,
- At least one, but not all, family member who is included in the maximum is entitled to a social security or railroad employee benefit.

The annuitant who is not dually entitled is a Parisi member. The dually entitled annuitant is non-Parisi.

The redistribution of the family maximum to the Parisi member is effective on the later of August 2000, the OBD or the effective date of entitlement to the SS or railroad employee benefit.

Calculation

The Parisi redistribution is calculated as follows:

1. The social security benefit, railroad employee benefit or statutory share of the maximum, if lower, of all non-Parisi class members are added together.

2. The total is divided by the number of Parisi class members. Round the result down to the dime.

3. The amount in step 2 is added to the Parisi class member's share of the family maximum. The redistributed share of the maximum cannot be greater than the statutory share of the PIA.

EXAMPLE:

The payees are an aged widow and two disabled children.

August 2000 PIA	$ 681.90
August 2000 Max	1098.60
Widow's share of the Max	439.40
Widow's SS benefit	708.00
Disabled children's share of the Max	329.50

The disabled children are the Parisi members. To compute their redistributed share of the maximum:

- Add $219.70 (the lower of the widow's share of the family maximum or SS benefit divided by 2) to $329.50 (each disabled child's share of the max)

- Compare the total, $549.20, to the statutory share of the PIA, $511.40.

- The lower amount, $511.40, is payable.

The rate of the non-Parisi member does not change.

NOTE: If the Parisi class member is entitled to a WIMA, it must be recomputed based on the new share of the family maximum

REAP does not perform the Parisi calculation. If the applicant is a Parisi class member, the REAP estimate will be understated.

1050.20 Tier II Minimum And Maximum

If the employee was not awarded a retirement annuity before 10-1-81 and died after 9-30-81, the survivor Tier II is computed based on the "high 60" Tier II amount which would have been payable to the employee in the month of death (after any reduction for W/F, but before any age reduction). After 9-30-86, all initial survivor computations will be based on the employee's "high 60" Tier II.

The minimum 1981 Amendment Tier II a family would receive is 35%; the maximum is 80%.

If the employee was awarded an RR Act annuity or died before 10-1-81, and the survivor annuity is awarded before 10-1-86, the survivor Tier II is equal to 30% of the original or reduced for maximum Tier I rate.

1050.25 Determining Beneficiary's 1981 Amendment Tier II Share

1050.25.1 Widow(er)'s Share

The aged, disabled or young widow(er)'s share is the following percentage of the employee's "high 60" tier II:

Family Composition	Widow(er)'s Share
Widow(er) and 0 Children	50%
Widow(er) and 1 Child	50%
Widow(er) and 2 Children	50%
Widow(er) and 3 Children	42.105%
Widow(er) and 4 Children	36.364%
Widow(er) and 5 Children	32.000%
Widow(er) and 6 Children	28.572%

1050.25.2 Child's Share

The child's share is the following percentage of the employee's "high 60" tier II:

Family Composition	Child's Share

Family Composition	Child's Share
Widow(er) and 1 Child	15%
Widow(er) and 2 Children	15%
Widow(er) and 3 Children	12.632%
Widow(er) and 4 Children	10.909%
Widow(er) and 5 Children	9.6%
Widow(er) and 6 Children	8.571%
1 Child	35%
2 Children	17.5%
3 Children	15%
4 Children	15%
5 Children	15%
6 Children	13.33%

1050.25.3 Parent's Share

A parent's share is 35% of the employee's "high 60" tier II whether there are one or two parents. A parent cannot qualify for a tier II when the employee was survived by a widow(er) or a child who could ever qualify for an annuity.

1055.5 Lump-Sum Death Payment (LSDP)

1055.5.1 Methods for Computing the LSDP

There are two methods for computing the maximum lump-sum death payment (LSDP) amount:

A. If the employee has at least 120 months of creditable service before January 1975, the maximum LSDP is 10 times the basic amount. Computing the basic amount is a two step process. The following explanation of the basic amount computation is simplified and may be used to answer questions for beneficiaries. It should not be used to compute and pay an LSDP.

First, the employee's average monthly remuneration (AMR) is computed. The AMR is obtained by averaging the creditable compensation and wages earned after 1936, but before the LSDP closing date. The closing date is the earliest of the following dates:

1. The first day of the calendar year in which the employee attained age 65;

2. The first day of the calendar year in which the employee died;

3. January 1, 1975.

The basic amount is computed by adding 52.4% of the AMR up to and including $75.00, to 12.8% of the AMR exceeding $75.00. The sum of these two computations is multiplied by 1% for each year between 1936 and 1974 in which the employee earned over $200.00 (these are the increment years). Finally, the number of increment years is added to the sum of the two previous computations. The result is the basic amount.

If the resulting basic amount is less than $18.14, the basic amount is increased to $18.14.

An estimate of the basic amount used in computing the LSDP may be found on the MARC file. The maximum LSDP is approximately $1,200.00.

B. If the employee acquired his 120th month of creditable railroad service after 1974, the LSDP is $255.00.

1055.5.2 Amount of the LSDP

The actual amount of the LSDP depends in part upon who receives it.

A. An eligible widow(er) receives the maximum LSDP.

B. An LSDP payable to a funeral home is equal to the amount of the unpaid burial expenses or the maximum LSDP, whichever is less.

NOTE: If the employee acquired his 120th month of creditable railroad service after 1974 and died after August 1981, an LSDP cannot be made to a funeral home.

C. An LSDP payable to equitably entitled persons is equal to the amount of reimbursable burial expenses paid by such persons or the maximum LSDP, whichever is less.

NOTE: If the employee acquired his 120th month of creditable railroad service after 1974 and died after August 1981, an LSDP cannot be made to an equitably entitled person.

1055.10 Deferred Lump-Sum Death Payment

The deferred LSDP is equal to the amount by which the LSDP exceeds the total amount of insurance annuities accruing (after all deductions due to work or child not in care) the survivors of an employee in the 12-month period beginning with the month the employee died.

1055.15 Residual Lump-Sum (RLS)

1055.15.1 Gross RLS

The gross RLS is equal to the following percentages of the employee's creditable compensation including any creditable military service:

Percent	Period
4%	1-1937 through 12-1946;
7%	1-1947 through 12-1958 (or through 5-1959, if employee died before 6-1959);
7 ½%	1-1959 through 12-1961 (for deaths after 5-1959);
8%	1-1962 through 12-1965 (or through 10-1966, if employee died before 10-30-66);
8.1%	1-1966 through 12-1966 (for deaths after 10-29-66);
8.65%	1-1967 through 12-1967;
8.8%	1-1968 through 12-1968;

9.45%	1-1969 through 12-1970;
9.85%	1-1971 through 12-1972;
10.1%	1-1973 through 9-1973 (or until the moratorium on change in pay rates expires for employees covered by negotiated pension plan and such a moratorium);
5.35%	10-1973 through 12-1974.

The maximum compensation amounts which may be credited per month for computing the RLS are:

Compensation	**Period**
$300.00	1-1937 through 6-1954;
$350.00	7-1954 through 5-1959;
$400.00	6-1959 through 10-1963;
$450.00	11-1963 through 12-1965;
$550.00	1-1966 through 12-1967;
$650.00	1-1968 through 12-1971;
$750.00	1-1972 through 12-1972;
$900.00	1-1973 through 12-1973;
$1,100.00	1-1974 through 12-1974.

An estimate of the gross RLS may be found on the BIC or MARC file. The maximum RLS equals $13,813.00.

1055.15.2 Net RLS

When benefits were paid to the employee and others during his lifetime or to others after his death the amount of the RLS is equal to the gross RLS minus the sum of all deductible benefits paid.

A. Deductible benefits

- All regular retirement annuities payable through 12-31-74 to an employee and his spouse, in a 1937 Act case;

- Regular retirement annuities payable to an employee and his spouse from 1-1-75 in a 1937 Act conversion case and from the ABD in a 1974 Act case, excluding tier I amounts based on SS Act wages and the vested dual benefit component;

- Retirement annuities paid to a divorced wife;

- The portion of any SS benefits paid during the employee's life, based on his RR compensation;

- Any benefits paid to his survivors after his death, based on combined RR and SS earnings;

  NOTE: The full amount of any survivor benefits paid under the SS Act is deductible even though no RR compensation is actually used in the computation of such benefits.

- The tax refund;

- Any payment in a lump-sum not awarded because the $4.00 tolerance rule was applied and the person(s) not awarded the lump-sum payment will not be eligible for the RLS;

- Any unrecovered overpayment; and

  NOTE: If recovery of an overpayment was waived, the overpayment is nevertheless deducted from the RLS because the money was in fact paid out to the employee or others deriving benefits from the employee.

- Any overpayment recovered by actuarial adjustment.

  NOTE: The amount of the annuity payments deducted in such case would be the amount after the reduction for the actuarial adjustment.

B. Non-deductible benefits

- The tier I portion of regular retirement annuities payable to an employee and his spouse from 1-1-75 in a 1937 Act conversion case and from the ABD in a 1974 Act case, based on SS Act wages, and the vested dual benefit component of such annuities;

- Pension under section 6 of the 1937 RR Act;

- Supplemental annuities; and

- Any insurance benefits paid under the SS Act to the employee and others during his life, based solely on his SS employment.

Railroad retirement annuities are meant to replace, in part, earnings lost to an individual or a family because of old age, disability or death. Consequently, an annual earnings limit was established to limit the amount of earnings a retired individual may have. The amount of earnings an individual under full retirement age (age 70 prior to the year 2000 and under age 72 before 1-1-83) has in a year may affect the amount of annuities payable, if earnings exceed the annual limit. Earnings over the annual limit are considered to be "excess earnings" and may cause deductions from annuity payments, depending on the kind of annuity and the amount of earnings.

The concept of "excess earnings" is relevant to the retirement age and service tier 1 and vested dual benefit (VDB) work deduction components and to the full survivor nondisability annuity rate which is subject to work deductions. These amounts are reduced as follows:

- Beginning in the year 2000, annuitants who have excess earnings and are under full retirement age for the entire year lose $1 for every $2 of excess earnings (earnings over the annual exempt amount). Annuitants who will attain full retirement age during the earnings year will lose $1 for every $3 of excess earnings over the annual exempt amount. However, only the earnings through the month before the month of attainment will be counted for work deduction purposes. Work deductions no longer apply beginning in the month the annuitant attains full retirement age. ***(Note: Work deductions cease when the annuitant attain full retirement age. This does not include LPE work deductions.)***

  Example 1 - Mr Jones is under full retirement age for the entire year of 2004 and he reports an estimate of earnings of $20,000.

$20,000.00		Estimated earnings.
-11,640.00	-	2004 limit for annuitants under full retirement age
8,360.00/2	-	Excess earnings and divisor for annuitants under FRA
4,180.00	-	Amount to be recovered from work deduction components

  Example 2: Mrs. Martin attains FRA in June of 2004 and reports an estimate of earnings through May 2004 of $39,000.

$39,000		Estimated earnings through April 2004.
- 31,080		2004 limit for annuitants who attain FRA in 2004
7,920/3		Excess earnings and divisor for annuitants who attain FRA.
2,640	=	Amount to be withheld. Withholding cannot extend past April 2004, the month before the annuitant attains FRA.

- For the period January 1983 through December 1989, all annuitants under age 70 lose $1 for every $2 of excess earnings over the annual exempt amount.

Beginning in January 1990, annuitants under age 65 lose $1 for every $2 of excess earnings over the annual exempt amount. Annuitants who are age 65 through 69 lose $1 for every $3 of excess earnings over the annual exempt amount. ***(Work deductions ceased at age 70.)***

Example 1 – Mrs. Johnson is under age 65 in 1999 and had earnings of $23,000 in that year.

$13,000.00		Final 1999 earnings.
- 9,600.00	-	1999 limit for annuitants under age 65.
3,400.00/2	-	Excess earnings and divisor for annuitants under FRA
1,700.00	-	Amount that was recovered from work deduction components

Example 2: Mr. Johnson attained age 65 in 1999 and he reported earning of $25,500.

$25,000.00		Final 1999 earnings.
- 15,500.00		1999 limit for annuitants age 65 through 69.
9,500.00/3		Excess earnings and divisor for annuitants who age 65 through 69.
3,166.67	=	Amount recovered from the employee's work deduction components.

- Prior to January 1983, annuitants under age 72 lost $1 for every $2 of excess earnings over the annual exempt amount. ***(Work deductions ceased at age 72.)***

1105.5 Test to Determine if Work Deductions Apply

The test to determine if work deductions apply to an annuity consists of three basic parts:

A. Work Deduction Insured Status - In order to be subject to work deductions, an annuitant must have a "Work Deduction Insured Status." A work deduction insured status is defined as follows:

1. Employee - The employee has a "Work Deduction Insured Status: if he or she:

   - Has sufficient quarters of coverage based on his or her own non-railroad earnings to be eligible for a social security benefit or,

   - Has accumulated wage quarters of coverage and/or railroad compensation quarters of coverage after 1974 which would equal the number of quarters of coverage to have an "Insured Status" under Social Security Administration rules.

2. Spouse or Divorced Spouse - The spouse or divorced spouse has a "Work Deduction Insured Status" if the employee has a "Work Deduction Insured Status".

3. Survivor Annuitants - All survivor annuitants are considered to have a "work deduction insured status" under the Social Security Act rules and are therefore, subject to annuity work deductions.

B. Annual Earnings Test - An annuitant, whose total yearly earnings are over the annual exempt amount, will be subject to annuity work deductions if the annuitant has a work deduction insured status. Only the earnings through the month before the month the annuitant attains full retirement age are counted in determining if earnings exceed the annual exempt amount.

EXCEPTION: There is no age limit for LPE work deductions.

C. Monthly Earnings Test - Regardless of total annual earnings, annuities are payable in full for any month in which the monthly earnings test applies and the annuitant neither earns wages over the limit set for his age nor performs substantial services in self-employment. The monthly exempt amount is one-twelfth of the annual limit. Restrictions on the use of the monthly earnings test are explained in FOM1 1105.40.

EXCEPTION: If LPE work deductions apply, the monthly earnings test is not applicable.

The earnings test applies to all work performed in the United States and to certain work outside the United States that is covered under the Social Security (SS) Act. A separate earnings test (the foreign work test) applies to non-covered work outside the United States. See FOM1 1105.85.

The Railroad Retirement (RR) Act requires these deductions under the earnings test, which are the same as the deductions defined in the SS Act. However, the RR Act also withholds payment for any month in which an annuitant works for a railroad employer.

Disability annuitants (employee, widower, or child) are not subject to the annual earnings test. Instead, any work activity by a disability annuitant is evaluated in terms of whether the ability to work demonstrates that disability has ceased. The earnings restrictions for a disabled employee are explained in FOM 1125. However, the annual earnings test does apply when a disabled widow(er) attains age 60, because these benefits are then considered as age rather than disability benefits.

1105.10 Annual Exempt Amounts

The annual exempt amount is the maximum amount of money that may be earned in a year without loss of annuities. Any earnings over the annual exempt amount will cause annuity deductions for a non-disability annuitant who is under full retirement age (age 70 prior to the year 2000 and under age 72 before 1-1-83). Beginning 1-1-78, there is a separate annual limit for annuitants who are full retirement age and over; this limit is higher than the annual exempt amount for annuitants under full retirement age. Prior to 1978, the earnings limit was the same for all annuitants.

Effective November 11, 1988, the higher exempt amount will apply to persons who die before their birth date in the year that they would have otherwise would have attained full retirement age.

1105.10.1 Table of Exempt Amounts

The amounts shown for 1973 through 1977 are for all annuitants under age 72. Beginning 1-1-78, there are separate limits for annuitants full retirement age or over and for annuitants under full retirement age.

YEAR	FULL RETIREMENT AGE AND OVER		UNDER FULL RETIREMENT AGE	
	Annual	Monthly	Annual	Monthly
2017	44,880	3740	16,920	1410
2016	41,880	3490	15,720	1310
2015	41,880	3490	15,720	1310
2014	41,400	3450	15,480	1290
2013	40,080	3340	15,120	1,260
2012	38,880	3240	14,640	1,220
2011	37,680	3140	14,160	1,180
2010	37,680	3140	14,160	1,180
2009	37,680	3140	14,160	1,180
2008	36,120	3010	13,560	1,130
2007	34,440	2870	12,960	1,080
2006	33,240	2770	12,480	1,040
2005	31,800	2650	12,000	1,000
2004	31,080	2590	11,640	970
2003	30,720	2560	11,520	960
2002	30,000	2500	11,280	940
2001	25,000	2083	10,680	890
2000	17,000	1417	10,080	840
1999	15,500	1291	9,600	800
1998	14,500	1208	9,120	760
1997	13,500	1125	8,640	720
1996	12,500	1041	8,280	690

YEAR	FULL RETIREMENT AGE AND OVER		UNDER FULL RETIREMENT AGE	
	Annual	Monthly	Annual	Monthly
1995	11,280	940	8,160	680
1994	11,160	930	8,040	670
1993	10,560	880	7,680	640
1992	10,200	850	7,440	620
1991	9,720	810	7,080	590
1990	9,360	780	6,840	570
1989	8,880	740	6,480	540
1988	8,400	700	6,120	510
1987	8,160	680	6,000	500
1986	7,800	650	5,760	480
1985	7,320	610	5,400	450
1984	6,960	580	5,160	430
1983	6,600	550	4,920	410
1982	6,000	500	4,440	370
1981	5,500	459	4,080	340
1980	5,000	417	3,720	310
1979	4,500	375	3,480	290
1978	4,000	334	3,240	270
1977	3,000	250	3,000	250
1976	2,760	230	2,760	230
1975	2,520	210	2,520	210
1974	2,400	200	2,400	200
1973	2,100	175	2,100	175

1105.10.2 Increase in Annual Exempt Amount

The 1977 SS Act amendments established the annual exempt amount for annuitants full retirement age and over through 1982. After 1982, the annual exempt amount for annuitants full retirement age and over will be adjusted automatically, as it is for annuitants under full retirement age. The increase in the exempt amount is based on the percentage rise in the average national wage for the second preceding year. For example, the increase in the under full retirement age exempt amount for l981 is based on the percentage rise in the average national wage from 1978 to 1979.

New exempt amounts are usually available in mid-October.

1105.15 Determining Exempt Amount When Annuitant Dies

Effective November 11, 1988, the higher exempt amount will apply to persons who die before their birth date in the year that they would have otherwise attained full retirement age. Previous to that these rules applied.

Date of Death	Monthly Exempt Amount
Before the month of the annuitant's full retirement age attainment.	Use the under full retirement age limit.
In or after the month of the annuitant's attainment of full retirement age. (Whether the annuitant dies before the actual birthday is irrelevant).	Use the full retirement age or over limit.

Effective November 11, 1988, excess earnings are calculated using a 12-month taxable year. However, for deaths prior to November 11, 1988, when the year ends because of death, the annual limit must be calculated for the short taxable year. The monthly exempt amount for the year an annuitant dies is multiplied by the number of months in the year the annuitant was living, including the month of death. The 1988 exempt amount for a full retirement age annuitant who died in September 1988 is $6,300.00 (9 x $700.00).

Recalculation of the exempt amount for a short taxable year applies only when entitlement ends because of death. When entitlement terminates for a reason other than death, see FOM 1 1105.25.

Before November 11, 1988

To compute the annual exempt amount applicable for the year the annuitant dies based on a "short taxable year", multiply the number of months the annuitant was alive in the year (including the month of death) times the monthly exempt amount.

If the annuitant dies in the year he would have attained full retirement age, but dies before the month of his attainment, his annual exempt amount becomes the amount for beneficiaries under full retirement age. If he dies in the month he attained or would have attained full retirement age, whether before or after the actual day, use the full retirement age annual exempt amount.

Example - An annuitant dies in June 1988 at age 67. His exempt amount is calculated as follows:

$ 700.00 (monthly exempt amount for annuitant over full retirement age in 1988)
X 6 (number of months annuitant is alive in 1988)
$4,200.00 (exempt amount for 1988)

1105.20 Earnings after Age Attainments

- Full Retirement Age Attainment

  Beginning in the year 2000, no work deductions apply beginning in the month in which the annuitant attains full retirement age. Only the earnings through the

month before the month of attaining full retirement age are counted for work deductions. If the annuitant's earnings in that period do not exceed the annual exempt amount, no work deductions are applied.

When assessing TWDs in a full retirement age attainment case, you should base the withholding on the amount of expected earnings through the month before the month of attaining full retirement age. *If using an annual estimate based on the previous year's earnings, divide it by 12, then multiply the monthly amount by the number of months before the full retirement age attainment month.*

When assessing PWDs, release a field assignment to secure a monthly breakdown of the earnings through the month before attainment of full retirement age in survivor cases.

In retirement cases, remove the regular work deductions and include code ALTA code paragraph 414.10 in the adjustment award letter. Code paragraph 414.10 advises the annuitant to contact the field office and provide them with a monthly breakdown of the earnings. The field office will enter the monthly breakdown into SPEED.

B. Age 70 (or age 72) Attainments for Taxable Years Ending After December 1973

If the annuitant attained age 70 (or age 72) after December 1973, the charging of work deductions depends on whether the earnings are from wages or self-employment:

1. Earnings are Wages - Only earnings earned in the months before the month of attainment of full retirement age, (age 70 prior to January 2000), (or age 72) are used in determining annual earnings for charging tier I/VDB and survivor annuity work deductions. Earnings after age 70 (or age 72) are not used. Work deductions no longer apply effective with the month in which the annuitant attains age 70 (or age 72).

   Example - The annuitant (DOB 11-5-21) earns $10,550 through the month of October 1991 and $1,450 from November through December 1991. The total earnings for work deductions in 1991 is $10,550. Work deductions do not apply November 1, 1991 or later.

   If a monthly breakdown of the annuitant's earnings cannot be obtained, follow the procedure in section 2 below.

2. Earnings are Self-Employment Earnings - If the annuitant worked to the end of the taxable year, the net earnings or loss for the full year are prorated for the months before the employee attains full retirement age (age 70 prior to the year 2000 or age 72 before 1-1-83). Only the earnings prorated to the months before attainment of full retirement age are used in determining annual earnings for charging tier I/VDB and survivor annuity

work deductions. Work deductions no longer apply effective with the month in which the annuitant attains full retirement age.

Example - The annuitant (DOB 11-5-21) earns $12,000 for the taxable year 1991. These earnings are prorated as $1,000 per month for each month in 1991. The earnings of $10,000 are credited through the month of October 1991. The remaining $2,000 is credited to November through December 1991. The total earnings for work deductions in 1991 is $10,000. Work deductions do not apply November 1, 1991 or later.

C. Age 72 Attainments for Taxable Years Ending Before January 1973

If an annuitant has attained age 72 in a taxable year ending before January 1973, the earnings for the entire year are used to determine the amount of excess earnings. However, only months prior to the month of attainment of age 72 are charged work deductions.

Example - The annuitant (DOB 11-5-00) earns $15,550 for the taxable year of 1972. This would normally require 12 permanent work deductions for 1972. However, the annuitant attained age 72 in November 1972. Therefore, work deductions do not apply November 1, 1972 or later.

1105.25 Earnings After Entitlement Ends

These rules for counting earnings apply when annuity entitlement ends for a reason other than the death of the annuitant. When an annuitant died before November 11, 1988, the rules in FOM 1 1105.15 should be used.

1105.25.1 Retirement and O/M Annuities

In retirement age and service cases (employee, spouse, divorced spouse, or retirement overall minimum), use the same rules as SSA when determining the earnings to be used in the tier 1/VDB annual earnings test. This means that the total earnings for the earnings year are counted for the annual earnings test.

A spouse annuitant (entitled only by reason of having a child in his or her care) is entitled to a “termination grace year” if the entitlement is ending because there is no longer a child-in-care. This means that the “monthly exempt amount “can be applied in for any month in the terminating year in which the spouse has a non-work month. This is true even if the spouse was previously paid for a non-work month in a prior year.

1105.25.2 Survivor Annuities

Earnings for months beginning with the month the person is no longer qualified for an annuity are not counted for deduction purposes, if entitlement ends for a reason other than death. Excess earnings deductions may apply only if the annuitant earned over the annual limit in his short entitlement year (January through the last month of entitlement). This rule applies to survivor annuities. It does not apply when an annuity

continues to be paid with no break in entitlement (e.g., a mother becomes entitled as an aged widow or a child has continuous entitlement to a student's annuity).

EXAMPLE: A mother received an annuity for January through July; her annuity was terminated because she remarried in August and she was under age 60. The mother's earnings are counted only in the months January through July to determine if work deductions apply. If she earned more than the annual exempt amount in January through July, work deductions apply in her case.

If an annuitant's entitlement ends, but the annuitant again becomes qualified for later months in the year, see FOM 1 1105.60.

1105.30 Taxable Year

Earnings for deduction purposes are counted for a period of a taxable year. In the absence of evidence to the contrary, the calendar year is considered to be the taxable year in assessing work deductions. When a taxpayer dies, his taxable year ends with the date of death regardless of whether the taxable year was a calendar year or a fiscal year.

Effective November 11, 1988, the taxable year for purposes of excess earnings is defined as being 12 months. Previously, the taxable year ended with the date of death regardless of whether the taxable year was a calendar year or a fiscal year.

1105.31 Fiscal Year

A fiscal year is an accounting period of 12 months ending on the last day of any month other than December, or is a period varying from 52 to 53 weeks. When a beneficiary reports earnings on the basis of a fiscal taxable year, the annual report must be made on or before the 15th day of the fourth month following the close of the fiscal taxable year. You should make the appropriate changes on the annual report form to conform with the fiscal year. The applicable earnings test is determined by when the fiscal year ends during the calendar year. For example, a fiscal year annual report for 2/82 through 1/83 would have the 1983 yearly and monthly exempt amounts apply for all 12 months subject to the earnings test.

1105.35 Determining Amount of Excess Earnings

Annuity payments are subject to deduction if a non-disability annuitant has earnings over the annual exempt amount. The amount of earnings in excess of the annual limit is the basis for determining the amount of annuities to be withheld. An annuitant may lose $1.00 in annuities for every $2.00 earned over the annual limit if the annuitant is under full retirement age. The year the annuitant attains full retirement age, the annuitant may lose $1.00 for every $3.00 earned over the annual exempt amount.

The term "excess earnings" refers to the amount of annuities to be withheld because of earnings over the annual limit. To determine the amount of excess earnings, deduct the

annual limit from the reported earnings, and divide the result by two or three depending on the annuitant's age. The amount of excess earnings should be rounded down to the next lower multiple of $1.00, if it is not a multiple of $1.00.

EXAMPLE: The employee reported earnings of $15,781.63 for 1991. Since the employee is over full retirement age, the annual limit for 1991 is $9,720. The amount of excess earnings to be withheld from the annuity is $2,020.00.

$15,781.63	
- 9,720.00	annual limit equals:
6,061.63	divided by 3 equals:
$2,020.54	excess earnings rounds down to:
$2,020.00	

1105.40 Monthly Earnings Test And Grace Year

The annual earnings test determines the amount of annuities to be withheld based on the amount of earnings over the annual exempt amount. A monthly earnings test may be used to determine which months of annuities should be withheld.

Under the monthly earnings test, annuities are payable in full for any month the annuitant does not earn wages over the monthly exempt amount and does not perform substantial services in self-employment, regardless of the total annual earnings. However, the 1977 SS amendments restricted the use of the monthly earnings test.

1105.40.1 Initial Grace Year

The initial monthly earnings test cannot be used except in the grace year. The grace year is the first year after 1977 in which an annuitant has an entitlement month in which he does not earn wages over the monthly exempt amount and does not perform substantial services in self-employment (a non-work month). The first year an annuitant has a non-work month is the grace year, and that is the only time the initial monthly earnings test may be used. Once the monthly earnings test has been applied after 1977, deductions for subsequent years are determined by the annual earnings test, regardless whether the annuitant worked every month.

EXAMPLE: A widow's annuity began 8-1-2004. She earned $50,000.00 before her retirement in July. She returned to work in 2005, but she earned less than the monthly exempt amount in March through May. Her 2005 earnings were $40,000.00.

Because she was entitled to an annuity and had non-work months in 2004 (August through December), 2004 is the widow's grace year. The monthly earnings test allows payment of her annuity August through December, even though her earnings of $50,000.00 would have caused deductions under the annual earnings test.

The monthly earnings test may not be used in 2005, because the grace year has expired. Deductions will be charged under the annual earnings test beginning with

January, and for every succeeding month until the excess is recovered, regardless whether she had a non-work month.

1105.40.2 Grace Year for Break in Entitlement or a Termination Year

There are two other cases when the monthly earnings test may be used:

A. Break in entitlement - A grace year may apply when there is a break in entitlement. When an annuitant becomes entitled to a different kind of annuity and there is a break in entitlement of at least 1 month, the monthly earnings test may be used in the new grace year. The different kinds of annuity are an employee, spouse, child, widow(er), mother/father or parent annuity. A change from a spouse's to a divorced spouse's annuity or a widow(er)'s to a remarried widow(er)'s annuity is not a break in entitlement for a grace year determination.

The grace year is the first year of entitlement to the new annuity in which the annuitant has a non-work month. The grace year must be after 1977.

B. Termination year - A grace year applies in the termination year for a child, or for a wife or mother/father entitled based on a child in care, unless the annuity terminates because of the death of the beneficiary. A termination grace year may apply to a child's annuity or O/M share, a spouse annuity or O/M share based on a child in care, or a surviving mother's/father's annuity based on a child in care. The monthly earnings test may not be used if the beneficiary is entitled to any other kind of annuity in the month after entitlement to the child's annuity or child in care annuity ends. This provision does not apply to a spouse's or widow(er)'s annuity based on age. The grace year must be after 1977.

This provision was added to prevent an overpayment because of earnings after the benefit terminated. The RR Act already provided that earnings after survivor annuity ends are not included in determining excess earnings. However, the termination grace year will benefit the wife, surviving child, or mother/father who has a non-work month and excess earnings in the year that entitlement ends, because it permits use of the monthly earnings test in a year after the initial grace year.

1105.40.3 Legislative Background

Before 1978, the monthly earnings test could be used in every year. Retirement work deduction components (tier I and the vested dual benefit), O/M shares and survivor annuities could be paid in any non-work month, regardless of total yearly earnings or the number of non-work months.

The 1977 SS amendment restriction on using the monthly earnings test was designed to cease benefit payments to certain annuitants for parts of the year, when their work patterns had not changed and their yearly earnings were substantial. The intent of the law is to allow annuitants to begin receiving monthly benefits upon retirement, when all

work may cease. However, the grace year may actually apply before the year the annuitant retires, if he is entitled to an annuity and has a non-work month.

When the 1977 SS amendments were first enacted, the grace year was the first year in which an annuitant had a non-work month during a period of entitlement. There was no restriction on which years could be a grace year. The result was that when the monthly earnings test had been used before 1978, annuities could not be paid for non-work months in 1978. This was an unfair disadvantage to annuitants who would have otherwise been paid for 1978 non-work months, and could not have anticipated the change in the law.

Consequently, Public Law 96-473 (the 10-19-80 SS amendments) was enacted to alleviate the harsh effects of the 1977 amendments. The change restricted the grace year to years after 1977. The monthly earnings test could be applied without restriction to years before 1978.

EXAMPLE: An annuitant became entitled in 1976 and had non-work months in 1976, 1977 and 1978. The monthly earnings test can be applied in 1976 and 1977, under the law in effect before 1978. The monthly earnings test can also be applied in 1978 under the 10-19-80 amendments, because 1978 is the first year after 1977 in which the annuitant was entitled and had a non-work month.

1105.45 Non-Work Months

1105.45.1 Definition of Non-work Month

A non-work month is one in which the annuitant is entitled to an annuity and did not earn wages over the monthly exempt amount and did not render substantial services in self-employment.

A non-work month can exist whether or not the annuitant has excess earnings for the year, whether or not a payment is made on the basis of the non-work month, and whether or not the annuitant waives payment for the non-work month. The existence of the non-work month controls the grace year, not whether the annuitant receives an annuity based on the existence of the non-work month.

EXAMPLE: An annuitant became entitled to an annuity in January 2000. At a salary of $700.00 per month, his total yearly earnings were $8,400.00. He had no excess earnings, but 2000 is the first year in which he had a non-work month of entitlement (he did not earn over the monthly exempt amount of $840.00). Therefore, 2000 is the only year in which the monthly earnings test may apply. The fact that he had no excess earnings in 2000 is immaterial.

1105.45.2 Requirement to Reveal Non-Work Months

An entitled annuitant does not have a completely free option to determine the year to which the monthly earnings test applies. Once he is entitled, the monthly earnings test

will be applied to the first year he has a non-work month of entitlement, regardless of whether he accepts payment for those months or waives payment for the non-work months. The existence of the non-work month is the controlling factor. In addition, an annuitant does not have the option of concealing a non-work month solely for the purpose of eliminating use of the monthly test, to retain the use of the monthly earnings test for what he believes will be a more advantageous year.

1105.50 Applicant Options For Selecting Grace Year

An applicant with excess earnings should consider the use of the grace year when he files for an annuity. He may be able to determine the most advantageous use of the monthly earnings test according to when he files his annuity application. It is impossible to establish guidelines for selecting the most advantageous grace year, because many factors are involved.

It is generally advantageous to use the monthly earnings test in the year of retirement, when employment ceases. This is true when earnings are high enough to prevent payment of the annuity unless the monthly earnings test applies. Annuities may then be paid beginning the month that earnings do not exceed the monthly exempt amount. In this case, an individual may wish to defer filing for an annuity until the year he wishes to use the monthly earnings test. The regular rules for canceling an application apply if the annuitant chooses to cancel an application and re-file.

However, if the individual's earnings are low enough to permit payment of the annuity before he actually stops working, an earlier beginning date may be advantageous. Remember that retroactivity limitations may affect the benefits payable.

This consideration will have more effect on a survivor annuitant, because part of a retirement annuity is payable even when an annuitant has excess earnings.

1105.55 Monthly Withholding Of Work Deductions

Withholding for excess earnings is deducted from monthly annuities on a dollar-for-dollar basis, beginning with the first month of the entitlement year and proceeding to the second and succeeding months until the required amount has been withheld. Annuities are not withheld for a month in the grace year if earnings do not exceed the monthly limit.

EXAMPLE: A retirement annuitant has excess earnings of $3390.00. His work deduction components total $400.00 each month. The components are withheld beginning with the first month of entitlement and for three succeeding months until $3390.00 has been deducted. If the grace year applies and his earnings in the second month do not exceed the monthly exempt amount, no deduction will be applied for that month. Deductions will then be applied in the fourth succeeding month.

1105.60 Two Periods Of Entitlement

When there are two periods of annuity entitlement in the earnings year, the amount of earnings used in the annual earnings test for retirement age and service tier 1/VDB and survivor nondisability work deductions depends on the type of annuity:

A. Retirement Age and Service Cases - For each period of entitlement in the annual earnings test, count the total earnings for the earnings year. However, do not charge work deductions to any month for which an annuity is not payable due to a break in entitlement.

Example: A spouse has two periods of entitlement 1992. The first period based on child in care is from January through May. The second period based on age is from September through December. Total earnings for the year (January through December) are $6830.

Excess earnings for the first period of entitlement are:

$11,030 (Earnings January - December 1992)
7,440 (1992 exempt amount for those under full retirement age)
$3,590/2 = $1,795 (excess earnings first period of entitlement)

Excess earnings for the second period of entitlement are the same:

$11,030 (Earnings January - December 1992)
7,440 (1992 exempt amount for those under full retirement age)
$3,590/2 = $1,795 (excess earnings second period of entitlement)

The amount of the work deduction components withheld during the first period of entitlement are subtracted from the excess earnings of the second period of entitlement and only the remaining excess earnings are recovered in the second period of entitlement. Therefore, if the work deduction components withheld in the first period of entitlement totaled $295, the remaining excess earnings to be recovered from the second period of entitlement are $1,500 (to the extent of the work deduction components available).

B. Retirement Disability to Age and Service Cases

Beginning with the month the employee attains full retirement age, work deductions no longer apply.

C. Survivor Cases - For the first period of entitlement, count earnings from January through the last month in that period and charge any excess earnings to months in that period of entitlement.

For the second period of entitlement, count earnings from January through the last month in the second period. Determine total excess earnings and subtract

any excess chargeable against the first period. Charge the remaining excess only against the months in the second period of entitlement.

Example - A survivor has two periods of entitlement in 1992. The first period based on child in care is from January through May. Earnings for this period are $4926. The second period based on age is from September through December. Total earnings for the year (January through December) are $6,830.

Excess earnings for the first period of entitlement are:

$9,126 (Earnings January - May 1992)
7,440 (1992 exempt amount for those under full retirement age)
$1,686/2 = $843 (excess earnings first period of entitlement)

Excess earnings for the second period of entitlement are the same:

$11,030 (Earnings January - December 1992)
7,440 (1992 exempt amount for those under full retirement age)
$3,590/2 = $1,795 (excess earnings second period of entitlement)

However, the amount of the work deduction components withheld during the first period of entitlement are subtracted from the excess earnings of the second period of entitlement and only the remaining excess earnings are recovered in the second period of entitlement. Therefore, if the survivor annuity withheld in the first period of entitlement totaled $843, the remaining excess earnings to be recovered from the second period of entitlement are $952.

D. Retirement and Survivor Combined - Spouse-to-Widow(er) Conversion - For the period of entitlement as a spouse, count the total earnings for the taxable year. Charge the excess earnings as explained in section (A). For the widow's period of entitlement, count earnings from January through the last month of the taxable year. Determine total excess earnings and subtract any excess earnings chargeable against the spouse entitlement period. Then charge the remaining excess earnings only against months in the widow's period of entitlement.

Example - An individual is entitled as a spouse from January through May 1978. Total earnings for the year (January through December) are $6,830.

Excess earnings for the spouse entitlement are:

$11,030 (Earnings January - December 1992)
7,440 (1992 exempt amount for those under full retirement age)
$3,590/2 = $1,795 (excess earnings first period of entitlement)

The survivor entitlement begins June 1992 and extends through December 1992. Excess earnings for the survivor entitlement are the same:

$11,030 (Earnings January - December 1992)

7,440 (1992 exempt amount for those under full retirement age)
$3,590/2 = $1,795 (excess earnings second period of entitlement)

However, the amount of the work deduction components withheld during the spouse entitlement are subtracted from the excess earnings of the survivor entitlement and only the remaining excess earnings are recovered in the second period of entitlement. Therefore, if the work deduction components withheld in the spouse entitlement totaled $295, the remaining excess earnings to be recovered from the survivor entitlement are $1,500. The amount of earnings used in the annual earnings test for retirement age and service tier 1/VDB and survivor non-disability work deductions depends on the type of annuity:

1105.61 Estimated Earnings In Short Entitlement Year

When assessing TWDs in short entitlement year cases, the withholding should be based on the amount of expected earnings through the last month of entitlement. If you are using an annual estimate based on the previous year's earnings, divide it by 12, then multiply the monthly amount by the number of entitlement months in current year.

This situation arises mostly in family group cases in which a working parent is receiving an annuity based on having a minor child in care. Be sure to check and see when the youngest child entitling the parent will attain age 18 (age 16 for cases with surviving divorced or remarried young mothers/fathers).

EXAMPLE: A KM, whose youngest child will attain age 16 in July 1999, had 1998 earnings of $24,000.00. Permanent work deductions were assessed for 1998. No 1999 estimate was provided so normally, we would use the final 1998 earnings amount as an estimate for 1999.

However, since the KM is only entitled through June 1999, the 1999 estimate should be revised as follows:

$24,000.00 divided by 12 months = $2,000.00.

$2,000.00 times 6 months (Since the youngest child will attain age 16 in July, the KM is only entitled through June 1999) = $12,000.00.

When accessing PWDs in the short entitlement year, secure a monthly breakdown of the earnings through the last month of entitlement

1105.65 Annuities To Which Excess May Be Charged

When a retirement employee has excess earnings the excess may be charged against his/her annuity and the annuities of all others entitled on his/her earnings record. A spouse annuity or divorced spouse annuity may be affected by the employee's earnings, as well as the benefit of any auxiliary beneficiary included in the O/M computation. See FOM1 1105.65.1 for the specifics on when a divorced spouse is

subject to withholding based on the employee's excess earnings. The earnings of any auxiliary beneficiary receiving a benefit directly or included in the O/M, will affect the payment only of his or her own benefit. That is, the earnings of a spouse or divorced spouse included in the O/M or receiving an annuity, a child O/M auxiliary beneficiary, or a survivor annuitant affect only the payment of that person's own benefits.

1105.65.1 Divorced Spouse Annuities

Prior to January 1, 1985, a divorced spouse's annuity was subject to withhold based on the employee's earnings in the same manner as if she was a spouse.

Beginning January 1, 1985, a divorced spouse who has been divorced from the employee for at least 2 years will not be affected by the employee's earnings.

Beginning January 1, 1991, based on a change in the Social Security Act, the following changes apply regarding the divorced spouse annuity being impacted by the employee's earnings:

- If the employee's ABD was prior to the month of the divorce, none of the divorced spouse annuity is subject to deductions based on the employee's excess earnings.

- If the employee's ABD is in the month of the divorce or later, the divorced spouse benefit is subject to deductions until the spouse has been divorced from the employee for at least two years.

Beginning August 17, 2007, based on amendments to the RRA, the divorced spouse is not subject to withholding for the employee's excess earnings if the employee is receiving a disability.

1105.70 When Deductions Are Not Made

Excess earnings deductions are not made for any month in which:

A. The annuitant is not entitled to an annuity, or the annuity was waived;

B. In the first year the annuitant is entitled to the monthly earnings test and has a month of entitlement in which he did not work for wages of more than the monthly exempt amount and did not render substantial services in SE.

C. The annuitant is full retirement age or over (age 70 prior to the year 2000 and age 72 before 1-1-83).EXCEPTION: 1. In retirement cases in which the spouse's or divorced spouse's work deduction components or O/M shares are used to recover the employee's excess earnings, the age of the spouse or divorced spouse is immaterial. The spouse's or divorced spouse's work deduction components or O/M shares may be withheld even if she is over FRA;

D. An employee disability annuitant is under full retirement age;

E. The annuitant is entitled to a disabled child's insurance annuity or is included in the employee's O/M as a disabled child;

F. A surviving divorced spouse is under full retirement age and entitled to a disabled surviving divorced spouse's annuity;

G. A remarried widow(er) is under full retirement age and entitled to a disabled remarried widow(er)'s annuity; or

H. A widow(er) is under age 60 and entitled to a disabled widow(er)'s insurance annuity.

1105.75 Work Deductions For Dual Annuitant

When an employee is entitled to both an age and service annuity and a spouse or widow(er)'s annuity, both annuities are subject to work deductions if the employee has a work deduction insured status. However, the amount of the employee annuity work deductions withheld (tier 1 and VDB) must be subtracted from the total amount of excess earnings to be withheld from the spouse or survivor annuity. If the amount withheld from the employee annuity equals the amount of excess earnings, no work deductions are assessed against the spouse or survivor annuity.

EXAMPLE: An employee who is also receiving a widow's insurance annuity earned $35,506.00 in 1999. The employee has a work deduction insured status. Retirement computed the employee's final 1999 work deductions. They withheld the employee's full tier 1 work deduction component for the entire year totaling $4,825.00. The survivor examiner should assess 1999 work deductions as follows:

$35,506.00			Amount of Earnings	
- 15,500.00			Minus Exempt Amount	
20,006.00	/3	=	$6,668.00	Amount Subject to Withholding
			-4,825.00	Minus Amount Withheld by Retirement
			$1,843.00	Amount to be withheld from the Survivor Annuity

1105.80 Limited Retroactivity For Reduced Age Annuitant

Under the provisions of the RR Solvency Act, a retirement or survivor annuity that is reduced for age is not payable before the month the annuity application is filed.

Under the SS Act, an age-reduced benefit may not retroact before the month of filing if it causes a further reduction for age.

1105.85 Foreign Work Test

The Social Security Administration has determined that, in some cases, differences in the values of foreign currencies make it administratively impractical to apply a test based on the dollar amount of earnings to work outside the U.S. that is not covered

under the SS Act. The foreign work test is used to determine if earnings in non-covered employment outside the U.S. will result in annuity deductions. The U.S. includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa.

1105.85.1 Foreign Work Test For Age and Service Cases

Earnings from work outside the United States, even when not covered for benefits under the Social Security Act, is still considered "earnings" for work deduction purposes. The 45 hour Work Test (also referred to as the "Special Work Test") applies to retirement age and service tier 1/VDB cases.

The 45 hour work test does not apply in survivor work deduction cases.

Effective May 1, 1983 or later, the "Special Test" provides for the withholding of the full monthly amount of the annuity subject to work deductions for any month the annuitant engages in non-covered remunerative activity outside the United States for 45 or more hours in a given month. For months preceding May 1, 1983, the special test provided for withholding the full work deduction amounts if the annuitant worked in any part of seven or more days per month.

A deduction may be imposed for non-covered self-employment outside the U.S. even if no "substantial services" were performed. All that is required is that the person "carry on a trade or business". Therefore, the "substantial service" determinations do not apply to services performed outside the U.S.

The following chart determines whether the special test or the regular annual earnings test applies:

A. Deductions For Work As Employee Outside U.S

	Type of Employment	Test Applicable
1.	U. S. Citizens	
	a. Employment covered by the SS Act for American employer; or foreign subsidiary of U.S. corporation where corporation has entered into agreement with the Internal Revenue Service (IRS) for coverage.	Annual
	b. Employment not covered by the SS Act for employer other than above, or because specifically excluded from coverage.	Special

2.	Aliens		
	a.	Employment covered by the SS Act because of U.S. vessel or aircraft and contract of employment entered into in U.S. or during performance of contract of employment, vessel or plane touched a port or airfield in U.S.	Annual
	b.	Employment not covered by the SS Act because (a) is not applicable.	Special

B. Deductions for Self-Employment of U. S. Citizens Outside the U. S.

	Type of Employment	**Test Applicable**
1.	Practice of Profession as Physician	Special
2.	Activity Would Be Covered if Carried on in U. S. and:	
	• Income from personal services and capital investment (in which case part of the net earnings is covered).	Annual
	• Income from personal services only (in which case none of the net earnings is covered).	Special
	Exception No. 1: Minister who works for American employer or has U. S. congregation.	Annual
	Exception No. 2: Earnings are in excess of the exempt amount.	Annual

C. Deductions for Self-Employment of Aliens Outside U. S.

	Self-Employment Activity	**Test Applicable**
1.	Resident of U.S. and Self-Employment would be covered if carried on in U.S. (including resident ministers, whether or not they have	Annual

	elected coverage).	
2.	Non-resident of U.S.	Special

Do not impose work deductions under either the annual earnings test or the special test against citizen or aliens on the basis of income which is not considered to be "earnings", such as rentals from real estate, capital gains, dividends, interest, or other excluded income.

1105.85.2 Work Covered by the Foreign Work Test

The foreign work test applies if an annuitant engages in the following non-covered remunerative activities:

A. Employment outside the U.S. which is not covered under the U.S. Social Security Act. Generally, this includes work for foreign employers, unless the employer is a subsidiary of a U.S. corporation. Coverage determinations may be affected by the existence of a totalization agreement (international social security agreement).

A beneficiary working outside the U.S. who might normally be covered under the U.S. Social Security system may find that, because of an international agreement, his work is covered only under the foreign system. Consequently, his work would be subject to the foreign work test instead of the annual earnings test.

EXAMPLE: A U.S. citizen beneficiary, permanently residing in Germany, works as a self-employed person. Since he is a U.S. citizen, he would normally be subject to U.S. Social Security coverage. Under the terms of the international social security agreement with Germany, however, his work is subject only to the German laws on social security coverage and he is exempt from U.S. coverage. Therefore, his self-employment activity is subject to the foreign work test rather than the annual earnings test. Whether or not his earnings are actually covered by Germany is immaterial. As long as the work activity is exempt from U.S. coverage, the annual earnings test is not applicable.

B. Self-employment outside the U.S. which will not be reported as earnings for U.S. social security tax purposes; or

C. Self-employment outside the U.S. by a nonresident alien, unless the SE will be reported for U.S. social security tax purposes.

The annual earnings test applies for any employment outside the U.S. that is covered for U.S. social security tax purposes and for self- employment outside the U.S. by a U.S. citizen or a resident alien. When a U.S. citizen or resident alien is self-employed outside the U.S., the net earnings from SE will be reported for U.S. social security tax purposes unless a U.S. citizen established "foreign residence" or "presence in a foreign country". Refer to FOM 1 1105.85.4.

A deduction may be imposed under the foreign work test for non-covered SE outside the U.S. even though no services were performed. All that is required is that the person carries on a trade or business, i.e., holds himself out to others as engaged in the selling of goods or services for profit. The fact that a person has not actively participated in the business, nor derived a profit from it, does not matter. However, deductions do not apply under either the foreign work test or the annual earnings test for income that is excluded from net earnings (rentals from real estate, capital gains, dividends, interest or other excluded income).

Practice as a physician outside the U.S. is non-covered remunerative activity, and deductions are governed by the foreign work test.

1105.85.3 Work Covered by the Annual Earnings Test

Because the earnings are reportable for U.S. social security tax purposes, the following kinds of work are covered by the annual earnings test:

A. Employment of a U.S. citizen or resident alien by an American employer;

B. Employment of a U.S. citizen or resident alien by a foreign subsidiary of a U.S. corporation that actually has entered into an agreement for coverage for its employees under the SS Act;

C. SE in a trade or business that results only in income such as rentals from real estate, capital gains, interest income, dividends, etc.;

D. SE of an alien who is a resident of the U.S.;

E. SE of a citizen of the U.S., when the citizen has not established "foreign residence" or "presence in a foreign country". See FOM 1 1105.85.4; and

F. Services of ministers. A minister is a duly ordained, commissioned or licensed minister of a church performing services in the exercise of his/her ministry, or a member of a religious order performing the duties required by the order. A minister is not performing services in the exercise of his/her ministry when he/she is working as an employee of any governmental entity. In applying the retirement tests, all ministers, whether citizens or aliens, are treated as if they had elected SS coverage, even though they may not have done so. Thus, the fact that a minister has not elected coverage would not prevent his being subject to the annual earnings test with respect to his/her SE outside the U.S., if his/her work would be covered under the SS Act had he/she made the election.

1105.85.4 Citizens Self-Employed Outside the U.S.

Practice as a physician outside the U.S. is always subject to the foreign work test. Other SE carried on by a citizen outside the U.S. is subject to the annual earnings test only if it can give rise to net earnings from SE (i.e., net earnings are subject to U.S. SS taxes). Whether such SE can give rise to reportable SS taxes may depend on whether the

citizen has established "foreign residence" or "presence in a foreign country." All or part of a citizen's income or loss may be excludable in determining the amount of net earnings from SE if the citizen established "foreign residence" or "presence in a foreign country."

"Foreign residence" means bona fide residence in a foreign country (or countries) for an uninterrupted period that includes an entire taxable year. Mere presence is not enough to establish "bona fide residence." Generally, one who goes to a foreign country for an extended or indefinite stay for any reason and maintains a home there is a bona fide resident, even though he intends to return to the U.S. at some future time. "Presence in a foreign country" means presence in a foreign country (or countries) during a total of at least 510 full days during any period of 18 consecutive months. "Foreign residence" or "presence in a foreign country" must exist for the particular taxable year under consideration in order for a person to qualify for a special tax exemption for that year.

1105.85.5 Advising Annuitants

When inquiries about or notices of changes to foreign addresses are received, advise a retirement annuitant that work in a foreign country may affect payment of the annuity. Emphasize the annuitant's responsibility to report earnings over the monthly exempt amount or work outside the U.S. for more than 45 hours per month. A report should include the annuitant's citizenship status and whether or not the annuitant is self-employed.

1105.85.6 Definition of Terms Used Pertaining to Employment Outside the United States

A. U.S. Citizen - A citizen of the U. S. by birth or naturalization.

B. U.S. - Effective 9-13-60, the term means the 50 states, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

The inclusion of Guam and American Samoa in the definition of resident and non-resident alien (for purposes of work deductions outside the U.S.) is effective from 1-1-61, for services performed as an employee and to taxable years beginning after 1960 for self-employment in a trade or business.

C. Outside the U.S - This term applies to the place where a person performs his services or to the place where the trade or business is conducted but not to the place where the person lives.

D. Carry On a Trade or Business - This term means the person holds himself out to others as engaged in the selling of goods or services for profit. The fact that a person has not actively participated in the business nor derived a profit from it is not material. The mere holding himself out as being available to participate is sufficient to find that he was carrying on a trade or business during any given

period even though circumstances (such as illness) may have prevented actual participation.

1105.90 Returning Annuity Because Of Excess Earnings

When an annuitant reports excess earnings, (s)he may have already incurred an overpayment. The following guidelines should be used in advising an annuitant about the return of an annuity payment. When an annuitant is advised to return a payment, no tracing action is necessary. Any overpayment will be determined when permanent work deductions are assessed.

A. In the year 2016, an employee disability annuitant should be advised to return his/her check for any month (s)he earns over $910.00 a month. See FOM 1 1125.5.2 after deduction of disability related work expenses.

B. A non-disabled survivor annuitant should be advised to return the check;

C. A disabled survivor annuitant should not return a payment when work is started because a continuance of disability determination must first be made; and

D. A retirement or spouse annuitant, under either the RR or the O/M formula, should not return a payment because part of that annuity is payable.

1105.95 Recovery Of Earnings Overpayment

An overpayment because of excess earnings is generally recovered by cash refund or by credit card and in some retirement cases partial withholding can be an added option, if one of the conditions listed in the next section applies. Penalty deductions that are applied in retirement age and service or disability cases, including the overall minimum, are recovered by the same method as the overpayment.

Partial withholding or an actuarial adjustment may be used to recover an overpayment due to excess earnings if one of the conditions in FOM 1105.95.1 is met. Overpayments in survivor cases must be recovered by cash refund or full withholding.

1105.95.1 Partial Withholding

Partial withholding may be offered in a retirement case if one of the following conditions exist and partial withholding would normally be offered. See FOM 1 1205.25.3.

A. The overpaid annuitant is at least FRA or (age 70 prior to the year 2000 and 72 before 1983); or

B. Work deductions are assessed only in the month of the annuity beginning date; or

C. The overpaid person states he is no longer working, and future excess earnings are not likely; or

D. Tier II is at least $10.00 greater than the partial withholding amount plus the amount of the current Medicare premium.

NOTE: Partial withholding may be offered even if temporary work deductions are being applied.

1105.95.2 Actuarial Adjustment

An actuarial adjustment may be offered in a retirement case if tier II is at least $10.00 greater than the actuarial adjustment amount plus the amount of the current Medicare premium. Actuarial adjustment may be offered even if temporary work deductions are being assessed, but not if any of the other conditions in FOM 1 1205.25.4 apply.

1110.5 Earnings Defined

For determining work deductions, a person's earnings for a taxable year consists of the sum of his remuneration for services rendered as an employee during the year and his net self-employment (SE) earnings for the year, MINUS any net loss from SE for the year. Earnings are counted for the period in which they are earned, regardless of when they are paid; however, net earnings from SE are generally counted as earnings for the taxable year in which they are received.

Earnings, for work deduction purposes, include amounts "deducted" from the annuitants pay for health insurance premiums, income tax withholding, employee contributions to a retirement plan (i.e. 401(k) plan), union dues, etc.

Example: If the employee's gross pay in a given month is $2,000, with deductions of $25.00 for health insurance, $300.00 for income tax withholding, and $200.00 for a 401(k) retirement account, his earnings for work deduction purposes is $2,000 for that month.

This section gives general guidelines for determining when earnings count for deduction purposes.

1110.5.1 Wages for Services as an Employee

Unless specifically excluded from "wages" under the Social Security (SS) Act, earnings for persons who are in service for hire normally include the following:

A. All remuneration for services in employment, whether covered or not covered under the Railroad Retirement Act or the Social Security Act. Pay for work not covered for social security contribution and benefit purposes may be counted as earnings for the annual earnings test;

B. Employment outside the U.S. covered by the SS Act;

C. All cash wages from agricultural labor, even though less than $150.00 a year;

D. All cash wages from domestic service in a private home, service as an industrial home worker and service not in the employer's trade or business, even though less than $50.00 a quarter; and

E. Cash tips of $20.00 or more per month for one employer.

FOM1 1110.10 and 1110.15 have more specific information on which earnings should be included or excluded for deduction purposes.

1110.5.2 Wages in Kind

Wages in kind are considered earnings unless they are specifically excluded from wages by the SS Act.

If an oral or written agreement between a person and his employer states the value of the gratuity furnished, that value is the amount of remuneration if it is considered reasonable by the standards at the time of payment. It is immaterial whether the agreement was reached before, during or after the gratuity was furnished.

When the employer and the person have not agreed on the value of the gratuity furnished in lieu of cash payments, the reasonable value of the gratuity is determined on the basis of the benefit to the person rather than the cost to the employer. For example, the price a restaurant charges a customer for a meal is not necessarily the value of the same meal furnished an employee of the restaurant, since employees do not usually get the same services as the customer.

1110.5.3 Self-Employment

Self-employment earnings are net earnings, regardless of the amount, from SE inside the U.S. (whether or not covered by the SS Act) and from SE outside the U.S., if covered by the SS Act. The net loss from SE is subtracted from the sum of any net earnings from other trades, businesses or total remuneration from employment. This means that if the SE business had a total loss for the taxable year, no work deductions for SE would be applied. Services performed in the U.S. by U.S. citizens employed by foreign governments, by wholly-owned instrumentalities of foreign governments, or by certain international organizations are included as self-employment earnings.

Deferred income received in a year after the year in which entitlement begins may be excluded in determining the individual's excess earnings, if it is based on services performed before entitlement begins. This applies to years after 1977 for an annuity or overall minimum (O/M) share payable for months after December 1977, but not for a disabled employee or child.

Detailed information on SE earnings and deferred income is in FOM1 1110.20 and FOM1 1110.45.

1110.5.4 Military Service

After 1956, earnings for deduction purposes include a serviceman's basic pay from the U.S. armed forces while on active duty or active duty for training, either within or outside the U.S.

Active duty is extended full-time duty; active duty for training is, generally, full-time duty for periods of 14 days or more. Attendance at weekly drills by the serviceman is assumed to be inactive duty for training. Earnings from inactive duty should be treated as follows:

- Inactive duty performed prior to January 1, 1988 - Earnings from inactive duty are not subject to work deductions.

- Inactive duty performed January 1, 1988 or later - Earnings from inactive duty are subject to work deductions.

1110.5.5 Earnings From Federal Government Employment

Earnings from employment for the Federal government are the gross earnings that the annuitant receives for services performed for the Federal government after the annuity beginning date (ABD).

Earnings, for work deduction purposes, include amounts "deducted" from the annuitants pay for health insurance premiums, income tax withholding, employee contributions to a retirement thrift plan, union dues, etc.

Example - If the employee's gross pay in a given month is $2,000, with deductions of $25.00 for health insurance, $300.00 for income tax withholding, and $200.00 for thrift plan account, his earnings for work deduction purposes is $2,000 for that month.

1110.5.6 Earnings of Homeworkers

Homeworkers are employees earning wages if they:

- Work away from the employer's place of business; and,

- Work in accordance with the employer's specifications; and,

- Work on material or goods furnished by the employer; and,

- Return the finished product to the employer or to someone whom the employer designates. It is immaterial whether the employer calls for the work or the worker delivers it to the employer.

This group includes people who make quilts, buttons, gloves, clothing, needlecraft products, typing, etc., for an employer. The work is done away from the employer's place of business, usually, in the workers home, the home of another, or in a home workshop. Usually, the specifications given are simple and consist of following patterns or samples furnished by the employer.

The pay received from any one employer by homeworkers in this category is not counted for Social Security benefit entitlement purposes when that employer pays the homeworker cash wages of less than $100 in a calendar year. However, all pay, cash and/or payments-in-kind, is counted in applying the earnings test for work deductions to a beneficiary, even if the cash-pay test is not met.

1110.5.7 Vacation Pay or Other Accrued Payments

A. Based on Service Before the ABD Year

Accrued payments from a railroad or non-railroad employer based on service performed before the annuity beginning date (ABD) year are not subject to work deductions. Accrued payments for the ABD year are subject to work deductions. When crediting a payment of accrued vacation pay or (annual leave), in lieu of taking the vacation, the RRB follows the guidelines established by SSA. Accrued vacation pay (or annual leave) paid in a lump sum at retirement relates to service performed prior to the date the employment relationship terminated.

B. Based on Service in the ABD Year or Later

If vacation pay or annual leave is based on service performed in the ABD year or later, these earnings are included in the total yearly earnings from that employer and are subject to work deductions. However, the non-work months for the grace year explained in FOM1 1105.40 may apply.

1110.5.8 Back Pay or Deferred Earnings

A. Based on Service Before the ABD Year

If the annuitant receives back pay from either a railroad employer or a non-railroad employer, and the actual date last worked for that employer is in a year before the ABD year, the back pay is credited to the month that the employee performed the service for that pay for that employer. The payments are not subject to work deductions.

Example 1 - The annuitant's date last worked is 12-31-1991. His ABD is 1-1-92. He received back pay on 2-5-92, from a railroad employer for the months of September 1991 through November 1991. For work deduction purposes, the back pay is considered earned in 1991 and does not cause work deductions.

Example 2 - Same facts as example 1, but the annuitant is also paying $200.00 per month from his wages in 1991 into a 401(k) retirement plan. The amounts paid into the 401(k) account are considered earned in 1991, and do not cause work deductions.

B. Based on Service in the ABD Year or Later

For work deduction purposes, back pay or deferred earnings for services to a railroad or non-railroad employer performed in the ABD year or later are considered to have been paid in the month in which they were earned. These earnings are included in the total yearly earnings from that employer and are subject to work deductions.

Example 1 - The annuitant has an annuity beginning date of January 1, 1990. He continues to work for his non-railroad employer in 1991 and 1992. On January 2, 1993, he receives back pay for months in 1991. The back pay is used to determine the work deductions that apply to the annuity for benefits paid for 1991.

Example 2 - Same facts as example 1, but the annuitant is also paying $200.00 per month from his wages in 1991 into a 401(k) retirement plan. The amounts paid into the 401(k) account are considered earned in 1991 and are used to determine the work deductions that apply in 1991.

C. Retired partners who receive a distributive share of the partnership income after entitlement to a railroad annuity

Deferred SE income earned before entitlement but received in the initial year of entitlement to an annuity is, however, included as earnings for deduction purposes.

When deferred SE income is excluded, it is not considered for an earlier period; it is treated as if it did not exist for work deduction purposes. The SE earnings excluded from the year received are not then added to the total yearly earnings of the year in which the services resulting in the income were performed.

EXAMPLE: A self-employed insurance salesman retired from all work in November 1994. His annuity beginning date is 12-1-94. In 1995, he received $10,000.00 in renewal commissions for policies sold prior to 1995. He has no net income for work deductions in 1995 because the $10,000.00 received after the year his annuity began is SE income attributable to services performed prior to his month of entitlement. He performed no substantial services as an insurance salesman in 1995. The $10,000.00 is also not added to his 1994 earnings.

For the purpose of the exclusion provision, "services" means any regular service performed in the ongoing operation or management of a trade, profession, or business which can be related to the income received.

1110.5.9 Sick Pay

A. Based on Service Before the ABD Year

If the annuitant receives sick pay "under a plan or agreement," for up to six months after the actual date last worked, from either a railroad employer or a non-railroad employer, and the actual date last worked for that employer is in a year before the ABD year, the "sick pay" is credited to tier 1 only to the actual date last worked for that employer. The payments are not subject to work deductions. This type of Sick Pay from a railroad employer is indicated on the Employment Data Maintenance (EDM) record as "Miscellaneous Compensation." It is also referred to as "Tier 1 Sick Pay."

Example - The annuitant's date last worked is 9-30-1991. His ABD is 1-1-92. He received "Tier 1 Sick Pay" from a railroad employer for the months of September 1991 through February 1992. For work deduction purposes, the total amount of the "Tier 1 Sick Pay" is credited to 9-30-1991. The "Tier 1 Sick Pay" does not cause work deductions.

B. Based on Service in the ABD Year or Later

If the annuitant is carried on the payroll in the year of the annuity beginning date, the "sick pay" is subject to the annual earnings test for work deductions.

If the annuitant performs service for a non-railroad employer after the annuity beginning date and then receives sick pay under a "plan or agreement" for a period (up to six months) after the actual date last worked for the non-railroad employer, these payments are credited to the date last worked for the non-railroad employer and are included in the total yearly earnings used in the annual earnings test for work deductions.

Example - The annuitant's actual date last worked is 2-28-1992. His ABD is 3-1-92. He received "Sick Pay" from a non-railroad employer for the months of March 1992 through August 1992. For work deduction purposes, the total amount of the "Sick Pay" is credited to 2-28-1992. The "Sick Pay" is included in the annuitant's yearly earnings. However, "non-work" months will probably apply after the ABD.

1110.5.10 Payment to School Employees during Non-Work Months

If the annuitant was a school employee who received payments during "non-work" months, use the guidelines as shown below:

1. Nature of Payments to School Employees - School teachers are usually engaged in a seasonal job with employment contracts requiring the performance of a specified number of days, weeks, or months of teaching (or similar) services during the school term in return for a specific salary. Frequently, the agreed-upon salary is paid out in 12 monthly installments for the convenience of both the employer and the employee. In such cases, the wages are earned when the personal services stipulated in the contract are performed and not during the off-season months.

2. Imposing Work Deductions - Do not impose a work deduction because of excess earnings for a "Non-Work" month in the "Grace Year" (i.e., one in which no services of any kind were rendered) falling between school years even though a wage or salary payment is made to the teacher (or janitor, clerk, etc.) for that month. In such cases, the payments made during the period between school terms are presumed to be part of the total earnings for the contract year and should be allocated to the months in which they actually were earned. However, if the school employee performs any additional service for additional remuneration between the school years (such as teaching summer school) for

the same employer on a full or part-time basis, that month should not be considered a "non-work" month.

3. Sabbatical Leave - Do not apply work deductions because of sabbatical leave payments for the normal "non-work" summer months where the school system makes regular salary payments to teachers in 12 monthly payments (even though the school year is of only 9 or 10 months' duration), unless the payments are for research and study actually performed during the summer months.

1110.5.11 Dismissal or Separation Payments

Dismissal or separation pay usually refers to payments made by an employer to an employee whose employment is terminated independently of his or her wishes. Normally, the employment is terminated because of economic conditions which result in a reduction of force or a shutdown of a plant. The payment is made to provide income to a terminated employee while he is seeking other employment. These payments are subject to the annual earnings test.

The dismissal or separation pay is deemed to have been paid on the actual date last worked, regardless of when paid. (This presumption may be rebutted if there is proof that the payments are for services rendered at an earlier time.)

Example 1 - The annuitant received a regular salary of $2,000, per month for 1-1-1991 through 3-31-1991. The annuitant receives dismissal pay of $25,000 which was paid in monthly installments of $2,500 per month for ten months effective from 4-1-1991. His actual date last worked was 3-31-1991. His ABD is 9-1-1991. The total amount of the separation pay is credited to 3-31-1991. The annuitant's total earnings for the year is $31,000. The annuitant has non-work months from 9-1-1991 through 12-31-1991.

Example 2 - The annuitant received a regular salary of $2,000, per month for 1-1-1991 through 3-31-1991. The annuitant receives separation pay of $25,000 which was paid in a lump sum on 7-5-1991. His actual date last worked was 3-31-1991. His ABD is 9-1-1991. The total amount of the separation pay is credited to 3-31-1991. The annuitant's total earnings for the year are $31,000. The annuitant has non-work months from 9-1-1991 through 12-31-1991.

1110.5.12 Earnings from Investments

Earnings from investments are not based on service to an employer or "substantial service" in self-employment. These earnings are not subject to work deductions. Some examples of these types of payments are:

- Rentals from real estate that cannot be counted as earnings from self-employment because, for instance, the beneficiary did not materially participate in production work on a farm, the annuitant was not a real estate dealer, etc.

- Interest and dividends from stocks and bonds (unless they are received by a dealer in securities in the course of business).

- Gain or loss from the sale of capital assets, or sale, exchange, or conversion of other property which are not stock in trade, nor includable in inventory.

- Payments from an Individual Retirement Account (401(k) plan.

1110.5.13 Earnings from Employment Outside the United States

If the annuitant is performing service to an employer or self-employment outside the United States and the annual earnings test applies, the earnings must be converted to U.S. dollars to determine the amount of the reduction to the annuity on account of work. The annuity applications and reporting forms specify that only U.S. dollars are to be shown. To convert the foreign earnings amount to U.S. dollars, complete Form G-310, Conversion of Foreign Currency, and forward it to your lead or supervisor. (S)he will obtain the exchange rate for the period in question and return the form to you.

1110.10 Income Included As Earnings

Certain kinds of income are not included as earnings for work deduction purposes. The charts in this section and in FOM1 1110.15 indicate the major kinds of income and how they are treated in the annual earnings test. The charts are not all inclusive. Check both sections to see if the information you need is covered. This information is furnished to give you guidelines in answering inquiries. In many cases, the nature of the payment must be determined and all final determinations are made by examiners in Operations.

The kinds of income listed in this section are included as earnings for deduction purposes.

	Type of Income	Count as Earnings for Deductions
1.	**Advances**	Count advances in period the services are performed unless the advances are paid against future commissions. If the advances are paid against future commissions, count in the period paid.
2.	**Agreements Not to Compete**	If the agreement calls for services to be performed, count as earned in the period the services are performed.
3.	**Back Pay**	Count back pay in the period for which paid unless not under a statute, court order, agency ruling, etc. If the back pay in to paid under a statue, court order, agency ruling, etc., count when paid; but no later than the last month of employment.

4.	**Bonuses**	a. Occasional Bonus Count occasional bonuses in the month of payment. A bonus is considered occasional if both the payment and the amount are determined at the sole discretion of the employer at or near the time of payment. b. Regular Bonus Count regular bonuses in the month for which paid. A regular bonus is considered as part of the employee's pay. **Note:** Bonuses paid by a third party are not considered as earnings for work deduction purposes.
5.	**Cafeteria Plan Payments**	Count cafeteria plan payments if the payment meet the definition of wages and the plan has not meet IRS requirements, i.e.is not a "qualified benefit under section 125." **Note:** The IRS determines whether a plan is a cafeteria plan under section 125 of the Code and whether any benefit under the plan is a qualified benefit. The W2 form normally indicates whether the plan is covered under section 125.
6.	**Cash Remuneration**	Covered employment under the SS Act or non-covered employment, without regard to minimum and maximum limitations.

7.	**Clergymen's Income (Ministers)**	Count remuneration for services rendered in the exercise of the ministry, regardless of whether or not coverage was elected and whether self-employed or an employee. Include salary, allowances for parsonage, rent, travel, etc. Note: If the allowance for parsonage or housing is included in retirement pay, it should not be counted. SSA has specific procedure for controlling the income reported for ministers. As such, only the posted SEI amount should be used for work deduction purposes. For more information, refer to POMS RS 02505.120.
8.	**Clerical Orders Under A Vow of Poverty**	Count reported wages of clerical orders under a vow of poverty if the order has filed a certificate of election of Social Security coverage. If no certificate has been filed, do not count.
9.	**Commissions**	If self-employed, count net earnings from SE. If an employee, count gross commissions and advances against commissions to be paid in the future. Also see FOM1 1110.45 for deferred earnings.
10.	**Consultants**	Count wages in period consultant performed services if an employee. If self-employed, count remuneration when received.
	Container Royalty Payments	Container royalty payments are special payments to compensate longshoremen for decreased employment opportunities resulting from the use of containerized shipping. These payments are counted as earnings for work deduction purposes.
11.	**Deferred Compensation**	Count in last month of employment (or in period actually earned when benefits are affected) if payments are from a nonqualified deferred compensation plan.

12.	**Director's Fees**	A director attending board meetings is not an employee of a corporation, since the board of directors is the governing body of the corporation and is not subject to its control. A director who does no work for the corporation, but attends the meetings of the board of directors, is deemed to be self-employed. The fees are included as SE income for deductions.
13.	**Dismissal, Severance or Termination Pay**	Dismissal, severance or termination pay refers to payments made by employer to an employee whose employment is terminated independently of the employee's wishes. Normally, the employment is terminated because of economic conditions which result in the shutdown of a plant or other similar action taken by an employer. The dismissal or severance payment is made to provide income to a terminated employee while seeking other employment. The true nature of the payment must be determined. Dismissal pay is counted as earnings for deduction purposes.
14.	**Election Workers**	Any payment to election judges or workers for services rendered.
15.	**Employer Payments for Educational Assistance**	Count employer payments for educational expenses.
16.	**Federal Annual and Sick Leave Payments**	Federal annual and sick leave payments are considered a continuation of salary. If employment continues, count in the months of absence. If physical services are performed after May 1990 and the employment relationship then terminates, count in las month of services (or period earned if benefits are affected. Consider leave donated to a recipient, as earned by the recipient, i.e., the same as the recipient's other sick leave.

17.	Federally Sponsored Economic and Human Development Programs	Generally, the head of the agency administering a program determines if remuneration is wages. Wages count as earnings for deductions when an employer-employee relationship exists, or the employing agency has determined payments to be wages.
	a. CETA(Comprehensive Training Act)	Count any compensation received for work which is substantial and necessary, if it is gainful and fills a public need.
	b. Domestic and Volunteer Service Act of1973 (includes Vista and Title I Special Volunteer Programs)	No remuneration received by volunteers is counted. The Act covers the following programs: National Volunteer Anti-Poverty Programs Part A Volunteers in Service to America (VISTA) Part B Service-Learning Programs Part C Special Volunteer Programs Title II National Older American Volunteer Programs Part A Retired Senior Volunteer Program Part B Foster Grandparent Program and Older American Community Service Programs Title III National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.
18.	**Fiduciary Fees**	Count earnings of professional fiduciaries and non-professional fiduciaries carrying on a trade or business under certain conditions.

19.	**Fringe Benefits**	Generally, low value awards, gifts (watches, pins, etc.) are not wages and, therefore, are not counted. However, some fringe benefits may be wages and therefore, counted, e.g., the value of have a company car for personal use. Development is needed in these cases.
20.	**Health Savings Accounts (HSAs)**	Count employee contributions to HSAs as wages for work deduction purposes. Do not count **employer** contributions to HSAs as wages for work deduction purposes.
21.	**Holiday Pay**	Count holiday pay. If the holiday pay is in excess of the regular salary, treat as a bonus.
22.	**Idle Time, Standby, and Non-work Payments**	Payments through the month age 62 is attained are counted as earnings.
		Beginning January l, 1984, include payments made to an annuitant after the month age 62 is attained, if no work was done in the period for which paid. Also beginning January 1, 1984, sick leave payments made to Federal employees after the month age 62 is attained are counted. Before January 1, 1984, these payments were excluded from earnings after the month age 62 was attained.
23.	**Incentive Awards**	Incentive awards under a supplemental compensation plan are counted as earnings.

24.	**Insurance Commissions**	**A. Life Insurance – Agent Is An Employee** Count original commission plus all anticipated renewal commissions on the sale of life insurance, in the month the employee performed the last act to be entitled to the commissions. **B. Life Insurance – Agent Is Self-employed** Count each original commission on the sale of life insurance, in the year actually received. Renewal commissions are excluded from earnings for work deduction purposes if the annuitant did not perform any service in the year of the payment. **C. Casualty Insurance – Agent Is An Employee** Count commissions for casualty insurance in the year sold. If renewed, count in the year renewed. **D. Casualty Insurance – Agent Is Self-employed** Count in the year the agent receives the commission for selling a casualty insurance policy. If the policy is renewed, count the "repeat commission" in the year it is received only if the agent performed services in the year in question.
25.	**Legislators**	Count wages reported by the State.
26.	**Life Insurance Paid By Employer**	Count as wages, the employer's cost of premiums for group term life insurance that exceeds $50,000 for the beneficiary. If the employment relationship has terminated, count in the last month of employment.
27.	**Members of Congress**	Count remuneration for services in Congress that are reported as wages.

28.	**Military Service**	Count military pay in the period for which it is paid, whether for active or inactive duty and including pay for inactive duty training of a member of a reserve component. Do not count the value of or allowances provided for food, clothing, shelter, etc., or special or incentive pay (e.g., flight pay, hazardous duty pay, etc.)
29.	**Net Earnings from SE**	Count all net earnings from SE derive from all trades or businesses as computed under the Internal Revenue Service (IRS) code. The legality of a business or trade is immaterial. Covered or non-covered under social security is immaterial.
30.	**Nonteaching School Employees**	Count in the period in which services by the nonteaching employee were performed (even if paid on a 12-month schedule).
31.	**Partnerships**	Count the NESE derived from a valid business partnership.
32.	**Peace Corps**	Count both current and termination Peace Corps payments.
33.	**Prizes, Awards and Gratuities**	Count prizes, awards and gratuities **only if** they are part of the salesperson' wage structure.
34.	**Public Officers Other Than Congressmen or Legislators**	Count wages reported for holders of a public office.
35.	**Railroad Employment**	Railroad compensation is only counted for work deduction purposes in the ABD year if the employee also has non-railroad earnings in the ABD month or later which are subject to work deductions. Refer to FOM1

36.	**Royalties and Patents**	Royalties paid prior to the year the annuitant attains full retirement age are counted as earnings for work deduction purposes. **Example:** An employee becomes entitled to an annuity in March 2002 at age 62. He receives $75,000 per year in royalties from books written and copyrighted in 2000. His annuity will be subject to work deductions for 2002, 2003, and 2004 because he has not attained full retirement age. Refer to FOM1 1110.15 for information on royalties that are not counted for work deduction purposes. For Patents, the annuitant, in order to provide a more accurate assessment, would need to submit additional information to the RRB regarding the patent such as when the patent was created, earnings information, tax records, etc.
37.	**Sabbatical Leave Payments**	Count sabbatical leave payments only if wages. Reference POMS RS 01402.220 and RS 01402.265.
38.	**Scholarships and Grants**	Count scholarships and grants only if wages. Reference POMS RS 01401.408 and RS 01402.265.
39.	**Service Charge/Fee (Tips)**	Count service charge/tips as wages in the period paid to the employee.
40.	**Sick Pay**	Refer to FOM1 1110.15
41.	**Stand-By Payments**	Payments received for an employee to be on call are considered as earnings for work deduction purposes.

42.	**State and Local "Pick-up" Plans**	Many retirement systems for employees of State and local governments provide for contributions by both employer and employees. Sometimes the employer will "pick-up"; i.e., pay the contribution that is required of the employee under a salary reduction agreement. In such cases, the amount of the "picked-up" portion is counted as wages to the employee in the year it is picked up. If the contributions are paid only by the employer with the employer's own funds; i.e., there is no salary reduction agreement, do not count the payments as wages.
43.	**Statutory Employee**	Although independent contractors, under common law rules, may be treated as statutory employees for certain employment tax purposes, they do not qualify as employees. Due to similar working conditions, IRS provided for their coverage as employees rather than self-employed persons. However, their earnings are treated as net earnings from self-employment and must be included when applying the earnings test.
44.	**Stock Bonus Plan**	Count the fair market value of the stock if not tax exempt. Reference POMS RS 01401.340 and RS 01402.125.
45.	**Stock Option Plan**	Count as wages the difference between the fair market value of stock at the time the option is exercised and the option price. Count these in the period the option was granted. **(IRS Ruling 56-452).**

45a	Exercising Stock Options Prior to 2002	A stock option is the right to purchase specific numbers of shares of a company's stocks at a future date at a pre-set price. Before tax year 2002, when the employee exercised a stock option, the difference between the stock price paid under the option and the fair market value of the stock (also referred to as the "spread") was counted as wages for work deduction purposes, if the income from the "spread," was reported in the same year as when the employee sold the stock. See FOM1 1110.15, Income Excluded From Earnings, for additional information on the years when stock options were excluded as wages for work deduction purposes.
46.	**Subchapter S Coorporations**	Taxable distribution from a Subchapter S corporation may be considered wages where they represent remuneration for services as opposed to a return on an investment. (Decisions on whether taxable income from a Subchapter S corporation is considered earnings are made on a case-by-case basis.)
47.	**Taxes Owed by Employee**	Count any taxes owed by the employee that are withheld from wages by the employer.
48.	**Television, Radio, Motion Picture Residuals**	Count remuneration from television, radio and motion picture residuals in the period the performer provided the original services if the performer was an employee.
49.	**Tips**	Count tips amounting to $20 or more per calendar month from each employer. When a customer's bill includes an additional amount which is for distribution to employees by an employer, such amounts are not tips or gratuities but are considered wages. Tips received in a medium other than cash are not counted as wages.
50.	**Trial Work Period Earnings**	Count trial work period earnings in year the disability annuitant becomes entitled to an age and service annuity but consider if the monthly earnings test can apply.

51.	**Vacation Pay, Pay in Lieu of Vacation, and Annual Leave Payments**	Count as earnings. Vacation pay should be credited to the period in which the individual took the vacation. If the individual receives a lump sum in lieu of vacation pay Payments at the time of retirement, the vacation pay should be considered earned in the last month worked.

1110.15 Income Excluded From Earnings

The kinds of income listed in this section are not included as earnings for work deduction purposes. The list is not all-inclusive. This information is furnished to give you guidelines in answering inquiries. If you receive an inquiry regarding a "special payment" and cannot reconcile it with this list or the list in FOM1 1110.10, send the inquiry to Policy and Systems, RRA Application and Calculation section for a formal determination.

TYPE OF PAYMENT	DO NOT COUNT AS EARNINGS
Annuity Plan or Systems Payments	Payments made by an employer under a plan or system to a former employee who has reached a specified age and whose employment relationship has terminated because of retirement.
Awards	a. Employee Achievement Do not count employee achievement awards. b. Length of Service Do not count length of service awards. c. Employee Suggestion Awards – See FOM1 1110.10. d. Outstanding Work – See FOM1 1110.10.
BUY OUTS	A buy out is a payment made on account of retirement and should not be counted as earnings for work deduction purposes.
Cafeteria Plans	Payments received from cafeteria plans are not counted as wages for work deduction purposes if the plan meets the requirements of section 125 of

	the Internal Revenue Code. IRS makes this determination. A copy of the plan with a description of the payments should be submitted as proof.
Capital Gains	All capital gains, including income received from the sale of farm animals, provided they were held for work, dairy or breeding purposes.
Damages, Attorney's Fees, Interest or Legal Penalty Payments	If the payment was made under a court judgment or by compromise settlement with the employer, based on a legal action for wages. Back pay recovered in the proceedings is counted as earnings.
Dividends and Interest	Do not count dividends and interest as earning for work deduction purposes. **EXCEPTION: If dividends or interest are received by a dealer in stocks and securities while they are in inventory for resale, those dividends or interest would be counted.**
Employer Payments for Dependent Care	Do not count employer payments for dependent care programs as earnings.
Engineer Reserve Pool Payments to Canadian Residents	Legal opinion L-2003-13 ruled that these payments are not earnings for work deduction purposes.
Expenses Deductible for Hiring A Substitute or Assistance	Do not count as wages to the principal employee, the amount of wages paid by the principal employee to a substitute or assistance.
Farm Rental Income	Income received by a landowner in cash or as his share of a crop produced on his land is considered rental income. This is excluded from net SE income if the owner did not materially participate in the production of the crop.
Federal Agricultural Program Payments (FAPP) Made to Farmers	Do not count FAPP payments such as deficiency payments, conservation reserve payments, whole herd dairy buyout program payments, PIK payments, etc. These payments are usually shown in item 6a on Schedule F.

Fiduciary Fees	Do not count fees paid to a non-professional fiduciary who is not carrying on a trade or business, but who merely directs and gathers the assets of an estate in isolated cases. Do count fees of professional fiduciaries.
Flexicredits	Flexicredits are a type of employer contribution towards insurance benefits and are not counted as earnings.
Foster Care Payments	Foster care payments are not considered as earnings for work deduction purposes.
Guaranteed Annual Income Payments (New York Shipping Association)	Do not count guaranteed annual income payments made pursuant to union agreement with the NY Shipping Association.
Health Savings Accounts (HSAs)	Do not count employer contributions to HSAs as wages for work deduction purposes.
Higher Education Act	Payments received under Title IV of the Higher Education Act are excluded from income as earnings.
Hobby Income	Do not count the amount of income that is derived from a hobby that is not a business or trade.
In-Kind Wages	Exclude income received for domestic or farm work, or from services not in the course of the employer's trade or business or for services by certain homeworkers whose cash pay in a calendar year is less than $100.00. Exclude meals or lodging furnished as remuneration for employment if furnished on the business premises of the employer and for the convenience of the employer.
Insurance Policy Proceeds	Proceeds from insurance policies are not counted as earnings.
Insurance Premiums Paid By The Employer	Do not include for work deduction purposes.
Investment Income	Exclude from earnings, income not attributable to the performance of personal services (e.g., rentals from real estate). Do not count dividends received

	on stocks and interest on bonds, provided it is not received in the course of a trade or business as a deal in stocks and bonds.
Judgment or Judicial Award	Do not count a judgment or judicial award as earnings for work deduction purposes.
Jury Duty Fees	Compensation received for jury duty, including meals and lodging are not counted as earnings.
Loans of a Personal Nature	Loans of a personal nature are not counted as wages for work deduction purposes unless the employee repays the loan by working in covered employment for employer.
Meals and Lodging	Do not count the value of meals and lodging if furnished for the convenience of the employer on the employer's premises and the employee is required to accept as a condition of employment.
Medical and Hospital Expenses	Do not count employer payments made under a medical plan or system, or payments made later than 6 months after the employee last worked if not under a plan or system.
Moving Expenses	Payments as reimbursement or allowance for moving expenses are not counted as earnings if the annuitant incurred the moving expenses in reporting to a new place of employment, and the expenses would be deductible for income tax purposes.
Non-Covered Remuneration For Services Outside the U.S.	When services are performed outside of the U.S. and the annuitant does not work more than 45 hours in a month, the earnings are not counted for work deduction purposes.
Payments Under a Plan	Certain payments or series of payments paid by an employer to an employee or to any of his dependents on or after the employment relationship has terminated because of death, retirement for disability or retirement for age and paid under a plan established by the employer.
Payments Upon or After Retirement	Do not count payments statutorily excluded such as "because of retirement" or "on account of retirement". If not thus excluded, count in the last

	month of employment (or prior period earned if benefits are affected.
Pension and Retirement Payments	Special payments made on account of retirement are not included as earnings.
Pre-Tax Medical Insurance Premiums	Do not count as earning for work deduction purposes. **Note:** These cases normally involve disability annuitants working for a school district. If there is a discrepancy between the earnings information on form RL-231f and the earnings posted by SSA, secure a copy of the annuitant's W-2. The pre-tax medical insurance premiums are normally through some type of cafeteria plan.
Prizes and Gratuities	Not counted as earnings unless the payment is an integral part of the salesperson's wage structure. Prize winnings from contests are not counted as earnings unless the person enters a contest as a trade or business.
Profit Sharing Payment From a Plan	Not counted if the plan is financed by a trust fund. (NOTE: If the trust fund is not tax exempt, count the payment as earnings.)
Qualified Native American entity income from fishing-rights related activity	If a tribe member makes income through fishing rights-related activities, directly or indirectly through a qualified Native American entity, that income is not counted as earnings. Fishing rights-related activity is any activity directly related to harvesting, processing, transporting, or selling fish (with conditions) while exercising the recognized fishing rights of the tribe.
Redwood National Park Act Payments	Do not count Redwood National Park Act payments for work deduction purposes.
Release Payments	Payments to secure release of an unexpired contract of employment are not counted as earnings.
Relief Payments	Relief from unemployment and similar programs providing assistant to the needy should not be counted as earnings.

Rental Income	Do not count rental income as earnings unless payment is received by real estate dealers from property held for sale or substantial service activity is provided. **Example:** An employee rents rooms through AIRBNB. Income from Air BNB is not considered earnings. Earnings from investments are not based on service to an employer or "substantial service" in self-employment. If the individual is providing services beyond renting the property, i.e. changing the tenant bed linens or providing meals each day then a self-employment determination would need to be made to see if the employee is providing "substantial service".
Retired Partnership Payments	Retirement payments received by a retired partner are not counted as earnings provided the payments are made under a written plan and the retirement partner renders no services to the partnership.
Royalties	For an annuitant who has attained full retirement age, royalties, to the extent that they flow from property created by the annuitant prior to the taxable year in which he or she attained full retirement age are not counted as earnings for work deduction purposes. **Example:** An employee becomes entitled to an annuity in March 2002 at age 62. He receives $75,000 per year in royalties from books written and copyrighted in 2000. His annuity will be subject to work deductions for 2002, 2003, and 2004 because he has not attained full retirement age. Royalties received in 2005 (the year he attains full retirement age) may be excluded.
Section 125 Plan	This is another plan involving employer contributions to the employee's insurance benefits and should not be counted as earnings for work deduction purposes.

Sick Leave Payments to Government Employees	Most Federal agencies report sick leave as wages since Federal agencies have determined that payments for sick leave are continuing payments of salary and are not made on account of sickness or accident disability. Before January 1, 1984, sick leave payments made to Federal employees after age 62 was attained may be excluded if the employee did not work in the pay period. All state and local government sick leave payments are counted as earnings, unless it is established that there is a separate plan for payments on account of sickness or accident disability, that are not just continued salary payments.
Sick Pay Before January 1, 1982	Prior to January 1, 1982, sick pay was not counted as earnings if it was paid under a plan or system.
Sick Pay Beginning January 1, 1982	Effective January 1, 1982, sick pay is not counted as earnings if it is paid after the expiration of six full calendar months after the month last worked.
Stock Options	A stock option is the right to purchase specific numbers of shares of a company's stocks at a future date at a pre-set price. The "spread" is defined as the difference between the option price and the fair market value of the stock. Prior to tax year 2002, if the income from the "spread" when exercising stock options can be attributable to the period when the employee was granted the options, but was actually paid in a later year, the income is not counted as wages for work deduction purposes. For tax year 2002 and later, see FOM1 1110.10.
Strike Benefits	Not counted as earnings provided that the payment is not based on walking a picket line or performance of any other service as an employee of the union.
Subchapter S Corporation	Undistributed taxable income from a subchapter S corporation which is not available for use will generally not be counted as earnings for services,

	except where the corporation has been set up for the primary purpose of avoidance of earnings restrictions. Decisions on whether income from a Subchapter S corporation should be considered as earnings are made on a case-by-case basis.
Supplemental Unemployment Benefits	Do not count supplemental unemployment benefits unless FICA taxable under IRS rules.
Tax Sheltered Annuities	The amount of the annuity purchased from the employer's funds are not counted as earnings to the employee. The amount of the annuity purchased from the employee's fund is considered to be earnings.
Tips	Tips paid to an employee which are less than $20 a month, or are not paid in cash, are not counted as earnings for work deduction purposes.
Traveling and Business Expenses	Payments made by an employer which are reimbursement specifically for travel expenses of the employee and which are so identified by the employer at the time of the payment are not counted as earnings.
Trust Payments	If the payments are made under an employer's plan or system or to a trust fund that is tax exempt, the payments are not counted as earnings.
Unemployment Compensation	Railroad unemployment insurance payments and unemployment compensation paid by States are not counted for work deduction purposes.
Veteran's Training Pay and Allowances	Do not consider veteran's training pay subsistence or dependency allowance paid by the VA to an individual while in school or while engaged in 0n-the-job training as an apprentice or trainee as earnings for deduction purposes. Any additional payments made to the veteran by an employer may be wages depending on the type of work program.
Worker's Compensation	Worker's compensation is not counted as Earnings for work deduction purposes.

1110.20 Self-Employment Income

Self-employment (SEI) is remuneration for "substantial services" performed for an unincorporated trade or business which the person owns.

Form AA-4, "Self-Employment and Substantial Service Questionnaire," is usually completed by an employee or spouse applicant who indicates on the annuity application that he or she is or was recently self-employed. It is also completed in cases where the employee claims S/E at any time after leaving railroad service and a S/E vs. LPE decision is needed for a C/C determination or for work deduction purposes. Occasionally, individuals complete the questionnaire, at their request, before filing an annuity application, to have the SEI determination made in advance.

Earnings from SEI for work deduction purposes are the "net earnings from self-employment (NESE) ". The NESE amount is subject to work deductions, if it exceeds the annual exempt amount.

The NESE amount is the amount of the wages for the earnings year normally displayed on the Employment Data Maintenance screen (EDMID104, Creditable Service and Earnings Yearly Totals) or in item 4 of Form G-90.

If this amount is not available from these sources, request the RRB field office to obtain a copy of the annuitant's income tax Form 1040, Schedule SE, filed with the Internal Revenue Service to pay the Self-Employment Contributions Act (SECA) tax for the earnings posted to his social security wage record based on his SEI.

Also obtain copies of the Form 1040, Schedule C or Form 1040, Schedule F for the computation of the net profit or net loss from SEI. The Form 1040, Schedule SE, (either the short form or the long form) combines the net earnings from all SEI trades or businesses carried on by the self-employed person in the earnings year.

A net loss from SEI would be subtracted from a profit from other SEI in the same year. The net SEI earnings are then multiplied by .9235. The result is the NESE.

If the individual is filing a joint income tax return, the Form 1040 Schedule SE should include his earnings only. The spouse files a separate Form 1040, Schedule SE on her own social security number to report her SEI to her own wage record. Use that amount for the spouse annuity work deductions for the spouse's own earnings.

Example: The employee (DOB 2-10-25), for the earnings year 1991, filed a Form 1040 Schedule C with a net profit of $15,000 as a self-employed insurance agent and Form 1040 Schedule F with a net loss of $1,000 from a farm he owns and operates as SEI. The Form 1040 Schedule SE indicates that his total SEI earnings for the earnings year 1991 are $14,000. This amount is multiplied by .9235. The resulting NESE of $12,929 is posted to his wage record and is displayed in item 4 of Form G-90. Since this amount exceeds his annual exempt amount of $9,720, and his tier 1 is not reduced for SSA benefits, his tier 1 is subject to work deductions.

Where an individual sells his business, the amount received for inventory or stock in trade or business is included in gross receipts in determining the net SEI on Form 1040 Schedule C. However, the earnings from the sale of the inventory will not be counted as earnings for work deduction purposes if the employee is no longer engaged in the business or the business is closed.

Where an individual sells his business and retains ownership of accounts receivable:

- Collections are included in computing the net SEI on Form 1040 Schedule C in the year received when a cash basis method of accounting is used; or,

- Collections are not included when using accrual method of accounting because they were included in the net SEI on Form 1040 Schedule C in the years in which the sales were made.

For the purpose of determining work deductions, a person's earnings for a taxable year consists of the sum of his remuneration for services rendered as an employee during the year and his net self-employment (SE) earnings for the year, MINUS any net loss from SE for the year.

The "optional" method of computing net earnings from SE is available to any individual who is regularly self-employed or a member of a partnership, when the actual earnings from non-farm SE are less than $1,600.00 and less than two-thirds of the gross non-farm income. When both non-farm and farm businesses are involved, the non-farm option may be used only if the individual's actual net earnings from both non-farm and farm SE are less than $1600.00.

Beginning 1-1-78, it must be determined if the monthly earnings test may be used in a given year. If the monthly earnings test does not apply, work deductions are based on the annuitant's net self-employment income for the year.

If the monthly earnings test applies, work deductions do not apply for any month in which the annuitant both does not earn over the monthly exempt amount in wages and does not render substantial services in self-employment, regardless of his total earnings for the year.

1110.25 Meaning Of Substantial Services

A self-employed person's monthly work activity cannot be gauged accurately in terms of the amount of monthly earnings, as is done with employed workers. The self-employed person's monthly services, therefore, are measured by considering whether they are substantial. A substantial service determination is made only if the monthly earnings test applies. Once the monthly earnings test has been applied in a particular year, work deductions in subsequent years will be assessed based on the total yearly earnings, regardless of the time spent in substantial services.

The general test of whether services are substantial is whether, in view of the particular services rendered and the surrounding circumstances, the person can reasonably be considered retired in a particular month. If he can be considered retired in a month, his services in that month are not substantial. In considering whether services in SE are substantial in a month, the factors in the following sections may be pertinent. The determination of substantial services is judgmental, and is based on the facts presented. The final determination is made by BRC; these guidelines are furnished for your information.

There is not necessarily any connection between earnings from SE and substantial services. For example, earnings from SE may come after the month services were rendered, or may represent profits based solely on investment or past service. Thus, services may be substantial in a month in which no income is realized, or services may not be substantial in a month in which a large amount of income is realized. On the other hand, to the extent that earnings from SE reflect the kind and amount of services rendered in a month, consideration of earnings could be helpful in making determinations of substantial services.

1110.25.1 The Amount of Time Devoted to SE

Time is a major consideration in deciding whether a person can reasonably be considered retired. Thus, certain assumptions are based on the amount of time devoted to the business. More than 45 hours of services in a month is usually considered substantial. However, if the individual submits evidence establishing that he can reasonably be considered retired in a month in which services amount to more than 45 hours, the services may not be found substantial.

Services of 45 hours or less in a month would not usually be considered substantial. However, services of 15 through 45 hours in a month could be regarded as substantial if, for example, they were spent in the management of a large business or in a highly skilled occupation.

When time devoted to a business in a month is less than 15 hours, it is assumed that services are not substantial, regardless of their nature.

Time devoted to SE includes all time devoted by a self-employed person to any trades or businesses from which the net earnings or losses are includable in his earnings for annual earnings test purposes. Time devoted to such businesses includes all time spent by the self-employed person in any activity, whether physical or mental, at the place of business or elsewhere, which relates to the operation of the business. This includes, among other things, advising and planning, making business contacts and attending meetings, and preparing and maintaining the facilities of the business.

If a self-employed annuitant is idle during a calendar month because he is on vacation, sick or chooses not to work, he did not render substantial services during that month.

The fact that an annuitant owns an operating business is not controlling. Such an annuitant may have his business affairs so arranged that he is not required to, and does not perform substantial services in one or more months.

1110.25.2 The Nature of the Services Rendered

A decision may be made whether services were or were not substantial based only on consideration of time devoted to the business. However, when this is not the case, the nature of services rendered is considered with the amount of time devoted to business.

Some services may be substantial even though performed for less than 45 hours in a month. Such services could be managerial and technical services by an owner or partner in a large business, highly skilled services such as those rendered by professional persons, or any services to which high earnings are directly attributable.

In evaluating the services of an annuitant, both the nature of the services and the amount of time devoted to the business are considered. When services are less than 15 hours in a month, they are not substantial regardless of their nature. The closer services are to 45 hours in a month, the less skilled and valuable they would have to be in order to be substantial. Services performed regularly as one of the key functions of a business are more likely to be substantial than those performed temporarily due to an unexpected absence of an employee.

1110.25.3 How Services Compare with Services in Past Years

Consideration of the time spent and nature of services rendered may be enough to determine that services were or were not substantial. However, when the decision cannot be based on these facts alone, the relationship of present services to services rendered in the past becomes significant.

If there has been a significant reduction in a person's participation in his business (and especially when there has also been an accompanying reduction in the scope of the business itself), this factor is given considerable weight toward finding that the reduced services are not substantial. A sharp curtailment is not always necessary; a tapering off over a period of years might also result in a significant reduction. Conversely, an absence of any significant change in the amount and kind of services rendered would weigh in favor of holding the services to be substantial.

Sometimes an owner of a business may continue to designate his position in the business by the same title he used when working full time. However, his former functions may be largely assumed by other workers in the business and the efforts of the owner are greatly reduced in significance. Such a situation would weigh strongly in favor of holding services amounting to less than 45 hours in a month not substantial.

1110.25.4 Setting in Which the Services Were Performed

The presence or absence of a manager may be significant in evaluating the importance of the person's role in the business operations. In some cases the person may share

the responsibility of management, while in others he may turn it over completely to a manager.

The kind and size of business and amount of capital invested also affect the significance of services the person may be performing. If, for example, the person renders services in a business being conducted on a limited scale with little capital invested (in the nature of a sideline to retirement), his services would less likely be substantial than if they were spent in a larger and more profitable business in which considerable capital was invested, or which required considerable management or other skilled services.

The fact that a business is seasonal may also have a bearing. In the off-season, services may be unimportant and are less likely to be substantial.

1110.30 Guide for Developing Substantial Services

When full development is required, all information about monthly services and the circumstances under which the services were rendered will be requested by BRC. The following questions may prove helpful in getting complete factual development. The annuitant must submit a signed statement including the pertinent information.

A. In what type of trade or business were the services rendered?

B. What was the annuitant's status in the business (sole owner, partner, etc.)?

C. What was the approximate value of the business and what percentage did the annuitant own?

D. How many full and part-time employees worked in the business?

E. Was there a manager? If so, what was his name and address and what was the extent of his responsibility?

F. Did the annuitant share the responsibility of management?

G. If any of the employees are related to the annuitant, what is the relationship of each?

H. What were the regular business hours? If the regular business hours varied during certain months of the year, what were the variances and what was the reason for them?

I. What were the annuitant's duties and responsibilities?

J. How much skill did the annuitant's work require?

K. Were high earnings derived from the business based on the annuitant's personal services?

L. To what extent were the earnings of the business based on the capital invested in it?

M. Did the annuitant regularly go to the place of business and, if so, how long did he usually spend there each day?

N. How much time did the annuitant devote to the business while away from the place of business?

O. What were the total number of hours devoted to the business by the annuitant during each month that he alleges that services were not substantial?

P. If the annuitant was away on vacation, on what dates did the vacation begin and end?

Q. If the annuitant was off work because of illness or injury, on what date did he become unable to work and on what date was he able to return to work?

R. How do the services in question compare with services rendered by the annuitant in prior years?

1110.35 Disclosure of Guides To The Public

The guides used in making substantial service determinations may be disclosed to the public. However, take special care to avoid disclosing any one guide to the exclusion of the others. All four tests should be explained. Avoid any misunderstanding that only a straight hourly test is applied.

1110.40 Allocating Earnings

The information in this section does not apply to employee disability annuitants. Special rules apply in allocating earnings when there is a question regarding disability and when services were performed. See FOM1 1125.20.

1110.40.1 Earnings from Employment

Earnings from employment (wages) are counted as earnings for the taxable year in which the services are rendered. However, the SS Act provides that wages paid to an individual during a taxable year are presumed to have been earned in that year. Therefore, unless an individual claims otherwise, earnings are counted in the year they are paid. Also see FOM1 1110.40.3.

1110.40.2 Earnings from Self-Employment

Net earnings from self-employment are generally counted as earnings for the taxable year in which they are received, regardless of when they are earned. FOM1 1110.45 explains when certain deferred SE income should be counted.

1110.40.3 Special Payments

When special wage payments are received, an annuitant may allege that payments are either not earnings or are wages for a period different than that in which paid. Special payments include vacation pay, sick pay, bonuses, back pay and severance pay. The question is usually material only when payment is made close to retirement or during a prolonged absence from work. In those circumstances, first determine if the earnings should be counted for deduction purposes (FOM1 1110.10 and 1110.15).

If a special payment is material to the amount of work deductions, it may be allocated to a period other than when payment is made if:

A. Special payment made before employment relationship terminates - For work deduction purposes, an employment relationship is considered terminated when the individual last performed physical services, unless the individual is expected to return to work or is subject to call to render additional services.

When a special payment is paid before the employment relationship terminates, it is credited as follows:

1. Credited to the month of absence
    a. Federal, state or local annual and sick leave payments;
    b. Holiday pay;
    c. Sick pay, if it is included as earnings;
    d. Vacation pay.
2. Credited to the month of payment, unless proven otherwise (see B)
    a. Advances against commissions;
    b. Occasional bonuses (payment is at sole discretion of employer);
    c. Payment in lieu of vacation.
3. Credited to the month for which paid
    a. Back pay;
    b. Bonuses which are a regular part of the individual's pay;
    c. Deferred wages;
    d. Idle-time, standby or subject-to-call payments;

e. Payments to school teachers during non-work months (when paid in 12 installments for 9 or 10 months work).

B. Special payment made after employment relationship terminates - A special wage payment made at the time of or after the termination of an employment relationship is credited as earnings in the last month the employee worked.

EXCEPTION: Any special wage payment, except bonuses, may be credited to a different period if there is a written plan which shows that the special payment was for services rendered in a different period.

1110.40.4 Payments to School Employees During Non-Work Months

If the monthly earnings test applies during a given year, special guidelines are required for school employees. School teachers are usually engaged in a seasonal job with employment contracts requiring the performance of teaching (or similar) services during the school term in return for a specific salary. Frequently, the salary is paid out in 12 monthly installments for the convenience of both the employer and the employee. In such cases, the wages are earned when the personal services stipulated in the contract are performed, and not during the off-season month.

A deduction because of excess earnings is not imposed for a non-work month (i.e., one in which no services of any kind were rendered) falling between school years, even though a wage or salary payment is made to the teacher (or janitor, clerk, etc.) for that month. In such cases, the payments made during the period between school terms are presumed to be part of the total earnings for the contract year and are allocated to the months in which they actually were earned if allocation would be material.

1110.40.5 Charging Of Earnings Of Corporate Directors

Effective January 1, 1991, for purposes of excess earnings deductions, corporate director's earnings are to be treated as received in the year that the relevant services are performed. For years before 1991, corporate director's earnings are to be treated as earnings for the year in which the earnings are received.

1110.45 Deferred Self-Employment Earnings

Deferred self-employment income that is received after the year of entitlement to an annuity, is not included in earnings for deduction purposes if the income is not attributable to services performed after the month in which the annuity began. This provision is effective for taxable years beginning January 1, 1978; it may also be referred to as the "special self-employment income tax exclusion."

The SE income exclusion rule does not apply to wages from regular employment. Wages are still counted as earnings for the year in which they are earned.

1110.45.1 Kinds of Deferred Income

A. Based on Service Before the ABD Year

If the annuitant receives back pay from either a railroad employer or a non-railroad employer, and the actual date last worked for that employer is in a year before the ABD year, the back pay is credited to the month that the employee performed the service for that pay for that employer. The payments are not subject to work deductions.

Example 1 - The annuitant's date last worked is 12-31-1991. His ABD is 1-1-92. He received back pay on 2-5-92, from a railroad employer for the months of September 1991 through November 1991. For work deduction purposes, the back pay is considered earned in 1991 and does not cause work deductions.

Example 2 - Same facts as example 1, but the annuitant is also paying $200.00 per month from his wages in 1991 into a 401(k) retirement plan. The amounts paid into the 401(k) account are considered earned in 1991 and do not cause work deductions.

B. Based on Service in the ABD Year or Later

For work deduction purposes, back pay or deferred earnings for services to a railroad or non-railroad employer performed in the ABD year or later are considered to have been paid in the month in which they were earned. These earnings are included in the total yearly earnings from that employer and are subject to work deductions.

Example 1 - The annuitant has an annuity beginning date of January 1, 1990. He continues to work for his non-railroad employer in 1991 and 1992. On January 2, 1993, he receives back pay for months in 1991. The back pay is used to determine the work deductions that apply to the annuity for benefits paid for 1991.

Example 2 - Same facts as example 1, but the annuitant is also paying $200.00 per month from his wages in 1991 into a 401(k) retirement plan. The amounts paid into the 401(k) account are considered earned in 1991 and are used to determine the work deductions that apply in 1991.

C. Retired partners who receive a distributive share of the partnership income after entitlement to a railroad annuity.

Deferred SE income earned before entitlement but received in the initial year of entitlement to an annuity is, however, included as earnings for deduction purposes.

When deferred SE income is excluded, it is not considered for an earlier period; it is treated as if it did not exist for work deduction purposes. The SE earnings

excluded from the year received are not then added to the total yearly earnings of the year in which the services resulting in the income were performed.

EXAMPLE: A self-employed insurance salesman retired from all work in November 1994. His annuity beginning date is 12-1-94. In 1995, he received $10,000.00 in renewal commissions for policies sold prior to 1995. He has no net income for work deductions in 1995 because the $10,000.00 received after the year his annuity began is SE income attributable to services performed prior to his month of entitlement. He performed no substantial services as an insurance salesman in 1995. The $10,000.00 is also not added to his 1994 earnings.

For the purpose of the exclusion provision, "services" means any regular service performed in the ongoing operation or management of a trade, profession, or business which can be related to the income received.

1110.45.2 Field Office Development

When an individual reports self-employment that is similar to the kinds listed in the preceding section, explain the deferred income exclusion provision. If the annuitant alleges that some or all of the SE earnings should be excluded, a signed statement explaining the facts in the case is required.

Unless there is good reason to doubt a credible explanation of SE income that should be excluded, the allegation will be accepted without further development. Operations will notify you if verification is required.

1120.5 Legislative Background

Under the 1937 Railroad Retirement (RR) Act, an age and service annuitant and a spouse annuitant who were paid under the railroad formula had no earnings limitations. The only work restrictions were that an annuity was not payable for any month an annuitant returned to railroad or last pre-retirement non-railroad employment (LPE).

Section 2(f) of the 1974 Railroad Retirement Act extends work deductions to many retirement employee and spouse annuitants who were never subject to them. The law was effective 1-1-75. However, work deductions could be imposed prior to 1-1-75 for annuitants who filed in 1975 with a retroactive annuity beginning date (ABD) of 1974.

The intent of the 1974 RR Act was to assess work deductions (W/D) under the new law, as if railroad compensation were wages under the Social Security (SS) Act. The RR Act provisions for assessing work deductions under the annual earnings test are the same rules as those applied under the SS Act. However, the law was not intended to penalize railroad employees whose earnings before 1975 had been substantially railroad compensation. Therefore, the railroad retirement work deduction provisions apply only to employees and spouses (and divorced spouses beginning 10-1-81) who have a work deduction insured status (see FOM-I-1120.20). A work deduction insured status is determined according to the number of quarters of coverage of all SS wages and of railroad compensation beginning 1-1-75. Work deductions are applied only to certain parts of the annuity that are attributable to all wages and to railroad compensation beginning 1-1-75.

Under the 1988 Amendments, effective December 1, 1988, an employee or spouse can continue in or return to last person service and still be entitled to an annuity. However, LPE earnings reductions apply to tier II and any supplemental annuity. The reduction is one dollar for every two dollars earned in LPE up to a maximum of 50% of each component. A spouse's tier II is reduced for the employee's LPE earnings as well as the spouse's own.

Unlike excess earnings work deductions, which are calculated on the basis of annual earnings, LPE work deductions must be calculated on the basis of monthly earnings. The reduction occurs no matter how much money is earned or how old the annuitant is.

The RR Act contains penalty rules for failure to report earnings. Similar rules have always applied for disability annuitants; for retirement annuitants, penalties may apply beginning 1-1-75 if earnings are not reported timely (see FOM-I-1120.15).

1120.10 Effect Of Earnings

Not all age and service and spouse annuitants (including divorced spouses) are subject to the annual earnings limitation. To be affected by the earnings limitation, the employee or other beneficiary must have a work deduction insured status. Also, only part of the annuity rate may be withheld for excess earnings, even though the full

benefit can be withheld in RR Act survivor annuities and SS Act benefits. The work deduction components that may be withheld are: the portion of tier I that is based on all SS Act wages and on railroad compensation beginning 1-1-75, and the vested dual benefit (VDB). See FOM-I-1120.35.

If the employee has a work deduction insured status, both the employee and the spouse may lose part of their respective annuities because of the employee's excess earnings. The spouse may lose only her own work deduction components if she works and the employee does not. If they both work, the employee's excess earnings must be recovered first. A divorced spouse annuity is affected in the same manner as a legal spouse annuity. However, a divorced spouse who has been divorced from the employee at least 2 years will not be affected by the employee's earnings beginning 1-1-85.

An employee or spouse subject to deductions for work may never lose more than the amount of the work deduction components times the months of eligibility in a year, regardless of the amount of excess earnings to be recovered. However, an annuitant with last person service earnings is subject to separate LPE work deductions, as discussed in FOM-I-1121.

Under the provisions of the RR Act, no annuity is payable for any month the annuitant works in railroad service. **Exception: Beginning August 17, 2007, an independently entitled divorced spouse can be paid an annuity even if the employee is still working for the railroad.**

NOTE: All references to a spouse annuitant in this chapter include a divorced spouse, unless stated otherwise.

1120.15 Penalty for Failure To Report Earnings

If a retirement annuitant subject to work deductions fails to make a timely report of earnings and an overpayment results, he may be subject to a penalty. Penalty deductions may also apply to annuities payable under the overall minimum (O/M) guaranty.

1120.15.1 When Report Is Due

FOR EARNING YEARS PRIOR TO 2002

Ordinarily, a report is considered timely if it is received by April 15 of a year. However, if reporting Forms G-19 or G-19L are released after February 15, the annuitant is allowed at least 60 days after their release to return the questionnaire.

A report is considered late if it is received after the due date (April 15 or 60 days), unless a request for extension of time was requested and granted. It is the bureau's policy to be liberal with requests from annuitants to submit late reports. The time period for reporting may be extended up to 3 months. Any honest misunderstanding of the

responsibility or failure to report because of illness in the family, the press of other obligations (e.g., filing income tax report), or the like, constitutes good cause. No penalties may be imposed if there is good cause for a late report.

FOR EARNING YEARS 2002 AND LATER

RRB will consider the Social Security Administration's report of earnings to be the annuitant's official report of earnings. RRB will secure the earnings information directly from SSA. In effect, all reports will be considered timely filed.

The penalty provision is still part of the Social Security Act and therefore, a penalty is still possible since RRB's penalties are based on rules established in the Social Security Act.

The annuitant still has to file a report if any of the following conditions apply:

- The annuitant starts working and expects to earn more than the annual exempt amount;*
- The annuitant's employment is not covered under the Social Security Act;*
- The annuitant stops working;
- The annuitant goes to work for a railroad or railroad labor organization; or
- RRB requests the annuitant to report earnings.

*If either of these conditions occurs, penalties will still be applicable.

Also, in cases where it is clear than an annuitant has made an attempt to receive benefits through fraudulent means by failing to report the proper earnings to RRB, late reporting penalties will still be applicable.

EXAMPLE: An annuitant would be subject to a penalty if he or she attempted to avoid deductions under the earnings test by willfully and knowingly failing to report their correct earnings to SSA, such as a self-employed beneficiary who does not file an SE tax return when required, or an annuitant who defers his or her wages and fails to report this to SSA.

If a penalty deduction applies for an earning year 2002 or later, it will be assessed using the procedure for earning years prior to 2002.

1120.15.2 Deduction Schedule

If "good cause" for the late earnings report is not met in retirement cases, the following deduction schedule applies:

- For the first late report, the penalty deduction is equal to the work deduction components applicable for December of the report year, except that if the amount of the deduction imposed for the taxable year (or years if more than one year is considered as the first failure) is less than the work deduction components for December, the penalty deduction is an amount equal to the deduction imposed, but not less than $10.

  Example: Mr. Stone became entitled to an annuity in 2007 and had reportable earnings for 2008 and 2009. He did not make his annual reports for those years until 2010. His 12-2009 work deduction components totaled $1403.26. His deduction imposed for the 2008 and 2009 excess earnings was 1226.00. Since this is Mr. Stone's first failure to report and his excess earnings deduction is less than the actual work deduction components applicable, the penalty amount to be applied is $1226.00.

- For the second late report, the penalty deduction is two times the work deduction components for December of the year in which the earnings were made. (THERE IS NO PENALTY LIMITATION FOR THE SECOND AND SUBSEQUENT FAILURES TO REPORT EARNINGS.)

- For the third and any subsequent late report, the penalty deduction is three times the work deduction components for December of the year in which the earnings were made.

Penalties for any given year may never exceed the number of months for which the annuitant was entitled to payment in that year.

Use the following guidelines in determining whether a failure to file a timely report is first, second, or subsequent failure:

(1) <u>No Prior Failure</u>

Where no penalty deduction has previously been imposed against the annuitant for failure to make a timely report, all taxable years (and this may include 2 or more years) for which a report of earnings is overdue are included in the first failure.

The latest of such years for which good cause for failure to make the required report is used to determine the penalty amount.

EXAMPLE: Mr. Smith became entitled to an annuity in 2004 and had reportable earnings for 2004, 2005, and 2006. He did not make his annual reports for those years until July 2007. When multiple years are involved in the first delinquent report, the latest year is used to determine the penalty amount. Therefore, the penalty is equal to his December 2006 work deduction component(s).

EXAMPLE: Using the same criteria presented in the example above, assume that it was determined that Mr. Smith was found to have good cause for not making a timely report for 2006. In this situation, the first failure to make a timely report would be 2005 and the penalty would be the December 2005 work deduction component(s).

(2) Second and Subsequent Failures

After one penalty deduction has been imposed, each taxable year for which a timely report of earnings is not made, beginning with reports of earnings which become delinquent after the date of the first delinquent report, and for which good cause for failure to make the required report is not found, is considered separately in determining whether the failure is the second or subsequent failure to report timely.

EXAMPLE: Mr. Thomas incurred a penalty deduction for not making his 2003 earnings report until July 2004. In August 2006, it was found that Mr. Thomas had not made a timely report of either his 2004 or 2005 earnings, and good cause was not present with respect to either year. The penalty for 2004 is equal to twice his work deduction component(s) for December 2004. The penalty for 2005 is equal to three times the work deduction component(s) for December 2005.

1120.15.3 Applying Penalties

Penalties are to be applied at the same time the overpayment is being worked up and are included as part of the total overpayment. The explanation regarding the penalty is included in the overpayment letter. If penalty deductions should have been assessed, but were overlooked when the overpayment was being worked up, they can be assessed during the reconsideration process. Good cause for late filing can also be developed during the reconsideration process. The overpayment amount in the Program Accounts Receivable (PAR) system includes the penalty amount. The penalty amount is recovered by the same method of recovery selected by the overpaid person to repay the regular overpayment amount.

1120.20 Work Deduction Insured Status Defined

An employee, spouse or divorced spouse has a work deduction insured status if the requirements in this section are met. FOM-I-230 explains the requirements for a quarter of coverage and an insured status.

1120.20.1 Employee Requirements

An employee has a work deduction insured status if he:

A. Has sufficient wage quarters of coverage (QC) and is eligible for an SS benefit on his own earnings record as of 12-31-74; or

B. Would qualify for an SS benefit on his own earnings record if old enough; or

C. Has accumulated wage QCs which, when added to all compensation quarters of coverage after 1974, would equal the number of QCs required to have an insured status at SSA. The following formula is used to determine the number of QCs acquired toward a W/D insured status:

SS QC (all wages)

\+ RR QC (compensation after 1974)

QC for W/D insured status

EXAMPLE: An employee born in 1939 needs 40 wage QCs to be insured at SSA. When he retired from a railroad in January 2009, he had 18 wage QCs and 34 compensation quarters after 1974. He has a work deduction insured status even though he doesn't have enough wage QCs for an insured status at SSA.

Before 8-13-81, an auxiliary vested dual benefit (VDB) could be paid to an employee on another person's earnings record. Entitlement to such a VDB does not, by itself cause a W/D insured status. However, an employee who is entitled to an auxiliary VDB may have a W/D insured status based on his own earnings record, according to the preceding criteria.

Beginning 10-1-84, any employee who has worked in the railroad industry consistently since 1-1-75 will have a W/D insured status. He will have a W/D insured status based solely on compensation QCs, even if he has no wage QCs. Forty QCs will have elapsed beginning 1975 through 1984, and all employees are fully insured at SSA when they have 40 QCs. The W/D insured status is attained 10-1-84, because a W/D insured status is acquired as of the first month of the quarter in which the employee earns his qualifying QC (see FOM-I-1120.25). Of course, an employee may acquire a W/D insured status based on compensation alone before 10-1-84, depending on his date of birth. For example, an employee born in 1920 needs only 31 QCs, and 31 compensation QCs have elapsed between 1-1-75 and 9-30-82. His W/D insured status is effective 7-1-82, the first day of the quarter. Most employees will fit into this category, and now have a work deduction insured status.

The following chart shows the date on which an employee will acquire a W/D insured status <u>based solely on compensation</u>, if he has worked consistently in the railroad industry since 1974.

YEAR OF BIRTH	REQUIRED QCs	DATE OF W/D INSURED STATUS
1920	31	7-1-82
1921	32	10-1-82
1922	33	1-1-83
1923	34	4-1-83
1924	35	7-1-83
1925	36	10-1-83
1926	37	1-1-84
1927	38	4-1-84
1928	39	7-1-84
1929 and on	40	10-1-84

The date on which a W/D insured status is attained would be earlier if the employee has any wage QCs.

An employee who began working in the railroad industry after 1974 will have a W/D insured status based on compensation alone when he completes 120 months of railroad service. His entire tier I will be subject to work deductions (see FOM-I-1120.35).

When military service (M/S) is credited as wages, it will be counted as wage QCs. Those QCs could give the employee a W/D insured status when they are combined with other wage QCs and with compensation QCs after 1974. When military service before 1975 is used as compensation, it will not result in extra QCs for a W/D insured status.

1120.20.2 Spouse Requirements

A spouse (including a divorced spouse) has a work deduction insured status if she:

A. Is married to an annuitant who has or acquires a work deduction insured status; or

B. Is receiving a vested dual benefit (VDB). Beginning 8-13-81, no new VDB may be paid to a spouse. If a spouse is receiving a VDB, she has a W/D insured status, and the VDB and the tier I W/D components may be withheld. If a VDB cannot

be paid to her, or if she is a divorced spouse and not entitled to a vested dual benefit, she does not have a W/D insured status unless the employee does, as stated in A.

NOTE: Entitlement to social security benefits on an earnings record other than the employee's or the spouse's own record does not cause a work deduction insured status.

1120.25 When W/D Insured Status Is Acquired

A work deduction insured status is acquired as of the first month of the quarter in which the employee earns the qualifying QC.

Beginning in 1978, SSA wage quarters are determined based on an annual report of earnings rather than the wages earned each quarter. Under the annual reporting method, one quarter of coverage is given for a specific amount of wages earned in the year regardless of when the wages were earned. FOM-I-230.140 lists the amount of earnings required each year for a QC. For example, in 1982 a QC is given for each $340.00 of wages earned in the year. Therefore, if a person earned a total of $800.00 in 1982, he would get credit for 2 wage quarters in 1982, regardless of when the earnings were made. The W/D insured status would be acquired at the beginning of the second quarter.

EXAMPLE: An employee has 28 QCs through December 1981 and needs 30 QCs for a W/D insured status. The employee worked in January of 1982 and earned $1,600.00. The $1,600.00 will give him 4 QCs for 1982. The 2nd quarter of 1982 is when he acquired his 30th QC; he receives one QC for each $340.00 of wages. Therefore, he has a W/D insured status effective 4-1-82.

Based on the annual report of earnings, the RRB may not receive notice of wages earned in a year until September of the following year. Therefore, it may be determined that an employee has a W/D insured status based on current earnings reported by the employee.

1120.30 First Year of Entitlement For Monthly Earnings Test

The monthly earnings test may apply only in the first year after 1977 in which the annuitant is entitled to an annuity and has a non-work month (see FOM-I-1105.40). However, special rules apply for determining the grace year in retirement cases, since the employee must have a W/D insured status before work deductions for excess earnings may apply.

1120.30.1 Employee Has W/D Insured Status on Annuity Beginning Date

The first year of entitlement for the purpose of determining a non-work month begins with the month the annuity begins to accrue, if the annuity is a full age annuity, a 60/30

annuity or an age reduced annuity, and the employee has a work deduction insured status on his annuity beginning date (ABD).

1120.30.2 Employee Acquires W/D Insured Status After ABD

If an age and service annuitant does not have a work deduction insured status on his ABD, but acquires it at a later date, entitlement for the purpose of determining a non-work month begins with the first month of the quarter the annuitant acquires the qualifying quarter for a work deduction insured status.

If a disability annuitant (either occupational or total and permanent) acquires a work deduction insured status after age 65, entitlement for the purpose of determining a non-work month begins with the first month of the quarter that the work deduction insured status is acquired. If the disability annuitant acquires a W/D insured status before age 65, entitlement for the purpose of determining a non-work month begins with the month the annuitant attains age 65.

1120.30.3 Entitlement for Purpose of Determining Non-Work Month for Spouse

Entitlement for the purpose of determining a non-work month for the spouse is the month the employee acquires a work deduction insured status.

1120.35 Excess Earnings Work Deduction Components Defined

The employee and spouse excess earnings W/D components are defined in this section. An age reduction applies to the excess earnings work deduction components if the annuity is reduced for age. See FOM-I-1120.45 for field office procedure in identifying work deduction components.

1120.35.1 Tier I W/D Component

The employee and spouse tier I W/D components represent the portion of tier I that is attributable to all wages and to railroad compensation after 1974.

A. Employee - The employee's tier I W/D component is called PIA 2 (Primary Insurance Amount). In this chapter, it will be referred to as the "tier I W/D component."

The employee's tier I W/D component equals the difference between the tier I PIA 1 based on all wages and compensation, and the PIA 17 based solely on compensation prior to 1975. The resultant tier I W/D component equals PIA 2, and is based on the sum of all wages plus compensation earned after 1974.

Even though PIA 17 is computed based on compensation through 1974 only, cost-of-living (COL) increases are applied to PIA 17 as they are to PIA 1. The amount of the tier I W/D component changes with each COL increase, and may also increase as the tier I PIA 1 is recomputed for additional earnings. Delayed

retirement credits (DRCs) may also increase the amount of the tier I W/D component.

The tier I W/D components are gradually increasing, as the years of compensation after 1974 on which the calculation is based are increasing. The tier I W/D component equals tier I for an employee who acquires his first month of railroad service after 1974, since PIA 17 equals zero.

B. Spouse - The spouse's tier I W/D component equals one-half of the employee's tier I W/D component, rounded down to the nearest multiple of $0.10.

1120.35.2 Vested Dual Benefit W/D Component

The entire vested dual benefit (VDB) amount is the VDB W/D component for the employee or the spouse. The VDB being paid is the amount used in assessing work deductions for excess earnings.

1120.35.3 Chart Summarizing W/D Components

The following chart summarizes the excess earnings W/D components for an employee or spouse.

	EMPLOYEE	**SPOUSE**
TIER I W/D COMPONENT (PIA 2)	PIA 1 minus PIA 17 updated for COL increases	50% of employee tier I W/D component
VESTED DUAL BENEFIT W/D COMPONENT	Entire Vested Dual Benefit	Entire Vested Dual Benefit, if any.

1120.35.4 W/D Components Involving Actuarial Adjustment or Waiver

If the annuity is reduced for an actuarial adjustment, charge the excess earnings against the unreduced work deductions components.

If an annuity is reduced by waiver, charge the excess earnings against the reduced work deduction components.

1120.36 Age Reduced Work Deduction Components

If the annuitant is receiving a pre-1981 amendment age reduced annuity, follow the instructions in Appendix F, “Form G-101a Instructions”. These detailed instructions explain how to compute the appropriate age reduction factor and how this factor is applied.

If the annuitant in receiving a 1981 amendment reduced age annuity, apply the age reduction factor as of the annuity beginning date (ABD) to the work deduction components.

Example: If the gross tier 1 work deduction component is $100, the gross vested dual benefit is $50, and the age reduction factor on the ABD is .25000, multiply the .25000 by $100 and subtract that product from $100 to obtain the adjusted tier 1 work deduction component of $75.00. Multiply .25000 by $50 and subtract that product from $50 to obtain the adjusted vested dual benefit work deduction component of $37.50.

If the annuitant is receiving an annuity under the 60/30 provisions that has an age reduction subject to recalculation at age 62, use the age reduction factor on the ABD to adjust the tier 1 work deduction component before the effective date of the age 62 recalculation and the recalculated age reduction factor to adjust the tier 1 work deduction component from the effective date of the recalculation.

1120.40 When Excess Earnings Work Deductions Are Applied

1120.40.1 Employee

If the employee meets all the following criteria, excess earnings work deductions must be imposed:

A. The employee is an age and service annuitant under full retirement age as of the month work deductions would begin;

B. The employee has a work deduction insured status;

C. The work deduction components exceed $1.00; and

D. The employee's earnings or expected earnings are greater than the annual limit for the year.

1120.40.2 Spouse

If all the following criteria are met, excess earnings work deductions must be imposed on the spouse annuity:

A. The spouse is either receiving a vested dual benefit or is the spouse or the divorced spouse of an employee with a W/D insured status. The employee's age is immaterial.

B. The spouse is less than full retirement age if she has excess earnings. However, the spouse's age is immaterial if her work deduction components are being used to recover the employee's excess earnings; and

C. The spouse has excess earnings herself or the employee has a W/D insured status and has excess earnings.

EXCEPTION: Beginning 1-1-85, the employee's earnings do not affect the annuity of a divorced spouse who has been divorced from the employee at least 2 years.

1120.40.3 Order of Recovery

Work deductions based on the employee's excess earnings are applied on a monthly basis in the following order of priority:

A. From the employee's tier I W/D component;

B. From the employee's vested dual benefit;

C. From the portion of the spouse or divorced spouse tier I amount subject to deduction. If both a spouse and divorced spouse are receiving annuities, the excess amount is recovered in equal proportions from both annuities; and

D. From the spouse vested dual benefit, if a VDB is being paid.

Work deductions based on the spouse's or divorced spouse's excess earnings are applied only to that individual's own annuity.

1120.41 Field Office Action When Earnings Reports Received

When a report of excess earnings from a G-19L or other report is received from a retirement annuitant, notify Headquarters using SPEED. See FOM1 15125.

1120.45 Using MARC and PREH to Determine Work Deductions

1120.45.1 Using MARC to Determine Work Deductions

The MARC (Microfiche of Annuity, Residual and Compensation) file (now on-line) should be used when an employee files for an annuity. It can also be used to advise the spouse if she files simultaneously with the employee, or before the employee's record shows on PREH.

A. "VESTING QC, RQ" - The number of QCs an employee needs for an insured status under the SS Act is found on the MARC in this item. This is also the number of QCs the employee needs for a W/D insured status.

B. "SSA QC" - This item shows the number of wage QCs the employee has acquired under the SS Act. If the employee is possibly insured based in part on pre-1951 social security earnings, "PI" is shown. To determine if the employee has a W/D insured status, you must also determine the number of the compensation QCs after 1974. The MARC no longer shows the number of railroad service months after 1974. You can make an accurate estimate by asking the employee about his railroad employment after 1974, or by checking the 1981 MARC II which does show the service months after 1974. If an older

MARC record is not available, you may request a Form G-90 (Certification of Service and Compensation) for a yearly breakdown of railroad compensation, if necessary.

If the employee has a W/D insured status based on the MARC information, the spouse has a W/D insured status.

C. "PIA 17" - PIA 17 is the amount of tier I that is not subject to excess earnings work deductions. It is the portion of tier I that is payable if the employee has excess earnings work deductions, because it is the portion of tier I that is based on railroad compensation before 1975.

To compute the amount that would be deducted from the employee's annuity because of excess earnings, use the following formula:

Tier I PIA 1

- PIA 17

Tier I W/D Component (PIA 2)

+ Vested Dual Benefit

Total W/D Components

When RBD computes the amount to be deducted for excess earnings, the reduction for age will be deducted. The tier I W/D amount computed by RBD may also differ from the amount shown on the MARC if additional earnings, delayed retirement credits or cost-of-living increases are added.

1120.45.2 Using PREH to Determine Work Deductions

The (Payment Rate and Entitlement History) system can be used to determine if excess earnings work deductions have been applied to an employee or spouse annuity.

Withholding for excess earnings work deductions is in force if the 3220 PREH record indicates withholding. The following fields on the 3220 record will display the work deductions being withheld:

- “WD-MO-ADJMNT-AMT”
- “T1-REG-WD-WH-AMT”

- “VDB-WD-WH-AMT”
- “T2-LPS-WD-WH-AMT”
- “SUPP-ANN-LPS-WD-WH-AMT”

1120.50 Informing Annuitant Of Work Deduction Status

1120.50.1 Field Office

The first and most important notification of work deduction information an annuitant receives is in the field office. All applicants agree to report earnings over the exempt amount when the application certification page is signed. The importance of reporting excess earnings should be emphasized when the application is filed. Since most employees have now acquired a W/D insured status based on compensation alone (see FOM-I-1120.20.1), the importance of reporting earnings should be stressed for all applicants. If an employee has not yet acquired a work deduction insured status, advise him that he may acquire one if he works and earns additional QCs.

Effective 12-1-88, an employee or spouse no longer needs to stop work for a "last person service" (LPE) employer in order to qualify for an annuity. However, LPE earnings deductions apply to tier II and any supplemental annuity, up to a maximum of 50 percent of each component. The deduction will apply for any month that the annuitant has LPE earnings, regardless of the amount of those earnings or the annuitant's age.

The annuitant should understand that LPE earnings in excess of the annual exempt amount can also result in regular work deductions.

Use the information in FOM-I-1120.45 to answer inquiries about work deductions. All reports of excess earnings, LPE earnings, or changes in work status should be entered into SPEED unless otherwise requested.

1120.50.2 Award Notice Information

The monthly amount being withheld because of excess or LPE earnings is printed on the award letter. That amount is identified as "REDUCTION FOR EARNINGS," and is printed on Form RL-20e when the first check after the accrual check will reflect temporary work deductions. It is also printed in "rate break" form when the amount deducted in the ABD month differs from the amount to be deducted from regular monthly payments.

EXAMPLE I

Reduction For Earnings	Effective Date

$ 255.78	09-27-2009
$418.50	10-01-2009

EXAMPLE 2

Reduction For Earnings	Effective Date	Supp Earnings Reduction	SUP Eff. Date
$663.00	5-3-10	$21.50	5-3-10

1120.50.3 Mass Mechanical Notification

The last mass mechanical notification of work deduction insured status was done in November 1977. There are no definite plans for another mass operation at this time.

Form letters RL-180 through RL-182 are used in that kind of operation to notify the employee and spouse if they have a W/D insured status and the amount of the W/D components.

1120.50.4 Work Deductions Award Letters

The following form letters are used to advise annuitants of work deduction adjustments to the annuity:

RL-119SR is used when an employee or spouse ceases LPE work and the reduction is being removed. The letter is generated through SPEED/ALTA and it is also available on RRAILS.

RL-169SR is used to explain to a spouse annuitant that work deductions cannot be removed from the annuity because the employee is still working. This letter is generated by SPEED and is also available on RRAILS.

Various code paragraphs also explain when work deductions are being applied and the effect of earnings on a retirement annuity.

1120.55 Excess Earnings Work Deductions In The ABD Month And Year

For years before 1982, follow the instructions in FOM1, Article 11, Appendix C, “Form G-101a Instructions,” for age and service work deductions.

The 1981 RR Act amendments changed the application of excess earnings work deductions in the month the annuity begins. No excess earnings work deductions will

be applied in the ABD month based solely on earnings before the ABD. This affects annuities that begin 1-1-82 or later.

If the employee had earnings after the ABD and work deductions apply in the ABD year, then all earnings in the ABD year (wages and railroad compensation) should be counted for the annual earnings test. However, work deductions apply only to those months where the non-railroad earnings exceed the ***monthly*** exempt amount.

If the ABD is on the first day of the month and the annuitant has both excess earnings in the ABD year and earnings over the monthly exempt amount in the ABD month, then we would apply work deductions to the ABD month.

EXAMPLE: An employee's ABD is 8-1-2009. Her earnings through August 2009 were $26,500.00. She continued to work through the end of 2009; however, her monthly earnings after August 2009 were under the monthly exempt amount for that year. ABD month work deductions would be applied for August 2009 since the ABD is on the first day of the month and the earnings in August were over the monthly exempt amount.

If the ABD is any day other than the first day of the month and the annuitant does not earn over the monthly exempt amount for the remainder of the ABD year, no work deductions apply in the ABD month.

EXAMPLE: An employee last worked for her LPE employer on 8-23-2009. Her earnings through 8-23-2009 were $16,520.00. Her monthly earnings through August 2009 were $2,065. She continued to work through the end of 2009; however, her monthly earnings after August 2009 were under the monthly exempt amount for that year. No work deductions will be applied for August 2009 because the ABD is not on the first day of the month **and** she had no earnings in excess of the monthly exempt amount after the ABD.

Apply regular ABD month work deductions according to the table below:

IF the ABD is on …of the month	**AND annuitant works after ABD**	**ARE there non-railroad excess earnings in the ABD month?**	**ARE there excess earnings in at least one month after the ABD?**	**THEN, ABD year work deductions do…**
The first	No	---	---	Not apply.
	Yes	Yes	---	Apply.
	Yes	Yes	Yes	
	Yes	No	Yes	

Other than the first	No	---	---	Not apply.
	Yes	Yes	Yes	Apply.
	Yes	Yes	No	Not apply.
	Yes	No	Yes	Apply, but the ABD month would be a non-work month.

For ABD months before 1-1-82, work deductions were applied in the ABD month based on the employee's earnings in that month, regardless of when they were earned. Therefore, the employee's annuity was often reduced for railroad compensation that was earned before the annuity beginning date.

Do not apply Last Pre-retirement Non-railroad Employment (LPE) age and service work deductions in the year the annuity begins when the annuity beginning date (ABD) is other than the first day of the month and there are no LPE earnings after the ABD.

1120.60 Excess Earnings Work Deductions When The Annuitant Is Entitled To SS Benefits

Beginning 1-1-82, tier I work deductions are not applied for any month the annuity is reduced for SS benefits. However, the annuity is now reduced for the amount of the SS benefit before work deductions. The SS reduction is made whether or not the SS benefit is actually payable after work deductions. The vested dual benefit W/D component is still withheld for months that work deductions apply.

In these cases, the vested dual benefit is still subject to work deductions for excess earnings. Also, if the employee is the annuitant with the excess earnings and the social security benefit offset, the spouse's tier 1 is still subject to withholding based on the employee's earnings.

When applying final work deductions in these cases, take into consideration the amount of the social security benefits withheld from tier 1 during the year before applying work deductions to the employee's VDB and the spouse's tier 1.

Since RRB has no control over the amount withheld from the employee in these types of cases, the usual proration of monthly work deduction amounts (e.g., 2/3 from the EE and 1/3 from the spouse) cannot be used in this situation.

When assessing permanent work deductions for an employee who has an SS offset, the order of recovery should be made as follows:

- The SS benefits payable for the year, then
- The employee's VDB, and finally,
- The spouse's tier 1 if it is not subject to withholding for SS benefits.

EXAMPLE 1

An employee under full retirement age has excess earnings of 20,580.00 in 2010. He is entitled to social security benefits of $1007.00 for January 2010 through December 2010. He is also entitled to a VDB in the amount of 117.07 which was previously withheld based on his earnings estimate.

The final retirement work deductions are computed as follows:

Excess Earnings	$20,580
Minus Exempt Amount	14,160
	6,420 divided by 2 = 3,210
SSA Amount Available for Withholding	12,084

The amount to be withheld for excess earnings is $3,210.00. The SSA MBR indicates SSA withheld the SS benefit January through March and paid a partial for April. In other words, SSA was able to withhold the full amount subject to work deductions. *(Note: Even if the MBR does not indicate that SSA has processed work deductions for the year, assume that they will be done at a later date.)*

No tier 1 work deductions are needed on the spouse's annuity and the VDB amounts previously withheld from the employee should be paid.

EXAMPLE 2

Same conditions as example 1, except the employee earned $40,000. The final work deductions would be completed as follows:

Excess Earnings	$40,000	
Minus Exempt Amount	14,160	
	25,840/2	12,920
Minus SSA Amount Available for Withholding		12,084
Amount of Withholding Required by RRB		836

836.00 divided by 117.07 = 7.14103 months withholding required for the VDB. The employee is entitled to a partial VDB for August and the full VDB for the remainder of the year.

No tier 1 work deductions are needed on the spouse's annuity.

EXAMPLE 3

The employee has excess earnings and a tier 1 offset but is not entitled to a VDB. There is a spouse on the rolls with no SS offset.

This section does not include any discussion on how to handle these situations if a divorced spouse is also subject to withholding based on the employee's earnings. If you come across a case of this nature, please forward the folder or folderless package to Policy and Systems, attention: Teresa Givens.

Note: When retirement work deductions imposed by both RRB and SSA creates a disadvantage to the beneficiary, see FOM1 1120.60.1.

1120.60.1 Effect of SS Entitlement

Since tier I will not be reduced for work deductions when there is an SS benefit, the SS benefit actually replaces the tier I W/D component. This change makes it easier for the RRB to apply work deductions, since it eliminates the need for adjusting tier I because of work deductions on both tier I and the SS benefit. It also eliminates the need to "restore" part of the SS benefit when it exceeds the tier I W/D component (see FOM-1-1120.60.2).

Entitlement to SS benefits may be a disadvantage when the SS rate is greater than the tier I W/D component. However, whether or not SS entitlement is a disadvantage depends on the amount of the annuitant's earnings and whether or not he has a vested dual benefit. When the SS rate is larger than the tier I W/D component, the reduction in tier I for earnings is greater. For example, if the employee's SS benefit is $1200.00, but his tier I W/D component is $500.00, he will have a greater reduction in tier I if he is entitled to SS benefits.

Similarly, SS entitlement may be an advantage when the SS rate is less than the tier I W/D component. Whether or not it is an advantage also depends on the amount of the earnings and VDB entitlement. These are factors because they determine if the SS benefit or tier I W/D component are the only amounts that will be affected, or if W/D would also be applied to the vested dual benefit.

The following chart summarizes the effect of SS entitlement on work deductions. This chart is based on equal periods of SS entitlement and annuity entitlement (i.e., 12 months for both). This chart should be used to provide guidelines in advising an employee. Based on the individual factors involved (e.g., SS beginning date or earnings fluctuation), a decision may depend on your calculations in an individual case.

	AMOUNT OF SS BENEFIT	
EFFECT OF SS ENTITLEMENT	**GREATER THAN TIER I W/D COMPONENT**	**LESS THAN TIER I W/D COMPONENT**
Disadvantage	If there is a VDB	If there is a VDB and the excess earnings amount to OR be withheld is less than the total of the SS benefit and the VDB for the year
	If there is no VDB AND the excess earnings amount to be withheld is greater than the total of the tier I W/D components for the year	
Advantage	None	If there is no VDB and the excess earnings amount to be withheld is greater than the total of the SS benefits for the year
	OR	
	If there is a VDB and the amount to be withheld is greater than the total of the SS benefit and the VDB for the year	
No disadvantage or advantage	If there is no VDB the excess earnings amount to be withheld is less than or equal to the total of the tier I W/D components for the year	
	AND	
	If there is no VDB and the amount to be withheld is less than or equal to the total SS benefits for the year.	

EXAMPLE 1: <u>SS Is Greater Than Tier I W/D Component, Employee Has a VDB</u> The employee earned $13,440.00 in 1982, which caused excess earnings of $4,500.00 ($13,440.00 - 4,440.00 -: 2 = 4,500.00).

His 1-1-82 rates were:

	Without SS	**With SS**	**SS Benefit**

Tier I:	$ 626.00	626.00	$ 164.00
SS:		-164.00	
		462.00	
Tier 2:	+ 343.88	+ 343.88	
VDB :	+ 172.49	+ 172.49	
	1142.37	978.37	$ 164.00
	x 12 mos.	x 12 mos.	x 12 mos.
	$ 13708.44	$ 11740.44	$ 1968.00
The work deduction components were:			
Tier 1:	$ 52.60	$ 172.49	
VDB:	+ 172.49	x 12 mos.	
	x 12 mos.	$ 2069.88	
	$ 2701.08		

Although the amount to be withheld was $4,500.00, the annuity could not be reduced for more than the total W/D components. The amounts payable after work deductions were:

13708.44	$11740.44	$ 1968.00
- 2701.08	- 2069.88	- 4500.00
$11007.36	$ 9670.56	$ 0.00

SS entitlement in this case was to the employee's disadvantage, because the total benefits payable were $1,336.80 less (the difference between the SS benefit and the tier I W/D component times 12 months).

EXAMPLE 2: SS Is Less Than Tier I W/D Component, Excess Earnings Withholding Is Greater Than Total Tier I and VDB W/D Components - The employee earned

$15,440.00 in 1982, which caused excess earnings of $5,500.00 ($15,440.00 - 4,440.00 - 2 = 5,500.00).

His 1-1-82 rates were:

	Without SS	**With SS**	**SS Benefit**
Tier I:	$ 503.00	$ 503.00	$ 250.70
SS:		- 250.70	
		$ 252.30	
Tier II:	+ 75.62	+ 75.62	
VDB:	+ 129.13	+ 129.13	
	707.75	$ 457.05	250.70
	x 12 months	x 12 months	x 12 months
	$ 8493.00	$ 5484.60	$ 3008.40
The work deduction components were:			
Tier I:	$ 294.80	$ 129.13	
VDB:	129.13	x 12 months	
	423.93	$ 1549.56	
	x 12 months		
	$ 5087.16		

Although the amount to be withheld was $5,500.00, the annuity could not be reduced for more than the total W/D components. The amounts payable after excess earnings work deductions were:

$ 8493.00	$ 5484.60	$ 3008.40
- 5087.16	- 1549.56	- 5500.00

$ 3405.84	$ 3935.04	+ $ 0.00

The benefits payable with SS entitlement ($3,935.04) exceeded the amount that would be payable if the employee were not entitled to SS benefits ($3405.84). The difference ($529.20) equals the difference between the tier I W/D component minus the SS benefit, times 12 months. SS entitlement was to the employee's advantage in this case as long as the earnings withholding exceeded $4,557.96 ($3,008.40/SS and $1,549.56/VDB).

1120.60.2 Work Deductions Prior to 1982

The 1981 RR Act amendments changed the computation of work deductions when SS benefits are involved. Before 1-1-82, tier I work deductions applied even when the annuitant was receiving SS benefits. However, the reduction in tier I for SS benefits was the net SS benefit after SSA had applied work deductions. The RR annuity, therefore, was reduced only for the amount of the SS benefit that was actually paid.

Instead of changing the reduction in tier I every time the SS benefit rate changed because of work deductions, a simplified method was used. When temporary W/Ds were applied, the full amount of the SS benefit was used to reduce tier I. In almost every case, the amount of the SS benefit exceeded the work deduction components that would have to be withheld otherwise. Since this method actually resulted in reducing the annuity for an amount greater than the W/D components, there was generally no overpayment as long as the annuity had an SS reduction for each month that W/Ds would apply. When permanent W/Ds were computed, the RR Act W/D components were deducted from the benefits payable after the correct SS reduction was made.

EXAMPLE 1: The employee was entitled to SS benefits of $254.30 effective 1-1-80, and $290.70 effective 6-1-80. The employee expected to have earnings of $5,120.00 in 1980. Since the exempt amount was $3,720.00, his excess earnings were $700.00.

The employee had a W/D insured status; his W/D components were:

	1/80	**6/80**
Tier I W/D Component	$ 58.00	$ 66.30
VDB	172.68	172.68
Total	$ 230.68	$ 238.98

When temporary W/Ds were assessed, only the SS reduction was made in tier I. When permanent work deductions were computed, the following adjustment was made:

Total SS (gross) deducted from tier I:	$ 3306.40
Total SS after work deductions:	- 2606.40
Tier I accrual:	$ 700.00
W/D recovered from W/D components:	- 700.00
Overpayment:	0.00

There were some cases in which the amount of the SS benefit greatly exceeded the amount of the work deduction components. When that happened, the reduction for SS would exceed the amount that should be deducted from the railroad annuity because of earnings. In those cases, temporary W/Ds were assessed with a "restoration" in tier I equal to the difference between the amount of the SS benefit and the work deduction components. In other words, only the work deduction components would be deducted from the annuity. The restored amount could only apply in months that the SS benefit would not be paid because of earnings.

EXAMPLE 2: The spouse's SS benefit was $250.00. Her tier I W/D component was $10.00. Her excess earnings to be withheld totaled $650.00. Since the maximum amount to be withheld from her annuity is twelve times her W/D component, or $120.00, it would be unjust to reduce her annuity for the gross amount of her SS benefit. Accordingly, we "restored" her SS benefit less $10.00 ($240.00) for the months that her SS benefit was not payable because of earnings. The monthly reduction for earnings, therefore, equaled her W/D component of $10.00.

If the annuitant did not have a W/D insured status, but did have an SS benefit that had work deductions, the full amount of the SS benefit was restored in the months the SS benefit was payable after work deductions. In other words, the annuity was reduced only for the amount of the SS benefit that was payable after work deductions.

1120.65 Assessment Of Temporary W/D's For Excess Earnings

Work deductions are assessed on a "temporary" basis during the current year. The work deductions are temporary because the withholding is based on an estimate of earnings. The withholding is intended as an offset to prevent or reduce an overpayment when the final adjustment is made. Temporary work deductions for excess earnings are required whenever an annuitant under full retirement age expects to have earnings over the annual limit.

1120.65.1 When Initial Temporary W/Ds Are Applied

A. ROC or PC awards - For cases paid through ROC or PC awards, the offset is based on the excess earnings divided by 12, or the number of months available for withholding. ROC automatically adds a 10 percent cushion to the amount of earnings being used for the estimate. See example 1.

If the basis for the withholding is less than the total work deduction components, it should be prorated between the employee and spouse annuities. Two-thirds or .66667 will be withheld from the employee's and one-third, .33333, from the spouse's annuity, if applicable. Round up the prorated amounts for both the employee and spouse to the dollar. See example 1 below. (NOTE: THESE ARE EXAMINER CALCULATIONS ONLY. ROC WILL PRORATE USING THE RATIO OF THE ANNUITANT'S WD COMPONENTS TO THE TOTAL OF ALL WD COMPONENTS.)

Example 1: An employee under FRA is entitled to an annuity beginning January 1, 1999. He has indicated that he will earn $17,300.00 in 1999. His temporary work deduction withholding will be based on $19,030.00 ($17,300.00 times 10%). His tier 1 work deduction component is $310.00 and his VDB is 169.40, for a total of $479.40 (maximum work deduction component).

Based on the employee's estimate, we need to recover $4,715.00 ($19,030.00 - 9,600.00=$9,430/2=$4,715.00). The calculated TWD based on 12 months withholding is $392.92 per month (4,715.00/12=$392.91666). The prorated withholding for the employee is $262.00 ($392.92 x .66667 = $261.95) and $131.00 for the spouse ($392.92 x .33333 = $130.97).

NOTE: IF THIS SAME CASE IS PAID THROUGH RASI, THE WITHHOLDING WOULD BE BASED ON THE MAXIMUM WORK DEDUCTION COMPONENT, $479.40, INSTEAD OF THE 12-MONTHS WITHHOLDING.

Example 2: An employee under FRA entitled to an annuity beginning 9-1-98. On March 1, 1999, he reports that he will earn $18,000.00 in 1999. His tier 1 work deduction component is 250.00 and the VDB is S101.80. His spouse's tier 1 work deduction component is $125.00, for a total maximum family work deduction component of $476.80 component.

Based on the employee's estimate, we would use $19,800 to compute the temporary work deductions. We need to withhold $5,100.00 ($19,800.00 - 9,600.00=$10,200.00/2= $5,100.00). The calculated TWD based on the number of months available for withholding is $510.00 ($5,100.00/ 10 months). Since the withholding based on the available months is higher than the maximum work deduction component, withhold the maximum work deduction components for the remainder of the year.

Temporary work deductions should be used for excess earnings in the current year. They may also be used if it is not possible to make final adjustment for earnings at the time the annuity is being certified.

B. RASI Awards

Excess earnings work deductions must be applied to a partial annuity rate when the field office computes an IMPACT or SPAR rate. RASI (Retirement Adjudication System Initial) applies temporary W/Ds to the employee or spouse final annuity when the employee or spouse has a W/D insured status and the application indicates excess earnings after the ABD. RASI also will apply temporary W/Ds to the spouse final annuity when the employee and spouse filed simultaneously and the employee estimates excess earnings after the ABD. If the spouse filed after the employee annuity was awarded, RASI will apply temporary W/Ds to the spouse if the employee's tier I W/D component is included in internal research records. Otherwise, work deductions will be applied to the spouse with a manual award.

RASI does not apply tier I work deductions when a social security benefit has been deducted from tier I (see FOM-I-l120.60). However, the vested dual benefit will continue to be withheld.

Beginning 1-1-82, work deductions will not be applied in the ABD month based on excess earnings before the ABD. However, if earnings are indicated for months after the ABD month, temporary W/Ds will be applied for each month in the year. RASI does not identify months in which earnings do not exceed the monthly exempt amount if there are any months of excess earnings after the ABD month. Work deductions are then applied in every month.

C. RASI EDP Review

During EDP review of the RASI awards, the goal is to identify awards where the RASI temporary work deductions are incorrect and to correct them using the following instructions.

If the correct temporary monthly work deduction amount is ***less*** than the amount being deducted (we are over deducting).

IF	THEN
The difference is $10.00 or less….	• DO NOT ADJUST TWD, and • Notate on the RASI award "temporary work deduction amount should be $XXX.XX, NAN, within $10.00."
The difference is more than $10.00….	• Adjust the TWD retroactive from the month they were calculated in error.

If the correct temporary monthly work deduction amount is ***more*** than the amount being deducted (we are under deducting).

IF	THEN
The difference is $1.00 or less….	• DO NOT ADJUST TWD, and • Notate on the RASI award "temporary work deduction amount should be $XXX.XX, NAN, within $1.00."
The difference is more than $1.00….	• Adjust TWD from the current month (zero accrual award) to correct the temporary withholding amount.

1120.65.2 Cases in Pay Status

When an annuitant in pay status reports expected earnings over the exempt amount after the ABD, temporary W/Ds are applied effective with the current month. Temporary W/Ds are rarely applied retroactively.

Due process rules do not require 30 days advance notice when applying or increasing temporary work deductions.

1120.65.3 When to Adjust Temporary Work Deductions for Upward Earnings Estimates and TWD Corrections

If the annuitant reports an increase in the amount of expected excess earnings or Last Pre-retirement non-railroad Employment (LPE) earnings after his ABD; or, if notification is received from SSA that indicates the annuitant will have an increase in expected excess earnings, adjust the withholding as needed.

If the amount of TWD's for the annuity in pay status is incorrect, and we have already withheld the estimated excess earnings amount, remove the tier 1/VDB TWD from the current month. If the annuitant is still working, set a tickler call-up for January 1st of the following year to re-enter the TWD. The TWD will be based on the previous year's estimate **plus 10 percent.**

Example: An employee under full retirement age has had a $675.00 TWD withheld since January 1, 2009. In June, he sends in a revised estimate of $20,000.00 for 2009. The case is being handled on a July voucher.

Based on the new estimate, we would calculate TWDs based on $22,000.00 ($20,000.00 times 10% = $22,000.00. We need to withhold $3,920.00 ($22,000 - 14,160.00= $7,840.00/2 =$3,920.00.) Since we have already withheld $4050.00 through June 2009, remove the TWDs from the current month and set a tickler call-up for January 1st to enter the TWD for the year 2010. DO NOT RELEASE AN ACCRUAL. The year 2010 estimate of earnings will be $24,200.00 ($22,000 times 10%) unless notified otherwise.

If you receive a revised upward estimate during the year and we have not fully withheld the estimated excess earnings amount, determine the remaining amount of withholding that is needed and adjust the TWD from the current month.

Example: An employee sends in a revised estimate of $22,500 .00 for 2010. Calculate TWDs based on $24,750.00 ($22,500 times 10%). We have been withholding $580.00 (the maximum WD component) per month from the employee since March 2010. The case is being handled on a July voucher.

Based on the employee's revised estimate, we need to withhold a total of $5,295.00 for 2010 estimated earnings ($24,750.00 – 14,160.00 = $10,590.00/2 $5,295.00. $2,320.00 has already been withheld through June 2010, therefore we need to withhold an additional $2,975.00. Using the remaining months available in the year, we would adjust the TWD withholding amount from $580.00 (the maximum WD component) to $496.00 ($2,975.00/6mos. = $496.00).

Use a "zero accrual" recert as described in RCM Part 8 award form instructions to apply or adjust TWD's. The rules of due process do not require 30 days advance notice when applying TWD's.

1120.65.4 When to Adjust Temporary Work Deductions for Downward Earnings Estimate

If you receive a revised downward earnings estimate during the year and the new estimate of earnings is less than the yearly exempt amount established for the annuitant's age, remove the tier 1/VDB work deductions from the earliest month withheld in the year.

Example: An employee under full retirement age has had a $350.00 TWD withheld since January 2010 based on his original estimate of earnings of $30,000. In May 2010, the employee informs us that due to cutbacks at his company, he will only earn $14,000for the year 2010. Since $14,000 is less than the yearly exempt amount for 2010 for annuitants under full retirement age, the TWDs will be removed from January 2010. **(NOTE: If the earnings are from the last pre-retirement employer, LPE work deductions would continue to apply).**

If you receive a revised downward earnings estimate during the year and we have already fully withheld the estimated earnings, remove the tier 1/VDB TWD from the current month. If the annuitant is still working, set a tickler call-up for January 1st of the following year to re-enter the TWD. The TWD will be based on the previous year's estimate **plus 10%.**

Example: An employee under age full retirement age sends is a revised estimate of $18,200.00. He is still working but has reduced his hours. We have been withholding $380.00 from his annuity since January 1, 2010. Calculate the TWD using $20,020.00 ($18,200.00 times 10%). The adjustment in this case is being handled in September 2010.

Based on the employee's revised estimate, we need to withhold $2,930.00 ($20,020.00 – 14,160.00/2 $$2,930.00). Since we have already recovered $3040.00, remove the TWD from the current month and set a tickler call-up for January 1, 2011 to re-enter the TWD. NO ACCRUAL IS RELEASED IN THIS SITUATION. The year 2011 estimate will be $22,022.00 unless notified otherwise.

If you receive a revised downward earnings estimate during the year and we have not fully withheld the estimated earnings, adjust the TWD based on the **lesser of** the maximum work deduction component, or the excess earnings divided by 12 or the number of months available. **IN THIS INSTANCE, THE ACCRUAL WILL BE PAID. ADJUST THE TWD FROM THE LATER OF JANUARY OR THE ABD.**

Example: An employee under age full retirement age has advised us that his estimate of earnings for 2010 has been decreased to $16,000. We have been withholding $180.00 from his annuity and $60.00 from his spouse's annuity since January 1, 2010,

based on his previous estimate of $24,000.00. Calculate the new TWD withholding amount using $17,600.00 as the estimate. The case will be on a June voucher.

Based on the employee's revised estimate, we need to recover $2,820.00 ($17,600 – 14,160.00 = $3,440.00/2 = $1,720.00.. The calculated TWD based on the 12-month withholding is $144.00. Since the 12-month withholding is less than the maximum work deduction component, recertify both the employee and spouse annuity from January 1. When prorated, we would adjust the TWD from January 1, 2010 to withhold $96.00 from the employee and $48.00 from the spouse.

1120.65.5 Removing Work Deduction Components

A temporary work deduction may be removed from the annuity, and the full annuity rate paid, if:

A. The annuitant attains full retirement age - The work deductions are removed effective with the month the annuitant attains full retirement age. However, if there were months earlier in the year that W/D should have been applied but were not, the work deductions will be removed effective with the current month. When the examiner adjusts the case to remove the tier 1/VDB work deductions, they will include ALTA code paragraph 414.10 in the award letter. That paragraph advises the annuitant to contact the field office and provide a monthly breakdown of earnings for the months prior to the attainment month. Once the annuitant contacts the field, the earnings breakdown should be submitted via SPEED.

B. The annuitant's wages will not exceed the monthly exempt amount, the annuitant will not perform substantial services in SE, AND the monthly earnings test applies - Work deductions are removed beginning the month the exempt amount is not exceeded unless it is December, because work deductions may apply in the following year. However, if there were months earlier in the year that W/Ds should have been applied but were not, the work deductions will be removed effective with the current month.

C. The annuitant's earnings will not exceed the annual exempt amount - Any work deductions withheld in the year will be refunded; or

D. The annuitant's estimate of earnings decreases, and sufficient work deduction components have already been deducted to offset the withholding for excess earnings - The work deductions generally will be removed effective with the current month, unless it is December, because work deductions may apply in the following year.

1120.70 Permanent Work Deductions For Excess Earnings

Permanent work deductions are normally determined after the end of the year, on the basis of an annuitant's annual report of earnings. Permanent work deductions are also

required when an annuity terminates and the annuitant had excess earnings in the year of termination. Beginning March 19, 2011, permanent work deductions can also be determined when a cease work report is filed. SPEED calculates permanent work deductions based on cease work reports so any cease-work report entered into SPEED that results in a USTAR referral should also be processed as permanent work deductions. Permanent work deductions are computed by determining the amount of annuities to be withheld based on the actual earnings, and deducting the amount of annuities temporarily withheld based on estimated earnings. The amount withheld cannot exceed the total of the annuitant's work deduction components for the year. If an overpayment results, the overpayment will be recovered from the annuity. An actuarial adjustment will not be used to recover an overpayment due to excess earnings if it is probable that the annuitant will have excess earnings in the future. FOM-I-1105.95 explains when partial withholding or actuarial adjustment may be offered.

If an accrual results when permanent work deductions are calculated, the accrual will be paid unless there is an outstanding overpayment. An accrual for a previous year will not be withheld because of excess earnings in the current year.

An employee's excess earnings in or after the ABD year may be high enough to result in the recomputation of the tier I PIA. The evidence required is described in FOM-I-230.151.

EXAMPLE: The employee earned $44,112.00 in 2010 which caused excess earnings of $14,976.00 ($44,112.00 - $14,160.00 = $29,952.00/2 = $14,976.00). The employee's tier I increased 1-1-10 because 2009 wages were included and caused a recomputation. The tier I increase reduced the overpayment. It also caused an increase in the amount of the tier I W/D component effective 1-1-10.

The annuity rates she was paid in 2010 were:

	1/2010 – 12/2010
Tier I	$ 248.55
Tier II	65.41
	$ 313.96

The total annuities paid to the employee in 2010 were $3,767.52. The annuity rates she should have been paid are:

	1/2010 – 12/2010
Tier I	$ 248.33
Tier II	65.41
	$ 313.74

Follow the instructions in Appendix F of this chapter when applying final work deductions.

Form G-101a, "Worksheet For Work Deduction in Retirement Cases (Pre-1981 Amendment)"

Form G-101b, "Worksheet - Calculating Age Reduction in Retirement Work Deduction Cases"

Form G-101F, "Worksheet - Work Deductions in Retirement Cases For Excess Earnings in 1982 or Later"

Form G-101L, "Worksheet For LPE Work Deductions"

1121.05 Background

Under the 1988 amendments to the Railroad Retirement Act, effective 12-1-88, an employee and spouse may continue to work for their last pre-retirement non-railroad employer and receive an annuity. However, work deductions are applied to tier II and the supplemental annuity based on last person earnings (LPE). If the LPE exceed the yearly earnings exempt amount, they may also cause regular work deductions to apply to tier I and the vested dual benefit.

Unlike deductions for excess earnings, LPE work deductions apply regardless of the annuitant's age, and regardless of the amount of the LPE. LPE work deductions are applied on a monthly basis, rather than on an annual basis.

1121.10 Last Person Earnings

Last Person Earnings (LPE) is the gross earnings after the ABD from the last person, company or institution an employee or spouse was employed with before the annuity began. Earnings from LPE employment in the ABD month will not cause a reduction if the ABD follows the date last worked in LPE. Refer to FOM 1 330.15.1 for a broader explanation on what constitutes LPE.

Self-employment (SEI) activities are not LPE. If the annuitant has both SEI and LPE in the same earnings year, a net loss in SEI (reported on Form 1040 Schedule SE) cannot be deducted from earnings from an LPE employer (wages reported on Form W-2) when determining the amount of LPE earnings.

For the purpose of computing the reduction to tier 2 and the supplemental annuity:

- A "Work Deduction Insured Status" is not required to apply LPE work deductions; and,
- The annual exempt amounts listed in Appendix A and the monthly exempt amounts listed in Appendix B do not apply to LPE earnings; and,
- Deductions are not applicable for months in which no services are rendered.
- Deductions apply, even if the annuitant has attained full retirement age.

If the amount of the LPE earnings exceeds the annual exempt amount, those earnings will also create tier 1 and vested dual benefit work deductions

1121.15 Special Payments and Employment

A. Deductions for Months in Which Services Rendered - LPE work deductions are to be applied for any month after the ABD in which an annuitant performs service

for pay, regardless of when the payment is actually made, as in the following examples.

1. Teacher - If a teacher receives his or her salary in 12 monthly installments, but only works in 9 months, work deductions only apply to the 9 months in which the teacher actually worked.

2. Salesman - If a salesman receives commissions in 1 month for sales made in prior months and does not work in that month, LPE work deductions only apply to the months in which the annuitant actually worked. Commissions should be attributed to months in which the salesman did work.

   The annuitant's signed report of earnings (usually Form G-19L) is sufficient for RBD's assessment of work deductions. However, RBD may ask you to contact the LPE employer when there is conflicting evidence in file.

B. Contributions to a 401(k) Plan from Last Person Earnings

If an annuitant has contributions to a plan under section 401(k) of the Internal Revenue Code, LPE work deductions are to be based on the earnings amount before deduction for the 401(k) contribution.

C. Earnings from Employment Outside of the U.S.

Foreign currency must be converted into U.S. dollars. Whenever possible, contact representatives should do the conversion and annotate Remarks when entering the average LPE salary in on-line applications. If the conversion is not done, the application must be coded for manual review on the Form G-230 screen.

When the annuitant provides the final earnings report, RBD will use the rate of exchange that was effective on the first business day of the earnings year.

1121.20 Calculations

1121.20.1 Reduction In The Employee Annuity For Last Person Earnings

The employee's tier II and supplemental annuity are reduced by $1.00 for every $2.00 of the employee's last person earnings (LPE). If the result of dividing the LPE by 2 is not a multiple of $1.00, the deductible earnings are rounded down to the nearest multiple of $1.00. For example, if the employee had an LPE of $403.00 in a month, the deductible earnings would be $201.00.

The deductions cannot exceed 50% of the total of the net tier II and supplemental annuity. Work deductions are applied to the amount of the supplemental annuity after any reduction for an employer pension, but before any legal process deductions or

cutback. If the deductible earnings are less than half of the total of the tier II and supplemental annuity, the deduction is applied proportionately to the two components. (An example of this prorated deduction follows the discussion of LPE deductions in the spouse annuity.)

If only the spouse has LPE earnings, no deduction is applied to the employee annuity.

Until a final report of earnings is obtained, temporary work deductions are applied based on average monthly earnings.

1121.20.2 Reduction In The Spouse Annuity For Last Person Earnings

The spouse tier II is reduced if either the employee or spouse has LPE.

A. Only the Employee or Spouse Has LPE - The spouse tier II is reduced by $1.00 for every $2.00 of LPE, not to exceed 50% of the spouse tier II.

B. Both the Employee and Spouse Have LPE - The spouse tier II is reduced by $1.00 for every $2.00 of the employee's LPE earnings and $1 for every $2 of the spouse's LPE earnings, not to exceed 50% of the spouse's tier II.

Until a final report of earnings is obtained, temporary work deductions are applied based on average monthly earnings.

EXAMPLE 1: An employee stopped LPE employment on 12-15-90, earning $401.00 for the month. He and his wife filed annuity applications the same day. They requested the earliest ABD of 12-1-90. LPE work deductions apply to his tier II, his wife's tier II and the supplemental annuity for any annuity payment due for December.

The LPE WD is $200.00 or one-half the LPE earnings. (Any remaining cents are dropped.) Both annuitants have components large enough to permit recovery of the LPE WD in full, without limiting the deduction to 50% of the annuity components. The annuity components and deductions are as follows:

	COMPONENT	LPE WD		NET COMPONENT
EE T2	$1,000.00	$191.75	*	$ 808.25
Supp	43.00	8.25	*	34.75
MA T2	450.00	200.00		250.00
Total	1,493.00	$400.00		$1,093.00

- The employee's LPE work deduction is the product of one-half the LPE, and the ratio of each LPE WD component to the sum of the LPE WD components.

For example, the EE T2 LPE WD is the product of $200.00 times ($1,000.00/$1,043.00), which equals $191.75.

LPE work deductions apply on the basis of a formula that can produce higher deductions for the spouse than for the employee. (See example 2 below.) A spouse who is also receiving an employee annuity could have a larger LPE work deduction because her tier II includes a restored amount to compensate for the tier I offset.

EXAMPLE 2: A male employee continues LPE employment and expects to earn $1,000.00 per month. He has a small tier II of $20.00 and is not entitled to a supplemental annuity.

His wife is not employed. She receives an annuity as a railroad employee which zeroes out the tier I of the annuity she receives as a spouse. She has a tier II of $400.00 after restoration of the EE annuity deducted from her tier I.

Although half the LPE earnings is $500.00, neither annuitant can lose more than 50% of tier II. While the employee's tier II is subject to an LPE work deduction of $10.00, the spouse's tier II is subject to a deduction of $200.00.

If the employee (male, in this example) files for a spouse's annuity, that annuity would also be subject to LPE work deductions without regard to the deductions applied under his own claim number.

Where more than two annuities (i.e., a working male employee's own employee annuity, his female spouse's spouse annuity, and the male employee's own spouse annuity on his female spouse's earnings record) are subject to the same LPE work deductions, the total amount of annuities reduced for LPE cannot exceed the amount of the actual earnings. The LPE reductions are to be applied in the following order up to the amount of the LPE earnings total:

1) the worker's own employee annuity;

2) the spouse annuity on the worker's earnings record;

3) the worker's own spouse annuity.

EXAMPLE: The working employee earns $700 per month in LPE. The working employee's tier 2 is $600; the spouse annuity tier 2 is $270, and the working employee's spouse tier 2 on his spouse's earnings record is $600. No supplemental annuities are payable. Under normal conditions, the working employee's tier 2 is reduced by $300, the spouse's tier 2 is reduced by $135, and the working employee's own spouse tier 2 is reduced by $300. However, because the total amount being reduced ($300 + $135 + $300 = $735) exceeds the LPE earnings ($700), the employee's own spouse annuity tier 2 can be reduced by only $265 ($300 + $135 + $265 = $700).

Where the rounding down of earnings causes a LPE reduction slightly less (usually $1 or $2) than the earnings total, it is not necessary to apply a LPE reduction for the amount of that rounding difference to the other earnings record. If the worker's own spouse annuity is not being reduced for LPE due to this provision, a note to file should be placed in that folder explaining why LPE work deductions are not being applied to the spouse annuity.

1121.30 Temporary Deductions

If an employee or spouse is continuing in LPE when the annuity is awarded or when the annuitant returns to last person earnings (LPE), temporary deductions are applied to tier II and the supplemental annuity to prevent an overpayment when the case is handled for a final adjustment. The amount of the temporary deduction is based on the average monthly LPE.

Temporary deductions ordinarily apply to LPE in the current year. They may also be used, if necessary, to avoid making an overpayment in a previous year, if it is not possible to make a final adjustment for LPE earnings at the time the annuity is being certified. LPE earnings in excess of the yearly exempt amount may also result in temporary work deductions for excess earnings in tier I and the VDB.

1121.30.1 RASI Awards

A. General - RASI applies temporary LPE work deductions to the employee and/or spouse if their applications indicate LPE employment after the ABD. Deductions are based on the average monthly earnings indicated on the applications. If the LPE earnings are not available, RASI reduces tier II and supplemental annuity by the maximum 50% deduction. If LPE employment ceases during the accrual period of the initial award, RASI will apply temporary work deductions and remove them beginning with the month following the date last worked in LPE.

NOTE: RASI's LPE work deduction processing is independent of the system's excess earnings processing. LPE/non-railroad data from the application is not considered when RASI calculates deductions for excess earnings.

B. Spouse LPE TWDs Based on Employee's Earnings - RASI applies work deductions to the spouse annuity when the employee has LPE. If the employee's earnings amounts are not available in the RASI master, RASI assumes that the employee's LPE are twice the sum of the employee tier II and supplemental annuity work deduction amounts, and applies deductions to the spouse tier II based on assumed earnings. If the employee's actual or assumed earnings are unavailable, RASI reduces the spouse tier II by the maximum 50% deduction.

If work deductions had been applied to an employee annuity but the Research record indicates that they have been removed, RASI will apply LPE work deductions based on the spouse LPE only, and will produce an award message

requesting examiner review. However, work deductions will be applied to the spouse annuity for the employee's LPE, if:

- The employee has continuing LPE;
- The employee has a net tier II of zero; and
- The spouse has a net tier II greater than zero due to an employee annuity restored amount.

C. Both Employee and Spouse Have LPE - RASI computes a work deduction amount for the spouse based on the combined earnings of the employee and spouse, rounded down to the dollar. As a result, RASI's LPE TWDs for the spouse may be slightly overstated if the LPE deduction is less than 50% of the spouse's tier II.

D. Prior year TWDs - If LPE work deductions are applied in a year prior to the voucher year, RASI produces an award review message advising that permanent work deductions should be applied for a prior year. RASI cannot apply permanent work deductions. In this situation, the case will not be monitored mechanically for a final report of the prior year's earnings.

E. Two LPE employers - If the application indicates two periods of non-railroad employment, RASI will use the combined earnings in the LPE temporary deductions for any overlapping months. RASI will exclude the appropriate LPE salary the month after an LPE employment period ends.

F. Employment after the ABD - If the employee or spouse has a period of non-railroad employment that begins after the ABD, RASI assumes the employment is not LPE and does not apply LPE deductions.

1121.30.2 Applying TWD's in ROC or PC Awards

Temporary deductions for LPE are applied to initial manual awards based on the average monthly earnings on the annuity application. If the applicant provided a monthly breakdown of prior year earnings (e.g., on Form G-19L), the claims examiner will calculate final work deductions for the ABD year.

1121.30.3 Partial Rate Exceeds Final Rate

A partial annuity rate might exceed the final rate if the IMPACT or SPAR did not include deductions for LPE. RASI produces a compute-only award, requiring manual award action by a claims examiner.

Because temporary work deductions are based on estimated earnings, the annuity cannot be considered overpaid until there is a final report of earnings. The claims examiner may therefore withhold any other accrual in the case as a temporary work deduction.

EXAMPLE: LPE TWDs of $40.00 should have been made on an employee's final award, but were omitted in the partial award. The final tier I is $25.00 higher than the MARC tier I. When recertifying the annuity, the examiner would use $25.00 as the tier II LPE work deduction from the ABD through the accrual period. The examiner would subtract the full LPE TWD ($40.00) when setting up the recurring annuity rate.

The award letter will explain that we were unable to withhold the full amount deductible, but that the computation will be reviewed in the following year when a final earnings report is made.

If the employee stopped working in LPE after the ABD and RASI was not able to withhold TWDs, TWDs may be withheld later in the year.

EXAMPLE: TWDs should have been applied in January through March. RASI produces a comp only award in April. TWDs can be applied in May and removed in August.

1121.30.4 Cases in Payment Status

If an annuitant resumes LPE after the annuity is in force, examiners withhold temporary LPE work deductions effective with the award voucher month.

If an annuitant notifies the RRB that he expects to earn more in LPE than he previously estimated, the examiner adjusts the annuity rate only if:

- Less than 50% of the tier II and supplemental annuity are being withheld; and
- The revised estimate would result in a change of more than $1.00 per month in the annuity payments.

In all other cases, the examiner will acknowledge the annuitant's revised estimate and note that any required adjustments will be made after the end of the year when the annual report of earnings is reviewed.

1121.31 Field Office Action When Earnings Report Received

When a report of excess earnings from a Form G-19L or other report is received from a retirement annuitant, enter the earnings information into SPEED. See FOM 1-15125.5 for detailed instructions for accessing and using SPEED. Field offices should scan and image all earnings documents as they are received.(See FOM 1-1115.35.3). Screen prints, route slips, envelopes, or other unnecessary attachments **should not be** scanned with earnings reports.

1121.40 Final Work deductions

1121.40.1 Control for Final Adjustment

Cases that have been adjusted for temporary LPE work deductions are controlled for an adjustment for final earnings. Research maintains work deduction monitoring codes, amounts and effective dates in its record.

Annuitants who had recurring or nonrecurring LPE TWDs on record at the end of the year will receive a questionnaire (Form G-19L) on which to make a final report of earnings. Spouses will receive a questionnaire if the Research record indicates that LPE deductions are based on the spouse's own LPE.

Applicants who expect their annuity to begin in the year prior to filing, and who had LPE earnings after the ABD, are asked to make a final report of earnings when they file their application.

Annuitants having LPE earnings and an ABD in the year of filing, but who are not paid final until the following year, will not be included in the ABD year monitoring program. In these cases, examiners manually release Form G-19L to secure a final earnings report for the ABD year.

1121.40.2 Earnings Reports

A. General

After the end of each year, annuitants are required to report the final amount of their earnings for the previous year. As part of its monitoring program, the RRB releases Form G-19L to secure this report from annuitants who had LPE in the previous year. Form G-19L also collects information on regular and disability excess earnings.

The first annual LPE monitoring was for 1989. Most final earnings reports for December 1988 were secured by field offices as a supplement to the employee or spouse annuity application.

In addition to annual earnings information, a report of LPE earnings for an earlier year must show the actual gross earnings for every month that the annuitant worked in LPE, the employer's name and address and an estimate of average monthly earnings. Annuitants receiving Form G-19L are instructed to return completed earnings reports to the field office address shown on the back of the form. Return envelopes are provided. A second copy of each Form G-19L is provided to field offices for use in tracing, if necessary. The form can also be found on RRAILS. Use Form G-19L, Annual Earnings Questionnaire and Form G-19L.1, Instructions for Completing the Annual Earnings Questionnaire, for retirement annuitants in LPE for the year in question when:

1. The annuitant did not make an earnings report for an earlier year.

2. The annuitant did not make a timely report of LPE; or

3. The annuitant says he did not receive a Form G-19L (an indication that he was bypassed in the annual earnings operation).

Form G-19F is also used to request annual earnings information. It is designed for use during the initial application process to request last pre-retirement non-railroad employment earnings in retirement cases when:

1. The ABD is in a prior year, or

2. The ABD is in the current year and the applicant has ceased work after the month of the ABD.

B. Discrepant Report of Earnings - A discrepancy between the annual earnings amount reported to SSA and the sum of the monthly earnings amounts may need to be investigated. The reported earnings are used to adjust the annuity unless:

- The total earnings reported for the year are less than the earnings reported to SSA; and
- The annuity is subject to less than the maximum offset of 50% of tier II and the supplemental annuity using the earnings reported to the RRB; and
- The difference between the total earnings reported to RRB and SSA is more than $50.00 (twice the tolerance amount for overpayments.)

If SSA employment data shows that all of the earnings are from LPE employment, the field office is asked to contact the annuitant to resolve the discrepancy.

1121.40.3 Final Adjustment for LPE Earnings

The final LPE adjustment compares what was paid with what should have been paid based on actual rather than estimated LPE. If there was an underpayment because too much money was withheld for temporary deductions, the additional amount due will be certified for payment at the time the final adjustment is made. If there is an overpayment, the overpayment will be recovered according to the usual overpayment recovery procedure.

If an annuitant is uncooperative in providing a breakdown for the yearly earnings, work deductions should be assessed by dividing the annual amount by 12 to determine the monthly LPE amount.

1121.50 When Annuitant Ceases LPE

If an annuitant reports that he has stopped LPE employment, the claims examiner will recertify the annuity to remove temporary LPE deductions. The adjustments effective

with the month after the date last worked. If the annuitant expects no LPE in the current year, the case will be coded to prevent the release of a questionnaire at the beginning of the following year. If the annuitant had LPE in the current year, the case will be coded as having had nonrecurring work deductions. This will indicate that, although LPE work deductions are no longer in effect, a final report of earnings must be obtained for the current year.

When an annuitant reports that he has stopped LPE employment, enter the earnings information into SPEED. See FOM 1-15125.5 for detailed instructions for accessing and using SPEED.

1121.55 Examiner Handling of LPE Cease Work Reports

When SPEED cannot process the LPE cease-work report, the case is referred off for manual handling. Examiners should use the same ALTA code paragraphs and RRAILS letters as SPEED uses. SPEED uses the following ALTA code paragraphs when creating a ROC award to remove LPE work deductions:

5005 Employee Cease Work LPE – Removing Employee Tier 2 WD

Since you stopped working for your last person employer on (1), the reduction applied to your Tier 2 has been removed effective (2). Please notify us of any changes in earnings or employment involving your last person employer.

1) Enter date last worked

2) Enter effective date

5006 Employee Cease Work LPE – Removing Employee Sup WD

Since you stopped working for your last person employer on (1), the reduction applied to your supplemental annuity has been removed effective (2). Please notify us of any changes in earnings or employment involving your last person employer.

(1) Enter date last worked

(2) Enter effective date

5007 Employee Cease Work LPE – Removing Employee Tier 2 & Sup WD

Since you stopped working for your last person employer on (1), the reduction applied to your Tier 2 and supplemental annuity has been removed effective (2). Please notify us of any changes in earnings or employment involving your last person employer.

1) Enter date last worked

2) Enter effective date

5008 Employee Cease Work LPE – Removing Spouse Tier 2 WD

Since the railroad employee stopped working for his/her last person employer on (1), the reduction applied to your Tier 2 has been removed effective (2).

1) Enter date last worked

2) Enter effective date

5009 Spouse Cease Work LPE – EE not in LPE - Removing Spouse Tier 2 WD

Since you stopped working for your last person employer on (1), the reduction applied to your Tier 2 has been removed effective (2). Please notify us of any changes in earnings or employment involving your last person employer.

1) Enter date last worked

2) Enter effective date

If the examiner is creating a PREH Update award only for the spouse, the RRAILS SPEED letter RL-169SR should be released to the spouse. The inserts for this letter is either code paragraph 5012 or 5020 as described below.

5012 Spouse Cease Work LPE - EE Still in LPE

We have received notification that you stopped working for your last person employer on (1). The reduction applied to your Tier 2 cannot be removed at this time because the railroad employer is still working for his/her last person employer. Please notify us of any changes in earnings or employment involving your last person employer.

1) Enter date last worked

5020 Employee Cease Work LPE – Spouse Still Working

We have received notification that the railroad employee has stopped working for his/her last person employer. The reduction applied to your Tier 2 cannot be removed at this time because you are still working for your last person employer. Please notify us of any changes in earnings or employment involving your last person employer.

Also, SPEED creates PREH update only awards when the LPE work deductions cannot be removed from the spouse annuity, (either the employee or the spouse is still working). Examiners should not create a PREH update award for the spouse in this situation. Instead, examiners should use the PREH on-line correction facility to update the SP-WD-MONIT-FLG code, (3200 screen) and release the appropriate award letter to the spouse using either code paragraph 5012 or 5020 above.

1125.5 Effect Of Earnings

1125.5.1 General

A disability annuity (D/A) is not payable for any month in which an annuitant:

A. Works in railroad service; or

B. Is under full retirement age and earns more than the monthly disability earnings limit after deduction of disability related work expenses in employment or self-employment of any kind.

EXCEPTION: Payments to volunteers under the Domestic and Volunteer Service Act of 1973 do not eliminate eligibility for any government program. That act consolidated the domestic volunteer programs throughout the Federal government under the ACTION agency. The services are meant to be provided by volunteers, and stipends or allowances are paid to enable volunteers to effectively carry out their assignments. Earnings under the following programs do not affect payment of a disability annuity:

1. Title 1 - National Volunteer Antipoverty Programs:

   a. Part A - Volunteers in Service to America (VISTA);

   b. Part B - Service-Learning Programs;

   c. Part C - Special Volunteer Programs.

2. Title II - National Older American Volunteer Programs:

   a. Part A - Retired Senior Volunteer Program;

   b. Part B - Foster Grandparent Program and Older American Community Service Programs.

3. Title III - National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.

1125.5.2 RR Act Disability Work Deductions

A disability annuitant who is under full retirement age is restricted by the Railroad Retirement (RR) Act disability annuity work limitations. The work restrictions apply to both an occupational and a total and permanent disability annuity. In addition to causing work deductions, the earnings of a disability annuitant may indicate that disability has ceased. A continuance of disability determination is made according to FOM-I-3l0.60 and 310.65 whenever earnings are reported. An application of a 9-month trial work period is made according to FOM-I-310.65.2 when DBD is testing an

individual's ability to do work without losing benefits. A trial work period extension (TWP EXT) is determined according to FOM-I-325.95.

Disability work deductions apply to the full annuity rate, rather than to certain work deduction components as in retirement cases.

Under the RR Act, effective January 1st, a disability annuitant may earn up to the yearly disability earnings limit without losing any annuities for the year (examples: for 2017, it is up to $11,374.99; for 2016 it is up to $10,999.99). However, annuities are withheld for any month throughout the year in which the annuitant earns over the monthly disability earnings limit after deduction of disability related work expenses a month. A disability annuitant must report all work activity when it begins, regardless of the amount of earnings. The disability annuity will be suspended if the annuitant earns over the monthly disability earnings limit after deduction of disability related work expenses a month (examples: for 2017, annuity is suspended if annuitant earns over $910; for 2016, annuity is suspended if annuitant earns over $880). Refer to the chart below.

Penalties may be applied if the earnings are not reported timely.

Disability related work expenses are described in FOM-I-310.55.3.

If the annuitant's earnings at the end of the year are not more than the yearly disability earnings limit, any annuities and penalties withheld during the year (because of monthly earnings over the monthly disability earnings limit) will be payable after the year's end.

If the annuitant's earnings at the end of the year are more than the yearly disability earnings limit, final work deductions are determined. One month's annuity is withheld for each month of disability earnings over the limit. A fraction of earnings of half (50%) the monthly disability earnings or more is counted as the monthly disability earnings limit (examples: for 2016, the fraction is $440 which is half (50%) of the $880 monthly limit; for 2015, the fraction is $425 which is half of the $850 monthly limit). One month's annuity is also withheld for each penalty.

Regardless of the annual earnings, no annuity will be withheld in any month in which the employee’s earnings were under the monthly disability earnings limit.

EXAMPLE: For 2015, a D/A was suspended for 2 months in which the annuitant reported earnings over $850 after deduction of disability related work expenses. His earnings at the end of the year were $7000. The 2 months' annuities were refunded; no penalties were withheld because the earnings were reported timely.

If the annuitant's earnings at the end of the year (2013) were $12775.00, and the employee had performed service and earned over $850 in three or more months in that year, 3 deduction months would apply. The earnings in excess of $10625.00 are $2075.00. A total of 2 work deduction months apply for the first $1700.00 of excess earnings. Since the remaining amount of $450 ($2075.00 - $1700.00) is greater than $425.00, an additional deduction month would apply.

Prior to the year 2000, when a disability annuitant attained full retirement age, regular retirement work deductions would then apply.

Beginning in the year 2000, no work deductions apply beginning with the month in which the disability annuitant attains full retirement age.

The following chart provides the maximum monthly and yearly earnings amounts:

Year(s)	Monthly Earnings Amount	Yearly Earnings Amount
1968 – 1988	$200	$2500
1989 – 2006	$400	$5000
2007	$700	$8750
2008	$730	$9125
2009	$770	$9625
2010	$780	$9750
2011	$780	$9750
2012	$790	$9875
2013	$810	$10125
2014	$840	$10500
2015	$850	$10625
2016	$880	$11000
2017	$910	$11375

1125.10 Deductions When Disability Annuitant Attains Full Retirement Age Prior To the Year 2000

A disability annuitant, full retirement age or older is not limited to the yearly earnings amount (see FOM1 1125.5.2). The annual earnings limitation applies beginning the month the disability annuitant attains full retirement age because the disability annuity technically becomes an age annuity at full retirement age. Work deductions apply at full retirement age only if the annuitant has a work deduction insured status (see FOM-I-1120.20).

The earnings from the beginning of the year through the month before the month the annuitant attains full retirement age are used to determine RR Act disability work deductions. Work deductions under the annual earnings test are based on earnings for the entire year. Deductions may be applied beginning the month the annuitant attains full retirement age. The annual limit for full retirement age or over is used.

EXAMPLE: Grace Jones was receiving a D/A and earned $7300.00 in 1989. She attained full retirement age in June. Her earnings through May, the month before the month she attained full retirement age, were $5,200.00. These earnings caused one disability work deduction month. Her total yearly earnings, $7,300.00, exceeded the annual exempt amount of $6,480.00. Consequently, her annuity was not payable for part of June to withhold $410.00 for excess earnings.

BEGINNING IN THE YEAR 2000

Effective with the month a disability attains full retirement age, work deductions will cease to apply. The disability work deduction rules apply in the year through the month before the month the annuitant attains full retirement age.

1125.15 Earnings to Be Counted In Year

For deduction purposes, a person's earnings for a calendar year consist of the sum of his remuneration for services rendered as an employee during the year, and his net self-employment (SE) earnings for the year.

If a disability annuity begins after the first of the year, only the annuitant's earnings after the annuity beginning date are counted for application of the RR Act disability earnings provision. If the annuitant attains full retirement age or dies before the end of the calendar year, only his earnings through the month before the month in which the event occurs are counted. If the annuitant recovers from his disability, his earnings through the month in which his annuity is last payable are counted, not the month in which he recovers from disability.

1125.15.1 Deduction for Disability Related Expenses from Earnings Amount

Disability related work expenses (DRWE) are special expenses that the annuitant paid which are necessary for him to work (for example, attendant care, medical devices, equipment, prostheses, or similar items or services). If these expenses are claimed, refer the case to the DBD to determine if they are allowable per instructions in their disability manual. If annuitant claims such expenses, ask the field office to develop per instructions in the FOM.

1125.20 Allocating Earnings

Because a disability annuitant's work must be reconciled with the disability rating, special consideration must be given when a disability annuitant has earnings but alleges that he was not working. The disability programs section (DPS) determines if the

disability annuitant has demonstrated the ability to perform substantial gainful activity that indicates the cessation of disability. When a disability annuitant is self-employed, OPR (the overpayment recovery unit) reviews the case to determine if the annuitant is performing substantial services in SE, and for which months.

1125.20.1 SE Earnings from Family Enterprise

When an annuitant's SE is part of a family enterprise in which other family members actively participate in earning the money, the annuitant is not considered to have earned that portion of the income due others for their services to him. This applies even though the income goes to the annuitant himself as head of the family or as title owner of the land producing the income. The amount chargeable to the labor of others includes the reasonable value of the services performed even when these services are not actually paid for.

1125.20.2 Allocating Earnings to Prior Months

Earnings of a disability annuitant are not averaged over any period. When a disability annuitant is working, his earnings are usually credited to the month(s) in which he was paid. However, when it is definitely indicated that part of his earnings represent accruals for earlier month(s), these specific earnings are charged to the month(s) in which they were earned.

In determining net earnings from SE, expenses or losses should be deducted from the same month(s) to which the gross SE earnings are charged. When payment is received in a particular month for an operation carried on over a number of months (e.g., farming), and payment cannot be allocated to other months, the expenses incurred are deducted from the amount of the payment considered to be for "earnings." The fact that the expenses were incurred in months other than the month in which payment was made is immaterial.

In the following examples the amounts reported represent NET income.

EXAMPLE 1: A disability annuitant is self-employed as a real estate agent. He reports that he was paid $1,000.00 in August as commissions for three sales, as follows: $150.00 for a sale completed in April, $300.00 for a sale completed in July, and $550.00 for an August transaction. In this case, definite and ascertainable parts of the $1,000.00 paid in August represent earnings for earlier months. Deductions must be made for July and August.

EXAMPLE 2: A disability annuitant owns a liquor store. He reports earnings of $50.00 in January, $70.00 in February, a loss of $80.00 in March, and earnings of $4,000.00 in April. Since the earnings for April are obviously out of line, the annuitant will be requested to name the months in which the $4,000.00 was earned.

1125.20.3 Allocating Renewal Commissions for Insurance Salesman

The term "renewal commission" as used here refers only to the commissions paid on the basis of the sale of life insurance for the second or later years of the policy.

When a disability annuitant reports that he received renewal commissions based on the previous sale of a life insurance policy, those amounts are considered to have been earned when the insurance policy was sold, if the annuitant was considered an employee of the company when the sale was made. If the annuitant was self-employed, the renewal commissions are not counted as earnings for work deduction purposes if the annuitant did not perform any services in the year the renewal commissions are paid.

1125.20.4 Allocating Bonuses

When a disability annuitant reports that (s)he received a bonus and does not indicate that the bonus was based on earnings, the amount of the bonus is divided by the number of months in which he worked; each month is credited with equal amounts of earnings.

If the annuitant reports that (s)he received a bonus based on his/her earnings (for example, 10 percent of his/her earnings), the earnings for each month are increased by the ratio which the bonus bears to the total earnings.

When a person's earnings are increased to more than the monthly disability earnings limit in any month as a result of the allocation of a bonus payment, the allocation cannot, by itself, cause an additional deduction to be imposed because of failure to report.

1125.25 When Work Must Be Reported

A disability annuitant must report any current, future or past work activity. Penalties may be applied if a report is not made within 2 months of the first month the annuitant earns over the monthly disability earnings limit (see FOM-I-1125.30). All work activity must be reported, regardless of the amount of earnings, because the work may affect the continuance of disability.

Work must be reported when the annuitant begins or expects to begin work for someone else, or self-employment. The report must include the following information:

A. The kind of work;

B. The name and address of the employer;

C. The date employment began;

D. The number of hours to be worked each week;

E. The expected monthly earnings; and

F. The expected length of employment;

G. Any expenses (DRWE and IRWE) to be deducted from monthly amount earned (see FOM-I-310.55).

A report must also be made whenever the annuitant earns more than the monthly disability earnings limit in a month and previously informed us it would be less, or when the annuitant changes jobs. Remember that it is very important to establish the date of an earnings report because penalty deductions may result from a late report.

In signing the application certification, each applicant agrees to notify the Railroad Retirement Board of events that affect his annuity, including work. The applicant receives booklets (Forms RB-l and RB-ld) that explain when an annuitant must report work, and include instructions for making a report. The applicant also receives the application receipt that contains the same instructions.

When a disability annuitant has reported earnings of over the monthly disability earnings limit in a month after deduction of disability related work expenses, an earnings questionnaire (Form G-19) will be released after the end of the year. An annuitant must file a report on his own if earnings were more than the monthly disability earnings limit in a month after deduction of disability related work expenses or over the yearly disability earnings limit, and it was not previously reported.

1125.30 Penalties for Late Reporting

A penalty deduction may be applied if a disability annuitant under age full retirement age does not report earnings of more than the monthly disability earnings limit in a month within 2 months of the month he was paid for his employment. The report must be made before the annuitant receives and accepts his annuity payment for the second month following the month he was paid over the monthly disability earnings limit after deduction of disability related work expenses.

EXAMPLE: A disability annuitant was paid over the monthly disability earnings limit in May. The work must be reported before he receives and accepts the annuity payment for the second month following May. He must report the work before he accepts the payment dated August 1, payment for July, or a penalty will apply.

A penalty deduction is equal to the amount of the employee's annuity for the month of excess earnings for which the report was late. In the preceding example, the penalty will equal the annuity rate for May if a report is not made timely.

1125.30.1 Receipt and Acceptance of Payment

It is assumed that a payee received and accepted an annuity payment if it was mailed or deposited by electronic funds transfer and was not returned. If a payee returns a payment, whether it is endorsed or not, that is evidence that he did not accept it.

Unless a payment is returned, we may impose additional deductions in the belief that the payment was accepted.

Penalty deductions are to be applied at the same time the overpayment is being worked up and are included as part of the total overpayment. The explanation regarding the penalty is included in the overpayment letter. If penalty deductions should have been assessed but were overlooked when the overpayment was being worked up, they can be assessed during the reconsideration process. The overpayment amount in the Program Accounts Receivable (PAR) System includes the penalty amount. The penalty amount is recovered by the same method of recovery selected by the overpaid person to repay the regular overpayment amount. Penalty deduction amounts cannot be waived.

1125.30.2 First Failure to Report

When a disability annuitant fails to report earnings over the monthly disability earnings limit in a month after deduction of disability related work expenses before receiving and accepting an annuity for the second month following the month in which he was paid for his employment, a penalty deduction equal to 1 month's annuity is imposed. For the first failure to report, the deduction equals only 1 month's annuity, even if the annuitant worked in more than 1 month and did not report until much later.

EXAMPLE: Mr. Boyd was paid $920.00 in September and each month after that. He did not report his employment before receiving and accepting his annuity payment for the month of November (dated December 1). One penalty deduction applies, equal to the annuity for September. Only one penalty applies, even if he did not report his work until the next year and worked each month, because this is his first failure to report.

1125.30.3 Subsequent Failures to Report

The second time that a disability annuitant fails to report receipt of earnings over the monthly disability earnings limit in a month after deduction of disability related work expenses before receiving and accepting an annuity for the second month following the month in which he was paid for his employment, penalties equal his annuities for the month(s) in which he was paid for his employment and for which his report was not timely.

EXAMPLE: Mr. Lee was paid over $910.00 each month from September through February. He reported his employment on March 15 and did not return his check for the month of February. This was Mr. Lee's second failure to submit a timely report; a penalty applied 2 years before for failure to report. Because it was the second time he failed to report, the penalty deductions equal his annuities for the months of September, October, November and December. His report was timely for the months of January and February.

1125.30.4 Recovering Penalty Deductions

Annuity deductions because of penalties are generally recovered by full withholding of the annuity. The annuity is withheld in the year the annuitant failed to report, or in a later year when it is determined that a penalty should have been imposed in a previous year. The penalty month is always in addition to months withheld for earnings over the monthly disability earnings limit after deduction of disability related work expenses.

Because a penalty deduction must be withheld from the annuity, the annuitant is not asked to refund the additional deduction. However, if the annuitant volunteers to pay for a penalty deduction, the payment for the penalty deduction will be accepted. Otherwise, a penalty deduction amount will be recovered before the annuity is reinstated.

When a disability annuitant dies and there is an outstanding penalty deduction against his annuity, the outstanding amount may not be deducted from any benefits due his survivors or estate, except employee annuities that were accrued but unpaid at death. The penalty amount will not be recovered unless there are employee annuities payable. This rule applies whether the deduction event was discovered before or after the annuitant's death. A penalty deduction may be recovered only by full withholding from the disability annuity. If a disability annuity is terminated because the annuitant recovers from disability or is suspended because the annuitant is working and not currently entitled to benefits, and there is an outstanding additional deduction, the deduction will be withheld at a later date when the annuity is reinstated.

When a penalty deduction is to be imposed in the case of an annuitant not currently entitled to benefits, notify the annuitant that when he is again entitled to an annuity (e.g. when he stops working), a penalty deduction will be imposed for failure to report his employment within the time prescribed by law. Tell him the amount that will be withheld from his annuity when his payments are reinstated.

1125.30.6 Action When Annuitant Pays or Offers to Pay Penalty Deduction

Because a penalty deduction is not due until the annuitant is reinstated on the rolls, and is not due at all if he dies before reinstatement, refuse any offer of payment of the penalty deduction. Inform the annuitant that the amount will be withheld from his annuity when payments are reinstated.

If the annuitant submits a check or money order for an overpayment and the penalty deduction, return the amount of the penalty deduction to him as a "One Payment Only" award (see Form G-357 Instructions). Show in the "Remarks" space of the award form, "penalty deduction sent by annuitant returned." Inform him that the payment is being returned because it is not due until his annuity is reinstated and that, according to law, a penalty deduction can be recovered only by withholding from his annuity.

NOTE: The procedure for a cash refund of a penalty in disability cases differs from the procedure for cash refund of a penalty in age and service cases.

If the annuitant later complains or inquires about the possibility of having penalty deductions recovered by a method other than full withholding, refer the case to RAC.

1125.30.7 Responsibility for Applying Penalty Deductions

The organizational unit having jurisdiction over the erroneous payment will determine when penalty deductions are to be imposed.

1125.30.8 Actuarial Adjustment

It will not generally be known whether disability work deductions assessed during the current year will be payable later. Consequently, if an overpayment, part of which is applicable to the current year, is recovered by actuarial adjustment, it may be necessary to redetermine the actuarial rate after the first of the next year. To avoid this situation to the greatest extent possible, recover any overpayment for the current year by set off.

1125.30.9 Penalty Deductions Extend Past the Month Annuity Terminates

A. Reason For Termination Is Death - When a disability annuitant dies and there is an outstanding penalty deduction against his annuity do not deduct the outstanding amount from any annuities due his survivors or estate, except employee annuities that were accrued but unpaid at death.

B. Reason for Termination Other Than Death - When a disability annuity is terminated because the annuitant recovers and there is an outstanding penalty deduction, do not request refund of the penalty deduction.

Insert a sheet of 5 x 8 paper in the folder (immediately above the latest award form) with the notation, in red, "PENALTY DEDUCTIONS APPLY".

If, at a later date, the annuitant becomes entitled to an age and service annuity or another disability annuity, check the claim file carefully to determine if such a notation has been made. If so, withhold the amount of the penalty deductions from the current annuity. When this action is taken, remove the notation from the folder.

1125.35 Temporary Disability Work Deductions

When a disability annuitant reports that he will earn over the monthly disability earnings limit in a month after deduction of disability related work expenses, the disability annuity will be suspended the later of the current month or the first month the earnings will exceed the monthly disability earnings limit after deduction of disability related work expenses. The annuity will remain in suspense unless the annuitant informs us he no longer expects to earn over the monthly disability earnings limit in a month. In that case, it must first be determined if the annuity should be withheld an additional month because a penalty for failure to report has been imposed. An annuity will not be reinstated until the annuity has been withheld to recover any penalty deduction(s).

A suspension notice on Form AB-31-back is used to notify the employee when his disability annuity is suspended because earnings exceed the monthly disability earnings limit in a month after deduction of disability related work expenses. The letter requests refund of the overpayment of annuities for months the annuitant earned over the monthly disability earnings limit and the annuity was not suspended. It also informs the annuitant if a penalty deduction applies because earnings were not reported timely. If the overpayment is not refunded, it will be handled when permanent work deductions are determined after the end of the year. It is possible that no overpayment will exist if the employee's final earnings for the year do not exceed $11,374.99.

The disability annuity is reviewed for continuance of disability as described in FOM-I-310.60 and 310.65.

EXAMPLE 1: Mrs. Green returned her May 1 payment with a note that she began work in March and was earning $920.00 a month after deduction of disability related work expenses. Her annuity was suspended effective April 1, since the return of her May 1 payment suspended the June 1 payment. No penalty applies because the work was reported before she received and accepted the June 1 check (payment for May). Her annuity remained in suspense until she informed us that her earnings were less than the monthly disability earnings limit beginning in September after deduction of disability related work expenses. The annuity was reinstated effective September 1, because her monthly earnings were not more than the monthly disability earnings limit after deduction of disability related work expenses and no penalty deduction applied.

EXAMPLE 2: Mr. Smith informed us in June that he began work in January but would earn only $910.00 a month after deduction of disability related work expenses. No suspension action was taken because he would not earn more than the monthly disability earnings limit in a month, and no penalties apply because earnings were not over the monthly disability earnings limit in a month.

EXAMPLE 3: Mr. Brown informed us in September that he began earning $920.00 a month in June. His annuity was suspended with the payment dated October 1. Based on his estimate, he would earn only $6,440.00. However, his annuity must be suspended for any month he earns over $910.00 after deduction of disability related work expenses. Also, a penalty deduction would be applied in the current year. Our letter asked Mr. Brown to refund the overpayment for the 3 months of payments he received, and advised him his annuity would remain in suspense. Recovery of the penalty amount would be included when the final overpayment is determined. In this case, when permanent work deductions were determined, there actually was no overpayment because final earnings did not exceed $11,374.99.

1125.40 Permanent Disability Work Deductions

A final report of earnings is required after the end of the year, when a disability annuitant has reported earnings of more than the monthly disability earnings limit in a month after deduction of disability related work expenses. An annual monitoring report

(Form G-254 to the annuitant and Form RL-231f to the employer) will be mailed in those cases.

If an annuitant earns less than $11,375.00 in 2017, annuities are payable for every month. This is true even if annuities were withheld for earnings over the monthly disability earnings limit in a month after deduction of disability related work expenses or for penalty deductions. A penalty deduction may not apply for 2017 if the final earnings were less than $11,375.00. (For earning limitations for the years prior to 2017, refer to FOM 1125.5.2).

If an annuitant's earnings are over $11,374.99 in 2017, one month's annuity must be withheld for every $910.00 of earnings over $11,374.99. Fractions of$455.00 or more are counted as $910.00. Penalty deduction months must also be withheld.

If the annuity rate changes during the year, the annuity is withheld for months in which the lower rate is payable. However, the penalty amount equals the annuity rate for the month(s) the employee had excess earnings and the report was not timely.

EXAMPLE 1: Mr. Best started working on January 1, 2016. He earned $1,050.00 in January, February and March, and $940.00 each month from April through December. He did not report his earnings over the monthly disability earnings limit until June. The annuity was suspended July 1 to withhold the annuity for 1 penalty month. Because his earnings were less than the monthly disability earnings limit after March, the annuity was suspended only to withhold the penalty deduction. Since his final earnings totaled $11,610.00, only 1 month's annuity had to be withheld for permanent work deductions ($610.00 over $11,000.00). One month's annuity also had to be withheld because he failed to make a timely report. The two deductions would be applied at the rate payable for January; the difference between twice the January rate and the total annuities withheld would be refunded.

EXAMPLE 2: In September 2016, Mr. Brown reported earnings of $881.00 a month beginning June 1, 2016. His annuity was suspended October 1 to withhold 7 months' annuities and one penalty deduction for late reporting. Since his earnings totaled only $6,167.00, all annuities, including the penalty deduction, were refunded after the end of the year when permanent work deductions were assessed.

EXAMPLE 3: Mrs. Adams earned $1100.00 a month after deduction of disability related work expenses beginning March 1, 2015. She informed us in April, so no penalty deduction applies. She returned the April 1 payment, and the May 1 payment was suspended. Her annual earnings report showed a total of $11,500.00, which required 2 months' deductions ($1300.00 over $10200.00). The withholding for permanent work deductions was applied to the months January through June; the balance was refunded to her.

A personal conference is offered to every overpaid individual who is currently entitled to an annuity. A personal conference can be held in person or over the telephone. An annuitant requesting a personal conference must make that request in connection with a request for a review of the facts and/or waiver consideration. Overpayment recovery action is delayed pending the results of the personal conference.

The goals of the conference are to:

- provide the annuitant an opportunity to present any evidence, explanation or other information that would affect the overpayment review and/or waiver decision; and
- help the annuitant understand why he or she is overpaid and how the overpayment occurred.

We achieve these goals by allowing the annuitant to review and copy material pertinent to the overpayment and by discussing the overpayment with him or her at the conference. In the situation where the personal conference is conducted over the telephone, material pertinent to the overpayment is mailed to the overpaid individual. Likewise, if the overpaid person has any additional information or evidence for consideration, the overpaid person should send such information or evidence to the field office for review prior to the personal conference telephone call.

The field office is responsible for setting up and conducting the conference and preparing a report of the conference.

1230.5 Release of Folders or Material to the Field Office

Since field offices have access to Web Connect and since most material in e-file cases is imaged, it may not be necessary for headquarters to send any “folder” material to the field office for conducting a personal conference. If “folder” material does need to be sent to the field office, there are several options for sending it there. Recon and DRD specialists do not need to send any material to the field office that is already available through electronic means. The field has access to:

- any material that is already imaged and appears on Web Connect;
- any mainframe information they can view on systems like RRAPID or PAR; and
- any documents sent to headquarters through the field (if there is an indication the field office maintained a copy of what was sent into headquarters).

Headquarters will forward a summary of the facts (with references to the RR Act and equivalent U.S. code) and cover memorandum to the field office. There may be other material that should be sent as well. The annuitant may have provided pertinent information when the request for the personal conference was made. While preparing for the personal conference, Recon and DRD specialists may have developed additional

information that has not yet been imaged. The summary of facts and a cover memorandum for the conference will be sent as attachments to an EMAIL. The EMAIL may also contain a few facts provided by the annuitant in the request for the personal conference. Any hard copy documents that the field requires will be sent to the field will either be sent via FAX or a temporary folder. The EMAIL will inform the field office if any additional material is being sent and how it is being sent. When material is prepared for release to the field office for a personal conference, it will not include any items that cannot be released under the Privacy Act.

When a folder is prepared for release to the field office for a personal conference, the file is purged of items that cannot be released under the Privacy Act. A summary of the facts concerning the overpayment with references to the RR Act and equivalent U.S. Code is prepared. A copy of the summary of the facts is retained in Headquarters along with the purged items. Before releasing the folder to the field office, the unit preparing the file will send an EMAIL message to the manager advising that they are sending the file. The folder is sent to the Bureau of Supply and Service and then forwarded to the field office via FEDEX. Allow 1 week for delivery.

The Reconsideration Section (RECON) takes the above actions when a personal conference has been requested in conjunction with a request for a review of the facts only, or a request for both review of the facts and waiver.

The Debt Recovery Division (DRD) takes the above actions when a personal conference has been requested in conjunction with a request for waiver only.

When RECON prepares a summary of facts for a personal conference, they also prepare a cover memorandum. If the annuitant requested both a review of the facts and waiver consideration, the cover memorandum explains what actions the field office should take to ensure that BFO-DRD gets the information needed to make the waiver decision. BFO-DRD needs the following information:

- A financial disclosure statement (Form DR-423); and
- A copy of the annuitant's latest income tax return, if one was filed within the last 2 years.

The above items are to be secured before, during, or within 30 days after the conference. If the field office receives these items before RECON has sent material to the field office for the conference, the field should forward the items to RECON immediately instead of holding them at the field office.

If the above items have not been submitted before or at the personal conference, the annuitant should furnish them within 30 days after the conference. They should be submitted directly to the Debt Recovery Division. The field office should provide the annuitant with an envelope addressed as follows:

Railroad Retirement Board

Debt Recovery Division

844 North Rush Street

Chicago, Illinois 60611-2092

If the items are not submitted within 30 days after the conference, a determination on the waiver request will be made without them.

1230.5.1 Form G-26p

If a physical folder is being sent to the field office, form G-26p is affixed to the folder for routing purposes. Do not remove it from the folder. Follow the instructions on the form when returning the folder to Headquarters.

1230.5.2 Tracing for the Personal Conference Material or Folder

There may be a delay between the time you advise that a personal conference request has been received and the time you receive the personal conference material or folder. If you receive an inquiry from the annuitant, you may trace no sooner than 7 weeks after the date you first notified RECON or DRD of the personal conference request. Tracing with RECON or DRD should be via EMAIL.

1230.10 Annuitant No Longer Wants a Personal Conference

If the annuitant changes his (her) mind after requesting a personal conference and no longer wants a personal conference, secure a signed statement to that effect. If the annuitant still wants a review of the facts and/or waiver without the personal conference that should be indicated in the signed statement. Also, secure the properly completed "G" form attachment that was provided with the overpayment notice if he (she) does not want the overpayment recovered by the method stated in the overpayment letter.

If the material or the folder to conduct the conference has not yet been received in the field office, notify RECON immediately to inform them that the personal conference is cancelled. Notify RECON either by EMAIL or by telephone. After notifying RECON, submit the above documentation to RECON.

If material or the folder to conduct the conference has already been sent to the field office, notify RECON that the personal conference is cancelled using RRAILS Form FO PERS CONF REPORT. After imaging the report, advise Headquarters by E-MAIL that the personal conference report has been imaged. Assemble any pertinent material including documentation of your contacts with the annuitant and forward this material to the originating section. When the folder has been sent to the field office, return the folder according to the instructions on Form G-26p.

1230.15 Annuitant's Rights in a Personal Conference

The purpose of the personal conference is to explain the overpayment and give the debtor an opportunity to present additional evidence that could affect the overpayment. This is accomplished in several ways.

The annuitant may present his (her) case orally. He (she) may be represented by legal counsel or any other person. The annuitant may submit evidence through documents or witnesses. It is the annuitant's responsibility to ask a witness to appear in his (her) behalf. If the witness is unable to appear, the annuitant may ask the witness to prepare a signed statement to be used at the conference.

The field office will advise the annuitant that material is available at the field office for review before the conference. The material must be available for review at least 5 days before the conference.

Be sure the annuitant understands that any decision made by the RRB based on evidence given by an adverse claimant is in the file. An adverse claimant is one who made an allegation or presented evidence to the RRB contrary to that presented by the annuitant. If the annuitant requests this adverse claimant be present at the conference, it is the field office's responsibility to ask the adverse claimant to voluntarily appear at the conference or answer a prepared list of written questions.

1230.20 Determining Who Will Conduct the Personal Conference

The manager will conduct any personal conference in the territory assigned the office except when he (she) is unavailable or was previously involved in the overpayment determination. If the manager cannot conduct the conference, he (she) will designate a contact representative (GS-10 or higher) in the office to conduct the conference. If there is no one available in the office to conduct the conference, the manager will contact the regional director who will determine the person to conduct the personal conference. When someone other than the manager conducts the conference, include a brief explanation in the personal conference summary prepared after the conference.

1230.25 Setting up the Personal Conference

1230.25.1 Review of Material or Folder

The person conducting the conference should review the material or folder received from headquarters and become familiar with the facts in the case. He (she) may prepare notes that for use when summarizing the case at the conference. If you need any additional information concerning the overpayment, call the originating office for assistance.

1230.25.2 Setting up a Time and Place or Time and Date

The field office should hold the conference within 60 days of receipt of the material or folder from headquarters. If you cannot schedule the conference within 60 days, send an e-mail to the originating section indicating status of personal conference scheduling. Also, contact your regional office for any advice it may give.

The conference can be held by telephone or in person, whichever the annuitant prefers. If in person, the conference will normally be held at the field office. However, at the discretion of the manager, it may be held at a location more convenient for the annuitant such as a customer outreach program service location. The manager must consider conditions present in the field office (workload, travel budget, personnel, etc.) and proximity to the debtor before scheduling a conference outside the office.

The person conducting the conference is responsible for contacting the annuitant or his (her) payee to give the annuitant a choice of either an in person or telephone conference and to arrange the conference. Do this by telephone with a confirming letter. Use the RL-150, Personal Conf Appt Notice, on RRAILS as the confirming letter. If you cannot reach the annuitant or payee by telephone, send a letter by Certified Mail-Return Receipt Requested. In either case, retain a copy of the letter for the Headquarters file.

If circumstances prevent the annuitant from setting a date or he (she) does not cooperate in scheduling a conference, send a notice to the annuitant requesting him (her) to contact the field office to schedule a personal conference within 30 days of the date of the notice. You can use RRAILS letter “CUSTOM Field Service Letter” for this purpose. Advice that if this is not done, he (she) will forfeit rights to a personal conference, and a decision will be made based on the information in file. If at the end of the 30-day period the annuitant has not responded, prepare an EMAIL outlining your attempted contacts with the annuitant. Also forward copies of letters as documentation of your contacts with the annuitant.

1230.25.3 Annuitant Fails to Appear for Conference or Does Not Answer the Telephone

Contact the annuitant and determine why the appointment or telephone call was missed. If the annuitant no longer wants a personal conference, follow the instructions in FOM-I-1230.10. If the annuitant still wants a conference, arrange a second appointment or phone call and confirm it by letter. The second appointment or phone call should be within 30 days of the first appointment. During your contact and in your letter, advise the annuitant that if the second appointment is not kept the file will be returned to Headquarters and a decision will be made based on the evidence in file. Do not schedule a third appointment or phone call.

If the annuitant fails to keep the second appointment or phone call, release a letter advising that the file is being returned to Headquarters and a decision will be made based on evidence already in file. Prepare an EMAIL including summaries of your

contacts with the annuitant, including the dates personal conferences were scheduled. Also forward copies of all correspondence with the annuitant.

1230.30 Format of the Personal Conference

Assure all parties involved that the conference is informal. You may take notes during the conference but direct transcription or recording must not be used by any individual involved.

1230.30.1 Introduction

The person conducting the conference will open by introducing all present either in person or via the telephone, and determining their roles. State that the purpose of the conference is to give the annuitant an opportunity to present his (her) case and obtain all relevant evidence. Also, explain the role of the person conducting the conference which includes: listening to the evidence; asking questions to clarify issues; assisting the annuitant through questions, suggestions and explanations; summarizing the conference; and forwarding the summary and any evidence to Headquarters for a review and decision. Emphasize that this is fact-finding and explain that if the request involves a waiver request, the decision regarding the overpayment or granting of waiver is made at Headquarters. Also, briefly outline how the conference will proceed.

1230.30.2 Summary

Give a brief history of the claim. Specifically state issues and dates involved in the overpayment determination. Generally explain the applicable provisions of the law.

1230.30.3 Annuitant Presents His (Her) Case

Ask the annuitant if the summary is a correct account of the events. Then let the annuitant (or representative) present his (her) case and submit evidence. You may allow the annuitant to tell his (her) own story and/or use a question and answer method. Offer any explanations or suggestions that may assist the annuitant. Try to prevent irrelevancies from becoming time-consuming.

1230.30.4 Witnesses

Allow the witness(es) to tell the story in their own words and/or question them if appropriate. You, the annuitant or his (her) representative may question any witnesses to determine the basis for their knowledge. You also may ask questions to clarify misunderstandings and facts.

1230.30.5 Inappropriate Conduct

If the conduct of the annuitant deteriorates so that orderly progress cannot be made, remind him (her) that the purpose of the conference is to secure all facts and that his (her) conduct is defeating that purpose. Attempt to mediate or clarify any misunderstanding. Caution the annuitant that the conference will be terminated and

only the evidence presented up to that point will be submitted to Headquarters if his (her) conduct does not improve. After that point, if the situation does not improve, terminate the conference.

1230.30.6 Additional Evidence

Any additional evidence the annuitant may wish to submit may be allowed if submitted within 30 days. Do not hold the folder pending receipt of the additional evidence.

1230.30.7 Closing the Conference

Close the conference by reviewing all the facts presented. Allow the annuitant to make closing remarks. Advice the annuitant that the facts and evidence presented will be forwarded to Headquarters for a decision. Advice the annuitant that a final decision from should be received from Headquarters within 90 to 180 days after all the evidence is submitted.

If the personal conference is for review of the facts only and it is apparent that the annuitant agrees with the overpayment, the person who conducted the personal conference should ask the annuitant if he (she) wants to select a method of recovery at that time.

If the personal conference involves waiver and it is apparent that the annuitant agrees with overpayment, and does not believe the conditions for waiver will be met, the person who conducted the personal conference should ask the annuitant if he would like to withdraw the request for waiver and select a method of recovery at that time. If the annuitant wishes to withdraw their request for waiver, secure a statement to that effect.

Under no circumstances should you offer the annuitant a method of recovery not already offered on the Form G-421 attachment provided with the overpayment notice. If the annuitant requests an alternate means of recovery not already offered, contact DRD to discuss the request. Document any agreement by DRD to an alternative means of recovery and submit the signed statement withdrawing the request for waiver to Headquarters.

In a case where the annuitant requested a Review of the Facts and a personal conference but not waiver consideration, DRD will honor the waiver request if the annuitant requests waiver at the conference.

1230.35 Documentation and Notification to Headquarters

1230.35.1 Personal Conference Summary on RRAILS Form FO PERS CONF REPORT

Prepare and image a summary of the personal conference on RRAILS Form FO PERS CONF REPORT. Advice Headquarters by E-MAIL the report has been imaged. The report should include:

A. The place and date of the in-person conference, or the time and date of the telephone conference, and a brief explanation if the in-person conference was held outside the district office;

B. A brief explanation if the manager did not conduct the conference;

C. The format of the conference, a summary of the facts and evidence presented, and important discussion points made during the conference;

D. Your personal observations and impressions gained during the conference;

E. Information regarding whether the annuitant refused to select a method of recovery; and

F. Your recommended decision.

G. What documents or evidence, if any, the annuitant will be submitting within the next 30 days.

1230.35.2 Information Submitted to Headquarters

This should include:

A. Form G-66a;

B. Form DR-423, which has been reviewed and discrepancies reconciled, if waiver is requested;

C. Properly completed "G-421" series form attachment that was provided with the overpayment notice in the event that the annuitant's request for waiver and/or review of the facts is denied;

D. Documentation of contacts with the annuitant; and

E. Any additional evidence submitted within 30 days of the conference.

1230.35.3 Releasing the Conference Results to Headquarters

When the field office completes the conference, they should image the summary of the conference on RRAILS Form FO PERS CONF REPORT and advise Headquarters by EMAIL to the Recon or DRD specialist handling the case that the report has been imaged. Also, advise whether other material is to follow in the mail or by FAX. It is not necessary for the field office to return any material that was faxed to them. However, if any original material was mailed to the field office or if the field office developed material before, during, or after the conference, that material should be Faxed or mailed back to the Recon or DRD specialist. The field office should send any waiver-related material, such as tax returns and the DR-423 directly to DRD.

Folders are returned to the originating section according to the instructions on Form G-26P. Insert all the necessary information in the folder and return it to Headquarters as soon as possible after the conference is held. Do not hold submission of the conference report for receipt of Form DR-423, the income tax return, other statements from the annuitant regarding the waiver request, or any evidence being submitted for any other reason. Advise the annuitant that this evidence should be submitted within 30 days. If circumstances prevent you from immediately returning the folder, give a brief explanation in your summary and submit the entire package to Headquarters as soon as possible.

1230.40 Tracing the Headquarters Decision

If the annuitant inquires concerning the Headquarters decision, you may trace the appropriate section no sooner than 8 weeks after you returned the case to Headquarters. Tracing with BFO-DRD should be via EMAIL. Tracing with RECON can be either by EMAIL or by telephone.

1235.5 Collection Standards

The Railroad Retirement Board (RRB) is required by the rules and regulations issued by the Treasury Department to take aggressive action on a timely basis to collect all erroneous payments. Among other things, these regulations provide that we make written demands for repayment, collect debts by offset whenever possible, and when offset or cash refund is not possible, accept repayment in regular installments.

Installment payments should be made monthly and in an amount sufficient to liquidate the debt in a reasonable period of time based on the debtor's financial condition (generally the maximum period of time should be 36 months). All requests for an installment agreement should be forwarded to the Debt Recovery Division (DRD) in the Bureau of Fiscal Operations (BFO), along with the debtor's initial payment for approval.

1235.10 Collection Procedures

1235.10.1 Annuity Payable

When an overpayment is assessed against a person due an annuity, the debtor is normally given the option of refunding the entire overpayment or having his annuity withheld (totally or partially) to recover the overpayment. Generally, there is no problem in recovering overpayments when an annuity is payable.

1235.10.2 No Current Entitlement

When there is no monthly annuity payable or no lump-sum payment due the debtor, collection efforts are in the form of an initial letter requesting a refund, a tracer letter if no response is received, and then a field office investigation of the debtor's ability to repay the debt. If the debtor is deceased, his estate is liable for the overpayment. Collection efforts will be made through the legal representative of the estate.

The district office should not take any action to investigate the debtor or his ability to repay the debt unless directed to do so by DRD.

1235.15 Uncollectible Debts

An overpayment is considered uncollectible when evidence in file indicates that recovery of an overpayment cannot be accomplished by:

- Further active collection effort;
- Full or partial withholding of a currently payable railroad annuity or supplemental annuity;
- Actuarial Adjustment; or
- Waiver of recovery.

If an overpayment recovery cannot be made by these methods in a reasonable amount of time from the date of the overpayment notice or from the date the last payment was received, whichever is later, DRD is authorized to make a determination that the overpayment is uncollectible.

The following means will be considered for disposing of uncollectible debts: compromise, suspension or termination of collection efforts, referral to a private collection agency, referral to the Internal Revenue Service, referral to the Department of Justice or Federal salary offset.

1235.20 Additional Collection Methods

Whenever normal recovery methods are unsuccessful, DRD is authorized to take additional measures to recover an erroneous payment. Each case must be judged on its own set of circumstances. Therefore, it is difficult to predict how each case will be handled until it is reviewed by an examiner in DRD.

1235.20.1 Compromise Settlement

The RRB, or the Chief Financial Officer for the RRB, has the authority to compromise an overpayment which does not exceed $100,000.00 and does not involve fraud, false claim or misrepresentation. A compromise means that we will settle the overpayment with the debtor for an amount less than the assessed overpayment amount. Sometimes it is to our advantage to settle in this manner, especially if the debtor is unable to pay the entire debt, or there is little chance of being successful in court, or the cost of enforced debt collection is greater than the debt itself. All compromise offers must be in writing.

A. Restrictions - We will try to discourage compromises payable in installments. However, if this type of arrangement is necessary, we will obtain an agreement with the debtor which stipulates that the prior indebtedness, minus the payments made in installments, will be reinstated upon default. Payments should be sufficient in size and frequency to liquidate the RRB's claim in as short a time as possible. We will not accept payments of less than $10.00 per month unless the total amount to be recovered is $100.00 or less.

B. Developing for a compromise settlement - Generally, we will only make a compromise settlement if a debtor offers a partial refund as a compromise or if information already in file indicates that a compromise might be advantageous to the government. If this occurs, DRD will direct the field to obtain Form DR-423, if not already in file. The field office should furnish a recommendation as to whether the debt should be compromised. Base your recommendation upon the debtor's ability or inability to repay the debt, using your observations and information on Form DR-423. DRD is in a better position to consider other factors like enforced collection costs or litigation possibilities. See FOM-I-1240.10 for factors to consider when making your recommendation. Send your recommendation along with Form DR-423, if needed, to DRD.

1235.20.2 Suspension or Termination of Collection Efforts

Collection action may be suspended or terminated when the erroneous payment is $100,000.00 or less, prior to the referral of cases to the Department of Justice for litigation.

A. Suspension of collection activity - Collection action may be suspended temporarily when:

- The overpaid person cannot be located and there is reason to believe that future collection action may be productive enough to justify periodic review and action on the claim; or
- The person owns no substantial equity in real estate and is unable to make installment payments or effect a compromise; or
- The person is a member of the armed forces stationed in a controversial area until the individual returns to the U.S.

B. Termination of collection activity - occurs when an overpayment is considered uncollectible and:

- Claim Legally Without Merit - Collection action is terminated whenever it is determined that the erroneous payment claim is legally without merit. A claim can be considered legally without merit if, for example, the statute of limitations has expired.
- No Evidence to Substantiate Claim - Collection action is terminated when it is determined that evidence necessary to prove the case cannot be produced or necessary witnesses are unavailable and voluntary payment cannot be secured.
- Debt Size Does Not Warrant Further Recovery - Recovery is not pursued in the following situations:
  - Any debt that is less than $600.00, unless the debtor is receiving a salary or retired pay from the U.S. government.
  - Any debt that is less than $400.00, if the debtor is involved in bankruptcy proceedings.
  - Any debt of less than $800.00, when the debtor is not located and reasonable attempts have been made to locate him or her.
  - Any debt of less than $800.00, when the annual income of the debtor is less than $7,500.00 per year in a rural area and $8,500.00 in an urban area and is derived from non-Federal sources and there is no indication

that the debtor has a high income potential, has inheritance prospects or has assets which may be realized by enforced collection proceedings. The family income figure stated above is generally considered to be for a family of two and should be increased by $500.00 for each additional dependent.

NOTE: The monetary limits given above are meant as guidelines and not as absolute values.

- Any case in which there is evidence that the debtor has been discharged in bankruptcy and the amount owed the RRB was listed in his schedule of debts, provided no question of fraud is involved.

- Any debt of $100,000.00 or less, in a case which the debtor is deceased and there is positive evidence showing the decedent left no estate.

1235.20.3 Referral to the Internal Revenue Service

The Deficit Reduction Act of 1984 authorizes Federal agencies to refer debts to the Internal Revenue Service (IRS) for collection by offset against tax refunds due individuals by the U.S. government. Federal agencies may exercise the tax refund offset authority under the Deficit Reduction Act through January 10, 1994. An agreement between the Railroad Retirement Board (RRB) and the IRS and the Financial Management Service of the U.S. Department of Treasury governs the RRB's participation in the tax refund offset program.

The Bureau of Fiscal Operations (BFO) is responsible for making the determination as to whether the debt is still past-due and legally enforceable. BFO will forward the list of delinquent debts to the IRS.

Debts selected for referral to the IRS for tax refund offset must meet certain criteria. A debt which may be referred to the IRS is a debt:

- Resulting from erroneous payments made under the Railroad Unemployment Insurance Act or the Railroad Retirement Act;

- That is at least $25.00;

- Which has been delinquent at least 3 months, but not more than 10 years, from last contact with debtor at the time the tax refund offset is made;

- With respect to which the debtor's rights to reconsideration, waiver and appeal have been exhausted;

- With respect to which the RRB's records do not contain evidence that the debtor has filed for bankruptcy or the debt has already been discharged by bankruptcy proceedings;

- Which cannot currently be collected by offset of amounts payable to the debtor under the acts administered by the RRB;

- With respect to which the RRB has made a reasonable attempt to notify the individual that the debt is past due and will be referred to the IRS unless, within 65 days, the debtor repays the debt or makes acceptable arrangements to repay the RRB; and

- With respect to which the RRB has given the debtor at least 65 days from the date of the notification to present evidence that all or part of the debt is not past-due or is not legally enforceable, and has considered the evidence presented by the debtor and determined that the debt is past-due and legally enforceable.

The IRS will review the list of delinquent debts provided by the RRB and after determining that there is a tax refund payable, will deduct as much of the overpaid amount as possible.

1235.20.4 Civil Suit

A civil suit is a legal action that can be instituted by the Department of Justice at the RRB's request for the purpose of recovering an erroneous payment. A civil suit has no punitive aspect. If the U.S. government wins the case, the court enters a judgment against the debtor. Recovery may be affected if the debtor has sufficient assets to settle the claim.

A civil suit may be recommended when it has been established that:

- Waiver of recovery of the overpayment is not possible;

- Recovery by full or partial withholding is not possible;

- Reasonable efforts to secure refund have failed;

- Compromise settlement has not been made and collection action has not been suspended or terminated;

- The overpayment is $600.00 or more; and

- It is clear that the debtor (including an estate) has sufficient assets to satisfy a judgment, or has current income large enough to make repayment.

DRD will direct the field office to investigate the debtor's ability to repay the debt. See FOM-I-1240.10.1 for field office actions to develop this information.

1235.20.5 Referrals to a Private Collection Agency

Overpayments may be referred to a private collection agency by the bureau of fiscal operations through DRD when the following conditions are met:

- The debtor is living;
- The initial notice of overpayment or the last refund is dated no more than 5 1/2 years from the date of submission to BFO;
- The debt is $100.00 or more;
- Fraud is not evident;
- The debt is a last check or direct deposit payment and Headquarters has documentation that the person who has been named as debtor cashed the not-due check or withdrew the EFT payment made erroneously;
- The debt is not under reconsideration or the right to request reconsideration has expired;
- The debt is not under consideration for waiver of recovery or the right to request waiver of recovery has expired;
- Recovery of the debt is not being made from an annuitant entitled on same railroad account as the debtor, i.e., the recovery is not being made under section 10(a) of the Railroad Retirement Act;
- The debt is not under appeal or the appeal process has been exhausted;
- The debtor is refusing to repay although financially able or the debtor's ability to repay cannot be determined;
- The RRB, or its designee, determines referral would serve the interests of the agency.

1235.25 Fraud Cases

The RR Act provides for fines to be levied and prison sentences for any person convicted of knowingly making or causing to be made any false or fraudulent statement to effect an award or payment under the act. Prosecution for fraud is a criminal action and is punitive in purpose. Occasionally however, fraud prosecution does result in restitution. This usually occurs when the court suspends sentence upon the condition that the erroneous payment is repaid.

The filing of a criminal action does not preclude the filing of a civil action to obtain a judgment against a debtor (i.e., the debtor must pay back the illegally gotten monies). A debtor may be subject to both actions.

It is important that you notify the appropriate adjudication section in the Office of Programs, i.e., retirement post section or survivor post section, when you first become aware that fraud may be involved in a case. A brief memorandum summarizing the

situation should be directed to the section manager in a plain envelope marked "Do Not Open in Mailroom." The section will initiate adjudicative and development actions, and, if an overpayment is over the threshold amount (see RCM 6.6.191), prepare a referral to the Office of Inspector General.

When retirement, survivor or disability adjudicative units send a field assignment to obtain earnings, medical or other information from an individual, field office personnel should obtain information by questionnaire when possible. Field personnel should exercise caution during any questioning of individuals that involves personal contact (either in person or by phone). Do not interrogate the individual about inconsistencies. Helping the individual complete a questionnaire or asking for information or for a clarification is different from interrogation to obtain incriminating evidence. The latter is the OIG's responsibility. The reason for this focus on questioning technique is to avoid compromising effective prosecution if fraud is pursued.

The time limitation on fraud prosecution makes early investigation and referral extremely important. The offender cannot be prosecuted for a fraudulent act unless action is instituted within 5 years after the commission of the offense.

1235.25.1 Elements of fraud

The elements of fraud are defined by two broad concepts:

The first, "Failure to Report" covers a broad area of cases. Some of the common events that occur that may be considered violations if the subject fails to report them are:

1) The annuitant died and the subject continued to illegally receive benefits either via check or electronic funds.

2) An annuitant has left the subject's care and the subject continued to receive and use the benefit for themselves instead of forwarding the funds to a nursing home or the new payee, etc., or using it for the annuitant's care and welfare.

3) The annuitant is employed and such employment could affect their retirement or disability annuity.

4) The annuitant begins to receive a public service pension, etc., which could affect the current benefit rate.

5) The annuitant has returned to railroad service.

6) The annuitant has remarried.

The second concept is "False Claims and/or False Statements". These cases involve circumstances in which an individual submits a document to the RRB which provides false information and, based on that document, the RRB pays benefits. These are commonly referred to as false claim cases. In other cases the individual may submit an

RRB form or some form of correspondence on which the person provides the agency with false information. Although the RRB form or correspondence containing the false information is not a specific claim for benefits, it may result in the initiation or the continuation of benefits. These cases may be prosecuted as false statement cases. This also applies to circumstances in which an individual makes a false oral statement to a RRB employee which results in the initiation or continuation of benefits.

When any of the factors is involved in a case being handled in an adjudication unit, and the overpayment involved is over the threshold amount (see RCM 6.6.191), the case is referred to a Quality Analyst for possible referral to the OIG for investigation of fraud. Disability cases are notated for referral to the OIG, pending the overpayment determination.

1235.25.2 Investigation of fraud

Investigation of fraud is the responsibility of the OI-OIG.

1235.30 Charges on Overpayments

The Debt Collection Act of 1982 requires the Railroad Retirement Board (RRB) to charge interest on claims for money owed the RRB, to assess penalties on delinquent debts and to assess charges to cover the costs of processing claims for delinquent debts.

1235.30.1 Interest

The rate of interest to be assessed is the rate of the current value of funds to the United States Treasury (i.e., the U.S. Treasury Tax and Loan Account Rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and Treasury Fiscal Requirements Manual Bulletin annually or quarterly, in accordance with the United States Code.

The interest rate to be assessed is computed each year by averaging investment rates for the 12-month period ending every September. The rate then goes into effect January 1 of the following year.

The PAR system will assess simple interest once a month on the unpaid principal of a debt. Interest shall accrue from the date on which notice of the debt and demand for payment is mailed to the debtor, or in the case of a debt in which waiver has been requested, interest shall accrue from the date that a denial of waiver of recovery is mailed to debtor or, if waiver has not been requested, upon expiration of the time within which to request waiver.

These charges will be displayed on Line Number 997 on PAR system table screens.

1235.30.2 Penalty

A penalty charge of six percent per year shall be assessed on any debt that is delinquent for more than 90 days. The penalty charge shall accrue from the date on which the debt became delinquent. A debt is delinquent if it has not been paid in full by the 30th day after the date on which the overpayment letter was first mailed or hand-delivered. In cases where the overpayment is being repaid via installment payments, the debt is considered to be delinquent at any time after the debtor stops making installment payments.

These charges will be displayed on Line Number 999 on PAR system table screens.

1235.30.3 Administrative Charges

Administrative charges can be assessed against the debtor for administrative costs incurred as a result of processing and handling the debt because it became delinquent. Administrative costs include costs incurred in obtaining a credit report and in using a private debt collector.

The bureau of fiscal operations (BFO) is responsible for determining the administrative charge to assess. Administrative charges are applied as fixed dollar amounts to delinquent debts which are referred outside the RRB to attempt recovery. The amount of the charge is determined by the referral destination.

The three referral destinations used by the RRB, and the administrative cost associated with each for preparation of the referral, are shown below.

Referral Destination	**Administrative Cost**
• Private Debt Collection Agency	$ 6.14
• Internal Revenue Service (IRS) Tax Refund Offset Program	$ 7.68
• Department of Justice	$45.00

These charges will be displayed on Line Number 998 on PAR system table screens.

If a debt is referred to more than one outside agency to attempt collection, a separate charge will be added for each successive referral.

1235.30.4 Assessment of Charges

Only certain overpayments are subject to interest, penalty or administrative charges. The RRB has established the following criteria:

A. Waiver of Charges - The Debt Collection Act of 1982 allows waiver of charges under certain circumstances. The RRB has established the following criteria for automatically waiving the collection of interest charges:

- The overpaid person is repaying the overpayment by full or partial withholding;
- The overpayment is less than 60 days delinquent (i.e., less than 60 days have elapsed since the date of the overpayment letter);
- The overpaid person has requested waiver and/or reconsideration of the overpayment;
- The 60-day appeals period has not expired;
- The appeals process has not been exhausted.

Also, when DRD makes a decision to waive an overpayment on which interest, penalty or administrative charges have been assessed, the charges associated with the amount waived are also waived. When DRD makes a decision to put an overpaid amount into uncollectible, any charges that were assessed are also put into uncollectible.

B. Current Entitlement Cases - Interest, penalties and administrative charges will not be assessed on overpayments when either the overpaid person or a person in the same family group as the overpaid person is currently entitled to payments.

C. Non-Entitlement or Split Family Entitlement - Interest, penalties and administrative charges apply to overpayments, when either there is no other person entitled on the same account as the person overpaid or the only individuals entitled on the same account as the person overpaid, are considered to be in a different family group (i.e., split family groups).

Charges apply to and may be assessed against the following types of overpayments:

- Overpayments made to survivor annuitants when there is no other person in the same family group in pay status;
- Overpayments where recovery is being attempted from the estate of a deceased person;
- Overpayments made to retirement or survivor disability annuitants who have recovered and no other person in the same family group is in pay status;
- Overpayments which are a result of an erroneous award (retirement or survivor) and there is no other person in the same family group in pay status;

- Overpayments which are a result of cancellation of an application (retirement or survivor);
- Overpayments made to divorced wives who have lost entitlement due to remarriage;
- Overpayments made to spouses who have lost entitlement due to divorce;
- Overpayments made to either an employee or spouse and jurisdiction of survivor benefits is being transferred to the social security administration; and
- Overpayments made to a person who is entitled to benefits, but whose annuity rate is zero.

1235.30.5 Notification of Charges

Before charges can be assessed in a case, the person from whom recovery is being sought must be advised that the result of failure to make payment in full before or by a specified date will result in the assessment of charges on the original overpayment.

The overpayment form letters designed for release to individuals who may have charges assessed on their overpayments have been revised accordingly.

Any special overpayment letters released must carry similar wording.

Charges will not be assessed on overpayments in which the debtor was previously notified of the overpayment amount and recovery action is in force. However, should the person repaying such an overpayment by installment payments default, BFO may release a notice which advises that if payment is not received in full within 60 days from the date of that notice, charges will be assessed. BFO also may assess charges when an overpaid individual wishes to re-negotiate the installment payment agreement.

In delinquent debt cases, the PAR system will be capable of releasing notices automatically. The PAR system is programmed to release two dunning notices of progressively stronger language. The system is programmed to release up to three notices of progressively stronger language. The notices include complete information regarding charges that have been assessed.

If payment has not been received by the due date specified in the initial notice of overpayment, the PAR system will begin "dunning" by releasing a "Notice of Delinquent Debt." Subsequent notices will be released at 30-day intervals. If repayment is not received within 30 days of the date the last notice is released, the debt will automatically progress to the Accounts Receivable Referral (AREF) Table. DRD is responsible to decide which available collection program/action is most appropriate to enforce collection of the debt.

1240.5 Locating the Debtor

After an initial overpayment letter and a tracer has been released with no response, BFO-DRD may request field assistance in locating the overpaid individual. Among the sources available to you are:

- Employers, relatives or friends of the individual;
- Telephone directories;
- Postmasters;
- Driver's license records;
- Automobile title and license records.

You may have developed other sources of information in your area. You may use whatever sources are reasonable, trustworthy and do not violate any confidentiality statutes to obtain information. However, keep your efforts within reason when there are indications that the debtor is not likely to be found.

1240.10 Development Requested By BFO-DRD

1240.10.1 Investigating a Person's Ability to Repay a Debt

BFO-DRD may request the field to investigate an individual's ability to repay a debt when the debtor ignores refund demands or stops making refunds, or when a compromise settlement or monthly installments are proposed to settle a debt, or when a civil suit is contemplated.

BFO-DRD may request information pertaining to, but not limited to the following in conjunction with a review to determine a debtor's ability to repay a debt:

- His age and health;
- Present and potential income;
- Inheritance prospects;
- The possibility that assets have been concealed or improperly transferred; and
- The availability of assets or income which may be realized if collection proceedings were taken.

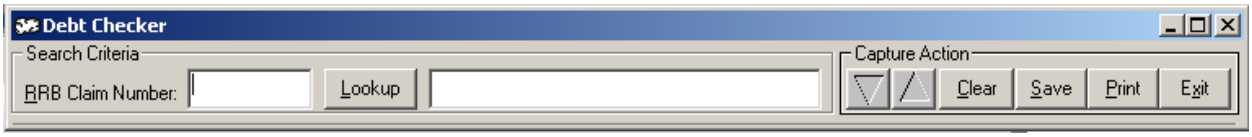
1240.10.2 Development for Possible Civil Suit

BFO-DRD may request information be secured for possible civil action being initiated to recover erroneous payments. Specifically, they may request you to obtain certain statements and documents to enhance our case against the debtor. However, if you discover other documents or sources of evidence that would strengthen our case, get copies of such evidence if readily available, or if development is necessary, contact BFO-DRD to discuss the relevancy of such evidence before development.

When your investigation is complete, assemble all the statements and evidence and send it to BFO-DRD in a white envelope marked, "Do Not Open in Mailroom."

1240.14 Using DEBTCHKR to Verify Debts

Use DEBTCHKR to verify RRA, RUIA and Medicare debts. The new version of DEBTCHKR is found on the RAILS toolbar and on the Extra toolbar. When DEBTCHKR is selected the screen below will appear. Enter the RRB Claim Number and press “Lookup”. DEBTCHKR will scan PAR for any RRA, RUIA and Medicare debts including debts identified as uncollectible and transferred to the UNCL table on PAR. A printout of the debts will be shown on screen.



If an inquiry is made on a delinquent debt that has been referred to the Department of Treasury, DEBTCHKR has been enhanced to show the following message:

********** “DO NOT RELEASE ANY INFORMATION **********

********** CROSS SERVICING INVOLVED **********

********** CONTACT DRD **********

********** “DO NOT RELEASE ANY INFORMATION **********

ACCOUNT NUMBER BILLING DOC ID:

If you encounter this message, do not release any information to the inquirer. In this type of situation the inquirer has already been informed that the case is being handled by the Department of Treasury. Inform the inquirer to contact the Debt Recovery Division at 1-312-751-7176. You can contact DRD via an e-mail to the BFO-Debt Recovery Waiver Group mailbox (provide a current phone number of the inquirer) or you may call DRD at extension 7176. DRD will respond directly to the individual.

DEBTCHKR allows you to save and/or print the data. Select "Clear" to enter another claim number. Select "Exit" to close the DEBTCHKR program. See RCM 6.6.134 for more information.

1240.15 Investigating For Fraud

When a question of fraud has been raised in a case, OIG may request the field to make an investigation. The sources of evidence and the extent of development depend upon the facts and circumstances in each case. Undertake no development action until directed to do so by OIG.

1240.15.1 Action by OIG

The OIG releases Referral Memos to the appropriate Field Offices in cases where a case is being referred to the United States Attorney. These memos should be placed at the top of the annuitants file along with a notation of "Do Not Purge". This folder should not be purged until the OIG releases another memo indicating that this case has been closed.

1240.15.2 Action by the Field Office

If, after the case has been referred to the United States Attorney, the annuitant offers to make repayment or has any inquiries regarding the benefits (s)he received as a result of his/her fraudulent claim or statement, take the following action:

A. Written Inquiries – Field Office (FO) personnel are to fax written inquiries to the OIG at 312/751-4342. Include the annuitant's claim number and the statement "Open Investigation" on the fax cover sheet. Forward the original to RBD or SBD via Form G-26. RBD/SBD will forward the documents to PSD/IDS to be imaged. Notate on the original that it was faxed to the OIG, initial and date. A copy of the correspondence should be retained in the FO for one year.

B. Email Inquiries – FO personnel should forward the email to **Hotline@oig.rrb.gov**. The subject line should include "Open Investigation" and the claim number. Make a copy of the email and forward it to RBD or SBD via Form G-26. RBD/SBD will forward the documents to PSD/IDS to be imaged. Notate on the copy that the original was forwarded to the OIG, initial and date. A copy of the correspondence should be retained in the FO for one year.

C. Telephone or In Office Inquiries – If an annuitant calls or comes into the office to discuss their case, the FO personnel should advise the annuitant that **"We do not have specific information on your case and a written request will have to be sent to headquarters for a response."** Request the annuitant to prepare a written statement that will be forwarded to headquarters. Do not mention that the request will be sent to the OIG. Fax the statement to the OIG at 312/751-4342. Include the annuitant's claim number and the statement "Open Investigation" on the fax cover sheet. Forward the original to RBD or SBD via Form G-26. RBD/SBD will forward

the statement to PSD/IDS to be imaged. Notate on the original that it was faxed to the OIG, initial and date. A copy of the correspondence should be retained in the FO for one year.

D. Problems or Special Need Cases – If the annuitant insists on speaking to someone or this case needs special attention, have the FO Manager call or email one of the contacts below. They will contact the OIG and obtain the requested information.

RBD Operations and Claims Analyst – x4759

SBD Operations and Claims Analyst – x3323

Sickness and Unemployment Section Chief – x4708

UNDER NO CIRCUMSTANCES SHOULD FO PERSONNEL FORWARD ANY ANNUITANT CALLS TO THE OIG OR GIVE OUT THE OIG TELEPHONE NUMBER.

Note: You may take any non-overpayment related action on these cases e.g. change of address, direct deposit, rate letter, etc.) However, after performing the action, send an email to **Hotline@oig.rrb.gov**. Notate the action taken and date. The subject line should include "Open Investigation" and the claim number.

1240.20 Encouraging Repayment on Non-Fraud Cases

In any of your contacts with a debtor, the field can encourage repayment of a delinquent debt by reminding the individual of all the possible recourse we can take to recover the debt. BFO-DRD should be consulted to determine the status of a debt prior to any demands for repayment.

1240.20.1 Section 10(a) Recoveries

We have the authority to recover one person's debt from others entitled on the same wage record. In cases with multiple beneficiaries, tell the debtor that section 10(a) of the RRA gives us this recovery option.

1240.20.2 Recoveries from an Estate

When a debtor is deceased, it is important to notify the representative(s) of the estate concerning the overpayment. If you receive information that a debtor is deceased, immediately contact BFO-DRD with the name(s) of the legal representative of the estate or beneficiaries of the estate if the estate is already settled. BFO-DRD will make a formal written request for repayment from the estate. However, in your contacts with the estate's representative, you may inform him that the estate is liable for the overpayment.

1240.20.3 Debtor Is Receiving Federal Payments

The RRB is authorized to offset any Federal payments being received by a delinquent debtor. Offset is commenced after the debtor is notified of our intention to offset, if the debt is not repaid. If the debtor does not make arrangements to pay the debt, the agency making the Federal payments is instructed to commence the offset. BFO-DRD annually matches all delinquent debts with Federal payment tapes.

1240.20.4 Department of Justice Referrals

Delinquent debts may be referred to the DOJ for civil suit. It is the DOJ's sole responsibility to collect any judgments obtained through civil suit. Debts referred to the DOJ have interest, penalty and administrative costs added to the amount due.

1240.20.5 Referrals to a Private Collection Agency

Delinquent debts may be referred to a private collection agency. Debts referred to a collection agency have interest, penalty and administrative costs added to the amount due.

1240.25 Analyzing Form DR-423

1240.25.1 General

Normally, you will obtain Form DR-423 when an annuitant requests waiver consideration with or without a personal conference request. Also, BFO-DRD may request Form DR-423 when attempting recovery and the debtor is not currently entitled to benefits.

When the form is returned to the field office, review it according to the following guidelines and attempt to resolve any apparent discrepancies.

1240.25.2 Guidelines for Analysis

Specific guidelines for analysis are inadvisable since local costs and individual circumstances vary from region to region. However, with your knowledge of the area and the individuals involved, you should be able to review certain items on the form and indicate their validity. If necessary, the beneficiary should present evidence to support data on the Form DR-423.

A. Section 3 - Monthly Income - Although only one member of a family group may be a beneficiary and the only person overpaid, the concept of "financial hardship" is related to the effect it has on the family, since individual expenses are difficult to isolate. Income for the beneficiary and spouse should be calculated on a monthly basis and be placed in the appropriate column. Income attributable to other "dependents" (see FOM 1720 DR-423 instructions for definition of "dependents") should be calculated on a monthly basis and entered in item J.

B. Section 4 - Monthly Household Expenses - This section is the one most often questioned. Review each entry and determine if it is reasonable for the family composition and location. If you believe an unreasonable figure has been provided, contact the individual and obtain a signed statement explaining the discrepancy.

EXAMPLE: An individual entered $500.00 per month food expenses for a family of two. On initial review, the figure appears too high for the family composition. After contact with the person, he explained that both he and his wife are on special diets prescribed by their family doctor. For this reason, their monthly food bill is higher than an average family of two in the area.

C. Section 5 - Summary of debts - Only recurring monthly debts should be included and entries should not duplicate expenses listed in Section 4.

D. Section 6 - Balance Summary - Items 20 and 21 should be reviewed carefully for consistency. Only one of these questions should be answered. If the beneficiary has an entry greater than zero in item 19, but fails to provide an amount in item 20, an explanation should be submitted. Make sure item 21 is completed if there is a negative amount shown in item 19.

E. Section 7 - Summary of Assets - Take into consideration current real estate market values in your area when analyzing this information. Other possessions, such as furniture, vehicles, etc., should be given an estimated value based on probable resale value. The age and condition of material goods are important factors in placing a value on goods.

F. Remaining items on DR-423 - Accept the statements made by the individual unless you have information to the contrary. In that case, obtain the individual's statement explaining the discrepancy.

1240.25.3 Preparing "Statement of Review" and Submitting Package To Headquarters

After reviewing the Form DR-423 and obtaining any necessary statements from the individual, prepare a "Statement of Review" indicating that you reviewed the form and found the entries to be reasonable/unreasonable for the location and family composition. Explain any unusual circumstances in your memo. If necessary, attach the debtor's statement(s) to the Form DR-423. Release the DR-423, the debtor's statements, if available, and your statement to BFO-DRD in a white envelope. A copy of the beneficiary's most recent Federal income tax return should be submitted with the Form DR-423 package.

1240.25.4 BFO Actions

When BFO-DRD receives the Form DR-423 package, an examiner will review the form, your evaluation and the debtor's statements. BFO-DRD will take all information into

consideration when making a decision. If further information is needed, BFO-DRD will request additional development from the field.

Certain railroad benefit recoveries are not handled like the regular overpayments described in previous chapters. These special situations and the methods for their recovery are explained below.

1245.5 Recovery of the Residual Lump-Sum

Sometimes a change in law occurs which permits the payment of a survivor insurance annuity to a new class of annuitants. If a residual lump-sum (RLS) was previously paid in a case, it may have to be recovered before an annuity can be paid to a newly eligible individual. The RLS will only be recovered from the person who received it and only the amount he received will be recovered.

1245.5.1 RLS Previously Elected

A person who previously elected and received the RLS can never receive a survivor annuity, even if a change in law occurs.

If an RLS was elected and paid to someone other than the newly eligible individual, that individual can receive an annuity without recovery of the RLS. The RLS would not be recoverable in this situation.

EXAMPLE 1: Lisa Jones, a surviving RR widow, elected to receive the RLS on her deceased husband's account after his death in 1975. She remarried after she attained age 60. Although remarried widows are eligible for an annuity under the 1981 amendments. Mrs. Jones cannot receive an annuity because she elected and received the RLS.

EXAMPLE 2: Nancy Jones is the surviving divorced wife of RR employee Jones in Example 1. Under the 1981 amendments, she is eligible for a survivor annuity as a surviving divorced wife. She may receive that annuity even though Lisa Jones elected the RLS in 1975. The annuity will be paid without recovery of the RLS. The RLS will not be recovered from the widow either.

1245.5.2 RLS Paid on Modified Election

An individual can make a modified election for the RLS if he has future entitlement and SSA has survivor benefit jurisdiction or RRB has jurisdiction and the employee is insured under the SS Act on wages alone. When an RLS was paid based on a modified election, the individual who made the election and received the RLS can receive a survivor annuity if a change in law occurs which makes him eligible for an annuity. However, the RLS he received must be recovered from the annuity.

EXAMPLE: Sarah Smith, widow of deceased RR employee Allen Smith, remarried before age 60. She made a modified election to receive the RLS on her deceased husband's account in 1979. Since her second marriage terminated in 1980, she is eligible for a remarried widow's annuity under the 1981 amendments despite her

modified election to receive the RLS. However, the RLS will be recovered from the survivor annuity.

1245.5.3 RLS Paid Without Election

If the RLS was previously paid to an individual without an election and that individual later becomes eligible for an annuity due to a change in law, the annuity will be paid to him. However, the RLS must be recovered from the annuity.

EXAMPLE: Amy Johnson received an RLS in 1973 as designated beneficiary on her deceased ex-husband's account. Under the 1981 amendments, Amy is eligible for an annuity as a surviving divorced wife. She can be paid that annuity after the RLS is recovered.

1245.10 Recovery of Death Benefits

When an employee died before 1947, a death benefit may have been paid equal to 4% of the employee's creditable compensation or the residual amount payable at that time. This benefit was the only survivor benefit payable before 1947.

This benefit is recoverable from any survivor annuity payable due to changes in the law. However, the 4% death benefit is recoverable even if the newly eligible individual did not receive it.

1245.15 Method of Recovering The RLS Or Death Benefit

When an RLS or death benefit is recoverable from an annuity, ORSP will take the action described in the following sections.

1245.15.1 Annuity Accrual Sufficient for Offset

The RLS or death benefit will be withheld from the initial award and the annuitant will be advised of the recovery in the award letter (see exhibit 16).

1245.15.2 Annuity Accrual Not Sufficient for Offset

The annuity will be withheld until the RLS or death benefit is fully recovered. Neither partial withholding nor actuarial adjustment will be offered or accepted as a means of recovery in these cases. However, cash refund will be offered as an alternate means of recovery. The annuitant will receive an award letter (see exhibit 17) advising him of the amount of the recovery and the reinstatement date if a cash refund is not made.

If you receive a cash refund in a case like this, take action as outlined in FOM-I-1220.15.

1245.20 Overpayments Caused By Cashing Original and Replacement Checks

Refer to RCM 6.6.174-6.6.175, Double Payment Overpayments-Original and Replacement Checks Cashed.

1245.25 Overpayments Discovered In The Benefit Accuracy Study

Many cases were discovered in the Benefit Accuracy Study (CFO Informational Memorandum No. 32-80) which involves erroneous payments, either underpayments or overpayments. Underpayments will be handled by re-certifying the annuity to the correct rate. Overpayments will be handled as outlined below.

1245.25.1 Overpayment Retroacts Less than 4 Years

ORSP will follow existing procedure in recovering the overpayment. See FOM-I-1210.

1245.25.2 Overpayment Retroacts More than 4 Years

The annuity rate will be corrected. The annuitant will be given 30 days advance notice of the rate correction. The advance notice will also serve as the adjustment notice; no award letter will be released. See exhibit 19 for a sample of the letter.

If all of the conditions for pre-recovery waiver are met (see FOM-I-1205.21), DRD will release a letter to the annuitant explaining the overpayment and the fact that the RRB granted pre-recovery waiver.

If all of the conditions for pre-recovery waiver are not met, an overpayment letter (usually form RL-65b or RL-66) will be released directly to the annuitant or to the field office for field office release.

1245.30 Estate Development

In cases where an overpayment caused by an event other than a last payment(s) situation is discovered, the overpaid annuitant is deceased and no other individual(s) is entitled to an annuity based on the same earnings record, recovery may be attempted from the estate of the deceased.

1245.30.1 ORSP Actions

When the name and address of a relative, an individual who notified RRB of death or representative payee is available in the claim folder, survivor claims examiners will release code letter 601 to that person (see exhibit 28). This letter requests information concerning the estate of the deceased. Although no action on the part of field personnel is required, servicing field offices will receive a copy of this letter in the event any inquiries are received from the recipient.

Following release of this letter to a relative or representative payee, ORSP will pend for 30 days for a response. At the expiration of 30 days, if no response has been received, the servicing field office will be asked to initiate estate development via HSL.

1245.30.2 Field Actions

Where the name and address of a relative or an individual who notified the RRB of death is not available, no representative payee is involved or no response to code letter 601 has been received within 30 days of release, survivor claims examiners will release a request for estate development to the servicing field office via HSL (see exhibit 29). When an HSL message requesting estate development is received, check appropriate court records to determine if there is an estate. Court records regarding the existence of an estate may be secured by phone or letter, personal examination is not required. At this point, do not contact family members for this information as code letter 601 was already released and failed to secure a satisfactory response.

A. Estate is Open - In the event an estate has been opened for probate, secure the name and address of the administrator or executor, the name and address of the court which has jurisdiction for the estate and the expected closing date of the estate. Enter this information in the space provided on the HSL message and respond directly to the Debt Recovery Division (DRD).

   In addition to the above, secure a list of the assets and liabilities, if possible. Depending on the length of the list, it will generally be most practical to forward this information to DRD via memorandum.

   DRD will pend the initial release of the HSL request for estate development for 60 days. If at the expiration of this time period no response has been received, DRD will begin tracing on the request. Because of the limited amount of time required to file a proof of claim with the court in open estate situations, the requested information should be forwarded as soon as possible.

B. Estate has been Closed - In the event the estate has been closed at the time field offices are requested to develop for an estate, secure a transcript of the final accounting of the estate. Forward this accounting to DRD via memorandum. DRD will then determine if recovery action can be attempted from the distributees of the estate.

C. Estate was not Submitted for Probate - In many situations, an estate was probably not submitted for probate. If a search of court records does not result in discovery of either an open or closed estate, attempt to determine if the deceased had any assets not held in joint tenancy. It may be field office personnel have the name of a relative other than the individual who was sent code letter 601. If so, contact this individual in an attempt to secure this information. Advice DRD of progress in this attempt. DRD may also suggest additional avenues to pursue prior to abandonment.

D. Overpaid Amount is $5,000.00 or More - Where the overpaid amount is $5,000.00 or more, field office personnel will always be requested to search court records for an estate. If a search of court records results in the discovery of either an open or closed estate, advise DRD via HSL as described in A or B above.

If a search of court records does not indicate an estate was opened, attempt to determine from a family member if the deceased had any assets not held in joint tenancy. In this situation, code letter 601 has not been released. Contact any family member to obtain this information. Advice DRD of the progress in securing the information. DRD may suggest additional avenues to pursue prior to abandonment of estate development.

1245.35 Treasury Offset Program (TOP) Recoveries

1245.35.1 Overview

Effective August 1, 2007, monthly annuity payments under the Railroad Retirement Act and monthly Social Security benefits paid by the Railroad Retirement Board (LAF E cases) for **non-tax debts** were subject to offset under the Treasury Offset Program (TOP). The Debt Collection Improvement Act of 1996 (P.L. 104-134) authorized the Treasury Offset Program. The Act requires Federal-disbursing agencies to offset Federal payments to collect delinquent debts owed to the Federal government. Offsets for Federal **tax debts** owed to the Internal Revenue Service (IRS) became effective with the August 1, 2011, monthly benefit payments.

TOP is the reduction of Federal benefit payments to recover delinquent debts owed to other Federal agencies. It is an automated process performed by the Department of the Treasury's Financial Management Service (FMS). FMS matches each agency's payment records against a large debtor database. When a match occurs, the benefit is reduced if all the criteria for offset are met. When an offset occurs, FMS notifies the beneficiary and sends the offset funds to the agency where the debt is owed, known as the creditor agency. FMS also notifies the paying agency that the payment was reduced due to TOP.

Over 30 Federal agencies participate in TOP as creditor agencies. Examples of debts owed to other agencies are student loans owed to the Department of Education, home loans owed to the Veteran's Administration, and food stamp overpayments owed to the Food and Nutrition Service.

A beneficiary may owe more than one debt to a Federal agency or agencies. When this occurs, FMS's policy is to collect the oldest debt first. After the oldest debt is collected, FMS will continue offsetting the benefit as collection toward the next debt.

If the beneficiary has any questions regarding the offset, he or she must contact the creditor agency at the number shown on the Treasury notice or, contact the TOP Help

Desk at (800) 304-3107 or Telecommunications Device for the Deaf (TDD) (866) 297-0517.

1245.35.2 TOP Effective Date

A. Non-Tax Debts

The RRB began its participation in TOP effective with the August 1, 2007 monthly benefit payments. Individuals with **non-tax debts** were issued a first notification on August 1, 2007 of the intent to recover the debt (60-day notice). The notice provided an explanation of the debt to be recovered. A second notification was issued by Treasury to these same individuals on September 1, 2007, (30-day notice) which again provided an explanation of the debt to be recovered. The first recovery by TOP of non-tax debts occurred with the issuance of the October 1, 2007, RRA monthly benefit payments. A final notification that the debt recovery was initiated was issued to this same group of annuitants within a few days of the October 1, 2007, payment date.

Ongoing, if future monthly matches of the monthly RRA monthly payment file to the debtor database result in 'hits' for non-tax debts, the beneficiaries will be notified with 60-day, 30-day, and final notifications of debt recovery, as appropriate.

IMPORTANT: If an individual's debt has been fully repaid to the debtor agency after the release of the first notification on the intent to recover the debt, no future notices will be released to the individual by Treasury.

B. Tax Debts

Offsets for Federal tax debts owed to the IRS began in August 2011. By law, an advance notice of the intent to recover an IRS debt under TOP is not required. Beneficiaries who owe a tax debt will have received one or more notices directly from the IRS (Click here for a sample of the final notice). The notices will have included an explanation of the debt, a statement of the intent to levy, an explanation of appeal rights, and instructions on how to make repayment arrangements. Beneficiaries will receive notice from Treasury that the offset has occurred. The notice will advise the beneficiary to contact IRS if there are any questions concerning the action being taken. The payments that have been offset for a tax debt will be included in the monthly TOP offset information available for viewing on Boardwalk.

1245.35.3 Offset Amount

A. Minimum Benefit Offset Amount

By law, TOP will not reduce benefit payments below $750 per month for a non-tax debt. Therefore, RRB beneficiaries who have been identified by the TOP process as delinquent debtors with a non-tax debt will still receive at a minimum $750 per month. RRB beneficiaries whose benefit payments are below the $750 threshold will continue

to receive their full monthly benefit payments and no TOP recovery will be made against their payments.

For recovery of IRS debts, TOP will not reduce benefit payments below $166.67 per month. RRB beneficiaries who have been identified by the TOP process as delinquent debtors with a tax debt will still receive $166.67 per month. RRB beneficiaries whose benefit payment amounts are below the $166.67 threshold will continue to receive their full monthly benefit payments and no TOP recovery of the tax debt will be made against their payments.

B. Maximum Benefit Offset Amount

The maximum amount that is offset from an individual's benefit payment under TOP is 15 percent of the available benefit. Tier 2 benefits are exempt from offset under TOP. Here are several examples of how Treasury calculates the offset amount.

1) A debtor receives a monthly railroad retirement annuity of $950, consisting of tier 1 benefits of $850 and tier 2 benefits of $100. The amount that is offset is the lesser of $127.50 (15 percent of $850) or $100.00 (the amount by which $850 exceeds $750). In this example, the amount that is offset is $100 (assuming the debt is $100 or more).

2) A debtor receives a monthly railroad retirement annuity of $3067, consisting of a tier 1 of $1923, a tier 2 of $1101, and a supplemental annuity of $43. The payment subject to offset is $1966($3067 minus tier 2 benefits of $1101). The amount that is offset is the lesser of $294.90 (15 percent of $1966) or $1216 (the amount by which $1966 exceeds $750). In this example, the amount offset is $294.90 (assuming the debt is $294.90 or more).

3) A debtor receives combined railroad retirement and social security benefits from the RRB, consisting of a tier 1 of $69.28, a tier 2 of $105.32, and Social Security benefits of $1118.00. The total monthly benefit payment is $1196.20 after deduction of Part B Medicare premiums of $96.40. The amount subject to offset is $1090.88 ($1196.20 minus $105.32). The amount that is offset is the lesser of $163.63 (15 percent of $1090.88) or $340.88 (the amount by which $1090.88 exceeds $750). In this example, the amount offset is $163.63 (assuming the debt is $163.63 or more).

4) A debtor receives a monthly railroad retirement annuity of $912.56, consisting of a tier 1 of $548.00 and a tier 2 of $364.56. The amount subject to offset is $548.00 ($912.56 minus tier 2 benefits of $364.56). No amount is offset because $548.00 is less than $750.00.

5) A debtor has an outstanding tax debt and receives a monthly railroad retirement annuity of $685.60 consisting of a tier 1 of $550.00 and a tier 2 of $135.60. The amount subject to offset is $550.00 ($685.60 minus tier 2 benefits of $135.60). The amount that is offset is the lesser of $82.50 (15 percent of $550.00) or $383.33(the

amount by which $550.00 exceeds $166.67). In this example, the amount offset is $82.50 (assuming the debt is $82.50 or more).

1245.35.4 Reduction of RRB Benefit not Appealable to RRB

The reduction of an RRB benefit under TOP cannot be appealed to the RRB since the offset occurred due to a debt that is owed to another Federal agency (the creditor agency). Annuitants should discuss any appeal rights with the creditor agency. Likewise, the reduction of Social Security benefits paid by the RRB (LAF E cases) cannot be appealed to the RRB or the Social Security Administration.

1245.35.5 RRB Overpayments

If a railroad retirement beneficiary has a payment that was reduced due to TOP, and we later determine that the payment was not due the beneficiary, he or she is liable for the entire payment amount (the amount before TOP). The following scenario is used for the examples below.

A debtor receives a monthly railroad retirement annuity of $2781.81 consisting of a tier 1 of $1765.00 and a tier 2 of 1016.81. The total monthly benefit payment dated November 1, 2007 is $2600.31, after deduction of Part B Medicare premiums of $93.50 and Federal income taxes of $88.00. The payment subject to offset is $1583.50 ($2600.31 minus tier 2 benefits of $1016.81). The amount that is offset is the lesser of $237.53 (15 percent of 1583.50) or $833.50 (the amount by which $1583.50 exceeds $750). In this example, the amount offset is $237.53. The November 1 payment issued to the beneficiary is $2362.78 ($2600.31 minus $237.53)

Example #1 – Death Termination

On November 5, we receive a report that the beneficiary died on October 29, 2007. The payment dated November 1, including the offset amount of $237.53 is not due. In this situation the RRB will initiate a reclamation request to Treasury. Treasury will reclaim the amount of the November 1 benefit payment of $2362.78 issued to the beneficiary and reverse the offset amount issued to the debtor agency.

Example #2 – Death Termination (outstanding check with representative payee)

On November 5, we receive a report that the beneficiary died on October 29, 2007. The payment dated November 1, including the offset amount of $237.53 is not due. In outstanding last check cases involving a representative payee, we cannot institute reclamation if the annuitant, and not the representative payee, died and payments were being made by paper check. The RRB will seek recovery from the representative payee, or the annuitant's estate, for the amount of the November 1 benefit payment that was actually received, plus the offset amount.

Example #3 – Non-Death Termination

On November 5, we receive a report that the beneficiary returned to railroad service on October 29, 2007. The payment dated November 1, including the offset amount of $237.53 is not due.

In this situation, the RRB will release an overpayment letter to the beneficiary for the amount of the November 1 benefit payment that was actually received, plus the offset amount.

Exception: If the offset amount of the not-due payment represents a federal tax debt, a reclamation request must be submitted within nine months of the payment date to ensure the return of the offset funds. See section 1245.35.7 D.

Hardship Requests

Any request for relief from TOP due to hardship must be directed to the debtor agency. The RRB is not authorized to stop or delay the collection of another agency's debt via TOP. In addition, the RRB cannot issue special payments to pay benefit amounts that were offset. Repayment, if any, would have to be paid by the debtor agency.

1245.35.6 Exemptions from TOP

A. Payments Exempt from TOP

The following payment types are exempt from TOP:

- Daily RRA accrual payments are not subject to TOP.
- The tier II portion of an RRA monthly benefit payment is not subject to TOP.
- RUIA benefits are not subject to TOP.

B. Debts Exempt from TOP

There are also some debts that are not subject to collection via TOP:

- Debts owed to or enforced by states, the District of Columbia and territories, including child support may not be offset against RRB benefit payments.
- Railroad retirement debts will not be collected from RRB benefits via TOP. For example, FMS will not collect a delinquent RRB debt from an RRB benefit paid to that person. This is because RRB will conduct its own benefit withholding to collect its debts. Debts referred to Treasury by the RRB are collected under TOP only from payments issued by other Federal agencies.

  NOTE: FMS is responsible for identifying debts that should not be offset from the RRB's payments. In the case of RRB payments that should not be offset to collect a

RRB debt, the system will automatically identify the payment to be exempt. No action is required on the part of the RRB.

1245.35.7 Claims Processing

A. Non-Receipts

Handle reports of non-receipt according to the instructions in FOM-I-115.30. Remember to check the PREH, PAYBACK, DATA-Q, PACER, and Treasury Check Information (TCIS) systems to verify and confirm the status of the payment. If the report is valid, process the request based on the original amount of the payment (before offset) per the instructions in FOM-I-1573.5.

Treasury has created three new status disposition messages. The messages have been added to FOM-I-1574.5.

- SF-1184 PROCESSED – PAYMENT WAS OFFSET – Initial processing by Treasury's Philadelphia Regional Financial Center (PFC) for a payment that was offset by TOP is complete. PFC has forwarded the non-receipt request to its debt collection center in Birmingham, AL (BDMOC). BDMOC will process the non-receipt claim or EFT trace request against the payment it issued after having applied the offset.

- COURTESY DISBURSEMENT ISSUED – PAYMENT WAS OFFSET – A courtesy disbursement check was processed for a payment that was offset by TOP.

- REJECT – PAYMENT WAS FULLY OFFSET – A non-receipt status or photocopy request was received for a payment that was fully offset by TOP. **NOTE:** Because benefit payments must be greater than $750.00 (or $166.67 for IRS tax levies) to be eligible for offset, this message will not be received from Treasury. In the event this message is received, contact P&S-PAS.

B. Reclamations

There are no changes to the reclamation process. Reclamation requests are processed based on the original amount of the payment (before offset). Treasury will seek the return of any offset funds sent to a debtor agency.

Exception: Treasury will not process the return of offset funds from the IRS for federal tax debts, if the reclamation request is received nine months after the payment date. In this situation, only the partial payment amount will be returned for the reclamation request. See section D below.

C. Returned Payments

Treasury has developed the following check cancellation codes to cancel and/or return offset funds and payments:

- Code 70 – Used internally by Treasury to cancel a payment before it is released to the beneficiary because the payment was identified as being subject to offset by TOP.

- Code 71 – Used to return the offset amount of the original payment as a result of a non-entitlement claim, stop reason codes E and F.

- Code 72 – Used to return the net amount of the original payment (after offset as a result of a non-receipt claim, stop reason codes A, D, and G.

In all other cases, Treasury uses the standard reason for return codes listed in FOM-I-15100.35 when cancelling/returning offset payments and offset funds to the RRB. Payments returned for less than the original amount may require additional manual handling by headquarters, as the lesser payment amount will not match against the Checkwriting Master file to initiate a suspension or termination transaction.

Example: The debtor's original benefit payment amount as shown in the Checkwriting Master file is $1350 (tier 1 benefits of $1150 and tier 2 benefits of $200). The TOP offset amount is $172.50. The amount of the payment sent to the debtor is $1177.50 ($1350 minus $172.50). The $1177.50 payment is returned as undeliverable (code 98). Because the amount of the payment does not equal the rate shown in the Checkwriting Master file, the annuity did not suspend.

Processing a change of address transaction will not reissue the payment. The payment must be manually reissued. Field offices and non-claims examining units should verify the address and/or Direct Deposit information and contact the retirement or survivor Customer Service Group to have the payment reissued.

D. IRS Payment Offset Reversals

Internal Revenue Code Section 6343(b) authorizes the return of levied property or funds when the IRS determines that the property has been wrongfully levied. However, only amounts collected during the nine months preceding the date of the Notice of Reclamation request may be returned.

- If **less than nine months pass** and the RRB determines that the payment was made in error (or learned that the beneficiary has died) and submits a reclamation request, **IRS will return the offset funds** to the RRB.

  Example: The debtor's RRB benefit payment dated September 1, 2014, for $1,000.00 has an IRS TOP offset amount of $200.00. The RRB submits a reclamation request in June 2015. TOP will process the reversal since it was attempted within nine months of the payment date, IRS will return the offset amount of $200.00. The partial payment amount of $800.00 would be returned to the agency.

- If **more than nine months pass** and the RRB determines that the payment was made in error (or learned that the beneficiary has died) and submits a reclamation request, **IRS will not return the offset funds** to the RRB.

  Example: The debtor's RRB benefit payment dated October 1, 2014, for $1,000.00 has an IRS TOP offset amount of $150.00. The RRB submits a reclamation request in August 2015. TOP will reject the request since it was attempted nine months after the payment date, the offset amount of $150.00 would not be refunded. The partial payment amount of $850.00 would be returned to the agency.

1305.5 Introduction

Earlier articles of FOM, Part I, delineated the eligibility requirements for benefits under the Railroad Retirement Act (RRA). In most types of benefits, one requirement which may qualify an applicant is disability. The purpose of this article is to describe the disability requirement, to provide instruction to field offices in developing disability claims and to describe continuance of disability.

The basic provisions of law for disability benefits for railroad workers and their families are contained in the RRA as follows:

- Disabled Employee - Sections 2(a)(1)(iv) and (v);
- Disabled Widow(er) - Section 2(d)(1)(i);
- Disabled Child - Section 2(d)(1)(iii);
- Disabled Surviving
- Divorced Wife - Section 2(d)(1)(v);
- Disabled Remarried Widow - Section 2(e)(l)(v).

1305.10 Occupational Disability Defined

An occupational disability is the inability to perform the duties of the regular occupation due to permanent physical or mental condition. Only the railroad employee can be considered for this type of disability (see FOM-I-310.5.1).

1305.10.1 Regular Railroad Occupation

An employee's regular railroad occupation is that railroad occupation in which he has been engaged in service for hire:

- In more calendar months than the calendar months in which he or she has been engaged in service for hire in any other occupation during the last preceding five calendar years, whether consecutive or not; OR
- In not less than one-half of all the months in which he or she has been engaged in service for hire during the last preceding 15 consecutive calendar years.

If an employee last worked as an officer or employee of a railway labor organization and if continuance in such employment is no longer available to him or her, the regular occupation shall be the position to which the employee holds seniority rights or which he or she left to work for a labor organization (See DCM 3.2.3).

For the above discussion, railroad occupation means an occupation that exists in the railroad industry. It also includes occupations or comparable occupations in other industries with similar duties and requirements. Other occupation means any occupation in any industry or business.

EXAMPLE: An employee leaves his position of conductor after 20 years to work full-time for the United Transportation Union as General Chairman. If he files for occupational disability, his regular occupation will be considered to be conductor.

It is also possible for an employee to work in self-employment and retain their current connection. In some instances a significant lapse of time may expire between when the employee last worked for the railroad and when the employee files for an application for a disability annuity. In cases such as these disability claims examiners are to consider the occupation the employee has been engaged in railroad service for hire in more calendar months than he has been engaged in service for hire in any other occupation during the last preceding five calendar years, as their regular railroad occupation.

Disability claims examiners are to use the information provided on the G-251, Vocational Report, the G-251a, Job Information Report, - Job Description, and the G-251b, Job Information Report – General in determining the job duties performed.

For example, an employee works in the CSX railroad as a conductor from 1968 through July 1984. He then works as a locomotive engineer from August 1984 through July 1990. In August 1990, he then starts his own business. In January 2006, this employee files a disability application with the RRB. It is determined that the work done for this business is self-employment and allows the employee to keep his current connection. Based on the information provided, the employee's regular railroad occupation would be a locomotive engineer.

NOTE: It is also possible for an employee to work in government service and retain their current connection. If an examiner receives a case (current connection due to government service) in which a significant lapse of time occurs between when the employee last worked for the railroad and when the employee files an application for a disability annuity, forward the case to Policy and Systems – RAC for a determination of the regular railroad occupation.

1305.10.2 Effect of Medical Disqualification by Employer

A. Disqualified by railroad employer - Information from the employer concerning the claimant's ability to perform the duties of the regular railroad occupation should be reviewed. If the employee is not allowed by his/her railroad employer to continue working in his/her regular railroad occupation, the disability claims examiner will consider the claimant disabled based on the G-3EMP and evidence in the file. If the employee claims disqualification by his employer, obtain evidence of the disqualification as prescribed in FOM-I-1325.10.3.

B. Not disqualified by railroad employer - If the employee has not been medically disqualified by his railroad employer for service in his regular railroad occupation, the RRA provides that the RRB shall determine if the employee is disabled for work in his regular railroad occupation.

1305.15 Total And Permanent Disability Defined

A total and permanent disability is the inability to engage in any regular employment due to permanent physical or mental condition. A determination of total and permanent disability is required to entitle an employee not eligible for occupational disability, as well as a widow(er), remarried widow(er), surviving divorced wife and a child to a disability benefit.

1305.15.1 Regular Employment

Regular employment means the regular performance of the substantial and material duties of any substantial and gainful employment in the usual and customary manner with any employer.

1305.15.2 Permanent Physical or Mental Condition

A physical or mental impairment that can be expected to either result in death or last for at least 12 consecutive months.

A. Determination that a Condition Exists - The Disability Programs Section of the Bureau of Retirement Claims determines if a condition exists and when it prevents the performance of work. Except as provided in FOM-I-1305.45.1, the reason for the existence of the condition is not considered.

B. Permanence of Condition - The condition must be expected to result in death or last at least a year. There are some conditions that can be expected to improve at some point in the future. However, this does not prevent a disability from being established. It can cause benefits to be terminated at that future time. Also, some conditions can, by prescribed treatment, be controlled to a level which would no longer prevent the performance of regular employment. Failure by the disabled person to obtain that treatment will not prevent the payment of an annuity, although it is considered for freeze termination purposes.

1305.20 Disability Freeze/Period Of Disability

While only the establishment of an occupational or total and permanent disability is necessary to pay an employee annuity under the RRA, additional benefits may result from the establishment of a period of disability or, as it is more commonly called, a disability freeze (DF). Provisions for the DF and for the additional benefits are based in the SS Act; therefore the requirements of that act must be met. Note that while an annuity under the RRA can be granted based solely on alcohol or drug addiction, without other medical impairments, that type of claim would be denied under the SS Act.

Therefore, effective with applications filed January 1, 2008 or later, even if the employee were receiving a total and permanent disability annuity, he would not be entitled to a DF. For a more detailed explanation, see DCM 4.8.4.

All employee applicants are considered for a disability freeze, regardless of whether total and permanent disability is alleged. An age and service employee applicant who claims to be totally and permanently disabled should consider filing a separate application for a "freeze only" determination (see FOM-I-1310.10).

However, the annuitant has the right to request that a disability freeze not be granted. This could occur for a number of reasons (e.g. employee and spouse would get better coverage under private insurance than under Medicare.) In such cases, obtain a signed statement from the employee that all of the advantages of the freeze (Medicare, O/M, possible tier 1 increase, tax advantage, possible survivor benefit increase) have been explained to him and that he still does not want to be rated for a disability freeze. Submit the statement to DBD with the application materials.

1305.20.1 Requirements

In order for a disability freeze to be granted, a disability requirement and an earnings requirement must be met.

A. Disability Requirement - The applicant must either be rated totally and permanently disabled as defined in FOM-I-1305.15, or be at least age 55 and unable, because of blindness, to perform substantial gainful employment previously performed with regularity over a period of time.

B. Earnings Requirement - This requirement differs depending upon the age of the employee at the time of disability onset. It need not be met by a blind person age 55 or older.

1. Disability began after age 30 - To be insured for a disability annuity, the applicant must have earned sufficient railroad retirement and/or social security credits that when combined would provide a fully insured status under the Social Security Act, AND must have earned credit in 20 calendar quarters of railroad or social security work during the 40 calendar quarter period ending in or after the quarter in which total and permanent disability began.

2. Disability began between ages of 24 and 31 - The employee must have earned railroad or social security work credits for half of the calendar quarters which elapsed between the quarter after age 21 and the quarter in which the total and permanent disability began.

   Before the l983 SS Act amendments, an employee who was disabled before age 31, who recovered and again became disabled after attaining age 31, had to meet the fully insured status and 20/40 quarter of coverage

requirements. For applications filed after 4-20-83, the requirements for disability before age 31 apply if the employee doesn't meet the 20/40 insured status requirements.

1305.20.2 Advantages of a Disability Freeze

A. Freezes the employee's earnings record - Years between onset of disability and normal retirement age will not be used in the computation of the PIAs unless they would cause an increase in benefits. This prevents the tier I AIME or AMW from being lowered by years of no or low earnings due to the disability. Even if this has no effect on the retirement annuity amount, usually the survivor benefit amount would be greater than without the freeze.

B. May permit the payment of the overall minimum (O/M) or guaranty provision - Because the DF is granted under the Social Security Act, the employee's family is entitled to receive at least as much in annuities as the family would have received in combined benefits under the SS Act. If the total SS benefits would have been higher, the employee's annuity will be increased to equal that higher amount.

C. May reduce the annuitant's tax liability - To reduce the taxability of tier I benefits, an annuitant has to meet the social security eligibility requirements. When a disability freeze is granted, all of the tier I is considered to be a social security equivalent benefit (SSEB) to be taxed under the more favorable "threshold" rules. Without a disability freeze, if the employee is under age 62, the entire tier I is considered to be a non-social security equivalent benefit (NSSEB) and taxed as a private pension.

D. May allow early Medicare coverage - Medicare coverage can begin in the later of the 30th month following onset of disability or the 25th month after disability benefits began to accrue. See FOM-I, Article 8 for more details.

E. May allow early payment of a vested dual benefit - If the employee also meets the earnings requirement using social security wages only, a DF rating will permit the payment of the vested dual benefit beginning with the later of the month disability benefits begin to accrue or 5 months after onset of disability.

1305.20.3 Authority to Make Disability Freeze Determinations

Amendments to the RR Act in 1958 gave the RRB legislative authority to independently determine and establish a DF for railroad employees who file appropriate applications. There are certain cases that are decided jointly with the Social Security Administration (SSA) in order to protect railroad employees and their families against any adverse effect caused by different decisions by the two agencies, and to avoid possible administrative problems for the agencies caused by uncoordinated decisions. A DF decision cannot be made until after 5 months after onset of disability, even though the DF may be effective retroactively to onset.

A. Joint freeze decisions - Joint freeze decisions are provided for in an agreement between the RRB and SSA. A joint decision is made when current or future social security benefits may be paid based on the railroad employee's record (i.e., insured or possible insured status, no current connection), and in cases involved in the financial interchange sample.

An RRB disability claims examiner makes an initial freeze decision based on RRB-developed medical evidence. The disability representative from SSA reviews for concurrence only decisions by the RRB to grant or deny a DF. Attempts are made to resolve disagreements; however, there are a few cases in which concurrence is not reached. In these cases the RRB will still award all benefits attendant to a DF (see FOM-I-1305.20.2) except early payment of the vested dual benefit.

In some joint freeze decision cases, the RRB releases notices to the employee annuitant from both the RRB and SSA; in others, separate notices are released by the respective agencies.

B. Single freeze decisions - Single freeze decisions are made solely by the RRB in cases not requiring a joint decision with SSA. Whenever possible, the disability claims examiner will decide on the DF at the same time he is deciding on the disability for annuity purposes. Otherwise a decision on the annuity is made and the DF decision is deferred until after the annuity has been paid.

Single freeze decision notices are sent from the RRB only.

1305.20.4 Length of a Disability Freeze (Period of Disability)

A. Beginning date for DF - A period of disability can begin effective with the date that both the earnings requirement and disability requirements are met. Also a period of disability cannot begin after attainment of age 65.

B. Ending date for DF - A period of disability ends on the earliest of:

- Death of the railroad employee;
- Last day of the month preceding the month of attainment of age 65;
- Last day of the second month after the month in which disability ceases.

1305.25 Medical Recovery Defined

Cases referred to the disability rating unit because of work activity or alleged recovery by the annuitant will have a continuance of disability determination made. Based on evidence in file and/or requested by the disability claims examiner, a determination may be made that the annuitant no longer meets the disability requirement for an annuity, a DF or both.

1305.30 Nonmedical Factors Defined

The RRB will obtain and consider all evidence (medical and non-medical) that relates to an applicant's disability claim. Non-medical factors are items which are not purely medical in nature, but which can assist in the determination as to whether a physical or mental condition exists and if it prevents the performance of work. Examples of non-medical factors are: job duties, personal observations of the applicant, changes in non-work activities, applicant's description of how the condition has affected him, work experience, educational achievement, special training, etc. Vocational (Non-medical) factors are presented on Form G-251 for employees and widow(er)s. Other pertinent non-medical observations that could assist in the disability determination may have been noticed by the Field representative. The personal observations of the Field representative, if any, will be considered with other non-medical factors. (See FOM 1315.5 and DCM 5.1.7).

1305.35 Medical Evidence

1305.35.1 Definition

Medical evidence consists of such items of a clinical nature as reports of medical examination, X-ray or laboratory tests; hospital records; psychiatric or psychological tests; personal physician records; etc. (See FOM1 1325.10)

Note: In order to have complete and accurate case records to make disability determination decisions, the RRB will obtain and consider all evidence that may or may not support the applicant's claimed impairment(s).

1305.35.2 Acceptable Medical Sources

- Licensed doctors of medicine;
- Licensed doctors of osteopathy;
- Licensed optometrists for the measurement of visual acuity and visual fields (a report from a licensed doctor of medicine or licensed doctor of osteopathy may be needed to determine other aspects of eye diseases);
- Licensed or certified clinical psychologists;
- Photocopies of hospital or clinical records, or reports of same signed by a medical records librarian;
- Employer medical records;
- Social Security Administration (SSA) medical records;

- Worker's compensation, Office of Personnel Management or other government agency medical records.

A disability rating must be based upon medical evidence from or attributable to acceptable medical sources. Disability Benefits Division (DBD) claims examiners **must** also give due consideration to all reports from or attributable to those who are not considered acceptable medical sources in all disability ratings because those reports can provide an understanding how an impairment affects the ability to work. However, those reports can **only** be used to support medical evidence from or attributable to an acceptable source. Accordingly, field offices should continue to attempt to develop for and submit in a timely manner evidence from any medical source, even if it is from a source not listed above, if the claimant or annuitant wishes for that evidence to be considered. However, if the **only** medical-related evidence in the RRB claims file is from or attributable to a source which is not an "acceptable" medical source, the medical portion of a disability rating cannot be based upon that evidence.

In the unlikely situation that the only medical-related evidence is from or attributable to a source which is not "acceptable," DBD claims examiners will order a consultative examination or send an E-mail request to the servicing field office to further develop medical evidence from an "acceptable" source which was not listed in the application (or in the situation of a continuing disability review, Form G-254) but is shown in the evidence as treating the claimant or annuitant.

Field office personnel are advised to make no judgment as to the acceptability of the medical source. Submit all obtained reports of medical treatment regarding any initial disability claim for benefits or continuing disability review to DBD in a timely manner

1305.35.3 Medical Examination

A medical examination should include the following:

- Medical History - the applicant's statement regarding his disability;
- Physical Examination - the examining physician's findings when conducting the examination;
- Diagnostic Impression - the examining physician's diagnosis after conducting the examination.

1305.35.4 Hospital or Clinical Records

Ideally, hospital or clinical records should consist of history obtained upon admission, initial impression, results of laboratory tests and x-rays, description and results of any surgery performed, final diagnosis and condition upon discharge. Discharge summaries alone are of little use in determining disability.

1305.35.5 Personal Physician Records

Information from the records of the personal physician is usually presented on Form G-250, Report of Physical Condition, although photocopies of the physician's records or a narrative report are acceptable provided they show history, diagnosis, laboratory and clinical findings, treatment and response to treatment.

NOTE: Physician reports must be signed and dated to be acceptable.

1305.35.6 Electronic Medical Evidence

Due to advancements in technology many medical record copying services as well as individual physicians no longer provide their medical records in paper form. Rather the medical records are being transmitted in an electronic medium. The most common method of electronic transmission is done by CD.

Field office personnel are to forward the electronic medical evidence to headquarters. They should include with the electronic submission a note explaining from whom the records were received. It is not necessary for the field to make a paper copy of these records.

When forwarding to headquarters, the CD should be shipped in a secure manner such as registered mail or a private courier with tracking capabilities such as Federal Express.

1305.40 Waiting Period For Benefits

1305.40.1 Benefits Under the RRA

The 1983 RR Act amendments added a waiting period requirement for all disabled employees and legal or de facto widow(er)s, who file an application 9-1-83 or later. The annuity may not begin until the railroad retirement disability waiting period has expired. The waiting period for an employee or a legal or de facto widow(er) begins the first day of the month after the month in which disability began, and continues for 5 calendar months. If the disability began the first day of the month, the waiting period still begins the first day of the following month.

EXAMPLE: An employee became disabled on 11-1-83. The railroad retirement waiting period begins 12-1-83, and ends 4-30-84.

NOTE: The 5-month waiting period is not affected by an employee being carried on the railroad payroll (e.g., settlement, pay for time lost, etc.). Therefore, if the disability waiting period begins 6-1-91 (due to a disability onset date of 5-16-91), it would end 10-31-91 regardless of how long the employee is being carried on the payroll. However, if the employee is carried on the payroll past the end of the disability waiting period, the employee's ABD could be affected since the annuity cannot begin while the employee is carried on the railroad payroll.

A. Waiting period for surviving divorced spouse or remarried widow(er) - The waiting period requirement has always applied to disabled surviving divorced spouses and remarried widow(er)s. These applicants must meet the waiting period requirement as defined in the SS Act. The SS Act waiting period differs from the railroad retirement waiting period when disability begins on the first day of the month. Under the SS Act, that first month of disability onset is counted in the waiting period; under the RR Act, it is not.

EXAMPLE: A surviving divorced spouse became disabled on 11-1-83. The SS Act waiting period begins 11-1-83 and ends 3-31-84.

B. Benefits that do NOT require a waiting period - Benefits to which a disabled child is entitled are not subject to a waiting period. This is true whether the child is an annuitant or included as part of the family group for the O/M computation.

C. Beginning date of waiting period - The waiting period (both RR and SS provisions) can begin no earlier than the later of the following dates:

1. The first day of the 17th month before the month in which the application is filed. This allows for the 5-month waiting period and the 12-month application retroactivity; or

2. In a survivor case, the first day of the fifth month before the month in which the prescribed period began (see FOM-I-4I0.10).

   Months before the employee's death, months before the disabled widow(er) attains age 50, or months before the termination of a previous mother's or father's annuity, may be included in the waiting period if the applicant was disabled in those months and the disability was continuous. Therefore, a DWIA may begin at age 50, or in the month of the employee's death, if the applicant became disabled more than 5 months prior to that month.

D. Waiting period not required - A waiting period (both RR and SS Act provisions) may not be required when an applicant becomes disabled again after a previous disability annuity termination. A waiting period is not required if the applicant becomes disabled again within:

1. For an employee, 60 months of the month the previous disability annuity terminated;

2. For a survivor, 84 months of the month the previous disability annuity terminated. Also see FOM-I-410.50.

This rule applies even when a disabled annuitant was previously entitled before 9-1-83, when no waiting period was required.

If the applicant does not become reentitled within either 60 or 84 months, as applicable, the annuity may not begin until the end of the waiting period.

1305.40.2 Benefits Provided by RRB Under the SS Act

Certain benefits provided to railroad annuitants are founded in the SS Act (require a DF); that act requires a 5-month waiting period. Prior to 1973, the waiting period was 6 months. Since these benefits are based on SS Act rules, the 5-month waiting period under that act is in effect. The SS Act waiting period differs from the RR Act waiting period when the disability begins on the first day of the month. Under the SS Act, that first month of disability onset is counted in the waiting period; under the RR Act it is not.

A. Benefits that require a 5-month waiting period

1. Disabled employee annuitant:

- Benefits under the Overall Minimum (O/M) Guaranty;
- Early vested dual benefit based on DF;
- Early Medicare coverage (coverage begins with the 25th month after the end of the waiting period).

2. Disabled widow(er) annuitant - Early Medicare coverage (coverage begins with the 25th month after the end of the waiting period).

B. Benefits that do NOT require a 5-month waiting period - Benefits to which a disabled child is entitled are not subject to a waiting period. This is true whether the child is an annuitant or included as part of the family group for the O/M computation. Early Medicare coverage begins with the 25th month after the date of entitlement.

C. Annuitant had a previous DF - If the annuitant had a previous DF that ended not more than 5 years before the current DF began, a new waiting period is not required.

1305.45 Effect Of Felony Conviction On Disability Benefits

1305.45.1 Effect on Definition of Disability

For the purposes of determining if a person is disabled to the extent required for a disability freeze (DF), the following items cannot be considered if the applicant has been convicted of a felony which was committed after October 19, l980:

A. A physical or mental impairment which began in connection with the commission of the felony;

B. The extent to which an existing impairment grew worse in connection with the commission of the felony;

C. A physical or mental impairment which began while confined to a penal institution or correctional facility for conviction of a felony; this limitation applies only to benefits payable while the person is confined;

D. The extent to which an impairment grew worse as a result of confinement in a penal institution or correctional facility for conviction of a felony; this limitation also applies only to benefits payable while the person is confined.

The above exclusions apply only to benefits for employees, disabled surviving divorced spouses and disabled remarried widow(er)s which are based on SS Act provisions. No effect on pure Railroad Retirement Act benefits has been determined.

The disability application Forms AA-1d, AA-17b and AA-19a ask if the applicant was convicted of a felony which was committed after October l9, 1980. If that item is answered "Yes," determine if commission of the felony had any relation to the employee's disability. Submit a brief memorandum outlining the facts, including the date of the felony, the date of conviction, the date and place of confinement, the prisoner's identification number and if he is in a vocational rehabilitation program.

1305.45.2 Effect on Payment of Disability Benefits

Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense and is confined in an institution at public expense for more than 30 continuous days or is one of the categories of individuals as defined in FOM1 150. See FOM1 150 for additional instructions on handling criminal activity cases.

1305.50 Variable Dropout Years

The 1980 amendments to the Social Security Act changed the rules for computing the tier I PIA on which the disability annuity is based. Usually, the change in computation yields a higher benefit rate.

1305.50.1 Based on Age

Effective for initial entitlements of July 1, 1980 (regardless of the DF onset date), the number of dropout years (years of lowest earnings eliminated from the PIA computation) in the PIA computation depends upon the age of the employee at the time of the disability onset.

Worker's Age	Dropout Years
Under 27	0

27-31	1
32-36	2
37-41	3
42-46	4
47 and over	5

Neither the beneficiary nor the field office needs to take any special action to entitle the employee to this more advantageous computation.

1305.50.2 Based on Child in Care

Effective July 1, 1981, a worker who was (a) under 37 in the earlier of the year of his disability ABD or disability onset, (b) was not employed in any computational year after l950 and during that year was living in the same household with his or his spouse's child who was less than 3 years old, (c) has a disability ABD of 7-1-80 or later, or a DF date of 2-1-80 or later, and (d) had 2 or fewer dropout years, will get an additional dropout year for each such year, provided that the total number of dropout years does not exceed 3.

Initially, the district office does not need to take any special action. The AA-l asks a disability applicant if a child under age 3 lived with him after l950. Headquarters will review these disability claims to determine if the age and the dropout years make the applicant potentially entitled to this special provision. At that point, the module will send an assignment to the servicing field office to develop for proof of child in care for the specific year(s) in question.

1305.55 Applicant Is Incompetent Or Incapable Of Filing

In the absence of evidence to the contrary, presume that the applicant is competent. However, if there is an indication that the applicant is incompetent, follow the guidelines in FOM-I-1415 regarding investigation of competency and selection of a representative payee.

1305.55.1 Applicant Is Incompetent

If an applicant is determined to be incompetent, have the representative payee furnish the information for, and sign his own name on the application for benefits and other forms. It is also the representative payee's responsibility to furnish the required evidence. The benefit application and supporting evidence should be accompanied by the required application and documentation to act as representative payee called for in Article 14.

1305.55.2 Applicant Is Incapable

When the applicant is mentally competent to manage his affairs, but physically unable to sign his name, he usually would not require a representative payee. He can furnish the information for the application and other forms, and may sign by mark with two witnesses. The person's hand may be guided in making his mark.

Checks may be endorsed using the same procedure, but direct deposit may be a better alternative.

1305.60 Tracing On Disability Applications

It is important to consider the specific case factors as well as any available information, when responding to an inquiry on the status of a disability application. The Field Service response and decision whether to trace with DBD should depend upon the case and the information available.

The RRB customer service standard provides that an applicant for a disability annuity will receive a decision on that application within 105 days of the application filing date. Some cases, such as occupational disabilities, generally require a shorter processing time. Others, such as an application for a total and permanent disability or an application from a disabled child or widow may require a longer processing time, for instance, because of a lack of available medical evidence. Other factors affecting the time required to adjudicate an application may include the need to schedule medical examinations, or a delay in reply to a request for medical evidence.

In determining when to trace with DBD, field staff should consider the tracing schedule, the circumstances of the case, and any other information available. Regardless of these factors, however, field offices should not hesitate to trace with DBD on any case, especially where a dire need, terminally ill (TERI), or Compassionate Allowance (CAL) case is involved. (See FOM1 135.15 for field office tracing guidelines.) Before contacting DBD, field personnel should access some of the on-line systems available to them. (See FOM1 135.10)

REQUEST will show whether the case has been rated for disability and if so, whether it was an allowance or denial. REQUEST will also show the pay status of the claim. If the case is not rated, checking AFCS may provide an idea as to what action is being taken. For example a case on an examiner’s desk or in dormant would be an indicator as to whether it was being actively worked on or awaiting additional information. Please note it is important to check REQUEST before AFCS, since in most instances DBD will not send the folder to RBD for payment. The case may still be in DBD and have been rated for the initial disability and still being worked on for the disability freeze.

1310 When Disability Should Be Developed

Development of a disability claim can be quite costly, time consuming and can cause apprehension for the applicant. Therefore, it is important to develop the disability claim only when it will result in a benefit otherwise unattainable for the applicant (annuity, Medicare, overall minimum, vested dual benefit), or for the program (quality assurance). There are three basic situations in which a claimed disability should be developed:

- Application for annuity;
- Application for additional benefits;
- Application for a disability freeze after an employee's death.

These situations are discussed in detail in the remainder of this chapter.

An individual may make inquiries concerning disability annuities by phone, by letter, by email, or in person. Never advise a potential applicant to wait until medical evidence is gathered to file an application. When you receive an inquiry about disability benefits, take the following actions:

- In all cases, ask whether the individual intends to file an application or is simply seeking information. If the inquiry is received other than by phone call or personal visit, call the person in order to ask this question. Document the response.
- For inquiries by phone, letter, or email with an intention to file, set up an appointment date to take the application and send an application packet with cover form G-249. The packet should contain applicable supplemental application forms (AA-1d for employees, AA-17b for widows, AA-19a for children), G-251 Vocational Report for employees and widows, G-197 consent forms, and those forms required by each specific case to develop the medical and non-medical information needed to process the application. Assure inquirer of field office assistance in filling out the forms and gathering the information.
- If someone comes to a field office personally wishing to file, take the application on the spot if scheduling permits. (Otherwise, set up an appointment to take the application and provide an application packet.) Do not tell the applicant to come back at a later date for the purpose of providing medical information.
- For inquirers who do not wish to file, provide the requested information. This may include booklets or an estimate. Inform the inquirer that when he does wish to file, he will need to contact the RRB at that time. Document the contact.

1310.5 Application For Annuity

Articles 3 and 4 of FOM Part I give the eligibility requirements for annuities under the Railroad Retirement Act. The establishment of a disability within the meaning of the Act can replace the age requirement for certain annuities. A disability claim should be developed if all of the following conditions exist:

- Applicant claims to be disabled, or a spouse or widow(er) applicant claims to have a disabled child in his/her care and custody;
- A determination of disability within the meaning of the act would cause an annuity to be payable that otherwise would not, or would cause an annuity to be payable at a higher rate.
- All other eligibility requirements are met.

1310.5.1 Employee Applicant

A. Employee under 62 and not eligible for 60/30 annuity - The only way this employee can qualify for an annuity is to be determined disabled to the extent required for a total and permanent disability, or if other requirements are met, for an occupational disability.

B. Employee age 62 to FRA and not eligible for 60/30 annuity - If other eligibility requirements are met, this employee could qualify for a reduced age annuity. However, if a disability is established, a full annuity could be paid, thus avoiding the reduction for age. This is important not only for the initial annuity rate, but also means that future cost-of-living increases will not be reduced, Medicare coverage could begin before age 65 and that survivor benefits will be based on the full rather than reduced rate. It also may mean further retroactivity.

C. Employee first eligible for 60/30 annuity 1-1-2002 or later - It is to the applicant's advantage to file for an age and service annuity. The calculation of the tier 1 PIA would be the same, however the employee would not be subject to the RR Act disability work deductions if he became employed prior to FRA. The employee should file for a DF application only.

D. Employee over FRA - There are only two situations in which an employee applicant over FRA would be advantaged by filing for disability.

- Disability annuity would permit retroactivity of ABD to earlier date than age and service annuity

  NOTE: This only applies if the twelve month retroactivity on the disability application will take the applicant to before the attainment of FRA.

- Applicant has less than 30 years of service and ABD could retroact before FRA without an age reduction.

1310.5.2 Widow(er), Remarried Widow(er), Surviving Divorced Spouse Applicant

A. Under Age 50 - Surviving widow(er)s and former spouses cannot qualify for a disability annuity before age 50. Upon the attainment of age 50, they may file an application if the other eligibility requirements are met.

B. Age 50-59 - Unless these potential beneficiaries have a minor or disabled child in care or custody, these applicants must file an application for a disability annuity in order to qualify for a monthly benefit.

If there is a minor or disabled child in care and custody, the applicant should file for an annuity on the basis of having a qualifying child in care and custody. This is true even if the age reduced disability annuity would be higher at the ABD than the child-based annuity, because the age reduction at the ABD for the disability annuity will apply as long as the annuitant receives an annuity, whereas the age reduction as of the time of conversion from a child-based annuity to an age or disability annuity would apply from that point as long as the annuitant receives an annuity. Conversion cannot occur until the widow(er), remarried widow(er) or surviving divorced spouse could no longer qualify on the basis of a child in care and custody or until age FRA is attained.

However, the disabled applicant might qualify for early Medicare by filing a separate claim (application Form AA-17b with supporting evidence) for a disability determination only.

C. Age 60-FRA - As far as annuity rate goes, there is no advantage to filing for a disability annuity. However, consideration must be given to whether the establishment of a disability will qualify the applicant for early Medicare (see FOM-1 1310.10.2). If so, a disability application for Medicare only should be filed separately from the application for annuity.

D. Over FRA - There is no advantage to filing for a disability annuity except possibly with respect to retroactivity.

1310.5.3 Disabled Child

The establishment of the disability of a child may qualify a survivor child for an annuity or may cause a female spouse or widow(er) to be qualified for an annuity when she would not otherwise have been eligible. In any of these cases, develop the disability claim from the child, parent or representative payee.

Before age 18, a child is generally regarded only as a minor child. Therefore, the earliest that child usually can be considered a "disabled child" is at age 18. The only exception is that for spouses, remarried widow(ers) or surviving divorced widow(ers), whose entitlement to the tier I portion of his/her annuity terminates upon the youngest

child's attainment of age 16, tier I benefits will be continued if the child is found to be totally and permanently disabled.

Additionally, for a child to qualify for benefits or cause a parent to qualify for benefits, the onset of the disability had to occur before the attainment of age 22.

A. Survivor child - The child of a deceased employee can qualify for a disabled child's annuity if he is at least age 18, disabled within the meaning of the Railroad Retirement Act, AND the disability began before age 22.

   Prior to age 18, the child receives benefits as a minor child even though he or she may be disabled. Therefore, a disability claim for a child's insurance annuity should not be developed until just prior to the attainment of age 18, unless the spouse/widow would lose SSEB Tier 1 status when the child attains age 16.

B. To qualify a widow(er) under age 60 - A widow(er) under age 60 must have a minor or disabled child in care and custody to qualify for a monthly annuity. If the child's mother/father would not otherwise be eligible for an annuity because of age, the development of the child's disability will serve to qualify both the child and the parent.

   Beginning August 1, 1992, the Board approved a change in policy that ceased the termination of tier 1 benefits to the young mother/father whose last child attained age 16. However, the tier 1 benefit would not be considered SSEB for tax purposes for a minor child age 16-17. Therefore the disability determination for a child will be developed at the time the child attains age 16.

C. To qualify an under-age spouse - A spouse can receive an unreduced annuity by having a disabled (or minor) child in care and custody, when otherwise she could only have received a reduced annuity. Also, beginning 5-1-83, a husband can qualify for a tier I spouse annuity on the basis of having a disabled child in his care and custody. Prior to this time, only a wife was eligible for an annuity.

   Beginning August 1, 1992, the Board approved a change in policy that ceased the termination of tier 1 benefits to the young mother/father whose last child attained age 16. However, the tier 1 benefit would not be considered SSEB for tax purposes for a minor child age 16-17. Therefore the disability determination for a child will be developed at the time the child attains age 16.

1310.10 Application For Additional Benefits

In addition to causing an annuity to be payable when it otherwise would not be, the establishment of a disability could cause an employee or a family member to receive additional monetary or non-monetary benefits. FOM-I 325 describes the criteria required for the payment of the overall minimum guaranty (O/M) and of an early vested dual benefit based on disability; FOM-I Article 8 explains how an employee, widow(er) and child can qualify for early Medicare coverage based on disability. Following are

specific situations in which a claimed disability should be developed so that additional benefits will result.

1310.10.1 Overall Minimum Guaranty (O/M)

The overall minimum guaranty (O/M) applies only to employee cases and only if the employee could have been eligible for benefits under the Social Security (SS) Act had his railroad work been covered under that act. One of the conditions of eligibility under the SS Act is the establishment of disability within the meaning of that act. In other words, developing a disability could possibly result in an increased annuity rate for the employee. It could be the disability of the employee himself, or that of a child of the employee who could be included in the computation of the O/M rate.

A. Employee disabled - Benefits to a disabled employee may be increased if all of the following conditions are met:

- Employee disabled within the meaning of SS Act (Disability Freeze);
- Employee has spouse and/or children who would be eligible for benefits under the SS Act;
- The combined benefits that would be payable to all family members under the SS Act exceed the combined benefits payable to the family group under the RR Act.

Generally, it will not be known if all these conditions will be met until after an annuity is awarded. Therefore, do not develop the disability of an employee under age 62 at initial filing if it is solely for O/M purposes. If the employee is age 62 or over, he can qualify for O/M consideration on the basis of age; therefore, disability should not be developed for O/M only.

B. Disabled child of employee - If all other conditions for an O/M are met by the employee, the establishment of the disability of a child of the employee may cause the annuity rate of the employee to be increased. This could be done in two ways:

- The inclusion of the disabled child in the computation. Note that a child cannot be included in the O/M based on disability prior to age 18. (See FOM-1 1310.5.3 for information about disabled IPI children.)
- The inclusion of a wife in the computation on the basis of having a disabled child in her care and custody.

1310.10.2 Medicare

The establishment of a disability within the meaning of the SS Act could qualify an employee, widow, or child to early Medicare coverage. A spouse cannot qualify for early Medicare on the basis of disability.

Keep in mind the waiting period requirement and the "time on the rolls" requirement for early Medicare (see FOM-1 1305.40.2). For example, if the ABD is after age 63, the annuitant would qualify for Medicare based on the attainment of age 65 before qualifying on the basis of disability.

Also, keep in mind that since a child is not eligible for inclusion in the O/M based on disability prior to age 18, an application for early Medicare for a child should not be developed prior to attainment of age 18. To be entitled to Medicare, the child must have been eligible for O/M inclusion for at least 24 months and be at least 20 years of age. (see FOM-1 810.15.4 and 810.30.8)

Employees who do not meet the service requirements to qualify for a disability freeze (20/40 or minimum QC test) based on wages and compensation, may use certain quarters of coverage based on Federal service to establish a disability freeze for Medicare purposes only. (see FOM-I 810.5.6).

1310.10.3 Vested Dual Benefit

Assuming all other conditions of eligibility are met, an employee can receive the vested dual benefit (VDB) when he meets the requirements for a social security benefit, (i.e., attains age 62, or meets the disability and insured status requirements of the SS Act). Therefore, a 60/30 annuitant may qualify for the VDB before age 62 by establishing disability. However, do not develop unless it appears that both the disability requirement and the insured status requirement are met (see FOM-1 1305.20.1).

1310.15 Application for Disability Freeze After Employee's Death

A survivor can file an application to establish a disability freeze (DF) for a deceased employee. A survivor application must be filed within 3 months after the employee's death. Although a disability annuity cannot be paid to the survivor, the establishment of a DF may increase the amount of survivor annuities (see FOM-I 1005.25.6).

1310.15.1 When to Develop

Field offices should initiate development of an application for a DF after death when all of the following conditions exist:

- Employee does not have a disability freeze;
- Employee was under age 62 on the disability onset date, or under age 63 if he was disabled for more than 24 months before his death;
- Employee became disabled before the year of death;
- Employee had been unable to work due to disability for at least 5 full months;
- A survivor application was filed, or is being filed, within 3 months after the month of the employee's death.

1310.15.2 How to Develop

A. Application - Secure a modified Application AA-1 as prescribed in FOM-1 1710.

B. Medical evidence - Secure a copy of available hospital records and any other available medical evidence (i.e. treating physician's records/RFC assessment), and a copy of the death certificate which shows the cause of death. In some states this information is available only on a "long form" death certificate. If additional medical evidence is required it will be requested by the Disability Benefits Division (DBD).

Hospital records should be submitted to document the medical condition. Ask the survivor applicant for sufficient information to obtain hospital records that will document the medical condition. If there are no hospital records, record that information in the remarks section of Form G-659a.

C. Submission of claim - Submit the modified Application AA-1 and medical evidence under cover of Form G-659a. It can be submitted along with the survivor application. However, the modified Application AA-1 must be listed in item 15 of the Form G-659a in all cases, not in item 14.

1310.20 Request For Tentative (Disability) Rating

Effective November 19, 1991, field offices should not accept applications or requests for tentative disability ratings.

1310.25 Reconsideration And Appeal

When a disability determination is made, the applicant or annuitant may request reconsideration and/or appeal the decision if he or she believes that it is incorrect. Depending upon the circumstances, additional development of the disability may be appropriate. Follow the guidelines in this section for development when an applicant or annuitant has been notified of a disability determination which he or she believes is incorrect.

If an individual calls a field office and inquires about a disability case, ask appropriate questions to determine if he/she believes that a disability rating is at least partially incorrect in order to prevent an unnecessary letter of protest or appeal. (For example, a claim is rated disabled but the determined date of disability onset may not be what the claimant expected. This type of situation could occur in cases involving an illness which would gradually worsen over time rather than beginning on an exact date.) The inquirer may actually be asking about the status of a disability annuity payment rather than questioning a rating. An explanation may satisfy the inquirer. If the explanation does not satisfy the inquirer and the individual had not previously questioned the decision or there is no record of a recent reconsideration request, secure a signed statement requesting reconsideration of the disability determination.

NOTE 1: DBD sends claim folders to the Reconsideration Section (Recon) at the time that an individual is rated not disabled (for disability annuity, freeze, or Medicare purposes) in anticipation of a possible request for reconsideration. Claim folders held in Recon in anticipation of a possible request for reconsideration of a "not disabled" rating are logged into AFCS location J206 ("Dis Holding File Possible Recon Request"). If a folder is charged to this location, Recon has not received a reconsideration request on the disability decision. If no reconsideration request is received, Recon will forward the claim folder to Claims Files or to another unit if other action is required.

NOTE 2: To determine if there is an active or completed reconsideration of a disability decision, check Universal STAR (USTAR) (FOM-1 15120). Reconsideration requests of disability decisions have the following USTAR category ("Cat") codes:

- RDI00N,
- RDI00O,
- RDI00P,
- RDI00Q,
- RDI00S,
- RDI00T,
- RDI00U,
- RDI00V, or
- RME00R.

Reconsideration requests undergoing active review do not have a date in the "Complete Dt" column in USTAR. In addition, the claim folders with active disability reconsideration requests will be logged into J202 ("Recon - Active" [a reconsideration request has been received timely but has not yet been assigned to an examiner for review]), J203 ("Dormant" [a Recon examiner is developing for additional information]), or a specific AFCS Recon examiner folder location.

1310.25.1 Reconsideration/Appeal Filed Within 60 Days of Date of Denial Notice

A. Application - A new application is not required if:

- The request for reconsideration is filed within 60 days of the date of the denial notice;
- The appeal is filed within 60 days of the date of the notice of reconsideration decision;

- The second appeal is filed within 60 days of the date of the Bureau of Hearings and Appeals (BHA) referee's decision.

A new application is not required in these situations even if the disability onset date is more than 3 months after the application filing date.

B. Medical evidence - Encourage the applicant to obtain copies of existing medical evidence which has not been previously submitted. Do not schedule specialized exams unless requested to do so by Operations - Reconsideration Section or by BHA.

1310.25.2 Reconsideration/Appeal NOT Filed Within 60 Days of Date of Denial Notice

A. Application - A new application is required if the 60 day appeal period has expired and a good cause for filing a late appeal is not established. Administrative finality is applied to the adjudicative decision after the appeal period expires without an appeal or reconsideration request having been filed.

However, if the applicant submits new evidence within 60 days of the date of the denial notice, even though he did not request reconsideration, the decision may be reopened. A new application is required only if the disability onset date is after the date of the denial notice. A new application is not required in this situation if the disability onset date is before the date of the denial notice.

Under certain conditions a final decision can be reopened. Reopening is required if the decision was erroneous or fraud is involved; reopening is permitted under certain other circumstances. However, an application should still be developed along with other pertinent evidence and information in order to protect the ABD and save later development if reopening is not permitted. If you believe a previously denied application should be reopened, so indicate in a memorandum accompanying the new application package. DBD will determine if reopening is permitted and will advise the field office. Do not give the applicant false hopes; assure him that the new application ensures that his case will receive full consideration.

B. Medical evidence - Develop applicant source medical evidence and secure hospital records that have not been previously submitted. Do not schedule specialized exams unless there is a clear indication that the applicant's condition has worsened and that such exam is needed to make a rating (see FOM-1 1325).

1310.30 Program Integrity

The Railroad Retirement Board (RRB) monitors the disability program to identify cases which may require additional review because of conflict, inconsistency, ambiguity, insufficiency in the evidence or change in the claimant’s condition. When determining if

additional case review is needed, consider the factors outlined in DCM 8.8.2. Once disability benefits are awarded, any disability case may be reviewed to assure that the annuitant continues to be entitled to a disability annuity.

There may be situations in which an individual is either discredited by the RRB or other Federal agency such as the Social Security Administration. As such, the evidence submitted and/or assistance provided to a claimant filing for a disability annuity may put that application or disability decision (grant or denial) into question.

When individuals are discredited and made known to the RRB, Policy & Systems will issue an Instructional Memorandum listing the names of those discredited individuals. These discredited individuals could be physicians, attorneys, attorney representatives, facilitators, or medical providers.

In addition, the RRB will also monitor applications in which the claimant used third-party facilitators when completing their applications. These third-party facilitators **may or may not have been discredited.** In most situations, these facilitators charged the claimant a fee for their services. The Disability Tracking of Physicians and Patterns (DTOPP) database will be used to enter the names of physicians and facilitators.

NOTE: The term "Facilitator" is defined as a third-party individual, company (application service), or attorney/law firm who has no relation to nor serves as a representative payee for the claimant, and whose purpose is to file an application on behalf of the claimant for a fee. The term "Facilitator" specifically excludes all RRB field employees; individuals who are filing on a disability applicant's behalf as their representative payee; as well as any family members of the applicant (i.e. spouse, son/daughter, etc.).

Below are instructions for Field Service (FS) and Disability Benefits Division (DBD) staff to follow when an individual has been identified as a third-party facilitator.

Field Service Instructions

If a third-party facilitator (i.e., examples mentioned above) is identified as an evidence source when reviewing the disability application package or was used by the claimant during the application taking process, field offices should enter the following identifying information in the Application Express (APPLE) System Remarks section (See FOM-1 110.100.3 and FOM-1 1325.20.6):

- Enter "Facilitator" followed by:
    - Facilitator name(s);
    - Professional title;
    - Organization name; and
    - Address information

Entering the word “Facilitator” first will help to identify facilitators when conducting a query in APPLE.

> **NOTE:** FS staff should only enter the information above so that all the pertinent information is shown on the first screen page of APPLE.

FS should verify that the third-party facilitator information is printed on the Form G-626, *Application & Form Transmittal*, before forwarding to DBD. If facilitator information is added to the APPLE System Remarks section after Form G-626 has been released to DBD, FS should send an email with identifying facilitator information to Program Evaluation and Management Services group mailbox - FacilitatorReplies@rrb.gov.

FS should complete development of the disability application package following standard procedure and forward to the Disability Benefits Division (DBD) for adjudication.

Disability Benefits Division Instructions

Identification of a third-party facilitator can occur during any type of case adjudication (this includes Continuing Disability Review [CDR]). DBD staff will evaluate and process the disability application package in accordance with DCM 3.6.1 and DCM 13.2. If a facilitator is identified during the adjudication process, send an email with identifying facilitator information to Program Evaluation and Management Services group mailbox - FacilitatorReplies@rrb.gov.

> **NOTE:** Continuing disability reviews (CDR) are initiated by the Disability Benefits Division - Disability Post Section (DBD-DPS) based on anticipated possible recovery or on reported work activity.
>
> Field offices should not develop in support of CDR cases unless requested by DBD-DPS. If a disability annuitant reports recovery or work activity, Field offices can develop a statement from the annuitant and submit the facts to DBD-DPS.

1310.35 Terminally Ill (TERI) and Compassionate Allowance (CAL) Claims

This procedure has been formulated to allow the RRB to more expeditiously process claims for applicants who have a medical impairment which:

- Is generally expected to result in death;
- Involves a high probability that the applicant can be rated disabled

  AND

- The evidence of the applicant’s allegations is expected to be easily and quickly verified.

The procedure standardizes the identification, development and processing of terminally ill (TERI) and compassionate allowance (CAL) claims. The coordinated efforts of field office and Headquarters employees to timely handle TERI / CAL claims in accordance with this procedure will greatly improve our responsiveness to the needs of these individuals.

TERI and CAL claims both involve a high probability of allowance. While TERI claims generally involve an illness which cannot be reversed and is expected to result in death, not all CAL claims involve terminal illness.

There is no relevance if the claim meets the TERI criteria, the CAL criteria, or both. Once identified as a TERI / CAL claim, that designation remains on the case until all administrative appeals of that claim are exhausted or it is obvious that the TERI / CAL criteria are no longer met. Headquarters will determine when a claim no longer meets the TERI / CAL criteria and then notify the responsible field office.

A. Identifying TERI Claims

Disability claims with an indication of a terminal illness will receive priority handling because of their sensitivity. Field office personnel should make every effort to attempt to identify all disability claims meeting the criteria for a TERI claim by reviewing the AA-1d and/or other evidence that was submitted. A claim may be identified as a TERI claim by using the following criteria:

1. There is an allegation from the claimant, friend, family member, doctor, representative payee, attorney, court or other medical source that the illness is terminal;

2. There is an allegation or confirmed diagnosis of Acquired Immune Deficiency Syndrome or Acquired Immunodeficiency Syndrome (AIDS);

   NOTE: All claims involving an allegation or a confirmed diagnosis of Human Immunodeficiency Virus (HIV) infection must also be handled expeditiously but should generally not be labeled as a TERI claim. An individual alleging or having a confirmed diagnosis of HIV infection may or may not be prevented from performing work under applicable sections of the Railroad Retirement Act (RR Act) or Social Security Act (SS Act) depending on the severity of the residual effects. Conversely, an individual who has AIDS has reached a progressively advanced stage of HIV infection with accompanying medical signs and symptoms which result in a poor prognosis and a reasonable expectation in eventual death.

3. The claimant is receiving inpatient hospice care or is receiving home hospice care, such as in-home counseling or nursing care;

4. There is an allegation or diagnosis of Amyotrophic Lateral Sclerosis (ALS), known as Lou Gehrig's Disease;

5. The claimant has a condition which medical records indicate is untreatable, cannot be reversed and is expected to end in death. These conditions would include but are not limited to the following:

    a. Chronic dependence on a cardiopulmonary life-sustaining device;

    b. Awaiting a heart, heart/lung, or bone marrow transplant (excludes kidney and corneal transplants);

    c. Chronic pulmonary or heart failure requiring continuous home oxygen and the claimant is unable to care for personal needs;

    d. A malignant neoplasm (e.g. cancer) which is:

        - Metastatic (has spread);
        - Stage IV (final stage);
        - Persistent or recurrent following initial therapy; or
        - Inoperable or unresectable.

    e. An allegation or diagnosis of:

        - Cancer of the esophagus;
        - Cancer of the liver;
        - Cancer of the pancreas;
        - Cancer of the gallbladder;
        - Mesothelioma;
        - Small cell or oat cell lung cancer;
        - Cancer of the brain; or
        - Acute Myelogenous Leukemia (AML) or Acute Lymphocytic Leukemia (ALL).

    f. Comatose for 30 days or more.

The above list **is not** intended to be all-inclusive. Rather, it should be used as general guidance in the identification of TERI cases. Other cases may be

considered TERI cases as long as the medical condition is untreatable and is expected to result in death.

In most instances, TERI claims are easily identified by the nature of the illness or by an indication from the applicant or his/her representative. Claims representatives should look for disability claims which may meet the criteria for TERI claims given above. Claims representatives and field office managers seeking guidance as to whether a claim should be considered a TERI claim should immediately telephone the supervisor of the Initial Section of the Disability Benefits Division (DBD-DIS) (x4740).

B. Identifying CAL Claims

Compassionate Allowance is a Social Security Administration (SSA) initiative to quickly identify diseases and other medical conditions that invariably qualify as a disability allowance based on minimal but sufficient objective medical information that is readily available and can be obtained quickly. The RRB has adopted this initiative as a way of providing for the needs of individuals whose medical condition is so serious that it obviously meets the disability standards. Accordingly, conditions in the CAL list may be considered when adjudicating all disability claims under the SS Act (i.e. disability freeze; early Medicare coverage; O/M) as well as the RR Act.

The list of conditions that SSA has developed under the initiative is a result of information received from internal and external medical, legal, and scientific professionals, the public, and disability claims specialists throughout the country. SSA is solely responsible for and continues to evaluate conditions to be included in or removed from the list. Accordingly, since conditions are added and removed from the CAL list, refer to the list on a regular basis to verify that you have the most updated information.

Field office personnel should make every effort to attempt to identify all disability claims meeting the criteria for a CAL claim by reviewing the disability application (forms AA-1d, AA-17b, or AA-19a) and/or other evidence that was submitted. Claims representatives and field office managers seeking guidance as to whether a claim should be considered a CAL claim should immediately telephone the supervisor of DBD-DIS (x4740).

The listing of impairments that SSA considers CAL conditions can be found in SSA's POMS DI 23022.080. That web page contains links to summaries about all of the conditions. The summaries include information about:

- Alternate impairment names, if any;
- A detailed description of affected body systems and how each impairment incapacitates an individual;
- Diagnostic tests that are usually performed, if any;

- Onset and progression;
- Treatments, if any; and
- Suggested evidence to support the claimed impairment.

The list of CAL impairments **is** all-inclusive and contains adult, child, and infant-related medical conditions. An individual can be rated disabled as a result of having any impairment in the CAL list regardless of age presuming that individual continues to be affected by that impairment and sufficient medical evidence to support the claim has been obtained.

C. Field Office Handling

Once a field office has identified or been notified that a claim is a TERI or CAL claim, flag your file "TERI / CAL" and take appropriate action to expedite handling to completion.

In order to provide good customer service and provide for the special needs of individuals meeting the criteria for a TERI or CAL claim, the field office which received the initial notification shall be responsible for all aspects of the claim until that office has been notified that the claim has been effectuated, even if it is not the same field office as the claimant's home field office.

Take special care not to use words such as "terminal," "terminal illness," or "allowance" when speaking to or showing the applicant any material on his or her claim. Do not advise the claimant that his or her case has been selected for expedited handling unless he or she specifically asks the question.

The following guidelines are to be taken to ensure expedited handling:

- If a field office has received information, evidence, or notification that an individual has stopped working and may be terminally ill or have a condition in the CAL list, schedule an appointment to contact the applicant within 3 days of the date in which a TERI or CAL is first identified to verify the allegations, identify family members who could help in any additional development of evidence, obtain possible rep payee information, and, if necessary, complete the application.
- Try to obtain relevant medical evidence as soon as possible by enlisting the help of family members or, by phone contact, with doctors and hospitals or other primary treating sources that can provide the evidence necessary for a quick determination. Ask medical providers to send medical documentation via fax or express mail to the field office. Request medical evidence by mail **only** if no other means of obtaining it are available.

All follow-up attempts for medical evidence shall be made with a phone call or fax no later than 7 days from the date of the most recent request. Consider contacting the claimant or official representative for assistance if there has not been any reply from his/her medical source. When appropriate, mail or fax a G-197 to the claimant or official representative to take to the treating source for completion. Update Contact Log regarding all actions taken.

- Simultaneously develop non-medical factors (e.g. G-251, releasing G-251a or G-251b, ADL's, etc) with medical development.

  Because of the special circumstances, all follow-up attempts for non-medical documentation shall be made with sensitivity of the claimant and his or her family in mind. Unless directed otherwise by the field office manager, all follow-up attempts shall be made with a phone call no later than 7 days from the date of the most recent request. When appropriate, mail or fax the RL-57b tracer letter. Update Contact Log regarding all actions taken.

- Enter applications on the APPLE system in the usual manner.

- Contact the Supervisor of DBD-DIS through e-mail (Outlook) or telephone (x4750) to advise that a TERI / CAL claim will be submitted.

- Transmit all claim material in an envelope marked "TERI / CAL Claim - Attention – Supervisor of DBD-DIS." Also, show "TERI / CAL CLAIM" on the cover sheet transmitting the claim.

  Do not unnecessarily delay the transmission of any TERI or CAL claim material. Indicate on APPLE and/or the cover sheet what evidence is being submitted and what evidence, if any, is outstanding and continues to be developed for. In addition, show that same information in an E-mail to the DBD group inbox.

- Whenever possible, utilize fax machines to transmit material which could not be submitted with the initial transmission; use the Disability fax number (312-751-7167) for the telecommunications.

- Establish a special control file designated for TERI and CAL claims only.

  Due to the sensitivity involved, it is recommended that the field office keep a photocopy of all applications and evidence of TERI and CAL claims until it is notified by headquarters that the claim has been effectuated. Properly dispose of personally identifiable and medical information as shown in FOM-1 125.5.1.

  Follow the same procedure if a determination is made that a claim meets the criteria for TERI or CAL claim handling after completing the initial

development. Be sure to contact the supervisor of DBD-DIS to ensure that the case is properly flagged in Headquarters.

Remove the TERI / CAL designation if headquarters notifies the responsible field office the claim no longer meets the criteria as a TERI / CAL claim.

D. Handling Request for Reconsideration or Appeal

Reconsideration requests for TERI or CAL claims will receive expedited handling.

- Forward reconsideration requests for disability-related decisions to Operations, Reconsideration. The Reconsideration Section will handle these cases.

  Contact the Chief of the Reconsideration Section by e-mail (Outlook) or telephone (x4621) to advise that a reconsideration involving a TERI or CAL claim is being submitted.

- If an individual is not satisfied with a reconsideration decision and files a formal appeal, contact the Bureau of Hearings and Appeals by e-mail (Outlook) or telephone (x4946) to advise that an appeal involving TERI or CAL claim is being submitted.

- Do not unnecessarily delay the transmission of any TERI or CAL claim material. Indicate on transmittal cover sheet what evidence is being submitted and what evidence, if any, is outstanding and continues to be developed for. In addition, show that same information in an E-mail to either the Reconsideration section group inbox or the hearings officer handling the claim.

1310 When Disability Should Be Developed

Development of a disability claim can be quite costly, time consuming and can cause apprehension for the applicant. Therefore, it is important to develop the disability claim only when it will result in a benefit otherwise unattainable for the applicant (annuity, Medicare, overall minimum, vested dual benefit), or for the program (quality assurance). There are three basic situations in which a claimed disability should be developed:

- Application for annuity;
- Application for additional benefits;
- Application for a disability freeze after an employee's death.

These situations are discussed in detail in the remainder of this chapter.

An individual may make inquiries concerning disability annuities by phone, by letter, by email, or in person. Never advise a potential applicant to wait until medical evidence is gathered to file an application. When you receive an inquiry about disability benefits, take the following actions:

- In all cases, ask whether the individual intends to file an application or is simply seeking information. If the inquiry is received other than by phone call or personal visit, call the person in order to ask this question. Document the response.
- For inquiries by phone, letter, or email with an intention to file, set up an appointment date to take the application and send an application packet with cover form G-249. The packet should contain applicable supplemental application forms (AA-1d for employees, AA-17b for widows, AA-19a for children), G-251 Vocational Report for employees and widows, G-197 consent forms, and those forms required by each specific case to develop the medical and non-medical information needed to process the application. Assure inquirer of field office assistance in filling out the forms and gathering the information.
- If someone comes to a field office personally wishing to file, take the application on the spot if scheduling permits. (Otherwise, set up an appointment to take the application and provide an application packet.) Do not tell the applicant to come back at a later date for the purpose of providing medical information.
- For inquirers who do not wish to file, provide the requested information. This may include booklets or an estimate. Inform the inquirer that when he does wish to file, he will need to contact the RRB at that time. Document the contact.

1310.5 Application For Annuity

Articles 3 and 4 of FOM Part I give the eligibility requirements for annuities under the Railroad Retirement Act. The establishment of a disability within the meaning of the Act can replace the age requirement for certain annuities. A disability claim should be developed if all of the following conditions exist:

- Applicant claims to be disabled, or a spouse or widow(er) applicant claims to have a disabled child in his/her care and custody;
- A determination of disability within the meaning of the act would cause an annuity to be payable that otherwise would not, or would cause an annuity to be payable at a higher rate.
- All other eligibility requirements are met.

1310.5.1 Employee Applicant

A. Employee under 62 and not eligible for 60/30 annuity - The only way this employee can qualify for an annuity is to be determined disabled to the extent required for a total and permanent disability, or if other requirements are met, for an occupational disability.

B. Employee age 62 to FRA and not eligible for 60/30 annuity - If other eligibility requirements are met, this employee could qualify for a reduced age annuity. However, if a disability is established, a full annuity could be paid, thus avoiding the reduction for age. This is important not only for the initial annuity rate, but also means that future cost-of-living increases will not be reduced, Medicare coverage could begin before age 65 and that survivor benefits will be based on the full rather than reduced rate. It also may mean further retroactivity.

C. Employee first eligible for 60/30 annuity 1-1-2002 or later - It is to the applicant's advantage to file for an age and service annuity. The calculation of the tier 1 PIA would be the same, however the employee would not be subject to the RR Act disability work deductions if he became employed prior to FRA. The employee should file for a DF application only.

D. Employee over FRA - There are only two situations in which an employee applicant over FRA would be advantaged by filing for disability.

- Disability annuity would permit retroactivity of ABD to earlier date than age and service annuity

  NOTE: This only applies if the twelve month retroactivity on the disability application will take the applicant to before the attainment of FRA.

- Applicant has less than 30 years of service and ABD could retroact before FRA without an age reduction.

1310.5.2 Widow(er), Remarried Widow(er), Surviving Divorced Spouse Applicant

A. Under Age 50 - Surviving widow(er)s and former spouses cannot qualify for a disability annuity before age 50. Upon the attainment of age 50, they may file an application if the other eligibility requirements are met.

B. Age 50-59 - Unless these potential beneficiaries have a minor or disabled child in care or custody, these applicants must file an application for a disability annuity in order to qualify for a monthly benefit.

If there is a minor or disabled child in care and custody, the applicant should file for an annuity on the basis of having a qualifying child in care and custody. This is true even if the age reduced disability annuity would be higher at the ABD than the child-based annuity, because the age reduction at the ABD for the disability annuity will apply as long as the annuitant receives an annuity, whereas the age reduction as of the time of conversion from a child-based annuity to an age or disability annuity would apply from that point as long as the annuitant receives an annuity. Conversion cannot occur until the widow(er), remarried widow(er) or surviving divorced spouse could no longer qualify on the basis of a child in care and custody or until age FRA is attained.

However, the disabled applicant might qualify for early Medicare by filing a separate claim (application Form AA-17b with supporting evidence) for a disability determination only.

C. Age 60-FRA - As far as annuity rate goes, there is no advantage to filing for a disability annuity. However, consideration must be given to whether the establishment of a disability will qualify the applicant for early Medicare (see FOM-1 1310.10.2). If so, a disability application for Medicare only should be filed separately from the application for annuity.

D. Over FRA - There is no advantage to filing for a disability annuity except possibly with respect to retroactivity.

1310.5.3 Disabled Child

The establishment of the disability of a child may qualify a survivor child for an annuity or may cause a female spouse or widow(er) to be qualified for an annuity when she would not otherwise have been eligible. In any of these cases, develop the disability claim from the child, parent or representative payee.

Before age 18, a child is generally regarded only as a minor child. Therefore, the earliest that child usually can be considered a "disabled child" is at age 18. The only exception is that for spouses, remarried widow(ers) or surviving divorced widow(ers), whose entitlement to the tier I portion of his/her annuity terminates upon the youngest

child's attainment of age 16, tier I benefits will be continued if the child is found to be totally and permanently disabled.

Additionally, for a child to qualify for benefits or cause a parent to qualify for benefits, the onset of the disability had to occur before the attainment of age 22.

A. Survivor child - The child of a deceased employee can qualify for a disabled child's annuity if he is at least age 18, disabled within the meaning of the Railroad Retirement Act, AND the disability began before age 22.

   Prior to age 18, the child receives benefits as a minor child even though he or she may be disabled. Therefore, a disability claim for a child's insurance annuity should not be developed until just prior to the attainment of age 18, unless the spouse/widow would lose SSEB Tier 1 status when the child attains age 16.

B. To qualify a widow(er) under age 60 - A widow(er) under age 60 must have a minor or disabled child in care and custody to qualify for a monthly annuity. If the child's mother/father would not otherwise be eligible for an annuity because of age, the development of the child's disability will serve to qualify both the child and the parent.

   Beginning August 1, 1992, the Board approved a change in policy that ceased the termination of tier 1 benefits to the young mother/father whose last child attained age 16. However, the tier 1 benefit would not be considered SSEB for tax purposes for a minor child age 16-17. Therefore the disability determination for a child will be developed at the time the child attains age 16.

C. To qualify an under-age spouse - A spouse can receive an unreduced annuity by having a disabled (or minor) child in care and custody, when otherwise she could only have received a reduced annuity. Also, beginning 5-1-83, a husband can qualify for a tier I spouse annuity on the basis of having a disabled child in his care and custody. Prior to this time, only a wife was eligible for an annuity.

   Beginning August 1, 1992, the Board approved a change in policy that ceased the termination of tier 1 benefits to the young mother/father whose last child attained age 16. However, the tier 1 benefit would not be considered SSEB for tax purposes for a minor child age 16-17. Therefore the disability determination for a child will be developed at the time the child attains age 16.

1310.10 Application For Additional Benefits

In addition to causing an annuity to be payable when it otherwise would not be, the establishment of a disability could cause an employee or a family member to receive additional monetary or non-monetary benefits. FOM-I 325 describes the criteria required for the payment of the overall minimum guaranty (O/M) and of an early vested dual benefit based on disability; FOM-I Article 8 explains how an employee, widow(er) and child can qualify for early Medicare coverage based on disability. Following are

specific situations in which a claimed disability should be developed so that additional benefits will result.

1310.10.1 Overall Minimum Guaranty (O/M)

The overall minimum guaranty (O/M) applies only to employee cases and only if the employee could have been eligible for benefits under the Social Security (SS) Act had his railroad work been covered under that act. One of the conditions of eligibility under the SS Act is the establishment of disability within the meaning of that act. In other words, developing a disability could possibly result in an increased annuity rate for the employee. It could be the disability of the employee himself, or that of a child of the employee who could be included in the computation of the O/M rate.

A. Employee disabled - Benefits to a disabled employee may be increased if all of the following conditions are met:

- Employee disabled within the meaning of SS Act (Disability Freeze);
- Employee has spouse and/or children who would be eligible for benefits under the SS Act;
- The combined benefits that would be payable to all family members under the SS Act exceed the combined benefits payable to the family group under the RR Act.

Generally, it will not be known if all these conditions will be met until after an annuity is awarded. Therefore, do not develop the disability of an employee under age 62 at initial filing if it is solely for O/M purposes. If the employee is age 62 or over, he can qualify for O/M consideration on the basis of age; therefore, disability should not be developed for O/M only.

B. Disabled child of employee - If all other conditions for an O/M are met by the employee, the establishment of the disability of a child of the employee may cause the annuity rate of the employee to be increased. This could be done in two ways:

- The inclusion of the disabled child in the computation. Note that a child cannot be included in the O/M based on disability prior to age 18. (See FOM-1 1310.5.3 for information about disabled IPI children.)
- The inclusion of a wife in the computation on the basis of having a disabled child in her care and custody.

1310.10.2 Medicare

The establishment of a disability within the meaning of the SS Act could qualify an employee, widow, or child to early Medicare coverage. A spouse cannot qualify for early Medicare on the basis of disability.

Keep in mind the waiting period requirement and the "time on the rolls" requirement for early Medicare (see FOM-1 1305.40.2). For example, if the ABD is after age 63, the annuitant would qualify for Medicare based on the attainment of age 65 before qualifying on the basis of disability.

Also, keep in mind that since a child is not eligible for inclusion in the O/M based on disability prior to age 18, an application for early Medicare for a child should not be developed prior to attainment of age 18. To be entitled to Medicare, the child must have been eligible for O/M inclusion for at least 24 months and be at least 20 years of age. (see FOM-1 810.15.4 and 810.30.8)

Employees who do not meet the service requirements to qualify for a disability freeze (20/40 or minimum QC test) based on wages and compensation, may use certain quarters of coverage based on Federal service to establish a disability freeze for Medicare purposes only. (see FOM-I 810.5.6).

1310.10.3 Vested Dual Benefit

Assuming all other conditions of eligibility are met, an employee can receive the vested dual benefit (VDB) when he meets the requirements for a social security benefit, (i.e., attains age 62, or meets the disability and insured status requirements of the SS Act). Therefore, a 60/30 annuitant may qualify for the VDB before age 62 by establishing disability. However, do not develop unless it appears that both the disability requirement and the insured status requirement are met (see FOM-1 1305.20.1).

1310.15 Application for Disability Freeze After Employee's Death

A survivor can file an application to establish a disability freeze (DF) for a deceased employee. A survivor application must be filed within 3 months after the employee's death. Although a disability annuity cannot be paid to the survivor, the establishment of a DF may increase the amount of survivor annuities (see FOM-I 1005.25.6).

1310.15.1 When to Develop

Field offices should initiate development of an application for a DF after death when all of the following conditions exist:

- Employee does not have a disability freeze;
- Employee was under age 62 on the disability onset date, or under age 63 if he was disabled for more than 24 months before his death;
- Employee became disabled before the year of death;
- Employee had been unable to work due to disability for at least 5 full months;
- A survivor application was filed, or is being filed, within 3 months after the month of the employee's death.

1310.15.2 How to Develop

A. Application - Secure a modified Application AA-1 as prescribed in FOM-1 1710.

B. Medical evidence - Secure a copy of available hospital records and any other available medical evidence (i.e. treating physician's records/RFC assessment), and a copy of the death certificate which shows the cause of death. In some states this information is available only on a "long form" death certificate. If additional medical evidence is required it will be requested by the Disability Benefits Division (DBD).

Hospital records should be submitted to document the medical condition. Ask the survivor applicant for sufficient information to obtain hospital records that will document the medical condition. If there are no hospital records, record that information in the remarks section of Form G-659a.

C. Submission of claim - Submit the modified Application AA-1 and medical evidence under cover of Form G-659a. It can be submitted along with the survivor application. However, the modified Application AA-1 must be listed in item 15 of the Form G-659a in all cases, not in item 14.

1310.20 Request For Tentative (Disability) Rating

Effective November 19, 1991, field offices should not accept applications or requests for tentative disability ratings.

1310.25 Reconsideration And Appeal

When a disability determination is made, the applicant or annuitant may request reconsideration and/or appeal the decision if he or she believes that it is incorrect. Depending upon the circumstances, additional development of the disability may be appropriate. Follow the guidelines in this section for development when an applicant or annuitant has been notified of a disability determination which he or she believes is incorrect.

If an individual calls a field office and inquires about a disability case, ask appropriate questions to determine if he/she believes that a disability rating is at least partially incorrect in order to prevent an unnecessary letter of protest or appeal. (For example, a claim is rated disabled but the determined date of disability onset may not be what the claimant expected. This type of situation could occur in cases involving an illness which would gradually worsen over time rather than beginning on an exact date.) The inquirer may actually be asking about the status of a disability annuity payment rather than questioning a rating. An explanation may satisfy the inquirer. If the explanation does not satisfy the inquirer and the individual had not previously questioned the decision or there is no record of a recent reconsideration request, secure a signed statement requesting reconsideration of the disability determination.

NOTE 1: DBD sends claim folders to the Reconsideration Section (Recon) at the time that an individual is rated not disabled (for disability annuity, freeze, or Medicare purposes) in anticipation of a possible request for reconsideration. Claim folders held in Recon in anticipation of a possible request for reconsideration of a "not disabled" rating are logged into AFCS location J206 ("Dis Holding File Possible Recon Request"). If a folder is charged to this location, Recon has not received a reconsideration request on the disability decision. If no reconsideration request is received, Recon will forward the claim folder to Claims Files or to another unit if other action is required.

NOTE 2: To determine if there is an active or completed reconsideration of a disability decision, check Universal STAR (USTAR) (FOM-1 15120). Reconsideration requests of disability decisions have the following USTAR category ("Cat") codes:

- RDI00N,
- RDI00O,
- RDI00P,
- RDI00Q,
- RDI00S,
- RDI00T,
- RDI00U,
- RDI00V, or
- RME00R.

Reconsideration requests undergoing active review do not have a date in the "Complete Dt" column in USTAR. In addition, the claim folders with active disability reconsideration requests will be logged into J202 ("Recon - Active" [a reconsideration request has been received timely but has not yet been assigned to an examiner for review]), J203 ("Dormant" [a Recon examiner is developing for additional information]), or a specific AFCS Recon examiner folder location.

1310.25.1 Reconsideration/Appeal Filed Within 60 Days of Date of Denial Notice

A. Application - A new application is not required if:

- The request for reconsideration is filed within 60 days of the date of the denial notice;
- The appeal is filed within 60 days of the date of the notice of reconsideration decision;

- The second appeal is filed within 60 days of the date of the Bureau of Hearings and Appeals (BHA) referee's decision.

A new application is not required in these situations even if the disability onset date is more than 3 months after the application filing date.

B. Medical evidence - Encourage the applicant to obtain copies of existing medical evidence which has not been previously submitted. Do not schedule specialized exams unless requested to do so by Operations - Reconsideration Section or by BHA.

1310.25.2 Reconsideration/Appeal NOT Filed Within 60 Days of Date of Denial Notice

A. Application - A new application is required if the 60 day appeal period has expired and a good cause for filing a late appeal is not established. Administrative finality is applied to the adjudicative decision after the appeal period expires without an appeal or reconsideration request having been filed.

However, if the applicant submits new evidence within 60 days of the date of the denial notice, even though he did not request reconsideration, the decision may be reopened. A new application is required only if the disability onset date is after the date of the denial notice. A new application is not required in this situation if the disability onset date is before the date of the denial notice.

Under certain conditions a final decision can be reopened. Reopening is required if the decision was erroneous or fraud is involved; reopening is permitted under certain other circumstances. However, an application should still be developed along with other pertinent evidence and information in order to protect the ABD and save later development if reopening is not permitted. If you believe a previously denied application should be reopened, so indicate in a memorandum accompanying the new application package. DBD will determine if reopening is permitted and will advise the field office. Do not give the applicant false hopes; assure him that the new application ensures that his case will receive full consideration.

B. Medical evidence - Develop applicant source medical evidence and secure hospital records that have not been previously submitted. Do not schedule specialized exams unless there is a clear indication that the applicant's condition has worsened and that such exam is needed to make a rating (see FOM-1 1325).

1310.30 Program Integrity

The Railroad Retirement Board (RRB) monitors the disability program to identify cases which may require additional review because of conflict, inconsistency, ambiguity, insufficiency in the evidence or change in the claimant’s condition. When determining if

additional case review is needed, consider the factors outlined in DCM 8.8.2. Once disability benefits are awarded, any disability case may be reviewed to assure that the annuitant continues to be entitled to a disability annuity.

There may be situations in which an individual is either discredited by the RRB or other Federal agency such as the Social Security Administration. As such, the evidence submitted and/or assistance provided to a claimant filing for a disability annuity may put that application or disability decision (grant or denial) into question.

When individuals are discredited and made known to the RRB, Policy & Systems will issue an Instructional Memorandum listing the names of those discredited individuals. These discredited individuals could be physicians, attorneys, attorney representatives, facilitators, or medical providers.

In addition, the RRB will also monitor applications in which the claimant used third-party facilitators when completing their applications. These third-party facilitators **may or may not have been discredited.** In most situations, these facilitators charged the claimant a fee for their services. The Disability Tracking of Physicians and Patterns (DTOPP) database will be used to enter the names of physicians and facilitators.

NOTE: The term "Facilitator" is defined as a third-party individual, company (application service), or attorney/law firm who has no relation to nor serves as a representative payee for the claimant, and whose purpose is to file an application on behalf of the claimant for a fee. The term "Facilitator" specifically excludes all RRB field employees; individuals who are filing on a disability applicant's behalf as their representative payee; as well as any family members of the applicant (i.e. spouse, son/daughter, etc.).

Below are instructions for Field Service (FS) and Disability Benefits Division (DBD) staff to follow when an individual has been identified as a third-party facilitator.

Field Service Instructions

If a third-party facilitator (i.e., examples mentioned above) is identified as an evidence source when reviewing the disability application package or was used by the claimant during the application taking process, field offices should enter the following identifying information in the Application Express (APPLE) System Remarks section (See FOM-1 110.100.3 and FOM-1 1325.20.6):

- Enter "Facilitator" followed by:
    - Facilitator name(s);
    - Professional title;
    - Organization name; and
    - Address information

Entering the word “Facilitator” first will help to identify facilitators when conducting a query in APPLE.

> **NOTE:** FS staff should only enter the information above so that all the pertinent information is shown on the first screen page of APPLE.

FS should verify that the third-party facilitator information is printed on the Form G-626, *Application & Form Transmittal*, before forwarding to DBD. If facilitator information is added to the APPLE System Remarks section after Form G-626 has been released to DBD, FS should send an email with identifying facilitator information to Program Evaluation and Management Services group mailbox - FacilitatorReplies@rrb.gov.

FS should complete development of the disability application package following standard procedure and forward to the Disability Benefits Division (DBD) for adjudication.

Disability Benefits Division Instructions

Identification of a third-party facilitator can occur during any type of case adjudication (this includes Continuing Disability Review [CDR]). DBD staff will evaluate and process the disability application package in accordance with DCM 3.6.1 and DCM 13.2. If a facilitator is identified during the adjudication process, send an email with identifying facilitator information to Program Evaluation and Management Services group mailbox - FacilitatorReplies@rrb.gov.

> **NOTE:** Continuing disability reviews (CDR) are initiated by the Disability Benefits Division - Disability Post Section (DBD-DPS) based on anticipated possible recovery or on reported work activity.
>
> Field offices should not develop in support of CDR cases unless requested by DBD-DPS. If a disability annuitant reports recovery or work activity, Field offices can develop a statement from the annuitant and submit the facts to DBD-DPS.

1310.35 Terminally Ill (TERI) and Compassionate Allowance (CAL) Claims

This procedure has been formulated to allow the RRB to more expeditiously process claims for applicants who have a medical impairment which:

- Is generally expected to result in death;
- Involves a high probability that the applicant can be rated disabled

  AND

- The evidence of the applicant’s allegations is expected to be easily and quickly verified.

The procedure standardizes the identification, development and processing of terminally ill (TERI) and compassionate allowance (CAL) claims. The coordinated efforts of field office and Headquarters employees to timely handle TERI / CAL claims in accordance with this procedure will greatly improve our responsiveness to the needs of these individuals.

TERI and CAL claims both involve a high probability of allowance. While TERI claims generally involve an illness which cannot be reversed and is expected to result in death, not all CAL claims involve terminal illness.

There is no relevance if the claim meets the TERI criteria, the CAL criteria, or both. Once identified as a TERI / CAL claim, that designation remains on the case until all administrative appeals of that claim are exhausted or it is obvious that the TERI / CAL criteria are no longer met. Headquarters will determine when a claim no longer meets the TERI / CAL criteria and then notify the responsible field office.

A. Identifying TERI Claims

Disability claims with an indication of a terminal illness will receive priority handling because of their sensitivity. Field office personnel should make every effort to attempt to identify all disability claims meeting the criteria for a TERI claim by reviewing the AA-1d and/or other evidence that was submitted. A claim may be identified as a TERI claim by using the following criteria:

1. There is an allegation from the claimant, friend, family member, doctor, representative payee, attorney, court or other medical source that the illness is terminal;

2. There is an allegation or confirmed diagnosis of Acquired Immune Deficiency Syndrome or Acquired Immunodeficiency Syndrome (AIDS);

   NOTE: All claims involving an allegation or a confirmed diagnosis of Human Immunodeficiency Virus (HIV) infection must also be handled expeditiously but should generally not be labeled as a TERI claim. An individual alleging or having a confirmed diagnosis of HIV infection may or may not be prevented from performing work under applicable sections of the Railroad Retirement Act (RR Act) or Social Security Act (SS Act) depending on the severity of the residual effects. Conversely, an individual who has AIDS has reached a progressively advanced stage of HIV infection with accompanying medical signs and symptoms which result in a poor prognosis and a reasonable expectation in eventual death.

3. The claimant is receiving inpatient hospice care or is receiving home hospice care, such as in-home counseling or nursing care;

4. There is an allegation or diagnosis of Amyotrophic Lateral Sclerosis (ALS), known as Lou Gehrig's Disease;

5. The claimant has a condition which medical records indicate is untreatable, cannot be reversed and is expected to end in death. These conditions would include but are not limited to the following:

    a. Chronic dependence on a cardiopulmonary life-sustaining device;

    b. Awaiting a heart, heart/lung, or bone marrow transplant (excludes kidney and corneal transplants);

    c. Chronic pulmonary or heart failure requiring continuous home oxygen and the claimant is unable to care for personal needs;

    d. A malignant neoplasm (e.g. cancer) which is:

        - Metastatic (has spread);
        - Stage IV (final stage);
        - Persistent or recurrent following initial therapy; or
        - Inoperable or unresectable.

    e. An allegation or diagnosis of:

        - Cancer of the esophagus;
        - Cancer of the liver;
        - Cancer of the pancreas;
        - Cancer of the gallbladder;
        - Mesothelioma;
        - Small cell or oat cell lung cancer;
        - Cancer of the brain; or
        - Acute Myelogenous Leukemia (AML) or Acute Lymphocytic Leukemia (ALL).

    f. Comatose for 30 days or more.

The above list **is not** intended to be all-inclusive. Rather, it should be used as general guidance in the identification of TERI cases. Other cases may be

considered TERI cases as long as the medical condition is untreatable and is expected to result in death.

In most instances, TERI claims are easily identified by the nature of the illness or by an indication from the applicant or his/her representative. Claims representatives should look for disability claims which may meet the criteria for TERI claims given above. Claims representatives and field office managers seeking guidance as to whether a claim should be considered a TERI claim should immediately telephone the supervisor of the Initial Section of the Disability Benefits Division (DBD-DIS) (x4740).

B. Identifying CAL Claims

Compassionate Allowance is a Social Security Administration (SSA) initiative to quickly identify diseases and other medical conditions that invariably qualify as a disability allowance based on minimal but sufficient objective medical information that is readily available and can be obtained quickly. The RRB has adopted this initiative as a way of providing for the needs of individuals whose medical condition is so serious that it obviously meets the disability standards. Accordingly, conditions in the CAL list may be considered when adjudicating all disability claims under the SS Act (i.e. disability freeze; early Medicare coverage; O/M) as well as the RR Act.

The list of conditions that SSA has developed under the initiative is a result of information received from internal and external medical, legal, and scientific professionals, the public, and disability claims specialists throughout the country. SSA is solely responsible for and continues to evaluate conditions to be included in or removed from the list. Accordingly, since conditions are added and removed from the CAL list, refer to the list on a regular basis to verify that you have the most updated information.

Field office personnel should make every effort to attempt to identify all disability claims meeting the criteria for a CAL claim by reviewing the disability application (forms AA-1d, AA-17b, or AA-19a) and/or other evidence that was submitted. Claims representatives and field office managers seeking guidance as to whether a claim should be considered a CAL claim should immediately telephone the supervisor of DBD-DIS (x4740).

The listing of impairments that SSA considers CAL conditions can be found in SSA's POMS DI 23022.080. That web page contains links to summaries about all of the conditions. The summaries include information about:

- Alternate impairment names, if any;
- A detailed description of affected body systems and how each impairment incapacitates an individual;
- Diagnostic tests that are usually performed, if any;

- Onset and progression;
- Treatments, if any; and
- Suggested evidence to support the claimed impairment.

The list of CAL impairments **is** all-inclusive and contains adult, child, and infant-related medical conditions. An individual can be rated disabled as a result of having any impairment in the CAL list regardless of age presuming that individual continues to be affected by that impairment and sufficient medical evidence to support the claim has been obtained.

C. Field Office Handling

Once a field office has identified or been notified that a claim is a TERI or CAL claim, flag your file "TERI / CAL" and take appropriate action to expedite handling to completion.

In order to provide good customer service and provide for the special needs of individuals meeting the criteria for a TERI or CAL claim, the field office which received the initial notification shall be responsible for all aspects of the claim until that office has been notified that the claim has been effectuated, even if it is not the same field office as the claimant's home field office.

Take special care not to use words such as "terminal," "terminal illness," or "allowance" when speaking to or showing the applicant any material on his or her claim. Do not advise the claimant that his or her case has been selected for expedited handling unless he or she specifically asks the question.

The following guidelines are to be taken to ensure expedited handling:

- If a field office has received information, evidence, or notification that an individual has stopped working and may be terminally ill or have a condition in the CAL list, schedule an appointment to contact the applicant within 3 days of the date in which a TERI or CAL is first identified to verify the allegations, identify family members who could help in any additional development of evidence, obtain possible rep payee information, and, if necessary, complete the application.
- Try to obtain relevant medical evidence as soon as possible by enlisting the help of family members or, by phone contact, with doctors and hospitals or other primary treating sources that can provide the evidence necessary for a quick determination. Ask medical providers to send medical documentation via fax or express mail to the field office. Request medical evidence by mail **only** if no other means of obtaining it are available.

All follow-up attempts for medical evidence shall be made with a phone call or fax no later than 7 days from the date of the most recent request. Consider contacting the claimant or official representative for assistance if there has not been any reply from his/her medical source. When appropriate, mail or fax a G-197 to the claimant or official representative to take to the treating source for completion. Update Contact Log regarding all actions taken.

- Simultaneously develop non-medical factors (e.g. G-251, releasing G-251a or G-251b, ADL's, etc) with medical development.

  Because of the special circumstances, all follow-up attempts for non-medical documentation shall be made with sensitivity of the claimant and his or her family in mind. Unless directed otherwise by the field office manager, all follow-up attempts shall be made with a phone call no later than 7 days from the date of the most recent request. When appropriate, mail or fax the RL-57b tracer letter. Update Contact Log regarding all actions taken.

- Enter applications on the APPLE system in the usual manner.

- Contact the Supervisor of DBD-DIS through e-mail (Outlook) or telephone (x4750) to advise that a TERI / CAL claim will be submitted.

- Transmit all claim material in an envelope marked "TERI / CAL Claim - Attention – Supervisor of DBD-DIS." Also, show "TERI / CAL CLAIM" on the cover sheet transmitting the claim.

  Do not unnecessarily delay the transmission of any TERI or CAL claim material. Indicate on APPLE and/or the cover sheet what evidence is being submitted and what evidence, if any, is outstanding and continues to be developed for. In addition, show that same information in an E-mail to the DBD group inbox.

- Whenever possible, utilize fax machines to transmit material which could not be submitted with the initial transmission; use the Disability fax number (312-751-7167) for the telecommunications.

- Establish a special control file designated for TERI and CAL claims only.

  Due to the sensitivity involved, it is recommended that the field office keep a photocopy of all applications and evidence of TERI and CAL claims until it is notified by headquarters that the claim has been effectuated. Properly dispose of personally identifiable and medical information as shown in FOM-1 125.5.1.

  Follow the same procedure if a determination is made that a claim meets the criteria for TERI or CAL claim handling after completing the initial

development. Be sure to contact the supervisor of DBD-DIS to ensure that the case is properly flagged in Headquarters.

Remove the TERI / CAL designation if headquarters notifies the responsible field office the claim no longer meets the criteria as a TERI / CAL claim.

D. Handling Request for Reconsideration or Appeal

Reconsideration requests for TERI or CAL claims will receive expedited handling.

- Forward reconsideration requests for disability-related decisions to Operations, Reconsideration. The Reconsideration Section will handle these cases.

  Contact the Chief of the Reconsideration Section by e-mail (Outlook) or telephone (x4621) to advise that a reconsideration involving a TERI or CAL claim is being submitted.

- If an individual is not satisfied with a reconsideration decision and files a formal appeal, contact the Bureau of Hearings and Appeals by e-mail (Outlook) or telephone (x4946) to advise that an appeal involving TERI or CAL claim is being submitted.

- Do not unnecessarily delay the transmission of any TERI or CAL claim material. Indicate on transmittal cover sheet what evidence is being submitted and what evidence, if any, is outstanding and continues to be developed for. In addition, show that same information in an E-mail to either the Reconsideration section group inbox or the hearings officer handling the claim.

If medical evidence is thought of as the technical consideration of a disability claim, non-medical factors can be thought of as the human consideration. This is where a disability claim begins - what is the ailment and how does it affect the applicant? A report of non-medical factors enables DPS to evaluate the applicant's residual capacity for work. It is the consideration of non-medical factors which makes a disability decision not just a medical decision. Therefore, good development of non-medical factors is just as important in many cases as development of medical evidence. Since the disability claims examiner who makes the determination of disability under the Railroad Retirement Act and the Social Security Act does not see the applicant, the non-medical factors report is a "picture" of the applicant that the examiner must weigh along with the medical evidence submitted. Correct disability determinations depend upon good representation of both.

Non-medical factors may also serve as the basis for developing medical evidence at Railroad Retirement Board expense when no other medical evidence exists.

1315.5 Non-Medical Factors Defined

In general terms, non-medical factors include:

- A description from the applicant of his medical condition.
- The applicant's statement of how and when his condition affected his ability to work.
- A description from the applicant of his current daily activities and how they have been changed due to his medical condition.
- A summary of the applicant's education and training.

A description of the duties of the job(s) the applicant performed in the 5 years and in the 15 years prior to filing a disability claim. (Vocational factors are considered when determining if an employee or a widow(er) is disabled. They are not considered when determining if a remarried widow(er) or a surviving divorced spouse is disabled.)

In cases when the application is taken in person and the contact representative observes something pertinent to the disability claim, the observations are noted on Form G-626A, Field Office Personal Observation Record. It is not necessary for a contact representative to travel or meet with an applicant in order to obtain a personal observation, unless requested. If activities of daily living (ADLs) are needed, these can be secured either by phone or in person.

The following are examples of observations that may be considered pertinent: a description of any unusual aspects regarding the applicant's appearance, abnormal skin conditions, swelling or abnormality of any joints, peculiarity of speech or manner, shortness of breath, nervousness; supporting devices such as a cane, crutches, corset,

or leg brace; if eye glasses and hearing aid are owned, whether worn or not; stance; walk, such as a limp or foot drag.

1315.10 Reporting Non-Medical Factors

Vocational (Non-medical) factors for employee and widow(er) applicants are reported on Form G-251. Forms G-251a and G-251b are completed in occupational disability claims only.

Form G-251 should ordinarily be completed by the applicant. The Forms G-251a and G-251b request job information from railroad employers. Specific instructions for completing Forms G-251, G-251a and G-251b are contained in FOM-I-1720.

When it is established that an employee or a widow(er) intends to file an application for disability, he should be furnished with Form G-251. Field offices are encouraged to furnish this form before an application is filed, if possible. However, do not refuse or delay an application for disability until the applicant furnishes a vocational report.

When an employee is filing an application for a period of disability (Disability Freeze) and/or early Medicare and has previously submitted a Form G-251, it is not necessary to secure a new G-251 if the employee has not worked since he last filed for disability. A note should be put in the Remarks section of the application transmittal form that a G-251 will not be submitted because the claimant has not worked since the last G-251 was submitted. In addition, EDMA should be checked to verify that no earnings have been posted since the last G-251 was submitted.

Do not make diagnoses or judgments in the report as to whether the applicant is disabled under the Railroad Retirement Act. While regard should be given to the fact that the applicant claims to be disabled, do not say anything that might cause a claimant to believe he/she will be found disabled. The assurance you can give him is that his claim will be developed properly, that it will receive just consideration and that there is an appeals procedure if he disagrees with the determination.

Other pertinent non-medical factors are noted in the Remarks section of the disability application. In some cases DBD may request the field representative to provide their personal observations. In these cases the observation can be provided via e-mail or memorandum.

1315.15 Documenting Daily Activities For Development Of Mental Impairment Cases

Mental impairments cause disability when the individual's ability to function is significantly restricted by the mental condition. In evaluating mental impairments, severity is measured in part by an objective description of findings of the claimant's ability to function in daily life. These findings are outlined in an Activities of Daily Living (ADL) report. The field service is primarily responsible for securing these Activities of Daily Living. They are essential to mental impairment claims adjudication and are used

at headquarters to determine the severity of impairment, ascertain an appropriate mental residual functional capacity or determine a claimant's ability to perform his past railroad work or any other work.

NOTE: An ADL report may also be needed when determining the effect of symptoms such as pain. The need for an ADL in pain cases is a technical determination that can be made by a disability examiner but is usually made by a medical consultant.

1315.15.1 Why We Develop for ADL

An objective description of signs, symptoms and findings from existing records from hospitals, treating physicians, therapists and consultative examinations are used to determine the existence of a mental impairment. However, since there are no laboratory tests or any other diagnostic methods that can reliably measure functional limitations caused by mental impairments, we must rely on other evidence such as daily activities. The applicant is the primary source for this information unless the Disability Benefits Division (DBD) advises otherwise or the contact representative believes the applicant to be unreliable or incapable of accounting for his/her daily activities.

NOTE: In cases where a third party source is used to obtain an ADL, the name and relationship of that person is to be noted in the ADL narrative.

1315.15.2 Activities of Daily Living Report

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Documentation of functional limitations is essential to accurate adjudication. A marked limitation may arise when activities or functions are impaired and the degree of limitations is such as to severely interfere with the ability to function independently, appropriately and efficiently.

A detailed documentation of the applicant's activities of daily living (ADL) and social functioning is an important tool in determining the severity of most mental impairments. Documentation should include a complete description of each activity discussed in the interview. The frequency, appropriateness, and quality of activities should be described along with the description of independence with which the applicant can perform them (that is, does the applicant need help to do them?). For instance, applicants who claim that they can cook should explain how the food is prepared, the variety of food and how often they cook. The more complete the information, the better a reviewer can evaluate a claim and avoid follow-up assignments.

1315.15.3 Field Office Development of ADL

An ADL should be developed at the time the disability application is taken if any of the following criteria applies:

- The applicant is claiming a mental impairment as one of the primary conditions contributing to their claim of disability.

- As part of the review of the medical evidence it is discovered that the applicant has been treated for a mental impairment.

- As part of the interview process the claims representative notices bizarre behavior from the applicant.

- As part of the interview process the claims representative infers that a mental impairment may exists. For example, the applicant alleges impairments which the medical evidence does not support.

1315.15.4 When it is not Necessary to Develop an ADL

It is not necessary to submit or request an ADL when the applicant's condition is obviously severe and enough other medical evidence is being submitted to substantiate a claim of disability. This includes a condition such as a disabled child with an IQ of 59 or less.

There are at least three instances where it is not necessary to develop for an ADL with the initial application. However, upon review of all information in the file, the disability examiner may determine an ADL is needed. The conditions are:

- An applicant is currently institutionalized due to a mental condition,

- An applicant has filed and is receiving benefits at SSA based on a disability rating within the last year.

- An applicant's physical condition will be severe enough for a finding of disability. See example in Section FOM-I-1315.15.5.

1315.15.5 Requests for an ADL

Many disability applicants who file based on physical impairments also complain of anxiety or depression. It may be indicative of a significant psychiatric illness or it may be a natural manifestation of a person who is no longer working because of a disability. We should not develop medical evidence for alleged psychiatric impairments, including an ADL, unless there is an indication that the applicant's alleged psychiatric impairment is potentially severe.

For example, an applicant applies for a total and permanent disability annuity based on a herniated disk, diabetes mellitus, color blindness and depression. The AA-1d shows he is taking insulin but no anti-depressants. The timely records of the treating physician show mental functioning to be normal and mention no depression. The hospital records likewise do not show depression in either the pre- or post- operative diagnoses. Because there is no indication that the applicant's depression is severe or potentially severe, no development is necessary in this area, unless the claimant alleges that the mental impairment is new.

Any request for an ADL received from DBD should include an explanation from the disability examiner making the request as to why an ADL is needed. The explanation should provide the claims representative with an understanding of why the ADL is needed.

For example, if the Disability Post section needs an ADL as part of the CDR process, the explanation would say something like, “This applicant was previously rated disabled based on depression. We are now conducting a CDR and need an updated ADL

Occasionally an RRB medical consultant will request ADL development in situations that would appear to meet the criteria for not being needed, as explained in this procedure. The medical consultants request is based on medical findings by a medical professional, using knowledge and experience that is not covered in this procedure. In these cases, the explanation is a statement that the medical consultant requested ADL development.

1315.15.6 Conducting the Interview and Compiling the Report

It is important to make applicants feel that they are part of the process rather than the subject of an interrogation. Explain that the purpose of the interview is to consider how daily activities have been affected by the condition they are claiming. Encourage applicants to freely describe their activities by using open ended questions such as "What, Why, When, Tell Me," rather than questions that are conducive to a yes or no answer. The daily activities worksheet, given in Appendix D and available on RRAILS, is recommended as a guideline for conducting the interview and provides a structured narrative report that gives the complete information needed for the disability determination process.

In some instances headquarters will send a copy of a previous ADL report in file for the applicant/annuitant. This will happen when DBD is performing a CDR or if an applicant is filing for a disability freeze after having their initial disability freeze application denied. The field staff should be sure that the new ADL report documents any changes in the various activities. (**Note**: It is possible that due to the applicant’s life long condition, no changes have occurred.) It is important to obtain the individual's current status on all daily living activities. Therefore, the "old" activities of daily living report is to be used only as background and a reference to assist the C/R in developing a more complete report when changes in the daily activities are noted. Annuitants must still be questioned about each activity. In questioning annuitants, do not refer directly to a behavior reported in a previous ADL report.

For example, if an annuitant previously said he stopped attending his child’s sporting events due to depression, do not ask if he is still too depressed to attend his child’s sporting events. Instead, approach the issue indirectly by asking about what he enjoys doing? Does he participate in family activities? Is he involved with his children’s school and/or after school activities?

Once the communication flow is established, encourage the applicant to continue talking by using phrases such as "tell me more." Record only objective data with examples, including a comparison of current daily activities to activities prior to the onset of the mental impairment.

For example: When asked about recreation, hobbies or social activities, the applicant said that he used to enjoy going to the movie theater. He explained that for the past 15 years he went to the theater at least twice a month with a friend or by himself. He went on to say that it has been over 6 months since he has gone to a theater because he believes that everyone in the theater is laughing at him. Further, he avoids any public activities for the same reason.

Rather than trying to determine how the person's activities or behaviors compare to some norm, the objective of the ADL is to determine how the impairment has affected their lives and ability to function. Therefore, documentation for the period before the onset date is very helpful in determining functional limitations caused by mental impairments.

Exception: When the claimed impairment is Intellectual Disability the ADL report should illustrate the claimant's lifelong limitations rather than changes in the ADL.

1315.15.7 Preparing and Submitting an ADL

Field staff is to enter the information obtained during the ADL interview on the ADL worksheet on RRAILS.

Be sure to use the daily activities worksheet as a guide for questions which should be a part of the interview process. If you have questions that will elicit the necessary information and they are not on the daily activities worksheet, then use your questions and add them to the worksheet. The questions on the worksheet may not fit all situations, but they are helpful as a guide.

The daily activities worksheet should never be photocopied and handed to the applicant, nor should it ever be mailed to the applicant. The applicant will provide more complete and useful information in the interview process. Before concluding the interview and finalizing the report, refer to the worksheet to verify that all relevant questions have been discussed with the applicant for a complete description of daily activities and social functioning. It should also be noted, that the interviewer needs to obtain information from the applicant that illustrates how the mental condition has changed the applicant's ADL since the onset of the mental condition. Be sure to include examples and quotations to help support and clarify information given in the interview.

When the ADL worksheet is finalized it is to be imaged using the RRAILS imaging feature. After having it imaged a paper copy is to be made and included with the disability application package being forwarded to DBD. If the ADL is being done after the disability application package is submitted, send the ADL worksheet to DBD as an e-mail attachment. As an alternative, if you are also sending additional medical

evidence, you may print the worksheet and send a paper copy along with the other medical.

1320.5 Introduction

Since the body systems approach is used by disability claims examiners in making disability determinations, field offices should also employ this methodology in developing proof of disability.

The human body is a vastly complex organism comprised of major body systems, their component organs, tissues, and individual cells which are ultimately the substance of life. Depending upon severity, impairment to or disorder of one or more of these body systems may constitute an inability to engage in employment to the extent required to qualify for disability benefits under the RRA. Functional loss, the true measure of disability, most closely meets the needs of the disability evaluation process - practicality, uniformity and accuracy.

Bodily function has both biological and physiological aspects. The biological aspect involves the essential components to sustain life - cardiac, respiratory and metabolic. All body systems involve biochemical processes which support these essential biological functions. Physiological aspect is characterized by the expenditure of energy.

Functions of different body parts are necessarily varied and specialized. These variations can be expressed qualitatively and quantitatively in medical terminology and physical measurements. The accumulation of this information constitutes medical evidence which, when it adequately represents the applicant's medical condition, forms the basis for a disability determination under the RRA.

Although field employees do not require an extensive level of medical knowledge, it is desirable to have a familiarity of certain aspects of human physiology, medical terminology, various diseases and disorders which affect function. Accordingly, the remainder of this chapter provides for each of the major body systems the following information:

- Description of the body system;
- Visible signs and observations of the applicant's appearance and behavior which indicate the level of impairment;
- Considerations and questions to be used in obtaining and evaluating adequacy of information about the applicant's medical condition;
- The most common impairments and disorders associated with each body system.

To further assist field offices in evaluating the adequacy of medical evidence and/or contracting for specialized examinations or services, Appendix B gives a listing, by body system and by impairment within body system, the usual exams, x-rays and laboratory tests required to make a disability determination. If these requirements are not met in

existing medical evidence, it is usually necessary that these requirements be contracted for through local providers as instructed in FOM-I-1330.

Finally, refer to DCM 3 APP D for a list of common medications. This list contains both the brand name and generic name of medications and the conditions for which they are often prescribed.

CAUTION: Field office employees should not attempt to use this chapter for diagnosis; that must be done by trained medical personnel. The information is provided only to assist you in developing medical evidence to accompany a disability claim.

1320.10 Musculoskeletal System

A. Description - The musculoskeletal system is composed of bones, joints, cartilage, ligaments, muscles and tendons. The primary purpose of the skeleton is to support the rest of the body and protect certain vital organs; the primary purpose of the muscles is controlled movement of body parts.

B. Visible Signs/Observations

- Deformities;
- Stiffness;
- Swelling;
- Amputation;
- Use of prosthesis;
- Gait.

C. Considerations/Questions

- Joints involved;
- Where/when/how injury occurred;
- Current ability to use affected area;
- Surgery performed;
- Can prosthesis be used?;
- Problems with remaining extremity Pain experienced, relief;
- Range of motion.

D. Impairments/Disorders

1. Inflammatory Arthritis - Impairments due to forms of arthritis that cause joint inflammation;

2. Osteoarthritis - Arthritis affecting major joints of upper and lower extremities (hip, knee, ankle, shoulder, elbow and wrists);

3. Disorders of the Spine - Back pain, disc and vertebra problems;

4. Fractures;

5. Amputation;

6. Osteomyelitis - Bone infection;

1320.15 Sensory System

A. Description - The body is in constant need of information about the environment that permits the person to discriminate between various objects and conditions, to maintain itself in desired positions, avoid dangerous objects or obstructions and in general, move through and manipulate his environment according to his needs. Of all the senses which supply this information, those of sight, hearing, balance, and position are the most important in terms of ability to survive and earn a living.

B. Visible Signs/Observations - Applicant's abilities despite impairments imbalance.

C. Considerations/Questions

- Cause of loss of sight - diabetes, congenital, cataracts, trauma, progressive vision loss, etc.;
- Dizziness, nausea, vomiting;
- Wear glasses?;
- Drive, watch TV, read newspaper? Hearing aid?;
- Understand speech?;
- Surgery to correct condition?

D. Impairments/Disorders

1. Visual Disorders - Blindness, cataracts, glaucoma, refractive errors, retinitis pigmentosa, hemianopsia;

2. Hearing Disorders - Conductive hearing loss, sensorineural hearing loss, Meniere's disease.

1320.20 Respiratory System

A. Description - Respiration is the ability of the lungs to inhale air and transfer oxygen from that air to the blood and to transfer carbon dioxide plus other waste gases from the blood to the airspaces in the lungs and exhale.

B. Visible Signs/Observations

- Difficulties in breathing;
- Coughing;
- Electronic speech assisting device - can person be understood? speech volume?;
- Wheezing.

C. Considerations/Questions

- Shortness of breath - during attack or any time of exertion;
- How much exertion brings shortness of breath?;
- Currently smokes - how much?;
- Use oxygen?;
- Asthma - frequency of attacks? Require hospitalization? Surgery?

D. Impairments/Disorders

1. Obstructive Disorders - Characterized by increased resistance in airways resulting in prolongation of exhaling; most frequent are emphysema and bronchial asthma;

2. Restrictive Disorders - Characterized by restricted capacity of lungs to expand and contract; caused by mechanical restrictions (kyphosis, scoliosis, paralysis of diaphragm) or by fibrotic degeneration;

3. Pulmonary Tuberculosis;

4. Diseases of Larynx - Most commonly a laryngectomy has been performed resulting in partial or total loss of ability to speak;

5. Other Infectious Diseases of the Lungs - Mycotic infections, etc.;

6. Occupational Lung Diseases - Silicosis, asbestosis, pneumoconiosis, berylliosis, etc.

1320.25 Cardiovascular System

A. Description - Every part of the body depends on circulating blood to receive oxygen and nutrition and to dispose of waste products. The heart is the pump in the circulation process; arteries carry blood away from the heart; and veins return blood to the heart. The heart, arteries and veins are the main components of the cardiovascular system.

B. Visible Signs/Observations

- Shortness of breath;
- Dizziness;
- Pallor;
- Varicose veins;
- Swelling.

C. Considerations/Questions

- Symptoms - shortness of breath, pain, fluttering of heart, dizziness; What brings on symptoms?;
- How long do symptoms last?;
- What relieves symptoms?;
- Medication? What is it for?;
- Cramping of legs;
- Surgery (type)?;
- Diagnostic tests (treadmill, angiogram, doppler)?

D. Impairments/Disorders

1. Congestive Heart Failure - Signs of vascular congestion such as peripheral or pulmonary edema, enlargement of the heart, shortness of breath, etc.;

2. Ischemic Heart Disease - Cardinal sign is chest pain, usually relieved by nitroglycerin;

3. Conduction Disturbances - Arrhythmias (irregular heartbeat);

4. Miscellaneous Other Cardiovascular Conditions - hypertensive vascular disease (high blood pressure),H aneurysms, chronic venous insufficiency, arteriosclerosis (Buerger's disease), transient ischemic attacks.

1320.30 Gastrointestinal System

A. Description - The function of the gastrointestinal system is to receive food substances into the body through the mouth, alter the physical and chemical composition of these substances so they can be absorbed into the blood stream and eliminate unused portions of such food from the body. The digestive tract consists of two main components, the gastrointestinal tract (mouth, pharynx, esophagus, stomach, intestines, rectum, anus) and the accessory digestive organs (liver, gallbladder, pancreas).

B. Visible Signs/Observations

- Height;
- Weight;
- Jaundice;
- Abdominal distention;

C. Considerations/Questions

- Weight loss;
- Abdominal pain;
- Chronic diarrhea or constipation excessive alcohol use?
- Loss of blood;
- Vomiting;
- Surgery?

D. Impairments/Disorders

1. Recurrent upper gastrointestinal hemorrhage;

2. Stricture, stenosis or obstruction of the esophagus;

3. Peptic ulcer disease, fistula formations;

4. Chronic liver disease;

5. Chronic ulcerative colitis;

6. Regional enteritis.

1320.35 Genito-Urinary System

A. Description - The genito-urinary system has three functions: to provide for procreation of the species, to maintain the composition and volume of body fluid for proper body function and to eliminate excess water and metabolic wastes from the body. Loss of function in the reproductive system does not directly affect the ability to work; therefore, most work inhibiting disorders in this system involve the kidneys.

B. Visible Signs/Observations

- Swelling;
- Weight loss;

C. Considerations/Questions

- Dialysis;
- Kidney stones;
- Kidney infections;
- Backache;
- Persistent fever;
- Weight loss;
- Fatigue;
- Sensory loss in extremities Surgery?

D. Impairments/Disorders

1. Chronic Renal Failure - Patients are almost always under continuous medical care;

2. Nephrotic Syndrome - Abnormalities in serum and urinary protein.

1320.40 Hemic-Lymphatic System

A. Description - The cell is the basic unit of life, and each cell in the body carries out in its own substance all the chemico-physical processes necessary for its existence. The carrying out of these processes necessitates a conveyance system for delivery of vital substances to all the relatively fixed body cells and for carrying off the byproducts and wastes generated by internal cellular metabolism. The actual delivery and removal are accomplished by the system of fluid tissues known as blood and lymph.

B. Visible Signs/Observations

- Pallor;
- Swelling or deformities of joints.

C. Considerations/Questions

- Frequent bacterial infections? Anemia, weakness;
- Blood transfusions?;
- Difficulty in stopping bleeding - bone pain?;
- Chemotherapy.

D. Impairments/Disorders

1. Disorders of the Red Blood Cells - Characterized by anemia caused by excessive blood loss, deficient red cell production, excessive red cell destruction;
2. Disorders of the White Blood Cells - Most common disease is leukemia;
3. Hemorrhagic Disorders - Characterized by hemorrhagic tendencies (hemophilia, etc.);
4. Lymphomas - Major types are Hodgkins' disease and non-Hodgkins lymphoma;
5. Plasma Cell Disorders - Most common is multiple myeloma; also macroglobulinemia.

1320.45 Skin

A. Description - The skin is composed of two main layers. The outer layer, consisting of dead cells over a layer of active cells, is called the epidermis. Dead outer cells flake or are abraded off, being replaced from underneath. The deeper

layer of skin is the dermis and it consists of connective tissue which supports various structures of the body.

B. Visible Signs/Observations

- Lesions;
- Rash;
- Discoloration;
- Burns;
- Scars;
- Disfigurement.

C. Considerations/Questions

- Cause of irritation;
- Frequency of irritation;
- Joints affected.

D. Impairments/Disorders

1. Common Skin Disorders - Dermatomyositis, systemic lupus erythematosus, scleroderma, psoriasis, etc.;
2. Physical Disfigurement.

1320.50 Endocrine System

A. Description - The endocrine glands regulate metabolic functions by secreting specific substances called hormones which are carried by the blood stream to their site of action. The endocrine system consists of the pituitary gland, thyroid gland, parathyroid glands, adrenal glands, pancreas and gonads. Most diseases of this system can be remedied through proper treatment.

B. Visible Signs/Observations

- Bulging eyeballs;
- Dwarfism;
- Gigantism;

- Large extremities.

C. Considerations/Questions

- Weight loss or gain;
- Dizziness;
- Blackouts;
- Convulsions;
- Numbness in extremities;
- Goiters;
- Non-healing sores or skin ulcers;
- Elevated blood sugar;
- Blurred vision;
- Seizures;
- Diarrhea or constipation.

D. Impairments/Disorders

1. Thyroid Disorders - Result of either excessive or underproduction of hormones;
2. Diabetes Mellitus - Persistently elevated blood sugar, family history of disease;
3. Diabetes Insipidus - May be caused by abnormal posterior pituitary gland, frequent complication is dehydration;
4. Hyperparathyroidism - Elevated parathyroid hormone level, generalized decalcification of bones;
5. Hypoparathyroidism - Low parathyroid hormone level, neuromuscular irritability.

1320.55 Neurological System

A. Description - The neurological system is divided into two major divisions, the central nervous system consisting of the brain and spinal cord, and the peripheral nervous system. It is like a vast communications network, both receiving and

sending the necessary information for the body to properly respond to its external and internal environment.

B. Visible Signs/Observations

- Speech, hearing or visual deficit paralysis;
- Level of consciousness (alert, stuporous, confused, etc.), orientation to time, person, and place;
- Gait;
- Lack of muscle control.

C. Considerations/Questions

- Description of seizures, nature, duration, frequency;
- Medication;
- Physical therapy;
- Diminished sense of touch;
- Motor deficits;
- Head injuries.

D. Impairments/Disorders

1. Epilepsy (Seizures):

   (a) Major Motor Seizures (Grand Mal or Generalized) - Characterized by momentary feeling of strangeness followed by unconsciousness and convulsive movement of arms and legs.

   (b) Minor Motor Seizures (Petit Mal, Myoclonic Jerks, Akinetic Seizures) - Brief interruption of consciousness, sudden and involuntary contraction of muscles, or sudden loss of tone in all muscles resulting in fall to the ground.

   (c) Focal Seizures - (Psychomotor or temporal lobe, Jacksonian). Clonic movements in localized groups of muscles such as the hand or forearm, with or without loss of consciousness.

2. Cerebrovascular Accident (Stroke) - Dramatic development of wide scale of neurological symptoms resulting in functional loss of one or more body

parts; parts affected depend upon area in the brain in which damage has occurred.

3. Cerebral Palsy - Group of disorders of the motor system at birth; most common feature is spastic paraplegia with brisk tendon reflexes and extensor plantar responses, often accompanied by mental retardation and epilepsy.

4. Head Injury - Compound fractures and depressed fractures of the skull often result in cerebral damage similar to cerebrovascular accidents and seizure disorders.

5. Intracranial Tumor - Tumors vary from benign gliomas (most common) to the malignant brain tumors; symptoms are caused by irritation and destruction of nerve tissue and by intracranial pressure.

6. Parkinsonism - Generalized poverty of movement accompanied by tremor, progressively degenerating into rigidity; disturbance of ability to perform fine and gross movements.

7. Chorea - Characterized by sudden jerking movement of limbs; most common types are Sydenham (benign) and Huntington's (progressive).

8. Multiple Sclerosis - Chronic disease caused by absence of covering of the nerve cells; change of symptoms occur frequently.

9. Diseases of Spinal Cord - Compression of spinal cord by tumor or cervical spondylosis, degeneration of spinal cord, Syringomyelia.

10. Disorders of Muscles - Muscular dystrophy and myasthenia gravis.

11. Peripheral Neuropathy - Numbness, tingling, muscle weakness and/or atrophy of extremities which may have been caused by diseases such as diabetes mellitus.

1320.60 Mental Impairments

A. Description - Mental impairments can be characterized as mental disturbances that are generally not associated with any demonstrable structural change in the brain and are without any clearly defined physical cause. An exception would be organic brain syndrome in which there is atrophy of the brain tissues. To a large degree, the causes of mental illness and the factors resulting in such mental disturbances are the difficulties of human existence.

B. Visible Signs/Observations

- Ability to understand and respond to questions;

- Assistance by another person in the interview;
- Dressed appropriately and reasonably well groomed;
- Unusual behavior (restlessness, mannerisms, twitching, crying, etc.);
- Memory defect, confusion, disorientation;

C. Considerations/Questions

- Reading, writing, and simple calculation abilities;
- Ability to perform routine, repetitive tasks;
- Description of customary activities (psychological functioning), scope of interest, ability to relate to others;
- Independence with which discretional activities are engaged in;
- Difficulty in thinking (forgetfulness, obsessive thinking, anxieties, worries, inability to complete thoughts, etc.).

D. Impairments/Disorders

1. Mental Retardation - Lifelong condition characterized by below average intelligence with resultant impairment in learning, maturity and social adjustment.

2. Other Mental Disorders - Chronic organic brain syndrome, functional non-psychotic disorders, functional psychotic disorders.

1320.65 Malignant Tumors

A. Description - Neoplasm is new, abnormal growth of cells resulting in nonfunctional or abnormally functional mass of tissue - a tumor. A benign tumor generally remains localized but may cause impairment due to size, pain or pressure. A malignant tumor begins as a local lesion but tends to spread beyond the site of origin by direct extension into adjacent areas or by migration of cells called metastasis.

B. Visible Signs/Observations

- Emaciation

C. Considerations/Questions

- Location of cancer;

- Surgery;
- Therapy (cobalt, x-ray, chemotherapy);
- Medication? (oral, intravenous) - response to treatment;
- Metastasis (spreading) to other body parts or areas;
- Functional limitations;
- Disfigurements?

D. Impairments/Disorders

1. Categories of Malignancies:

(a) Malignancies that carry prognosis of extremely short life expectancy (e.g., oatcell carcinoma of the lung);

(b) Less invasive malignancies that require metastasis to be disabling (e.g., carcinoma of the kidneys);

(c) Malignancies that show resistance to therapy.

2. Benign tumors

1320.70 Multiple Body Systems

A. Description - Multiple body systems refer to diseases which involve more than one body system. These are usually connective tissue diseases and rheumatic diseases.

B. Visible Signs/Observations

- Facial rashes;
- Skin hemorrhages;
- Personality changes;
- Obesity;
- Shortness of breath.

C. Considerations/Questions

Considerations and questions for each pertinent body system.

D. Impairments/Disorders

1. Systemic Lupus Erythematosus - Inflammatory disorder of unknown origin affecting the connective tissues of any organ system.

2. Obesity - Severe excessive body weight affecting musculoskeletal, cardiovascular, pulmonary and vascular systems.

3. Other Connective Tissue Disorders - scleroderma, sarcoidosis, dermatomyositis, polyarteritis nodosa.

1320.75 Acquired Immunodeficiency Syndrome (Aids)

A. Description - Acquired Immunodeficiency Syndrome (AIDS) is characterized by a defect in the natural immunity system against disease. It is caused by a specific retrovirus known as human immunodeficiency virus (HIV).

B. Visible Signs/Observations

- Weight loss;
- Sores or skin ulcers.

C. Considerations/Questions

- Recurrent fevers;
- Weight loss;
- Diarrhea;
- Fatigue;
- Night sweats;
- Recurrent fungal, viral or other infections.

D. Impairments/Disorders

1. Lymphomas - Major types are Hodgkin's disease and non-Hodgkin's lymphoma.

2. Fungal Diseases - Coccidioidomycosis, cryptococcosis histoplasmosis, candidiasis.

3. Viruses - Any of several viruses that cause cellular enlargement and severe disease affecting the salivary glands, brain, kidneys, liver and

lungs (cytomegalovirus) or a viral disease marked by blisters on the skin or mucous membranes (herpes simplex virus).

4. Respiratory Disorders - Tuberculosis, lymphoid pneumonia, pneumocystis carinii pneumonia.

5. Toxoplasmosis - A disease of the central nervous system.

6. Bacterial Infections - Salmonellosis and mycobacteriosis.

7. Retinitis - Specifically, cytomegalovirus retinitis, an inflammation of the retina often causing loss of vision.

8. Kaposi's Sarcoma - Malignancy characterized by red or violet lesions on the skin or mucous membrane.

9. HIV Encephalopathy - A disease which alters the brain structure causing dementia.

10. HIV Wasting Syndrome - Profound involuntary weight loss, loss of strength.

1325.5 General

The field office has overall responsibility for developing medical evidence as part of the disability claim. While instructions and guidance are provided here, the use of good judgment is equally important. Thorough and prompt development will facilitate the determination of the claim.

1325.5.1 Use of Evidence

Medical evidence submitted to the Railroad Retirement Board (RRB) becomes the property of the RRB unless otherwise specified. It is placed permanently into the claim file established for that claim number along with all other claim material, award/adjustment forms and correspondence for that claim number.

Disability claims examiners use the medical evidence in making a disability determination. If a joint freeze determination is required, a Social Security Administration disability claims examiner will also examine the medical evidence.

1325.5.2 Age and Relevance of Medical Evidence

Only recent medical records relating to the applicant's claimed disability should be developed. Evidence is considered to be recent when treatment or examination was within the last 12 months. However, it may be necessary to develop older evidence to establish that a child's disability began before age 22, or that a widow(er)'s disability began within the prescribed period.

1325.5.3 Protection of Medical Evidence Under the Privacy Act

Medical evidence submitted to the RRB is protected from disclosure to third parties by the provisions of the Privacy Act. See FOM-I 130 for the conditions under the Privacy Act that allow disclosure. Because of the sensitivity of medical evidence, a strict interpretation of the Privacy Act must be applied before releasing evidence in file or even disclosing the existence of such evidence in file. However, medical records maintained by the physician who conducted an examination either at RRB expense/direction or the applicant's, are the property of that physician and may be disclosed by the physician at his discretion.

1325.5.4 Access to Medical Evidence Under the Freedom of Information Act

The right of an individual to gain access to information about him held by an agency that was established in the Freedom of Information Act (FOIA) extends to medical evidence. That is, an applicant or annuitant may examine or obtain copies of medical information about himself. However, a physician's warning that release of the information would be harmful to the person must be respected. See instructions in FOM-I 130.40.8 for handling requests for copies of medical evidence in RRB possession.

1325.10 Descriptions and Sources Of Medical Evidence

Medical evidence consists of reports and records from acceptable medical sources about the disability. This section lists possible sources for medical evidence and describes what the evidence from these sources should contain in order to facilitate the disability determination.

1325.10.1 Personal Physician Records

A. Description - Medical evidence from the applicant's personal physician which shows history, diagnosis, laboratory and clinical findings, treatment and response to treatment is most helpful in arriving at a proper disability determination. A statement or opinion that the applicant is disabled will not satisfy the requirement that he be disabled within the meaning of the Railroad Retirement Act or Social Security Act. However, the trend has been to give greater weight to the opinions of personal physicians who have treated a patient over a period of time.

Reports from personal physicians are acceptable in the following forms:

- Form G-250, Report of Physical Examination;
- Form G-250a, Medical Assessment of Residual Functional Capacity;

  NOTE: Form G-250a is ONLY used by Hearings Officers in the Bureau of Hearings and Appeals (BHA).

- Form G-260, Report of Seizure Disorder (if epilepsy is alleged);
- Narrative report on the physician's business stationery;
- Copies of the physician's patient records.

To be useful, the report should include the items listed in the paragraph above. It also should be noted that during appeals of disability denials, appellants often provide significantly more detailed personal physician reports than the reports from the same physicians submitted at initial application development. Obviously, it is important to get the best report possible the first time around.

B How to obtain - When it is established that a person intends to file an application for disability, he should be furnished one or more Form G-250 and, if a seizure disorder is alleged, Form G-260 with instructions to have it completed by his personal physician(s), making sure the physician(s) signs and dates the narrative sections. Field offices should not release Form G-250a unless specifically requested by a Hearings Officer in BHA. Form G-197, signed by the applicant/annuitant or authorized individual, shall also be released with Forms G-250 and G-260.

Field offices are encouraged to furnish Forms G-250 and G-260 before an application is filed, if possible. If the applicant can bring the completed and signed forms as well as any additional medical records with him when he files, the field office can better determine what additional evidence may be necessary and can begin the process of obtaining it sooner. However, do not refuse or delay an application for disability until the applicant furnishes personal physician records.

If the applicant needs assistance in securing personal physician records, the field office may send Forms G-250 and G-260 to the doctor. Even though assistance in obtaining this evidence may be given, the RRB bears no responsibility for charges by the personal physician in furnishing it.

Based on experience with the particular physician, pend the request for a reasonable period, not to exceed 20 days. If no response is received, release and image tracer Form RL-11c and notate Contact Log. Allow 10 days for a response to the tracer. If no response is received, the field office manager must decide whether additional tracing efforts are worthwhile. Document any further attempts at development; image any released letters and notate Contact Log.

If the field office manager decides to abandon further efforts to obtain the records, release a brief E-mail summarizing the actions taken and reason for abandonment to the DBD Group Mailbox or, if known, the personal E-mail inbox of the responsible Reconsideration Section (RECON) disability adjudicator if a review of an adverse initial determination was requested. (See FOM-I 1325.15.3)

1325.10.2 Records from Hospitals or Other Institutions

A. Description - Records from hospitals or other institutions, such as mental health facilities, sanitoriums, etc., are usually comprehensive in nature and can be enormously valuable. The most desirable hospital/institution record consists of a copy of the discharge summary or final report which includes history, clinical course, physical and laboratory findings, therapy and response. If such a report or summary is not available, a copy of admission history, physical findings, laboratory and x-ray findings, as well as diagnosis, should be obtained. The absence of specific values such as lab test results, blood pressure, etc., frequently necessitates a specialized examination that otherwise would not have been required.

B. How to obtain - Unless the applicant furnishes adequate records as described in A. above, the field office should request records directly from the hospital or institution. Form RL-11b should be used for requesting hospital or institution records for any disability applicant, including a disabled child. Release Form G-197, signed by the applicant/annuitant or authorized individual, with Form RL-11b. Medical evidence should be requested from the claimant's alleged onset of disability through the current date.

Based on experience with the particular hospital or institution, pend the request for a reasonable period, not to exceed 20 days. If no response is received, send and image tracer Form RL-11c and notate Contact Log. Allow 10 days for a response to the tracer. If no response is received, the field office manager must decide whether additional tracing efforts are worthwhile. Document any further attempts at development; image any released letters and notate Contact Log.

If the field office manager decides to abandon further efforts to obtain the records, release a brief E-mail summarizing the actions taken and reason for abandonment to the DBD Group Mailbox or, if known, the responsible RECON disability adjudicator if a review of an adverse initial determination was requested. (See FOM-I 1325.15.3).

There are provisions for the payment of hospital records if a bill is received. See FOM-I 1330.15.2.

1325.10.3 Employer Records

Many railroad and non-railroad employers, through their medical departments or affiliated hospital associations, furnish valuable medical evidence at no cost to the RRB. Railroad employers can also inform us whether the applicant was disqualified from service because of physical condition. This disqualification must be completed by the contact official designated for medical matters for a particular railroad employer.

The RRB should request medical from an employer:

1. At the time an initial disability application is filed to obtain medical records within the last 18 months (use Forms G-197 and RL-11D1); ~~and~~ or

2. The applicant claims disqualification from railroad or the employer is listed in FOM 1 13 Appendix A (use Form RL-11 and G-3EMP).

RL-11D1

Medical evidence should be requested from an applicant's railroad and nonrailroad employer by the field office with an RL-11D1, *Request for Medical Evidence from Employers*, letter to obtain any medical evidence of an employee's disability that they may have for the last 18 months. Form G-197, *Authorization to Disclose Information to the Railroad Retirement Board,* must be signed by the applicant or his/her authorized representative and attached to the RL-11D1 form.

When Form RL-11D1 has been outstanding for more than 30 days, DBD may initiate tracer action by releasing an email to the claims representative (with a cc to the Field Office's Group Mailbox) that released the form. **NOTE:** The DBD examiner will continue the sequential evaluation process while waiting for the results. The claims representative will trace with the employer using Form RL-11C, *Letter Tracing Original Request for Medical Records*. Document any further attempts at development; image any released letters and notate Contact Log.

If the field office manager decides to abandon further efforts to obtain the records, release a brief E-mail summarizing the actions taken and reason for abandonment to the DBD Group Mailbox or, if known, the personal E-mail inbox of the responsible Reconsideration Section (RECON) disability adjudicator if a review of an adverse initial determination was requested. (See FOM-I 1325.15.3)

G-3EMP

Medical evidence should be requested from an applicant's railroad employer by the field office with an RL-11, *Letter For G-3EMP Disqualification Request for Medical Evidence from Railroad Employers*, letter if:

a) the applicant claims disqualification by his/her employer due to his/her physical condition; or

b) the employer is listed in Appendix A of FOM-I-13.

Form G-197, *Authorization to Disclose Information to the Railroad Retirement Board,* must be signed by the applicant or his/her authorized representative and enclosed with the RL-11 and G-3EMP forms. The field office assumes in these cases that a specialized examination will not be necessary.

The RL-11 letter requests a railroad employer to return the completed Form G-3EMP to the field office. This arrangement applies to all railroad employers. Use the completed Form G-3EMP to determine what additional medical evidence may be required, and develop accordingly.

When Form G-3EMP has been outstanding for more than 30 days, DBD will initiate tracer action by sending an e-mail to the field office servicing the area in which the contact official is located; that office will contact the proper railroad official to expedite completion of Form G-3EMP. Notate Contact Log.

1325.10.4 Records from Other Agencies

Sometimes an employee, widow(er), or child applicant for benefits under the RRA has also applied for benefits with another agency. By obtaining copies of medical evidence developed by that agency, we may be able to make a disability determination quicker, at less cost and more accurately than otherwise.

A. Social Security Administration (SSA)

1. Description - If an employee, widow(er), or child applicant has filed at SSA for Title II (Disability Insurance Benefits;(DIB) or Title XVI (Supplemental Security Income; SSI) benefits based upon a disability, the medical evidence and disability decision may be obtained from SSA. Such evidence may be sufficient for a rating under the RRA. SSA has procedures for notifying RRB and sending copies of medical evidence when a rating is made on an employee whose earnings record is

earmarked for railroad work. Unless you know that SSA medical evidence is in RRB files, the field office should request copies directly from SSA.

When you request medical records from SSA, also request the applicant to have Form G-250 completed by the personal physician as a record of the current medical condition. As a matter of customer service, field offices should always provide assistance to applicants, when needed, for medical evidence from their own medical sources even if we request evidence from SSA in order to avoid delaying a disability rating in case SSA is unable to provide their evidence. If Form G-250 cannot be secured, release a brief E-mail summarizing the actions taken and reason for abandonment to the DBD Group Mailbox or, if known, the personal E-mail inbox of the responsible RECON disability adjudicator if a review of an adverse determination was requested. Do not schedule specialized examinations unless requested by DBD or RECON.

2. How to obtain - Release Form RR-5 to SSA's Great Lakes Programs Service Center either by regular mail or as email attachment (see DCM 11, RR-5 instructions); send a copy to DBD. No tracer action by the field office is required.

   When an applicant has applied for disability benefits at SSA, but hasn't been rated, you may be able to obtain copies of medical evidence from the state agency that makes disability determinations for SSA (usually titled something like Disability Determination Section of the Department of Human Resources for the applicant's state of domicile).

B. Department of Veterans Affairs

1. Description - In addition to obtaining medical evidence from VA hospitals where applicants may have been treated, medical evidence may be available from the VA regional office if the veteran is receiving VA disability benefits. Since the veteran may be receiving benefits based on a condition unrelated to the disabling condition, the evidence VA has may not be current. Judgment should be used to determine the usefulness of such evidence.

2. How to obtain - The field office should request copies of medical evidence by sending Form RL-11a to the VA hospital or regional office where the applicant was treated or examined. Note that the applicant or authorized individual must sign the enclosure Form G-197, authorizing the VA to release medical evidence to the RRB.

   Pend the request for a reasonable period not to exceed 30 days. If no response is received, send and image Form RL-11c to trace the request; notate Contact Log. Allow 15 days for a response to the tracer. If no response is received, the field office manager must decide whether

additional efforts are worthwhile. Document any further attempts at development; image any released letters and notate Contact Log.

If the field office manager decides to abandon further efforts to obtain VA records, release a brief E-mail summarizing the actions taken and reason for abandonment to the DBD Group Mailbox or, if known, the responsible RECON disability adjudicator if a review of an adverse initial determination was requested. (See FOM-I 1325.15.3)

C. Worker's Compensation/Public Disability Benefit/Public Service Pension

1. Description - Medical evidence should be requested from an agency that pays worker's compensation, a public disability benefit, or a public service pension based on disability, when the applicant has received or expects to receive such payment. However, evidence should be requested only if the agency is considered a "key" source. A key source would have records of treatment or examination of the employee since or shortly before the earliest possible disability onset date.

   A branch of the armed forces that is paying a military disability retirement benefit will probably not be a key source for medical evidence. The veteran will usually have more recent records at a VA facility. Request medical evidence from a service organization only if it is the sole source of evidence, and the condition on which the disability benefit is based began at or near the alleged disability onset date.

   Do not request medical evidence from the paying agency if the applicant has been rated disabled or denied a disability by SSA, because that evidence will probably be included in SSA's records.

2. How to obtain - Use Form RL-11d to request medical evidence. The applicant's or authorized individual’s signature is required on Form G-197, as well as the claim number of the Worker’s Compensation/public disability benefit or public service pension. Form G-214 (Worker's Compensation and Public Disability Benefit Questionnaire) requests the benefit claim number and the name and address of the agency paying benefits. Form G-208 (Public Service Pension Questionnaire) does not request that information. When a Form AA-17b applicant also completes Form G-208, add the public service pension claim number and the address of the agency paying benefits in the remarks section of Form G-208.

   Send the Form Letter RL-11d to the address shown on Forms G-214 or G-208. Send all requests for Federal civil service records to the following address for the Office of Personnel Management:

   Office of Personnel Management

Chief of Disability Claims Division
1900 E Street NW
Room 3468
Washington, DC 20415

If you do not receive a report after 30 days, use Form RL-11c to trace your request; notate Contact Log. If the evidence has not been received within 15 days of the tracer, the field office manager must decide whether additional efforts are worthwhile. Document further attempts at development; image any released letters and notate Contact Log.

If the field office manager decides to abandon further efforts to obtain the records, release a brief E-mail summarizing the actions taken and the reason for abandonment to the DBD Group Mailbox or, if known, the responsible RECON disability adjudicator if a review of an adverse initial determination was requested. (See FOM-I 1325.15.3)

D. Other Agency or Institution

1. Description - An applicant may be receiving other welfare type benefits based on disability. Medical evidence may be available from the paying agency. Usually agencies are willing to provide copies of medical evidence because benefits they pay will be reduced by benefits paid by RRB.

2. How to obtain - Form RL-11d can be used to request medical records from the agency paying benefits. The applicant or authorized individual must sign enclosure Form G-197, authorizing the release of medical data to the RRB. Pend the request for a reasonable period not to exceed 30 days. If no response is received, send Form RL-11c to trace the request; notate Contact Log. Allow 15 days for a response to the tracer. If no response is received, the field office manager must decide whether additional efforts are worthwhile. Document any further attempts at development; image any released letters and notate Contact Log.

   If the field office manager decides to abandon further efforts to obtain the records, release a brief E-mail summarizing the actions taken and reason for abandonment to the DBD Group Mailbox or, if know, the responsible RECON disability adjudicator if a review of an adverse initial determination was requested. (See FOM-I 1325.15.3)

1325.10.5 Evaluation of Existing Source Evidence

Available medical evidence should be evaluated for its adequacy for a proper disability determination; that is, it must be substantial in quality and quantity, and it must reflect the applicant's current condition. Quality and quantity should be judged based on the

information for the particular body system contained in FOM-I 1320, and on the requirements for the impairment as shown in FOM-I Article 13, Appendix B.

EXAMPLE: Congestive heart failure, an impairment of the cardiovascular system, should show congestion around the heart cavity such as edema or enlargement of the heart, which can only be detected in a chest x-ray. Appendix B shows that an EKG is also required to diagnose this disease. Therefore, recent existing source evidence must show that these two procedures have been performed and that the results indicate congestive heart disease. Furthermore, consideration must be given to the possibility that the applicant's condition has improved and that a current examination may be needed to reflect current condition.

Assistance in evaluating evidence on hand may be obtained by telephone from a disability claims examiner in the Disability Benefits Division (DBD). If the medical evidence from existing sources appears sufficient (FOM-I 1325.20.3), forward it to DBD per instructions in FOM-I 1325.20.6. A disability claims examiner will review the evidence and advise if any additional development is necessary.

When it appears that existing evidence will not be adequate, arrange for a specialized examination through QTC Medical Services, Inc.

1325.10.6 Specialized Medical Examinations

If the medical evidence obtained from the above sources does not appear sufficient for disability rating purposes, the field office will arrange for a specialized medical examination through QTC Medical Services, Inc. QTC will be responsible for obtaining the requested examinations and forwarding the examinations directly to DBD. DBD will be responsible for approving the examination and for vouchering payment.

The field office will utilize the Federal Management Integrated System (FMIS) to secure medical examinations through QTC

See FOM-I 1330.20 for instructions and guidance in arranging for specialized examination through QTC.

1325.15 Applicant's Responsibility

While the field office has overall responsibility for gathering medical evidence, the applicant is expected to submit or assist the field office in obtaining existing medical evidence in support of his claim for disability. It is also the applicant's responsibility to furnish information about his condition and treatment he has received.

1325.15.1 Railroad Retirement Board Regulations

Railroad Retirement Board (RRB) regulations state that the applicant or his representative is responsible for obtaining and submitting the evidence required to prove eligibility for, or right to continue to receive annuity payments. With regard to

medical evidence to support a disability claim, the applicant's responsibility is not absolute.

Unlike other types of evidence, medical evidence is not always easily obtainable nor is it inexpensive. Disabled persons are less likely to be able to help themselves. Therefore, the applicant's responsibility for medical evidence must be balanced with humaneness.

Furthermore, it is administratively to the RRB's advantage to be able to obtain reports in the form and content which fulfill the adjudicatory and other needs of the RRB. The decision making process is made more efficient and accurate by our ability to secure institutional records and examination reports directly from the provider.

In summary, the claimant must submit or notify the RRB of the existence of all evidence which relates to the claimed disability that may or may not support the applicant's claimed impairment(s), to the extent the claimant is aware of that evidence. The RRB will assist him when necessary in obtaining the required evidence. The applicant's responsibility also includes his cooperation with the field office in securing evidence.

1325.15.2 Evidence an Applicant Should Submit

It is reasonable to require the applicant to obtain and submit personal physician records if such records exist. By doing so, the applicant's responsibility is established and good faith is demonstrated, which gives the RRB a basis for efforts to develop additional evidence.

If an applicant has not seen a physician from whom relevant evidence can be obtained, he should not be refused the opportunity to file a disability claim. Non-medical factors will be used in such a case to determine if further development of medical evidence at RRB expense is warranted.

Assistance should be provided to an applicant who needs help in getting a report from his doctor. See FOM-I 1325.10.1.B.

Any other records or reports in the applicant's possession should be accepted. If he volunteers to obtain records from other sources, you may prefer to allow him to do so. Consideration must be given to the most expedient means of obtaining the kind of records we need without imposing too great a burden on the applicant.

1325.15.3 Abandonment for Lack of Cooperation

Development of medical evidence should not be abandoned for lack of cooperation from the applicant until the field office manager has determined that:

- The applicant has been contacted in person or by telephone;
- The importance of his cooperation to his claim has been explained;
- The lack of cooperation is willful as opposed to unintentional or uncontrollable; AND

- The applicant is not likely to cooperate further.

If the applicant cannot be contacted in person or by telephone, send a letter to his last known address advising that his claim is still pending and requires his cooperation; request that he contact the field office within 2 weeks. Abandon if no response is received in that time period.

When a case is abandoned, the field office manager should submit a report covering actions taken and the reason for abandonment to the DBD group mailbox or, if known, directly to the Reconsideration Section disability adjudicator if a review of an adverse initial determination was requested. The claim will be decided based on the information and evidence that has been developed.

1325.20 Field Office Responsibility

Field offices are responsible for fully developing claims for benefits under the RRA, including disability claims, so that these claims may be properly adjudicated by the Disability Benefits Division (DBD). The objective is to submit a complete package with sufficient supporting medical evidence as soon as possible.

1325.20.1 Assisting the Applicant

In addition to giving information and advice to the applicant, the field office must obtain certain information from him in order to help him pursue his claim. The applicant's trust and cooperation must be gained. You should explain the sequence of events, how decisions are made and when and how he will be notified of the disability determination. A field office is in the position to assure a cooperating applicant that the RRB is doing its part in developing and carefully considering his claim and to encourage a non-cooperating applicant. Once a determination is made, the applicant may come back to the field office for explanation or to request reconsideration or later to appeal.

NOTE 1: It is important to make the applicant aware of possible delays that can occur due to circumstances that arise during the disability determination process. For example, an applicant should be informed that medical procedures, such as surgery, which occur subsequent to the application for a disability annuity can require additional medical evaluation before a disability decision is made. In some instances this will require a three month waiting period and additional medical examinations to determine the effect the surgery had on the disabling condition.

NOTE 2: Disability applicants residing outside the United States pose special challenges for field offices and there is a possibility of significant delays as a result of obtaining required evidence. Consequently, field office personnel are encouraged to attempt to anticipate issues which may delay a disability rating.

Many applications from individuals residing outside the United States involve those residing in Canada or Mexico. When an application from a resident of Canada or Mexico is filed, field office personnel should routinely ask the applicant whether (s)he

lives within approximately 100 miles of the United States and, if so, if (s)he owns a valid passport and is able to travel to the United States if it is determined that a specialized examination and/or testing is needed. However, assure the applicant if a specialized examination and/or testing becomes necessary that reasonable attempts will be made to schedule it as close as possible to their residence. Regardless, notify DBD of the applicants' answers through APPLE (FOM-I 1581.11.4), Form G-626, Form G-230, or E-mail in all situations. It is also highly recommended that Contact Log be updated.

1325.20.2 Obtaining Medical Evidence Directly from the Source

FOM-I 1325.10 describes different types of medical evidence and shows which ones that the field office should generally obtain directly from the source of that evidence.

1325.20.3 Reviewing Evidence for Sufficiency

Throughout the disability development process the field offices have to review medical evidence for sufficiency in two respects:

- Does it represent the best evidence available from that source?
- Does the accumulation of medical evidence appear to provide enough evidence for a disability determination to be made?

If the evidence is not sufficient in either respect, then decisions must be made as to whether to re-request the needed evidence or what additional evidence must be obtained.

Medical evidence should also be reviewed for the following:

- Completeness of reports and forms;
- That the evidence pertains to the applicant;
- Reports are signed and dated;
- Applicant's name and claim number are shown on each item (not necessarily each page).

1325.20.4 Contracting for Specialized Examinations

When it is decided that all existing medical evidence that can be obtained does not provide sufficient evidence for a disability determination, the field office must arrange for specialized examinations to be conducted at RRB expense. Examiners from DBD are available to assist the field office in determining if and what kind of additional medical evidence should be developed. If there is any uncertainty, check with DBD before arranging for specialized examinations. See FOM-I 1330.20 for procedure about specialized examinations.

1325.20.5 Following-up, Tracing, Carrying Through

Several initiatives have been taken to speed up the development of medical evidence. Since the field office is no longer responsible for tracing, forwarding or submitting bills for consultative examinations, more energy can be directed at the development of treating source medical evidence and non-medical evidence. Therefore, the field office should adhere to the tracing requirement found in the Code of Federal Regulations (Section 220.45(b)).

While a disability claim is being developed, the application with all available evidence should be submitted to DBD as soon as it is taken. The field office should keep its file in its pending file with call-up dates while waiting for the outstanding evidence to assure that time is not wasted. Requests for evidence should be pended for up to 20 calendar days. If there is no response after 20 calendar days, send and image a tracer or second request and pend it for 10 calendar days. (See FOM-I 1325.10 for specific information regarding forms/letters and the type of evidence requested.) The tracer or second request will have more effect if it is also supported by a telephone call to the provider. Notate Contact Log. If a response is still not received in 10 calendar days (unless experience indicates that a longer period is advisable in a particular case), the field office manager must either decide that additional tracing efforts are worthwhile or abandon efforts to secure that piece of evidence. Document any further attempts at development; image any released letters and notate Contact Log. Refer to FOM-I 1325.15.3 for procedures when abandoning for lack of cooperation from the applicant.

It is the field office's obligation to carry a disability claim to completion. When the office has completed its development, when submitting the last piece of evidence, it should so indicate on the transmittal to DBD or the Reconsideration Section (RECON) (if the case is at that level of adjudication) that no further evidence will be submitted.

When the field office cannot complete its development and the case is abandoned, the field office manager shall send a brief E-mail summarizing the actions taken and reason for abandonment to the DBD Group Mailbox or, if known, the RECON disability adjudicator if a review of an adverse initial determination was requested.

1325.20.6 Transmittal of Disability Application and Medical Evidence

Procedures for submission of applications and medical evidence differ as to whether the application is for a monthly disability annuity or for a disability freeze in order to gain other benefits, such as early Medicare, O/M, early VDB, etc. However in all instances, all medical evidence being obtained, whether attached or to be submitted should be listed individually on the transmittal sheet (G-626 or G-230).

A. Application for monthly disability annuity

1. Application - An application for a monthly disability annuity should be submitted to DBD as soon as possible.

At the time the application is submitted, it is important to indicate on the transmittal (Form G-626) whether all medical evidence is attached or additional medical evidence is being developed. The transmittal should include a list of all medical evidence attached and all medical evidence to be submitted. If consultative examination(s) are scheduled through QTC Medical Services, Inc., the type(s) of examination(s) or examination(s) number should be noted in the "Remarks" section of the transmittal. In addition, when an order is made on FMIS a screen print of the information is automatically generated. This screen print should be included with the application package. If all evidence is attached, indicate in the "Remarks" section of the transmittal. Items of medical evidence being developed that are not shown in the check boxes as "To Be Submitted" should be listed in the "Remarks" section of the transmittal. If specialized examinations have been or will be scheduled, indicate which exams and the dates the exams were ordered through QTC Medical Services, Inc.

If the initial employee disability application is received from a third-party facilitator (*i.e. "Mr. Jones' Office Services"* or an attorney/law firm), please make a brief notation in the Remarks section of Application Express (APPLE) as an alert to the Disability Benefits Division (DBD) examiner. The notation should include the name of the third-party facilitator, as well as any known contact information such as their address/phone number. See FOM1 110.100.3 for further instructions.

2. Medical evidence - Submit all available medical evidence with the application. Each piece of medical evidence must be date stamped

   Any additional medical evidence received should be date stamped and submitted to DBD under cover of Form G-26b. Be sure the employee's claim number is shown on the Form G-26b and each item of medical evidence attached. Also on the Form G-26b, indicate in "Remarks":

   - What medical evidence is attached;
   - What medical evidence is still being developed;
   - Expected date outstanding evidence will be submitted;
   - If specialized examinations were ordered through QTC Medical Services, Inc.

   NOTE: If the medical evidence is being submitted to DBD by fax, it is not necessary to send copies of the medical evidence to headquarters. The faxed medical evidence is sufficient for the file kept in headquarters.

After initially pending the case for 20 calendar days, follow up on any additional medical evidence being developed at 10 calendar day intervals until the case is closed.

B. Application for disability freeze (DF) only.- When an application for a DF only is being developed from an annuitant on the rolls or from an applicant who is also filing an application separately for a monthly annuity not based on disability, it is not necessary for the application for DF only to reach DBD before the complete medical evidence package. Also, if medical evidence is being developed for a disabled child for inclusion in the O/M, hold the O/M application(s) until all development is completed. No action can be taken on the application until a determination is made with respect to the disability. The filing date of the application will protect any retroactivity.

Field offices should hold DF or O/M applications for alleged disabled children only until all evidence, medical and non-medical, is gathered and ready for submission. The application and supporting evidence should be submitted together under cover of the appropriate transmittal, Form G-230 or Form G-659a. The "Remarks" section of the transmittal should list all medical evidence being submitted. The "Remarks" section of the transmittal should be prominently marked in red with a statement such as "Application for Freeze Only," "Application for Medicare Only" or "Application for Inclusion of DAC in O/M," to indicate that this is not an application for a monthly annuity.

1325.20.7 Abandonment of Disability Development

No phase of disability development should be abandoned until the field office manager has determined that all avenues have been explored and further action would be unproductive. When the manager decides the case should be abandoned, submit a report to the DBD group mailbox or, if known, directly to the Reconsideration Section examiner covering development actions taken and reasons for abandonment. See FOM-I 1325.15.3 before abandoning a case for lack of cooperation from the applicant.

1325.25 Disability Benefits Division Responsibility

The Railroad Retirement Act (RRA) charges the Railroad Retirement Board (RRB) with responsibility to make decisions with regard to eligibility for benefits under the provisions of the RRA. RRB regulations and Board orders assign this responsibility to the Disability Benefits Division (DBD). In order to have complete and accurate case records to make disability determination decisions, the RRB will obtain and consider all evidence that may or may not support the applicant’s claimed impairment(s). For effective and efficient operations in carrying out this responsibility, the section is administratively organized into components with division of responsibility.

1325.25.1 Disability Benefits Division

DBD makes determinations as to whether the disability provisions of the RRA are met. Inherent in that responsibility is the decision whether evidence submitted is sufficient for a determination to be made. Therefore, disability claims examiners in the section will review medical evidence submitted by field offices for sufficiency. If the examiner decides that additional evidence is necessary, (s)he will send an E-mail to the field office requesting specific evidence, or the examiner may order a specialized examination through QTC Medical Services, Inc.

Disability claims examiners are available for advice and guidance to field offices. They also should be consulted when problems arise with assignments sent to field offices.

1325.30 Field Service Responsibility

Through Operations - Field Service, field offices may obtain guidance and assistance on procedural and policy matters. Interaction between field offices and the section will lead to improved procedures and policies, and will help identify training needs which the section should fulfill.

1330.5 General

In carrying out their responsibilities to fully develop disability claims, all field offices are authorized to secure medical examinations and services including non-consultative exams for which the RRB will pay according to a predetermined fee. The predetermined fee schedule was developed in a contract between the RRB and its medical examination provider QTC (QTC Medical Services, Inc.).

Field offices should not develop any medical evidence that will result in a cost to the RRB prior to the time a disability application has been officially filed.

The following sections describe the services and records for which RRB will pay, and how to request such services and records.

1330.15 Copies Or Transcripts Of Medical Records

Some medical records are expected from the applicant, some are provided by employers and other agencies free of charge, and some are provided on a fee basis.

1330.15.1 Personal Physician Records

The RRB does not pay for copies or transcripts of personal physician records. Since it is the applicant's responsibility to provide these records, any financial responsibility for charges for records is that of the applicant.

1330.15.2 Records from Hospitals or Other Institutions

The field releases Form RL-11b to medical record providers when requesting copies of medical records. The letter informs the provider to contact the field office before billing. When the medical record provider contacts the field office in regards to billing, the field staff needs to remind the provider that the RRB is a U.S. Federal government agency and that charges should be waived. The field should determine if the record provider bills other government agencies and, if not, inquire as to why payment is expected from the RRB. If the provider insists on charging for their records, approve any requests of $75.00 or less. Since the service was provided for official U.S. Government purposes, the RRB should not be subject to state and local sales tax. Advise the provider that sales tax should not appear on the bill. Ask if the provider will agree to accept credit card payment.

If the amount charged is greater than $75.00 and you are unable to convince the provider to reduce the amount, determine the reason for the excess costs. If the cost is high due to the volume of the records and the records include daily charts and physical therapy notes (these usually do not provide the most relevant information), determine if the removal of these records will reduce the cost to $75.00. If so, remove the notes. If the cost cannot be reduced you may approve an amount up to $125.00. Contact the Field Service District Manager for approval of amounts exceeding $75.00. District

Managers can authorize amounts between $125.00 up to $200.00. For amounts exceeding $200.00, get approval from the Network Manager. Field Service Network Managers can authorize amounts between $200.00 and $250.00. When the amount exceeds $250.00, contact the RRA Application and Calculation (RAC) section in Policy and Systems. P&S-RAC will contact the Assistant Director of Administration to request approval of an amount exceeding $250.00.

1330.15.3 Employer Records

Employers under the RRA provide medical information and records to the RRB without charge.

1330.15.4 Records from Other Agencies

Federal agencies provide copies of medical records in their possession free of charge to the RRB. State and local agencies generally do so also; however, if they indicate that they must charge for photocopying the records, contact the agency using the guidance provided in FOM I 1330.15.2.

1330.20 Specialized Examinations, Laboratory Tests And X-Rays

The field office will utilize the Federal Management Integrated System (FMIS) to secure medical examinations. FMIS is a computer program used by all Federal agencies as a multi-purpose accounting system for the purchase and payment of goods and services. Extensive modifications have been made to data input screens and certain FMIS processes for convenient on-line entries to secure needed medical examinations.

Teleconference training and hard copy procedures providing instructions for ordering medical examinations through QTC Medical Services, Inc. on FMIS have been furnished to all field offices. To view printed instruction on using FMIS, click the following links.

RRB FMIS Consulting Opinion Order Entry QRG

RRB FMIS Consulting Opinion Receipt-Payment Entry QRG

RRB FMIS Medical Exam Order Entry QRG(02)

RRB FMIS Medical Exam Order Entry QRG

RRB FMIS Medical Exam Receipt-Payment Entry QRG

1330.20.1 Authority to Schedule Specialized Services

Authority to pay for contractual medical services rests with the Disability Benefits Division (DBD). All field offices are authorized to request specialized examinations,

laboratory tests and X-rays listed in FOM I, Article 13, Appendix C without prior approval from DBD (unless there is a notation advising the examination is not to be scheduled unless requested or approved by DBD). See FOM I 1330.20.3 for additional information regarding which examination, test, or x-ray to schedule.

The field office will schedule services with QTC Medical Services, Inc. through the use of FMIS.

Completing entries on the FMIS "Exam Order" screen is self-explanatory.

NOTE 1: When an application from a resident of Canada or Mexico is filed, field office personnel should routinely ask the applicant whether (s)he lives within approximately 100 miles of the United States and, if so, if (s)he owns a valid passport and is able to travel to the United States. If a specialized examination and/or testing is needed, indicate in the REMARKS section on the FMIS "Exam Order" screen if the applicant is able to attend the appointment only in their country of residence, only in the United States, or in either their country of residence or the United States.

NOTE 2: If there is no medical evidence in file, indicate that fact in the REMARKS section on the FMIS "Exam Order" screen.

1330.20.2 When NOT to Schedule Specialized Services

Do not schedule specialized examinations if one or more of the following conditions apply:

A. The applicant is currently confined to a hospital or institution. Do not schedule an examination even if you are requested to do so by DBD; when such a request is received from DBD, secure a hospital report and advise DBD immediately.

B. The applicant is confined to his home because of his disability. Prepare a non-medical factor report in accordance with FOM I 1315 and develop existing source evidence.

C. The applicant's disability is based solely on an obvious condition such as loss of an eye or a limb. Fully describe the applicant's disability in the non-medical factor report in accordance with FOM I 1315 and develop existing source evidence. If there are other disabling conditions, schedule specialized examinations if employer or applicant source medical evidence is not sufficient for rating purposes. (Examiners from DBD are available to assist the field office in determining if medical evidence may be sufficient for rating purposes.)

D. The employer or railroad hospital association is expected to submit medical evidence and that employer source's medical evidence is usually adequate for rating purposes.

E. The applicant was hospitalized within the last 3 months for the treatment or diagnosis of his disability. Secure a hospital report.

F. DBD requested development of a disability application and advised that no medical evidence is required because the applicant was rated disabled by the Social Security Administration.

G. The examination is considered invasive or is rarely used in disability determinations. Do not schedule the following examinations unless advised so by DBD staff: Examinations 014, 020, 023, 123, 024, 026, 028, 030, 032, 033, 036, 040, 042, 043, 047, and 200.

H. If the claimant's treating physician has indicated that the performance of the requested examination is contraindicated. The doctor's statement giving his/her reason for not obtaining the examination should be obtained.

I. Impairments in which consultative examinations do not adequately document the severity of the impairment, such as cancer or AIDS. Hospital records, clinic notes, etc., should be obtained.

1330.20.3 Determining Which Examination, Laboratory Test, or X-ray to Schedule

With existing medical evidence and non-medical factors as a basis, refer to FOM I, Article 13, Appendix B to determine which specialized examinations, laboratory tests and x-rays are required to complete development of the disability claim. That appendix lists the exams, tests and x-rays by impairment or disorder within each of the body systems that are needed by disability claims examiners to make disability determinations. Examiners from DBD are available to assist the field office in determining if and what kind of additional medical evidence should be developed. If there is any uncertainty, check with DBD before arranging for specialized examinations or determining which services should be obtained.

1330.20.4 Sending Background Medical Evidence to QTC Medical Services, Inc

Whenever a neurological exam (012) or psychiatric exam (013) is requested by the field office, a copy (two copies if both exams are ordered) of any available medical evidence must be sent by overnight delivery to:

QTC Medical Services, Inc.
Department RRB
1440 Bridgegate Drive
Diamond Bar, CA 91765

NOTE: The field office must ensure that the order for these exams be placed on FMIS the same day that the background medical evidence is mailed overnight. In addition, indicate in the REMARKS section on the FMIS “Exam Order” screen that background medical evidence is being forwarded.

1330.20.5 Fees for Specialized Services

A pre-determined schedule of fees has been agreed upon between RRB and its medical examination provider. QTC Medical Services, Inc. DBD will be responsible for payment once the examination(s) has been received and approved by DBD or Bureau of Hearings & Appeals (BHA).

1330.20.6 Notification of Cancellation

The disability applicant has been instructed to call QTC Medical Services, Inc. in the event of a scheduling problem. QTC will then contact the disability determination unit to restart the scheduling cycle if necessary. QTC may not, under the terms of the contract, automatically reschedule without RRB permission. The disability examiner may check with the field office to determine why the applicant could not make the appointment. (For example, the applicant may be hospitalized and rescheduling will have to be deferred, or the applicant was just unavailable on the selected day so rescheduling can be immediate.)

If the field office is notified by the applicant that an exam must be canceled, the field office should immediately notify the disability determination unit advising that an examination has been ordered but the applicant will not keep the appointment.

1330.25 Bill for Copies or Transcripts of Hospital or Institution Records

When a bill for medical records is received from a hospital or institution in the field office, a call will be made to the provider in the hopes of talking them out of charging us or to accept the flat fee. If the hospital or institution insists on payment for the copies or transcripts of records the field manager must approve the billing amount. Payment can be made in one of two ways: Credit Card or by submitting Form G-370 to BFO

1. Credit Card: This is the preferred method of payment for all billings. Use the manager's government purchases credit card and take the following steps:

    - Forward the bill to the Field Service Manager, annotating that it was paid by credit card.

    - The Field Manager will hold the bill until the monthly statement is received.

      NOTE: An asterisk is to be placed on the credit card bill next to each charge for medical records and notated on the bill "*-Medical Record Fees."

    - Sign the statement.

    - Submit statement with the credit card bills and receipts to RMC (Resource Management Center in Programs Evaluation and Management Services [PEMS]).

2. Form G-370: In cases where the hospital or institution will not accept a credit card payment, submit the bill under cover of Form G-370, Field Office Authorization for Payment of Hospital Medical Report. All bills should be sent directly to the Bureau of Fiscal Operations (BFO) in a white envelope marked "BFO-Accounts Payable Section."

For both payment methods,

- Check bills against imaging to ensure that the bill is not a duplicate, and
- If sales tax is included on the bill, request the provider to remove it based on government tax exempt status, and:
    - If the provider agrees, pay the bill minus the sales tax amount; or
    - If the provider disagrees, pay the bill including the sales tax.
- Be sure the applicant's name is shown on the bill, and
- Image the document.

Special Situations: If a bill is received for medical records and the bill was not previously approved by the field, take the following action:

- For bills of $75.00 or less, pay the bill as described in the above paragraphs.
- If the amount of the bill is greater than $75.00:
    - Pay the amount up to $125.00 and release Form Letter RL-11f (found in the general files section of the field service Bulletin Board System under the file name RL-11f.WPT) to the provider. This letter explains to the provider that we will only pay a maximum amount of $125.00 when prior approval is not obtained.

If the medical record provider does not agree with what we are paying them, get approval from the Field Service District Manager to pay amounts between $125.00 up to $200.00. For amounts exceeding $200.00 up to $250.00, get the approval of the Field Service Network Manager. Contact the RRA Application and Calculation (RAC) Section in Policy and Systems, for any bills exceeding $250.00. (P&S-RAC will request approval from the Assistant Director of Administration for amounts over $250.00). Send a copy of the Form Letter RL-11f.

1330.25.1 Tracer Actions

If a provider reports that he has not received payment for services, check the copy of the Form G-370 on imaging to see when the original was submitted to BFO. When less than 45 calendar days have elapsed since the submission date, explain to the provider that vouchers are batch processed and sent to the U.S. Treasury Department for check

preparation and release; ask the provider to please allow a little more time and to call back if not received within the 45 day time frame.

If more than 45 days have elapsed since submission of the Form G-370 to BFO, take the following action:

A. Call the Supervisor of the Accounts Payable section in BFO, on extension 4713. Give details of the service and request status of the payment.

B. If a satisfactory response is not received within 5 working days, call the Financial Management Analyst of the Bureau of Fiscal Operations, on extension 4317.

Do not call or write DBD to trace for outstanding payments. If BFO advises that they have no record of having received a Form G-370 for that service, submit a copy of the Form G-370 and the bill to BFO.

1330.25.2 Return or Refund of Payment

If for any reason the provider returns the Treasury check, or refunds part or all of the payment, send the payment in a white envelope to "BFO - Attention: Accounts Payable Section." Send a short memorandum explaining why the return or refund is being made. If a Treasury check is being returned, be sure to stamp the check non-negotiable.

1330.25.3 Reporting Payments to IRS and Providers

In January of each year, the RRB is required to report to the Internal Revenue Service (IRS) payments made to all providers who were paid more than $599.00 during the previous year. Also, Form 1099-MISC is issued to providers to show the total amount of payments made for the year. The provider would use Form 1099-MISC in the way a Form W-2 is used to document his income tax return. Requests for replacement Forms 1099-MISC should be forwarded to BFO.

1335.5 General

A. Continuance of entitlement - Entitlement to benefits based on disability continues until terminated for one of the following events:

- Beneficiary dies;
- Disabled employee or widow(er) attains full retirement age (FRA);
- Medical recovery of the beneficiary;
- Ability to work is demonstrated.

When benefits are terminated for either of the last two reasons, a new application is required to establish entitlement to a disability benefit again or to other benefits. Upon the attainment of FRA by a disabled employee or widow(er), the disability benefits are converted to regular age benefits automatically without new application. Conversion prior to FRA will not occur, even if the beneficiary is eligible for benefits based on criteria other than disability, unless medical recovery is shown, in which case a new application will be required.

See FOM-I-310.45 regarding termination of benefits.

B. Continuance of benefits - Even while entitlement to disability benefits continues, benefits (cash and other) may be suspended for one of the following reasons:

- Work for a railroad employer;
- Excess earnings (see FOM-I-1125).

When the condition causing suspension is removed, benefits may be reinstated if the annuitant is still disabled. Any work could cause an investigation to determine if the beneficiary has medically recovered or demonstrated an ability to work as described later in this chapter. See FOM-I-310.40 regarding suspension of benefits and FOM-I-310.80 regarding reinstatement.

C. Medical recovery - The establishment that a beneficiary has medically recovered requires a continuance of disability determination by a disability claims examiner in the Disability Programs Section. This determination is similar to the initial disability determination; the disability claims examiner usually looks at current medical evidence and non-medical factors to determine if there has been significant medical improvement, which would permit the annuitant to engage in substantial gainful activity, since the last rating. Recovery is generally determined to have occurred at the time the determination is made. Rarely is recovery determined to be retroactive.

D. Demonstrated ability to work - A beneficiary is considered to have demonstrated the ability to work for the purposes of terminating benefits when he has shown the ability to work in:

- Substantial gainful activity in total and permanent disability cases, OR
- His/her regular railroad occupation or similar occupation in occupational disability cases.

The beneficiary's work activities and earnings are used by disability claims examiners to determine if the ability to work has been demonstrated to the extent necessary for termination. Consideration is given to circumstances attendant to the work activity and earnings such as type of employment, value of services rendered, whether a "made" or "subsidized" job, extraordinary expenses attributable to the disabling condition, etc.

1335.10 Special Instructions to Disability Applicants

Disability applicants are given special instructions to report certain activities which may affect benefits and are cautioned that there are penalties for failure to report.

1335.10.1 Advice to Applicant about Events that Affect Entitlement and Payment

At the time an application is filed, the contact representative explains to the applicant what events will affect entitlement and the payment of disability benefits. He is also told how those events affect entitlement and payment. This verbal information is supported by booklets which also explain what and how events affect benefits.

1335.10.2 Instruction to Report the Occurrence of an Event Affecting Benefits

At the time of application, the applicant is instructed to report to the Railroad Retirement Board the occurrence of any event he has been informed would affect entitlement or payment of his benefit. The applicant signs a certification that he understands what the events are and that he will report them promptly if they occur. The consequences of failure to report are also explained. The applicant also receives an application receipt which lists the changes to be reported and explains how to report them.

The "failure to report" concept raises a possible fraud consideration. Refer to FOM 1335.40 for handling instructions.

1335.15 Disability Monitoring Programs

Entitlement and receipt of disability benefits are more susceptible to termination or suspension than other benefits because the basis for eligibility (disability) is not necessarily a permanent condition. Therefore, additional monitoring activities are necessary to assure the integrity of the program. Shown below are activities aimed at ensuring that disability benefits are properly paid.

1335.15.1 Disability Reminder Notices

The Railroad Retirement Board (RRB) releases three types of annual disability reminder notices to disability annuitants: Forms RL-4, RL-5 and RL-7.

RL-4 and RL-5

During the month of October, the RRB mails Forms RL-4 and RL-5 to retirement and survivor disability annuitants. Form RL-4 is issued to employee disability annuitants who are under full retirement age. Form RL-5 is issued to survivor disability annuitants who are under age 60. These notices remind disability annuitants of events that must be reported to the RRB. In addition, these notices provide the monthly earnings limit for the current calendar year and prior calendar year. We mail all the forms by the end of the month of October.

	RL-4	RL-5	Total
2015	29,929	4,296	34,225
2014	36,172	4,732	40,904

RL-7

The Form RL-7 *Disability Reminder Notice – Disabled Annuitant Under Earnings Limits*, is released to approximately 2,200 employee disabled annuitants who are under full retirement age (FRA) and who have earnings under the allowable limits. Annuitants are reminded of their responsibility to report any earnings for any month in which they exceed the monthly earnings limit or report if their annual earnings exceed the annual earnings limit.

The RL-7 is a reminder to these individuals that they must notify the RRB about any month their earnings exceed either the monthly earnings limit after deduction of disability work expenses during the year and/or if their annual earnings exceed the annual earnings limit. In addition, the RL-7 shows the monthly and annual earnings limits for three years. Field offices should handle reports of work activity or changes in medical condition that are generated as a result of these mailings. If a response is received at headquarters that reports work activity or a change in medical condition, the report will be forwarded to the Disability Benefits Division (DBD) for handling. See DCM 8.4.3 for how DBD will handle this correspondence.

Starting in 2014, individual RL-4, RL-5 and RL-7 notices to annuitants are sent to Imaging. This serves as documentation that the annuitant was sent a notice. Blank copies of the RL-4, RL-5 and RL-7 are available in RRAILS.

If you receive an inquiry, assist the annuitant or payee in making any necessary report. Forward the report to the Disability Benefits Division (DBD) in an envelope marked:

"DBD/CDR UNIT-REMINDER-DO NOT OPEN IN MAILROOM." You may include more than one report in each envelope. DBD may later request additional development if needed.

1335.15.2 Review of Cases in Current Pay Status

Disability cases are periodically called up for a continuing disability review (CDR). The possibility and frequency of review depends on the severity of the case. The Disability Benefits Division (DBD) will determine the need for review. That section categorizes cases based on the probability of recovery, for instance, medical improvement expected (MIE), medical improvement possible (MIP), medical improvement not expected (MINE), etc.

If medical improvement is expected or possible, the disability claims examiner will set a future call-up date at the time of the disability freeze determination. On the call-up date, the case will be reviewed to determine if entitlement should continue. In MIP cases, DBD will go through a screening process and select cases in which a Form G-254a and RL-254a are sent to the annuitant. Form G-254a is a screening questionnaire that assists in determining whether further medical review is necessary. If DBD does not receive a completed G-254a within 30 days, they will send a field assignment to trace with the annuitant. If a completed G-254a is not received within 14 days of the tracer, DBD will trace again to find out if more time is needed to obtain the completed G-254a. If the field indicates that the annuitant cannot be contacted, DBD will release a letter to the annuitant informing him that if he does not contact the field office and submit a completed G-254a within 30 days, the annuity may be suspended. If the field indicates that the annuitant is uncooperative, DBD will request the field to initiate a full CDR by requesting a G-254 and current medical evidence.

A full CDR is conducted for all MIE cases and some MIP cases. Generally, the review will include acquisition of G-254 and current medical evidence and non-medical evidence via an assignment to the field office.

If, however, medical improvement is not expected, the case would not be routinely reviewed. While these cases are no longer reviewed on a routine basis, there may be situations, (such a disabled child included in O/M becoming eligible for a survivor annuity) in which DBD will do a review. If a field assignment is warranted, DBD will advise the field office as to the type of information that is needed.

1335.15.3 Report of Work or Recovery by Annuitant

If an annuitant reports work activity or recovery from disability to the field office, the report should be sent to DBD promptly. The report to DBD should contain enough details to permit the disability claims examiner to determine if a continuing disability investigation is required.

A. Report of work - Disability annuitants are required to report all work activity regardless of the amount of earnings. See FOM-I-1125.25.

Advise the annuitant that his work must be reconciled with his disability. Also advise an employee of disability work deductions if he earns over $850.00 per month.

B. Report of recovery - If a disability annuitant reports that he has recovered from his disability, take a statement from him to that effect. Ask the annuitant to submit any recent medical evidence in his possession which substantiates his claimed recovery.

1335.15.4 Employer Reported Earnings

Both railroad retirement and social security covered earnings are checked each year to ascertain if disability annuitants have unreported earnings which may indicate recovery or the ability to work.

A. Reported railroad earnings - Since railroad covered earnings are reported directly to the Railroad Retirement Board (RRB), checking disabled annuitant records against annual compensation reports is a relatively simple process. If earnings are reported on an annuitant's record, a referral is generated which initiates an investigation.

B. Reported social security earnings - Earnings reported to the Social Security Administration (SSA), whether from employment or self-employment, are accessible to the RRB. Each year SSA transmits earnings information on annuitants who have been earmarked on SSA records as receiving railroad benefits. Additionally, requests for earnings information on individual cases can be made at any time. Information available is limited to the latest year of earnings posted at SSA plus preceding years. If earnings reported at SSA do not match earnings reported by the annuitant, an investigation is initiated to resolve the discrepancy. An annuitant who disagrees with the earnings reported by SSA should be directed to contact SSA to resolve the discrepancy.

C. Reported earnings through the state wage match - A listing of earnings from all 50 states is obtained by the RRB. DPS reviews referrals from state wage matches and often makes assignments to the field for investigation.

1335.15.5 Use of Subpoena in Earnings Investigations

In some earnings investigations of disability annuitants, DBD will request the Office of the General Counsel (OGC) to provide a subpoena to be issued to the employer. In these cases, DBD will forward the subpoena and return of service document to the field office that serves the area in which the employer is located. The field office may deliver the subpoena in person, or mail the subpoena by certified mail with a return receipt requested. The return of service document is to be completed by the claims representative handling the subpoena and is to be filed in the applicant's file. Pend the case for the date the documents are due to be returned as indicated on the subpoena. The field office will retain the return of service document until the information sought by

the subpoena is obtained, at which point the return of service document may be discarded. Notify DBD if the employer does not respond to the subpoena, or refuses to cooperate with the subpoena, and send the evidence of the receipt of the subpoena to DBD, i.e. the return of service document if the subpoena is delivered in person or the return receipt furnished by the post office if it was delivered by certified mail.

1335.15.6 SSA Earnings Monitoring

Earnings are requested from SSA for disability annuitants to determine their continuing eligibility to receive benefits. This process is referred to as Electronic Data Processing (EDP). Once we receive the earnings information, a computer generated Form G-254, *Continuing Disability Report*, and a Form RL-254 cover letter are released to disability annuitants having excess earnings. A Form RL-231F letter is also released to the annuitant's non-railroad employer(s) to verify the reported employment and earnings. The computer-generated forms include instructions for the completed forms to be returned to the annuitants' local field offices. For tracking purposes, these cases are also loaded to Universal STAR (USTAR). Details of the RL-231F forms released, such as employers and addresses, can be viewed on the EDP Detail Information screen in USTAR. This is accessed through the "Source Detail" button on the Work Detail screen.

NOTE: The EDP Detail Information screen in this category of field office work lists only the employers and earnings in which Form RL-231F forms were released and require monitoring and possible tracing for the return of completed forms. There may be other earnings reported (railroad earnings, self-employment earnings, etc.) which are included in the total EDP Run Amount at the top of this screen, however these earnings are not displayed at the bottom of the EDP Detail Information screen as they do not require field office handling. All earnings reports received from SSA are loaded and handled by DPS in separate USTAR categories.

1335.15.6.1 Field Disability Earnings Investigation Work Category

Field offices use USTAR to control and track the case referral, or work item, from when it is entered into the system to when it is closed out. The annuitant's ZIP code is used to assign cases to field offices. The cases are loaded under category codes consisting of the 3-digit field office number; the letters "DB"; and the last digit in the year of earnings, e.g., 296DB7 means the case is assigned to the Chicago field office and the earnings were reported for 2007. The same records are also loaded to USTAR for DBD-DPS control and tracking under category "DPSDBx" (the last character represents the year of earnings). This allows DPS to determine if field offices are in the process of investigating work activity, thereby avoiding duplicating work already in progress, and for follow-up action upon completion of field office handling.

1335.15.6.2 Field Office Handling

Field office managers are responsible for assigning USTAR work items. For information on how to assign work or other USTAR information, refer to FOM-I-15120.5. Claims

representatives should take the following actions when handling disability earnings investigation cases.

Form RL-231f or G-254 Received

- Image the form and any documents attached
- Forward the form to DBD-DPS
- Send an e-mail to the DPS mailbox advising receipt and submission of the form.
- Document in the remarks section of the USTAR work details screen the forms received and date received.

Note that an office can image and submit these forms as they are received, or hold all forms, and image and submit them at the same time.

Tracing

Offices should trace for any forms which have not been returned within forty-five days of the USTAR entry date. Prepare a tracer (use RRAILS) Form G-254/RL-254 and/or RL-231F(s). Detailed information to prepare RL-231F forms, such as employers, addresses, and earnings information can be found by clicking on "Source Details" from the Work Detail Screen in USTAR. G-254 requires a reporting period date on page one. Enter January 1 of the EDP year shown on USTAR source details screen. Pend the file for thirty days. Notate in the remarks of the USTAR Work Detail screen the date that tracer forms were released and to whom they were sent.

Closing Cases

All forms received – as the last form is imaged and submitted to DPS, include in the email notice to DPS that the case is complete. Close the case on USTAR using the disposition code "Handled - Case Completed" (HCC).

All Forms Not Returned

Offices may abandon these cases 30 days after the tracer. Be sure all forms received have been imaged and the forms themselves submitted to DBD-DPS. Document in the remarks section of the Work Detail Screen on USTAR, the date the case was abandoned. Send an e-mail notice to the DPS mailbox notifying them of the case abandonment. Be sure to include in your e-mail the forms that were not received as well as the date tracer forms were released. Close out the case on USTAR with the disposition type - "Case Abandoned" (ABD) and indicate in the remarks of the Work Detail Screen that the case is being abandoned.

1335.15.6.3 Special Situations

If the annuitant claims:

- not to have worked and the earnings do not belong to them;
- the earnings are incorrect; or,
- any other special situation, take the following actions:

Step	Action
1	Advise the annuitant to contact SSA to resolve any discrepancies.
2	Close the case out on USTAR under disposition code “Handled - Case Completed” (HCC). Document the remarks section of USTAR with the details of the case.
3	Send an e-mail to the DPS Group mailbox detailing circumstances.
4	Image all documentation as file only.

1335.20 Investigation for Continuing Disability

Investigations to determine if there is continuance of disability under the Railroad Retirement Act or the Social Security Act can be initiated by any of the following:

- Voluntary reports - Report by annuitant that his condition improved or he is working;
- Change of address or payee - Address change from hospital to private residence, cancellation of representative payee;
- Vocational rehabilitation notice - Report that annuitant has reached his potential for return to labor market;
- Earnings report - Earnings should be examined to determine source;
- Medical re-examination required - Diaried cases for automatic review;
- Periodic disability review - Cases called up for routine review.

1335.20.1 Conducting the Investigation

The initial phase of the investigation involves a review of the claim file in light of any new information. If the new information cannot be reconciled with the disability rating, the disability claims examiner will send an assignment to the field office requesting development of certain information and/or evidence.

Generally, the assignment will request a completed Form G-254, Form G-250 and a memorandum giving the contact representative's observations of the annuitant. If the

investigation was originated by an earnings referral, only a Form Letter RL-231-F will be requested.

Due to the unsettling effect continuing disability reviews may have on some annuitants, development of all continuing disability review (CDR) cases must be initiated by telephone. In rare situations where telephone contact is not possible, release a Custom Field Service Letter on RRAILS asking the annuitant to contact a field office by telephone. Begin the review process when the annuitant calls. Following this initial contact, the field office development of a continuing disability investigation assignment should be conducted in the same manner as initial development of disability (excluding medical improvement not expected [MINE] cases). Document all actual and attempted contacts on Contact Log.

Please note that field personnel should exercise caution during any questioning of annuitants that involves personal contact (either in person or by phone). For example, if earnings are under investigation and clarification is needed, ask appropriate questions to obtain the factual information needed. Do not interrogate the annuitant about inconsistencies.

If the annuitant refuses to cooperate, follow the procedures in FOM-I-1325.15.3.

If the case is one which involves MINE, the Disability Benefits Division (DBD) will identify it as such in the field office assignment. You will probably only need to develop a Form G-254 and a statement from a medical source since additional medical evidence is usually not required. If no medical source is available, you will need to secure a statement from a non-medical third party source. Refer to FOM-I-1335.20.2 for instructions on developing MINE reviews.

1335.20.2 Special Handling of MINE Cases

Cases selected for continuing disability review categorized as MINE will be identified as such by the Disability Benefits Division (DBD) in the field office assignment. Investigation of these cases will not be as intensive and may be handled differently than the other cases selected for review. Because of the sensitive nature of these cases, particular care should be taken in gathering information. Development of these cases should be initiated by phone.

A. DBD assignment - DBD will provide information as to the nature of the disability and the last phone number on record for the annuitant. If the phone number provided is not current or if DBD indicates that no phone number is available from the file, attempt to secure the number from a local phone directory or directory assistance. DBD will also provide the date to enter in Section 1 of the Form G-254 and information for you to use to prepare a letter to the medical source provided by the annuitant. Also follow any additional instructions DBD provides. In the course of the investigation you may discover something that could cause DBD to request additional medical evidence (e.g., annuitant working,

signs of improvement in condition, etc.). Complete the original assignment and return it. Allow DBD to determine what additional action is necessary.

B. Annuitant Contact - Contact the annuitant by telephone and identify yourself and the reason for your call. Advise the annuitant that you would like to ask a few questions which will constitute the continuing disability report and estimate the amount of time needed to complete the questioning. Ask the annuitant if you've reached him/her at a convenient time; if not, schedule a time to call back and conduct the phone interview. If you are unable to make phone contact with the annuitant, release a Custom Field Service Letter on RRAILS asking the annuitant to contact your office by phone, and begin the review process when the annuitant calls.

Upon completion of the questions on the Form G-254, advise the annuitant that you will be sending the form by mail for the annuitant's review and signature. Also explain that a Form G-197 will be sent for signature which allows us to contact the annuitant's doctor for a statement. If the annuitant is not currently under doctor's care, do not secure a Form G-197. However, you will need to secure the name, address and phone number of a non-medical third party who can verify the annuitant's statements. Also determine the third party's relationship to the annuitant. Signed permission to contact a non-medical third party is not necessary.

It is preferred that the Form G-254 be completed over the telephone, however, if that is not feasible or the annuitant prefers to complete the form personally, you may send it in the mail after the initial phone contact explaining the purpose of the review. You will also need to secure a signature on Form G-197 or the information to contact a non-medical third party as explained above.

Send the Form G-254 and Form G-197 (if necessary) to the annuitant; include a return envelope. Pend the case for 15 work days. If the form(s) have not been returned within that time frame, contact the annuitant and check on status. If the annuitant personally completed the Form G-254, review the form for completion. If necessary, contact the annuitant for clarification or missing information. Proceed to C. or D. of this section as appropriate.

If the telephone contact discloses that the annuitant is incapable of completing the review, advise DBD and determine if representative payee development is necessary. Do not pursue the disability review unless instructed to do so by DBD.

If the annuitant refuses to cooperate, advise DBD and take no further action unless instructed to do so by DBD.

C. Securing statement from medical source - Prepare a letter to the annuitant's current medical provider. DBD will furnish specific information to be used in preparing the letter. For example, an assignment involving a statutorily blind

individual may state that you should ask the physician if visual acuity remains at 20/200 or less in the better eye. If multiple conditions exist, you may need to pose more than one question.

The letter should also state that we will accept photocopies of the doctor's reports or notes in lieu of a statement. Include the signed Form G-197 signed by the annuitant and a return envelope.

If the annuitant provided more than one medical source, release a letter to the primary source only.

If the annuitant is not currently under doctor's care, make a third party contact as described in D. below.

D. Non-medical third party contact - This contact only needs to be made if a medical source is not available. The third party contact is the person provided by the annuitant as stated in A of this section. Third party contacts include family members or friends, if they have knowledge of the annuitant's condition and can provide an objective assessment. However, it is preferred third party contacts be custodial institutions, sheltered workshop administrators, social service or other organizations that provide some sort of assistance or a member of the clergy.

Contact the third party by phone. If phone contact is not possible, prepare a letter. Ask the contact how recently he or she saw the individual, and whether, so far as he/she can tell, the individual remains impaired and unable to work. (Where no medical issue exists, the non-medical contact is primarily to verify that the individual is alive and not working.) Explain that we are conducting a continuing disability review on the individual as required by law.

Assure the person that we have permission from the individual to contact them. Do not tell such third parties any information about the individual other than that we are conducting a disability review. Prepare a summary of the statement, and forward it for the contact's review and signature; include a return envelope. In the rare situation that there is no third party available who can confirm the annuitant's statements, a representative of the field office will serve as the third party contact. You should first contact DBD in this situation. They will provide specific questions and observations based on the annuitant's impairment.

1335.25 Continuance of Disability Under the Railroad Retirement Act

The end result of the continuing disability investigation will be a determination by the disability claims examiner regarding the continuance of disability benefits under the Railroad Retirement Act (RR Act).

1335.25.1 Annuitant Still Meets Disability Requirements

In order to determine continued entitlement to disability benefits, the disability claims examiner must:

- Determine that the disability requirements of the RR Act, whether for occupational or total and permanent disability, are still met; AND
- Reconcile any work activity with the disability. If entitlement continues, any known earnings must be considered.

For Employees

A. Earnings or expected earnings over the monthly disability earnings limit after deduction of disability related work expenses - The annuity will be suspended and pended to the end of the year for final work deduction determination.

B. Earnings or expected earnings are less than the monthly disability earnings limit after deduction of disability related work expenses – No action will be taken.

1335.25.2 Annuitant No Longer Meets Disability Requirements of RR Act

Benefits will be terminated if the disability claims examiner determines that:

- The disability requirements of the RR Act are no longer met; OR
- Work activity cannot be reconciled with the disability (e.g., annuitant receiving benefits on the basis of being occupationally disabled as a track laborer works for a private contractor and performs the same duties of a track laborer).

The annuity will be payable (subject to work deductions) through the end of the second month following the month in which the annuitant no longer meets the disability requirements of the RR Act.

1335.30 Continuance of Disability Under the Social Security Act

If the annuitant is receiving benefits attributable to the Social Security Act (SS Act) (O/M, Medicare, etc.), the continuing disability investigation will also be a determination regarding the continuance of those benefits.

NOTE: Even though benefits attributable to the SS Act may be terminated, benefits under the Railroad Retirement Act (RR Act) may be continued if the requirements of the RR Act are still met (e.g., an annuitant may have recovered to the point that he is no longer entitled to a disability freeze, yet still be entitled to an annuity on the basis of occupational disability).

1335.30.1 Annuitant Meets Disability Requirements of SS Act

In order to determine continued entitlement to SS Act based on disability benefits, the disability claims examiner must:

- Determine that the disability requirements of the SS Act are still met; AND
- Reconcile any work activity with the disability according to SS Act rules. If entitlement continues, earnings still must be considered under RR Act work deduction rules.

1335.30.2 Annuitant Does Not Meet Disability Requirements of SS Act

A. Annuitant does not meet SS Act requirements but does meet RR Act requirements - If the annuitant no longer meets the SS Act requirements for disability but does meet the requirements for disability under the RR Act, then SS Act-based benefits must be terminated while RR Act benefits will continue (see FOM-I-1335.25.1).

B. Annuitant does not meet SS Act or RR Act requirements - If it is determined that the annuitant no longer meets the requirements of either the SS Act or RR Act, all benefits must be terminated.

1335.30.3 Cessation of Disability Under the SS Act

Cessation of disability under the SS Act will be found effective with the earliest month in which one of the following applies:

A. If medical recovery is not an issue, as of the first month after 9 months of trial work in which the evidence establishes the individual is able to engage in substantial gainful activity (SGA). It is not necessary for the beneficiary to be engaging in SGA or still working in the month of cessation. For example, if an individual stopped working in the 9th month of his trial work period, cessation may still be found in the 10th month if his work activity during the completed trial work period clearly demonstrated the ability to engage in SGA. If the trial work period extension applies to the overall minimum (O/M) or a disabled child included in the O/M, see FOM-I-325.95.

B. If the trial work period does not apply (e.g., freeze only), as of the first month in which individual engages in SGA, or if he has worked in 9 months of his trial work period, as of the month he returns to work which is SGA.

C. As of the month the evidence establishes that medical recovery has occurred.

D. As of the month in which it is determined that, despite reasonable effort, the claimant cannot be located and that there is a reasonable possibility that disability has ceased.

E. As of the month it is determined that a beneficiary will not cooperate and there is a question of continuing disability. For an explanation of trial work period and SGA, see FOM-I-310.65.1 and FOM-1-310.65.2.

1335.30.4 Coordination of Cessation Decisions with Social Security Administration

When the RRB determines that an annuitant no longer meets the disability requirements of the SS Act, the Social Security Administration is notified if a joint freeze decision case is involved (see FOM-I-1305.20.3.A).

1335.35 Written Notice of Termination

When it has been determined that an annuitant has recovered from disability or has demonstrated the ability to work, he is entitled to a written notice 30 days in advance of termination. The notice will provide him with:

- Date of recovery or demonstrated ability to work;
- Description of the evidence used as a basis for the determination;
- Termination dates of the annuity, freeze and Medicare, if applicable;
- An opportunity to submit any evidence within 30 days which will be considered in a review of the decision to terminate;
- Notice that any payments received after entitlement has ended are erroneous and will be subject to recovery;
- Notice that in the absence of new evidence, the decision to terminate will become final, and he will have the right to reconsideration/appeal at that time.

If new evidence is submitted within the allotted time and causes a reversal of the decision, payments will continue and a written notice will be sent reversing the decision to terminate. If the new evidence does not alter the decision, the annuitant will be so informed and termination will proceed. Regular reconsideration and subsequent appeal procedures will still apply.

1335.40 Handling Possible Fraud in Disability Cases

Under certain circumstances, fraud under the "failure to report" and "false claims and/or false statements" concepts may apply to disability cases. The elements of fraud are discussed in FOM 1235.25.

Situations meeting the guidelines under the failure to report and false claims and/or false statements concepts should be reported to the appropriate Headquarters operational section, i.e., the retirement post section or survivor post section. The

operational unit will take necessary actions, i.e., prepare field assignments, release overpayment letters, establish the debt on the PAR system, and, if an overpayment exceeding the threshold amount (see RCM 6.6.191) exists, prepare a referral to the Office of the Inspector General.

When an assignment is sent to a field office to obtain earnings, medical or other entitlement information from an annuitant, field office personnel should obtain information by questionnaire when possible. Field personnel should exercise caution during any questioning of annuitants that involves personal contact (either in person or by phone). For example, if earnings are under investigation and clarification is needed, ask appropriate questions to obtain the factual information needed. Do not interrogate the annuitant about inconsistencies. Helping the individual complete a questionnaire or asking for information or for a clarification is different from interrogation to obtain incriminating evidence. The latter is the OIG's responsibility. The reason for this focus on questioning technique is to avoid compromising effective prosecution if fraud becomes an issue in a case.

1410.5 Children

To protect the rights of a minor child, someone should be selected to receive benefits on behalf of the child at the time an application is filed. The Railroad Retirement Board will not abandon development of a representative payee for a minor child.

1410.5.1 Under Age 16

The preferred payee for a minor is a parent, either natural, step or adoptive; or another representative who is legally vested with the care of the minor. If the child is not living with a parent, develop for a representative payee who will look after the child's interests. See FOM1-1420.10 for help in determining who is best qualified to be payee for a child in lieu of a parent.

1410.5.2 Age 16-17

A parent is also the preferred payee for a child this age. However, payments can be made directly to the child if he is in military service or otherwise emancipated, i.e., freed from parental control and responsibility. A child in military service will be considered emancipated; no special development is needed.

Interview any child age 16-17 who is neither in military service nor in the care of a parent or legal representative. The interview should show if the child has the capacity and maturity to be self-sustaining. A child living alone and supporting himself should be considered emancipated and will receive his annuity directly. Document your interview in a memorandum and attach a copy to the initial application package.

If a child shows that he is not self-supporting, develop for a representative payee as indicated in FOM1-1420.

If payments are in force to a payee for a child and the child becomes emancipated, a new Form AA-19 is not needed. Secure a certification form from the child and prepare a memorandum to document your interview with the child. The memorandum should include your reasons for believing the child is able to manage his own payments.

1410.6 Student

Prior to September 15, 1981, a survivor student was given the option of receiving annuity payments directly or authorizing payment to a parent. Beginning that date, the Railroad Retirement Board pays survivor students directly. A student is an adult beneficiary and all development in a survivor case will ordinarily be directly with the student. If a parent objects to direct payment to a student, explain that students are considered and treated as all other adult beneficiaries, and that a representative payee will be appointed only if the student is incapable of handling his own funds. The student may have his payments credited to an account at a financial institution through direct deposit. If the student so desires, the account can be a joint account with his parent.

1410.10 Adult

An adult will need a representative payee if he is incompetent, i.e., incapable of managing his annuity. In the absence of a legal representative, you should be able to determine the need for a representative payee at the time an application is filed. Factors like the nature of an individual's disability and his demeanor will indicate if representative payee development is necessary. See FOM1 1415.5.

1410.15 Allegation Of Incompetence

Investigate every allegation of incompetence according to the guidelines set forth in FOM1 1415. However, not every allegation will result in representative payee development and selection.

1410.5 Children

To protect the rights of a minor child, someone should be selected to receive benefits on behalf of the child at the time an application is filed. The Railroad Retirement Board will not abandon development of a representative payee for a minor child.

1410.5.1 Under Age 16

The preferred payee for a minor is a parent, either natural, step or adoptive; or another representative who is legally vested with the care of the minor. If the child is not living with a parent, develop for a representative payee who will look after the child's interests. See FOM1-1420.10 for help in determining who is best qualified to be payee for a child in lieu of a parent.

1410.5.2 Age 16-17

A parent is also the preferred payee for a child this age. However, payments can be made directly to the child if he is in military service or otherwise emancipated, i.e., freed from parental control and responsibility. A child in military service will be considered emancipated; no special development is needed.

Interview any child age 16-17 who is neither in military service nor in the care of a parent or legal representative. The interview should show if the child has the capacity and maturity to be self-sustaining. A child living alone and supporting himself should be considered emancipated and will receive his annuity directly. Document your interview in a memorandum and attach a copy to the initial application package.

If a child shows that he is not self-supporting, develop for a representative payee as indicated in FOM1-1420.

If payments are in force to a payee for a child and the child becomes emancipated, a new Form AA-19 is not needed. Secure a certification form from the child and prepare a memorandum to document your interview with the child. The memorandum should include your reasons for believing the child is able to manage his own payments.

1410.6 Student

Prior to September 15, 1981, a survivor student was given the option of receiving annuity payments directly or authorizing payment to a parent. Beginning that date, the Railroad Retirement Board pays survivor students directly. A student is an adult beneficiary and all development in a survivor case will ordinarily be directly with the student. If a parent objects to direct payment to a student, explain that students are considered and treated as all other adult beneficiaries, and that a representative payee will be appointed only if the student is incapable of handling his own funds. The student may have his payments credited to an account at a financial institution through direct deposit. If the student so desires, the account can be a joint account with his parent.

1410.10 Adult

An adult will need a representative payee if he is incompetent, i.e., incapable of managing his annuity. In the absence of a legal representative, you should be able to determine the need for a representative payee at the time an application is filed. Factors like the nature of an individual's disability and his demeanor will indicate if representative payee development is necessary. See FOM1 1415.5.

1410.15 Allegation Of Incompetence

Investigate every allegation of incompetence according to the guidelines set forth in FOM1 1415. However, not every allegation will result in representative payee development and selection.

1425.5 Notification

Advance Notice

Under the Code of Federal Regulations, whenever a representative payee is selected or changed, the annuitant must be notified 15 days in advance of the appointment via release of a Form Letter RL-107, "Advance Notice of Representative Payee Selection." The RL-107 letter informs the annuitant of the RRB's plan to name a representative payee and who that payee will be. The letter informs the annuitant of their right to review the RRB's proposed actions and to submit any additional evidence to be considered by the RRB before the representative payee appointment. This advance notice does not confer rights for reconsideration to the annuitant. The appeal rights and reconsideration process is initiated after the 15 day advance notice period ends when Form Letter RL-107B is released at the time of the representative payee appointment. If the annuitant requests a review of the intent of the RRB to appoint a representative payee within the 15 day advance notice period, the RRB will review the decision and consider any additional information provided and then decide whether to proceed with the representative payee appointment. This review and decision is made by the party who has made the representative payee selection, usually the RRB field office, and not by the Reconsideration Section.

Appointment Notice

After the 15 day advance notice period, the annuitant must be notified of the RRB's appointment of a representative payee via release of a Form Letter RL-107B, "Notice to Annuitant of Representative Payee Selection." The RL-107B letter provides the annuitant with his or her rights to file a request for reconsideration of the representative payee appointment decision.

Other Notices

A representative payee applicant is notified of his or her status via either Form Letter RL-107A, "Notice to Selected Representative Payee" or Form Letter RL-107E, "Notice to Not Selected Representative Payee Applicant."

An annuitant is notified of the resumption of direct payment via RL-107C, "Notice to Annuitant Who Will be Paid Directly Because of Representative Payee Dismissal."

A discharged representative payee is notified of his or her removal via Form Letter RL-107D, "Notice to Dismissed Representative Payee."

Whenever the field office learns of a change in the custody of an annuitant in a representative payee case, the field office releases Form Letter RL-107F, "Custodian Notice – Third Party Representative Payee Selected" to the new custodian.

1425.5.1 Initial Annuity Award

When the representative payee has been selected, a Form Letter RL-107, "Advance Notice of Representative Payee Selection," must be released to the annuitant 15 days prior to the representative payee appointment. The initial annuity award is made to a representative payee and the representative payee receives the award letter. The letter contains a paragraph indicating that he/she has been selected as representative payee. The annuitant also receives a copy of the award letter if he has not been declared legally incompetent.

1425.5.2 Payee/Custody Changes

Field offices are responsible for issuing notices signed by the district manager, to annuitants, denied and selected representative payee applicants and custodians. Copies of all notices released by the field are to be provided to Operations (RBD or SBD).

NOTE: In spouse to widow(er) conversion cases, the Form Letter RL-107 series letter copies are to be imaged.

A. Change from annuitant to representative payee - Fifteen days prior to the representative payee appointment, release Form Letter RL-107 to the annuitant. When the payee is appointed, release Form Letter RL-107A to the representative payee as notice of his or her selection. Form Letter RL-107B is also sent directly to the annuitant. See FOM-I-1745 for instructions on the completion of these forms.

B. Change from representative payee to representative payee - Fifteen days prior to the representative payee change, release Form Letter RL-107 to the annuitant. At the appointment, release Form Letter RL-107D to the old payee. Send the new payee Form Letter RL-107A. Notify the annuitant of the change in payee with Form Letter RL-107B.

   Exception: In cases involving minor child annuitants, field offices should decide whether the release of the Form Letter RL-107B would be in the best interests of the annuitant.

C. Change from representative payee to annuitant - Send the annuitant Form Letter RL-107C. Release Form Letter RL-107D to the representative payee.

D. Non-custodian representative payee selected - When a representative payee is selected for an annuitant with a third party acting as the annuitant's custodian, release Form Letter RL-107F to the custodian. This letter advises the custodian of the selection of the representative payee, requests they notify the RRB when custody changes, the annuitant dies or they have indications that the representative payee is not acting in the annuitant's best interest.

E. Change in custody of annuitant - Whenever custody of the annuitant changes in a representative payee case, field offices should release a Form Letter RL-107F to the new custodian.

Note: For further instructions on handling representative payee cases involving direct deposit, see FOM-I-1420.25.3.

1425.5.3 Denials

Disallow an application for a representative payee when:

1. A Form AA-5 is submitted by a person who is not selected as representative payee; or

2. It is determined that the annuitant can manage annuity payments on his own behalf.

Send Form Letter RL-107E to the person not selected as representative payee. File the denied AA-5 application in the field office representative payee file.

1425.10 Appeals

Under the Code of Federal Regulations, the decision to appoint a representative payee and who shall be appointed to serve as representative payee are considered to be initial decisions by the RRB and are subject to reconsideration. The provisions for who is granted the right to file for reconsideration and when the right is granted in representative payee appointment situations is described below.

1425.10.1 Non-appealable Decisions

Annuitants under age l8 do ***not*** have the right to appeal the RRB's decision to pay a representative payee. (These annuitants do have the right to contest the finding that he or she is, in fact, under age 18.)

Annuitants who have been found to be legally incompetent do ***not*** have the right to appeal the RRB's decision to pay a representative payee. (These annuitants do have the right to contest the finding that he or she has been found to be legally incompetent.)

Applicants to serve as the representative payee for an annuitant do ***not*** have the right to appeal the RRB's denial of their application to serve as representative payee.

1425.10.2 Appealable Decisions

Annuitants over age 18 who have not been found to be legally incompetent have the right to appeal both the RRB's decision to pay a representative payee and who is selected to serve as their representative payee .

Annuitants under age 18 have the right to appeal the fact that he or she is, in fact, under age 18. (These annuitants do ***not*** have the right to appeal the RRB's decision to pay a representative payee.)

Annuitants found to be legally incompetent have the right to appeal the fact that he has been found to be legally incompetent. (These annuitants do not have the right to appeal the RRB's decision to pay a representative payee.)

1430.5 General

When the Railroad Retirement Board (RRB) is paying both a railroad retirement annuity and a social security benefit, the payee must be the same. Operations will attempt to resolve any payee discrepancies because the check will be combined. These discrepancies are discovered when the Social Security Administration (SSA) first certifies a benefit to the RRB for payment.

In addition to resolving representative payee discrepancies, RRB-SSA representative payee coordination in the selection process can enlarge the number of prospective representative payee's RRB has to choose from. For example, SSA's field offices utilize social service agencies as representative payees in cases where a relative cannot be located. By contacting SSA's local field office, the RRB field office can establish contacts with area agencies which may be suitable representative payees.

1430.10 Social Security Administration Has Representative Payee - Railroad Retirement Board Does Not Have Representative Payee

1430.10.1 Operations Actions

Operations will initially accept the Social Security Administration's (SSA) representative payee determination in cases in which the RRB is paying benefits directly to an annuitant. Both SS and RRA benefits will be paid in a combined payment to SSA's payee.

Operations will provide the field office with the name and address of SSA’s payee and request the field office to initiate representative payee development action. Payments will continue to SSA's payee unless you develop information indicating misuse of funds by that payee or other information indicating that SSA's payee is unfit to serve in that capacity.

1430.10.2 Field Actions

Operations will provide the field office the name and address of the representative payee selected by SSA and request that you contact the payee to initiate development action.

If the payee is acceptable according to the standards in FOM-I-1420.5, set up a representative payee file, issue the proper informational booklet to the payee, explain the responsibilities of the payee under the Railroad Retirement Act and secure Form AA-5 and the proper certification form as indicated in FOM-I-1420.20.3.

If you determine that the payee is unacceptable, also determine if the annuitant is receiving the proceeds of his or her payment. Follow instructions in FOM-I-1415.15. Send a memorandum to Operations indicating the reasons SSA's payee is unacceptable and if the annuity should be suspended. If there is an acceptable payee

in your area, include that person's name and address in the memorandum. Operations will submit change of payee recommendations to SSA for approval.

1430.15 RRB Has Representative Payee - SSA Does Not Have Representative Payee

1430.15.1 Operations' Actions

If the railroad annuity is in pay status with a representative payee and the Social Security Administration (SSA) certifies social security benefit payments directly to the beneficiary, Operations will pay the social security benefit to the RRB representative payee and send payee selection information to SSA. SSA will generally accept the RRB payee. If SSA insists on paying the beneficiary directly, Operations will request that you investigate the beneficiary's competence.

1430.15.2 Field Actions

Investigate the beneficiary's competence as set forth in FOM-I-1415.10.

A. Beneficiary competent - Take action to discharge the payee and close your representative payee file. Notify Operations of your decision.

B. Beneficiary incompetent - Include your findings in a memorandum to Operations; Operations will forward this information to SSA. Operations will pay both railroad and social security benefits to the RRB representative payee unless your investigation reveals that a new payee is needed.

1430.20 Railroad Retirement Board and Social Security Administration Have Different Representative Payees

1430.20.1 Operations' Actions

If the railroad annuity is in pay status with a representative payee, and the Social Security Administration (SSA) certifies a social security benefit payment to a different representative payee, Operations will hold up the certification of the social security benefit pending a field office investigation. The railroad annuity will continue to be paid to the representative payee selected by the RRB. Operations will request you to reconcile the discrepancy and accept SSA's payee, if possible.

1430.20.2 Field Actions

Investigate to determine which payee should be selected to receive the annuitant's combined railroad/social security payments. Use the payee selection criteria set forth in FOM-I-1420.5. When the representative payee is selected, a Form Letter RL-107, "Advance Notice of Representative Payee Selection," must be released to the annuitant.

A. Social Security Administration's representative payee is accepted - Issue the proper informational Forms RB-5, and RB-5b to the new representative payee; explain the representative payee's responsibilities under the Railroad Retirement Act and secure Form AA-5 and the proper certification form as indicated in FOM-I-1420.20.3. Fifteen days after the release of the Form Letter RL-107, prepare a FAST-COA transaction to change the payee. Notify Operations of the representative payee selection by e-mail or memorandum.

   Operations will then pay the combined railroad/social security benefit to the same payee.

B. SSA's representative payee is not acceptable - Include your findings in a memorandum to Operations and state the reasons you believe SSA's payee is unacceptable. Operations will send this information to SSA for its decision.

Note: For further instructions on handling representative payee cases involving direct deposit, see FOM-1-1420.25.3.

Appendix A – Abbreviations

General Acronyms

Many of the following abbreviations are used in the RCM and the FOM. You may use these abbreviations in communications (memoranda, forms G-626, etc.)

A

ABD	annuity beginning date
AERO	automatic earnings reappraisal operation
AG	agricultural quarters
AGC	Associate General Counsel
AIM	Adjudication Instructional Manual
AIME	average indexed monthly earnings
ALTA	automated award letter to annuitant
AMC	average monthly compensation
AMR	average monthly remuneration
AMW	average monthly wage
AN	account number
APPLE	Application Express
AQD	alleged quarter of disability
A&SA	age and service annuity
ARD	adverse re-determination program.
ARF	adjusted reduction factor
ASAP	as soon as possible
ASTRO	Automated System to Recover Overpayments

B

BA	railroad employer identification, basic amount
BE	burial expenses
BENE	beneficiary
BIC	beneficiary information code (RRB)
BIC	beneficiary identification code (SSA)
BLB	black lung benefit for coal miners
BY	benefit year

C

CBT	computer based training
CC	current connection
CCOM	Compensation & Certification Operations Manual
CDR	continuing disability review (disability cases)
CERT	certificate, certifying, certification
CHICO	combined health insurance and check writing operation
CIA	child's insurance annuity (RRB)

CITZ	citizen(ship)
CMS	Centers of Medicare & Medicaid Services
CNTRGSTR	Central Register
COA	change of address
COINS	Consolidated Information Screens
COL	cost of living
COLA	cost of living adjustment
COMP	compensation
CONV	conversion
CPS	current pay status
CR	contact representative
CSM	creditable service month(s)
CWOA	closed without award
CY	current year

D

DA	disability annuity (RRB)
DB	direct billing (Medicare)
DBR	daily benefit rate
DC	death certificate
DCM	Disability Claims Manual
DD	direct deposit
DECD	deceased
DF	disability freeze
DIB	disability insurance benefit (SSA)
DISC	discrepancy
DLW	date last worked
DNE	death notification entry
D-O	drop-out (provision of SS Act)
DO	district office (RRB)
DOB	date of birth
DOD	date of death
DOE	date of entitlement
DOFS	date of filing, SMIB
DQRRB	disabled qualified railroad retirement beneficiary
DRC	delayed retirement credits (SSA)
DRR	date rights relinquished
DRS	disability review section (SSA)
DWIA	disabled widow's insurance annuity (RRB)

E

EARN	earnings
EDMA	Employment Data Maintenance System
EDP	electronic data processing
EE	employee

EEI	estimated end of inability date
EFF	effective
EFT	electronic fund transfer
EGHP	eligible group health plan (Medicare SEP)
EI	educational institution
EIN	employer identification number
ENT	entitled, entitlement
ER	employment relation, employer
E/R	earnings record
EXCS EARN	excess earnings

F

FAST	Field-Address-Suspension-Termination System
FEHB(A)	Federal Employee's Health Benefits (Act)
FH	funeral home
FHITF	Federal Hospital Insurance Trust Fund
FIN	final certification
FMB	family maximum benefit
FNOD	first notice of death
FO	RRB field office (RO, D/O or branch office)
FOM	Field Operating Manual (RRB)
FOMF	Financial Organization Master File
FRA	full retirement age
FSIS	Field Service Inquiry System
FTA	full-time attendance
FTS	full-time student

G

GAO	General Accounting Office
GC	General Counsel
GEP	general enrollment period (SMIB)
GF	grandfather clause
GOLD	G-90 Online database

H

HCFA	Healthcare Finance Administration (Obsolete but still used)
HHA	Home Health Agency
HHS	Home Health Services, Department of Health and Human Services
HI(B)	health insurance (benefits)
HIM	health insurance master "file" (SSA)
HIS	inpatient hospital services (HIB)
HMO	Health Maintenance Organizations
HSL	Hybrid Systems Limited

I

IB	Informational Bulletin
IEP	initial enrollment period (SMIB)
IM	Instructional Memorandum
IMPACT	initial monthly partial certification in tiers
INS	insured
IP	Interim Procedure
IPI	ineligible person included
IS	insured status
IW	interim widow

J-K

JA	joint and survivor annuity
JADE	Joint Agency Data Exchange
JS	joint and survivor option
KOR	Key Operating Reports

L

LAF	ledger account file (SSA) - (LAF E = RR certification)
LEMBA	larger excess master benefit amount (SSA)
LGHP	Large Group Health Plan
LI/E	last illness expense
LPE	last person employment
LPS	last person service
LSDP	lump-sum death payment
L/W	living with

M

MA	spouse annuity
MACRO	Master and Clearance Records On-Line
MARC	Microfiche,
MATLOCK	material locator
MBA	monthly benefit amount (SSA)
MBR	master benefit record (SSA)
M/E	medical evidence
MIE	medical improvement expected (disability cases)
MINE	medical improvement not expected (disability cases)
MIP	medical improvement possible (disability cases)
MIRTEL	Medicare information recorded, transmitted, edited and logged
MOMS	monthly microfilm of START
MPM	Medicare Programs Manual
M/S	military service

N

NCSP	non-covered service pension
NEI	national employee index
NIF	not in file
NIS	no insured status
Non-SSEB	non-social security equivalent benefit
NRA	non-resident alien

O

OBD	original annuity beginning date
OM	overall minimum provision (RR Act)
OP	overpayment
OPO	one payment only
OSR	on-site representative (SSA)

P

PC	payee code
PARS	Program Account Receivable
PART	Part certification
PE	post entitlement (SSA)
PG	Programs General
P.H.S.	Public Health Service
PIA	primary insurance amount
PIB	primary insurance benefit
POA	proof of age
POB/E	proof of burial expenses
POD	proof of death
POM	proof of marriage
POM/S	proof of military service
POR	proof of relationship
P/S	prior service
PSC	program service center (SSA)
PSP	Public Service Pension
PT	Procedure Transmittal

Q-R

QC	quarter of coverage
QRRB	qualified railroad retirement beneficiary
RASI	Retirement Adjudication System - Initial
RCM	Retirement Claims Manual
RECOMP	recomputation
REG ANN	regular annuity
RET	retirement
RF	reduction factor

RIB	retirement insurance benefit (formerly OAIB)
RLS	residual lump sum
RO	RRB Regional Office
RPS	RUIA Procedure Supplement
R of R	relinquishment of rights
RR	railroad
RRA	Railroad Retirement Act
RRAILS	Railroad Retirement Automated Integrated Letter System
RRAPID	Railroad Automated Processing Integrated Database
RRB	Railroad Retirement Board
RRDLW	Railroad day last worked
RRXR	Railroad Experience Rating
RUCS	Railroad Unemployment Claims System
RUIA	Railroad Unemployment Insurance Act
RW	remarried widow

S

SBI	state-buy in (Medicare)
SCORE	service and compensation of railroad employees
SDS	surviving divorced spouse
SE	self-employment
SEI	self-employment income
SEP	special enrollment period (SMIB-Medicare)
SES	State Employment Service
SGA	substantial gainful activity
SI	sickness insurance
SM	service months
SMI(B)	supplementary medical insurance (benefit)
SMITF	supplementary medical insurance trust fund
SNF	skilled nursing facility
SNS	skilled nursing services
SP	spouse
SPAR	spouse partial annuity rate
SPC MIN	special minimum
SS	social security
S/S	subsequent service
SSA	Social Security Administration (Act)
SSA DO	SSA district office
SSEB	social security equivalent benefit
SSI	supplemental security income
SSN	social security number
SUP ANN	supplemental annuity (RRB)
SURV	survivor
SURCAL	survival calculation ADP program
SUSP	suspense

SYM	symbol

T

TAS	tax accounting system
TERM	terminate, terminated, termination
T/I	transitional insured (SSA)
TI	table increase
TOM	Taxation Operations Manual
TPO/TPOINQ	tape print out/ tape print out inquiry
T/S	termination/suspension
TT	teletype
TI	tier l
T2	tier 2

U-V

UP	underpayment
UPC	unemployment payment control
UI	unemployment insurance
VA	Veterans Administration
VAC	Veterans Administration Center
VARO	Veterans Administration Regional Office
VQ	voluntary quit
VRS	vocational rehabilitation services

W-Y

WC	worker's compensation (worker's comp)
WCIA	widow's current insurance annuity (RRB)
WD	work deductions
WDIS	work deduction insured status
WE	wage earner (includes self-employed person)
WF	windfall
WIA	widow's insurance annuity (RRB)
WIB	wife's insurance benefit (SSA)
WIMA	Widow(er)’s Initial Minimum Amount
WO	without
XS	excess
YOC	years of coverage

Organizational Acronyms

A-C

ADC	Application Design Center

AFGE	American Federation of Government Employees (Union)
A&T	Assessment & Training
BCC	Bureau of Compensation and Certification
BC-S	Benefit Continuity (Survivor)
BDMO	Bureau of Disability & Medicare Operations (Obsolete but still referenced)
BFO	Bureau of Fiscal Operations
BHA	Bureau of Hearings and Appeals
BIS	Bureau of Information Services
CASS	Claims Adjustment & Settlement Sections
CESC	Compensation and Employer Service Center
CHAIR	Chairperson's Office
CIS	Congressional Inquiry Section
CSR	Customer Service Representatives
CSU	Clerical Services Unit

D-L

DIS	Disability Initial Section
DPS	Disability Post Section
DRS	Debt Recovery Section
ESC	E-Government Service Center
FS	Field Service
H&A	Hearing & Appeals
HQ	Headquarters
HR	Human Resources
IDU	Imaging Distribution Unit
IFR	Initial Folder Review
IRM	Information Resource Management
ISC	Infrastructure Services Center
LAW	Office of General Counsel (OGC)
LMO	Labor Members Office

M-R

MS	Medicare Section
MMO	Management Member's Office
OEO	Office of Equal Opportunity
OIG	Office of Inspector General
OLA	Office of Legislative Affairs
OP	Office of Programs
OPA	Office of Public Affairs
OPER	Operations
OPR	Overpayment Recovery Section
OSR	On-site Representative (SSA)
PAS	Payment Analysis and Systems Section
PES	Program Evaluation Section

PSD	Program Support Division
PSS	Program Services Section (BFS)
P&S	Policy and Systems
PSU	Payment Services Unit
RAC	RRA Application and Calculation
RECON	Reconsideration Section
RBD	Retirement Benefits Division
RIS	Retirement Initial Section
RIS	RUIA, Internet and Support
RMC	Resource Management Center
RO	Regional Office
RPS-A	Retirement Post Section A
RPS-B	Retirement Post Section B

S-U

SSS	Supply Services Section
SBD	Survivor Benefits Division
SIS	Survivor Initial Section
SPS	Survivor Post Section
SUBS	Sickness and Unemployment Benefits Section
TCIS	Tax Reconciliation Section
UPSD	Unemployment & Program Support Division

Program Acronyms

A

AEC	Advanced Evidence Collection (Replaced by APPLE Proofs Database
AERO	Automatic Earnings Recomputation Operation (performed annually from 1978 through 2005)
AESOP	Annuity Estimate Operations
AFCS	Automated Folder Control System
ALTA	Automated Award Letters to Annuitants
ANEX	Annual Extract Operation(Tax)
APPLE	Application express
ASTRO	Automated System to Recover Overpayments

B-C

BASS	BUSI Access Security System
BERT	Beneficiary Enrollment Retrieval system(CMS)
BIC	Beneficiary Identification Code
BXR	Beneficiary Cross Reference
CALC	Tax Withholding Calculation Module
CANCO	Cancelled Checks Operation
CHICO	Check writing Integrated Computer] Operation

COINS	Consolidated Information screens
COL	Cost-of-Living
CWF	Common Working File (CMS)

D-G

DAISY	Daily Activity Input System
DAS	Disability Attainment Selections
DATA-Q	DATA Queued
DELTA	TAS Daily Update System
EDM	Employment Data Maintenance
EFT	Electronic Funds Transfer
ETA	Evaluating Tax Accruals
FAME	FFS Application for Medical Exams
FAST	Field-Address-Suspension-Termination
FIELDSTAR	Field System Tracking and Reporting Program
FOMF	Financial Organization Master File
FSIS	Field Service Inquiry System
GRACE	General Rule Adjustment and Contributions Evaluation (Tax)

H-L

HIM	Health Insurance Master (CMS)
HSL	Hybrid Systems Limited (Although most reports have been replaced by Microsoft Outlook messages and Automated On-Line Reports, a few HSL reports are still used)
IC	Initial Claims System (Replaced by APPLE)
ICETEA	Initial Claims Transmission of Earnings Account
IMPACT	Initial Monthly Partial Annuity Certification in Tiers
IOTA	Interactive Output of Taxation Awards
JADE	Joint Agency Data Exchange
KEYMAST	Key Master Test Screens
KEYPROD	Key Master Production Screens
KOR	Key Operating Reports
LAMDA	TAS Data Base Extraction Program
LUCKS	List Uncashed Checks

M

MACRO	Master and Clearance Records On-line
MAMMA	Monthly Adjustment of MIRTEL Master
MAP	Monthly Attainment Processing
MARC	Microfiche of Annuity Residual and Compensation
MARS	Mechanical Adjustment of Railroad and Social
MATLOC	Material Locator
MBF	Master Benefit File
MBR	Master Beneficiary Record
MEDCOR	Medicare Correction System

MEDREF	Medicare Referral System
MEF	Master Earnings File
MIRF	MIRTEL File
MIRTEL	Medicare Information Recorded, Transmitted, Edited, and Logged
MMAC	MIRTEL Microfilm of Activity
MOLI	MIRTEL On-Line Inquiry
MOMS	Monthly Microfilm of START
MOR	Mechanical Output Referral
MOSBI	Monthly State Buy-In
NRECURR	Tax - Non-Recurring Module

O-Q

OCR	Optical Character Recognition
OLDDS	On-line Disability Decision Sheet
OLQ	On-line Query
ONCORR	On-line Correction System
OPAC	Online Payment and Collections Facility (FMS)
ORCS	Overpayment Recovery Correspondence System
ORVL	On-line Verification Letters
PAM	Post Adjudication Mechanical
PARS	Program Accounts Receivable
PHUS	Payment History Update System
PIENTRY	Payment Investigation On-line Entry
PISTATUS	Payment Investigation Status
PREH	Payment, Rate & Entitlement History (aka ORIS – On-line Rate History Inquiry)

R

RAIL	Retirement Adjustment to Include Lag (performed annually from 1989 through 2005)
RASI	Retirement Adjudication System Initial
RECALC	Mass Adjustment Tax Withholding Recalculation Program
RECURR	Recurring Module (Tax)
REQUEST	RASI Examiner Query Using Electronic System Terminals
ROC	Retirement On-Line Calculations
RRAILS	Railroad Retirement Automated Integrated Letter System
RRAPID	Railroad Retirement Automated Integrated Database
RRIC	Railroad Retirement Initial Claims (Formerly used for entering retirement applications on-line. Replaced by APPLE
RRXR	Railroad Experience Rating
RUCS	Railroad Unemployment Claims System
RUIACALC	RUIA Calculations
RESCUE	Recalculate for Service and Compensation Updated to EDM

S

SAARA	Supplemental Annuity and Retirement Attainments – Obsolete
SAIL	Survivor Adjustment to Include Lag
SALSA	Separation Allowance Lump Sum Award
SAMIC	Supplemental Annuity 1099 – Obsolete
SAMM	START Activity and Master Microfilm
SCAMP	SSEB Calculation Modular Program (Tax)
SCORE	Service and Compensation of Railroad Employees
SECUTAB	BRC Security Table for FAST
SOD	SCAMP-On Demand
SOLAR	Social Security On-Line Automated RR-1E's
SPAR	Spouse Partial Annuity Rate
SPEED	System to Process Excess Earnings Data
SPOC	SSEB PIA On-Line Calculations (Tax)
SSPI	Social Security Payment Inventory
STAR	RBD/SBD Version - Survivor Tracking and Reporting System
STAR	Tax Version – System to Apply Repayments
STATS	Statistically Targeted Automated Tracking System – Field office counts of monthly RRA and RUIA activities.
STAZA	System to Automate Zero Accruals
SURCAL	Survivor Calculations
SURGE	Survivor G-90 Expeditor
SURPASS	Survivor Payment System
SURVEA	Survivor Electronic Attainments

T-U

TACAL	SUP ANN Tax Credit and Liability System (Obsolete)
TAS	Tax Accounting System (RRA Federal Income Tax)
TAS RECERT	Tax Withholding Recertification Program
TAU	TAS Audit Update
TAXCOR	Tax On-Line Corrections
TAXTECH	Tax Accounting System Technical
TRIC	Telecommunicated Records for Interagency Coordination
TWERP	Monthly Tax Withholding Recertification Program
UFCS	RUIA Claims Files and Folder Control Systems
UPC	Unemployment Payment Control
USTAR	Universal System Tracking And Reporting

W-Z

WEB CONNECT (RRA)	Web Connect – Railroad Retirement Act
WEB CONNECT (RUIA)	Web Connect – Railroad Unemployment Insurance Act
WILBUR	Working Information Letters on Beneficiaries' Rates

WM (WILLIAM)	Daily Tax Withholding Module
ZIPCO	Zip Code

Appendix E - Operations Tracing Schedule for Outstanding Items

A. Compensation And Wage Data From Claims Certification Unit (CCU)

1. Retirement G-90 (from G-60 or RASI)

1st Tracer - After 30 days, check the status list of pending retirement Search requests.

- If the type reply column shows "DPA MANUAL REENTRY" or "MANUAL PIA RELD," send Form G-60a to CCU.
- If the type reply column shows "SSA REPLY," verify that the SS claim number is correct. In manual cases, release another G-60. In RASI cases, RASI will submit a new request.
- If the case is not on the status list and no G-90 has been received, release another G-60 in manual cases. In RASI cases, if RASI did not receive the G-90 data, RASI will submit a new request.

2. Survivor G-90

An FNOD or on-line SURGE request will generate a SEARCH G-90 wage record request. A G-90 requiring re-entry for lag, military service or SSA reply, appears on the HSL SBD Survivor "A" Search Pending List. (See RCM Informational Bulletin B-93-24 for additional information.) If a G-90 requires group "B" manual review or calculation by the CCU, it will appear on the B G-90 Database (PC) Program.

Tracing An Outstanding Re-Entry "A" G-90

- 1st Tracer - Check the E-mail SBD Survivor A Pending List. If the case is on the pending list, pend for 2 weeks from the date into system. If not received within 2 weeks, determine the "Type Code" reason the G-90 is delayed and follow the procedure below.

  If the G-90 is delayed due to SSA reply, the wage record cannot be traced. If there is no SSA reply furnishing the outstanding wages, the G-90 will drop off the pending list after 30 days with no calculation.

If the G-90 is delayed due to lag, refer the case to the Senior Claims Specialist or Section manager.

If the G-90 is delayed due to military service, trace directly to the CCU E-mail mailbox entitled "RE ENTRY A" using the "Survivor Wage Record Tracer" pattern.

CCU responses will be sent to the SURV INQUIRIES/ TRACERS mailbox. The messages will be distributed daily.

- 2nd Tracer - If no response to the E-mail is received within one week, trace with the CCU through the Senior Claims Specialist or Section Manager.

  If the case is not on the HSL Pending List, see procedure for tracing an outstanding manual "B" G-90 below.

Tracing An Outstanding Manual "B" G-90

To determine if a G-90 has been referred to CCU for manual review or calculation, access the B G-90 Database Program option #1, "Check on Survivor B G-90". Enter the terminal digit number without dashes or, if a six digit number, the prefix followed by the six digits. If no record is found using a six digit number, also check under the terminal digit number.

If the G-90 has been referred to CCU for category B manual handling, the claim number will be displayed as an existing case with the date received in CCU. If CCU has completed their action and forwarded the paper G-90 to the Survivor Benefits Division, the date of that action will be indicated in the "Date Completed" box.

- 1st Tracer - Trace a category B G-90 not completed by CCU using the Database program. Select "S - Send Message to CCU for Special Handling". Type in the tracer message in the remarks section and enter "Y" to send the message. CCU can acknowledge the special handling request and respond using the Database program, if applicable.

- 2nd Tracer - If no response to the Database program message is received within one week and no G-90 is received, trace with CCU through the Senior Claims Specialist or Section Manager.

3. Tracing G-563

   Release 1st Tracer 30 days after request was made. Release a 2nd Tracer G-563 marked "Second Request" 30 days after first tracer was released.

B. Compensation And Pension Data

1. Tracing G-88A.2, Notice of Retirement and Request for Verification of Service Needed for Eligibility.

   1st Tracer -

   - Advance Filing Cases - The Form G-88A.2 is not released by the field office until the month of the employee's date last worked. Trace 30 days from the annuity beginning date (ABD). Release an E-mail message to the field office nearest the railroad.

   - Other Than Advance Filing Cases - Trace 30 days from the filing date of the AA-1 application. Release an E-mail message to the field office nearest the railroad.

   2nd Tracer - 30 days after 1st tracer - Telephone the district manager of the field office nearest the railroad.

2. Tracing Form G-88p, Employer's Supplemental Pension Report.

   1st Tracer - After 30 days release an e-mail message to the field office nearest the railroad.

   2nd Tracer - 30 days after 1st tracer - Telephone the district manager of the field office nearest the railroad.

   NOTE: When tracing forms with the Canadian National Railway, always include the employee's PIN and/or SRB number.

C. Proofs etc. Needed To Pay Case

1. Tracing Proof from Field Offices

   - 1st Tracer - After 30 days or when referral message is produced - E-mail message to field.

   - 2nd Tracer - 30 days after 1st tracer - E-mail message to field.

   - 3rd Tracer - 30 days after tracer - Phone call to field. Note - The field office will be abandoning the case if they have been unable to obtain the proof by this time.

2. Tracing Proof from Resources Management Center (RMC)

   After 30 days from the date foreign language document was sent to RMC - Send a photocopy of the G-91a in file to RMC. Show

"Foreign Language Document Outstanding 30 days," on the G-26 route slip.

D. Medical Evidence

The Disability Benefits Division will take all tracing action necessary for outstanding medical evidence.

E. Social Security Data

1. RLS - (Form G-80 is obsolete). Refer to RCM 2.9.70.-73 for current G-80 RLS handling.

2. Tracing RR1a/RR1e

First Tracer - If the beneficiary or the field office reports that an application for SS benefits has been filed and no RR1a/RR1e is in file, check POLO. If not on POLO, send an RR-25 to the OSR.

F. Military Service Data

1. Tracing G-431 or SF-180

1st Tracer - 30 days after form was released. Release another form.

2. Tracing for Reply to Code Letter 353

1st Tracer - 30 days from date form letter was released - Release a letter marked "Second Request".

2nd Tracer - 30 days after 1st tracer, release a second tracer letter.

3rd Tracer - 30 days after 2nd tracer, refer case to RAC.

G. All Data From Government Agencies Not Mentioned Above

1st Tracer - 30 days from date form or letter was released - Release a letter marked "SECOND REQUEST".

2nd Tracer - 30 days after 1st tracer - Release a 2nd tracer letter.

3rd Tracer - 30 days after 2nd tracer - Refer case to PAS.

H. All Data Requested From Field Not Previously Covered

1st Tracer - 30 days from date request was made - Send E-mail message to the field office manager.

2nd Tracer - 10 days from 1st tracer - Send E-mail message to appropriate regional office.

Appendix G - Addresses Of SSA Program Service Centers and Reviewing Offices

SSA Numbers	Program Service Centers
268 – 302 316 – 399 700 - 728	Harold Washington Social Security Center Great Lakes Program Service Center 600 W. Madison St. Chicago, IL
001 - 134	Social Security Administration Northeastern Program Service Center Joseph P. Addabbo Federal Bldg. One Jamaica Center Plaza 155-10 Jamaica Avenue Jamaica, NY 11432-3830
135 - 222 232 – 236 577 – 584 596 – 599 691 - 699	Social Security Administration Mid-Atlantic Program Service Center 300 Spring Garden Street Philadelphia, PA 19123
501 – 504 516 – 524 526 – 576 586 600 – 626 646 – 647 650 – 653 680 750 - 751	Social Security Administration Western Program Service Center 1221 Nevin Avenue Richmond, CA 94802
303 – 315 429 – 500	Social Security Administration Mid-America Program Service Center

505 – 515 525 585 627 – 645 648 – 649 659 – 665 676 - 679	601 East 12th Street Kansas City, MO 64106
223 – 231 237 – 267 400 – 428 587 – 595 654 – 658 667 – 675 681 - 690	Social Security Administration Southeastern Program Service Center 2001 Twelfth Avenue, North Birmingham, AL 35285

Reviewing Offices	
DIB Claims All account numbers	Social Security Administration Office of Disability Operations 1500 Woodlawn Drive Baltimore, MD 21241
Foreign Claims (All account numbers if at least one beneficiary resides in a foreign country)	Office of Disability and International Operations Office of International Operations P.O. Box 1756 Baltimore, MD 21235

SSA Regional Office Addresses And States Served	
Region	States Served
BOSTON John Fitzgerald Kennedy Building Room 1100, Government Center	Connecticut New Hampshire Maine Rhode Island Massachusetts Vermont

Boston, MA 02203	
NEW YORK Room 40-102, 26 Federal Plaza New York, NY 10278	New Jersey New York Puerto Rico Virgin Islands
PHILADELPHIA P.O. Box 8788 3535 Market Street Philadelphia, PA 19104	Delaware Pennsylvania District of Columbia Maryland Virginia West Virginia
ATLANTA 101 Marietta Tower Suite 1902 Atlanta, GA 30323	Alabama Mississippi Florida North Carolina Georgia South Carolina Kentucky Tennessee
CHICAGO P.O. Box 8280 Chicago, IL 60680	Illinois Minnesota Indiana Ohio Michigan Wisconsin
KANSAS CITY Federal Building Room 436 601 East Twelfth Street Kansas City, MO 64106	Iowa Kansas Missouri Nebraska
DALLAS Room 1440 1200 Main Tower Building Dallas, TX 75202	Arkansas Oklahoma Louisiana Texas New Mexico
DENVER Room 1185, Federal Office Building 1916 Stout Street Denver, CO 80294	Colorado South Dakota Montana Utah Wyoming North Dakota
SAN FRANCISCO 75 Hawthorne Street San Francisco, CA 94105	Arizona Hawaii Nevada California
SEATTLE	Alaska Oregon Idaho

2201 Sixth Avenue M S RX-50 Seattle, WA 98121	Washington

Appendix H - Canadian Provinces and Territories by Field Office

First Character of Postal Code	Canadian Province or Region	Office/Speed #
A	Newfoundland and Labrador	Boston/231
B	Nova Scotia	Boston/231
C	Prince Edward Island	Boston/231
E	New Brunswick	Boston/231
G	Quebec East	Albany/211
H	Montreal Metro	Albany/211
J	Quebec West	Albany/211
K	Eastern Ontario	Buffalo/217
L	Central Ontario	Buffalo/217
M	Toronto Metro	Buffalo/217
N	SW Ontario	Detroit/286
P	Northern Ontario	Milwaukee/291
R	Manitoba	Fargo/376
S	Saskatchewan	Billing/372
T	Alberta	Billing/372
V	British Columbia	Bellevue/371
X	NW Territories, Nunavut	Spokane/384

Y	Yukon	Bellevue/371

Appendix I - Mexican States and Territories by Field Office

Covina, CA	**Houston**
Baja California Norte	Campeche
Baja California Sur	Chiapas
	Coahuila
	Federal District
Albuquerque	Guanajuato
Aquascalientes	Guerrero
Chihuahua	Hidalgo
Colima	Mexico
Durango	Michoacan
Jalisco	Morelos
Nayarit	Nuevo Leon
Sinaloa	Oaxaca
Zacatelas	Puebla
	Queretaro
	Quintana Roo
Mesa, AZ	San Louis Potosi
Sonora	Tabasco
	Tamaulipas
	Tlaxacala
	Vera Cruz
	Yucatan

Appendix J - Addresses Of State Correctional Authorities

ALABAMA
State Board of Corrections
101 S. Union St.
Montgomery, AL 36130

ALASKA
Department of Health & Social Service
Division of Corrections
Pouch HO 3, Health & Social Service Bldg.
Juneau, AK 99811

ARIZONA
Department of Correction
1601 West Jefferson St.
Phoenix AZ 85007

ARKANSAS
Department of Correction
Post Office Box 8707
Pine Bluff, AR 71611

CALIFORNIA
Department of Correction
P.O. Box 714
Sacramento, CA 95803

COLORADO
State Department of Corrections
Attn: Records
2862 South Circle Drive Suite 400
Colorado Springs CO 80906

CONNECTICUT
Department of Correction
340 Capitol Ave.
Hartford, CT 06106

DELAWARE
Department of Correction
80 Monrovia Ave
Smyrna, DE 19977

DISTRICT OF COLUMBIA
Department of Correction
614 H Street NW
Washington, D.C. 20001

FLORIDA
Department of Correction
2601 Blair Stone
Tallahassee, FL 32399-2500

GEORGIA
Department of Offender
Rehabilitation
800 Peachtree St. NE
Atlanta, GA 30308

HAWAII
Department of Social Service
and Housing, Correction Division
P.O. Box 339
Honolulu, HI 96809

IDAHO
Department of Correction
Box 7309
Boise, ID 83707

ILLINOIS
Department of Correction
201 Amory Bldg.
Springfield, IL 62706

INDIANA
Department of Correction
804 State Office Bldg.
Indianapolis, IN 46204

IOWA
Department of Social Service
Division of Correction
Hoover Building
Des Moines, IA 50319

KANSAS
Department of Correction
535 Kansas Ave.
Topeka, KS 66603

KENTUCKY
Bureau of Correction
State Office Building
Frankfort, KY 40601

LOUISIANA
Department of Correction
P.O. Box 44304
State Capitol Station
Baton Rouge, LA 70804

MAINE
Department of Mental Health and Corrections
411 State Office Bldg.
Augusta, ME 04333

MARYLAND
Department of Public Safety and Correction Services,
Division of Correction
6314 Windsor Mill Rd.
Baltimore, MD 21207

MASSACHUSETTS
Department of Correction
Saltonstall Office Bldg.
100 Cambridge St.
Boston, MA 02202

MICHIGAN
Department of Correction
Stevens T. Mason Bldg.
Lansing, MI 48913

MINNESOTA
Department of Correction
430 Metro Square Bldg.
Seventh and Roberts Streets
St. Paul, MN 55101

MISSISSIPPI
Department of Correction
723 North President St.
Jackson, MS 39202

MISSOURI
Department of Social Service
Division of Correction
Jefferson City, MO 65101

MONTANA
Department of Institution
Corrections Division

1539 11th Ave.
Helena, MT 59601

NORTH DAKOTA
Director of Institutions
State Capitol
Bismark, N.D. 58505

NEBRASKA
Department of Correctional Service
P.O. Box 94661
Lincoln, NE 68509

NEVADA
Department of Prisons
P.O. Box 7000
Carson City, NV 89701

NEW HAMPSHIRE
(no central dept. of corrections)
adult felons are committed to:
New Hampshire State Prison
Box 14
Concord, N.H. 03301

NEW JERSEY
Department of Corrections
P.O. Box 7387
Whittlesey Rd.
Trenton, N.J. 08628

NEW MEXICO
Criminal Justice Department
Correction Division
State Rd. 14
P O Box 27116
Santa Fe, N.M. 87502

NEW YORK
Department of Correctional Services
State Office Building Campus
Albany, NY 12226

NORTH CAROLINA
Department of Correction
840 West Morgan St.
Raleigh, N.C. 27603

OHIO
Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, OH 43229

OKLAHOMA
Department of Corrections
3400 N. Eastern 75 Howard Ave.
P.O. Box 11443
Oklahoma City, OK 73111

OREGON
Department of Human Resources
Correction Division
318 Public Service Bldg.
Salem, OR 97310

PENNSYLVANIA
Department of Justice
Bureau of Correction
P.O. Box 598
Camp Hill, PA 17011

RHODE ISLAND
Department of Correction
Cranston, RI 02920

SOUTH CAROLINA
Department of Correction
4444 Broad River Road
P.O. Box 21787
Columbia, S.C. 29221

SOUTH DAKOTA
Board of Charities & Correction
Office of Correctional Services
Suite 402-403 Foss Building
Pierre, SD.

TENNESSEE
Department of Corrections
Rachel Jackson Building
Ground Floor - MIS
320 6th Avenue North
Nashville, TN 37243

TEXAS

Department of Corrections
Box 99
Huntsville, TX 77340

UTAH

For adult offenders:
Dept of Corrections
Records Bureau
14717 S Minuteman Dr
Draper UT 84020
(801) 545-5700
(801) 545-5702 (fax)

For juvenile offenders:
Department of Social Services
Division of Corrections
150 W. North Temple
Salt Lake City, UT 84103

VERMONT
Agency of Human Services
Department of Corrections
State Office Building
Montpelier, VT 05602

VIRGINIA
State Department of Corrections
P.O. Box 26963
4615 West Broad St.
Richmond, VA 23261

WASHINGTON
Dept. of Social & Health Service,
Adult Correction Division
(Mail Stop FN - 61)
Olympia, WA 98504
Division of Juvenile Rehabilitation
(Mail Stop OB 42 - J)
Olympia, WA 98504

PUERTO RICO
Administration of Correction
Call Box 71308
San Juan, PR 00936

WEST VIRGINIA

Department of Correction
1116 Quarrier St.
Charleston, WV 25301

WISCONSIN
Department of Health and Social
Service, Division of Corrections
Madison, WI 53701

WYOMING
State Board of Charities and Reform
Capitol Building
Cheyenne, WY 82002

Appendix K – Undeliverable Mail Program Letters and Referrals

The samples listed are letters, USTAR referrals and data entry screens from the Undeliverable Mail Program. Click on the name of the document to view.

A. Re-mail Letter

B. G-697 Bank Letter

C. RL-132A-F (To current address)

D. Entry screen for RL-132A-F (To new address)

E. RL-132A-F (To new address)

F. USTAR referral (Address Investigation)

G. Entry screen/USTAR referral (Rep-Payee)

Appendix A - Prior Service and Red Cap Service Development and Adjudication

A1. Prior Service Defined

Prior service under the Railroad Retirement Act (RRA) means service performed before 1-1-37.

Service performed before 1937 may be credited only if, on 8-29-35, the employee met the conditions for an Employment Relation (ER) described in Appendix C of this chapter.

A2. Red Cap Service Defined

A person who rendered service as a redcap or other station attendant before 9-1941, and whose duties consisted of carrying hand baggage and assisting passengers' stations, received credit for all such verified service even though he received no remuneration from an employer for such service.

a. 1937 Railroad Retirement Act

Under the 1937 Railroad Retirement Act, redcap months prior to 9-1941 were treated as prior service months and the redcap compensation was included in the prior service average.

b. Under the 1974 Railroad Retirement Act

The 1974 Railroad Retirement Act changed the usage of redcap service and compensation after 12-1936 and before 9-1941; these months were then used as subsequent service. However, the amount of the average redcap compensation for those months was still determined as in 1937 Act cases.

A3. Maximum Number of Prior Service or Red Cap Months

a. General - The number of months of prior service or red cap service that may be included in an employee's years of service is the difference between 360 and the number of months of creditable service after 1936. The prior service or red cap service months are counted in reverse order beginning with 12-1936 depending upon availability of service records and verification of service. No prior service is included in an employee's years of service when 360 or more months of subsequent service have already been established for the employee.

b. Overlapping Service - Service performed for two or more covered employers in the same month can be credited as only a single month of service. The overlapping month is credited as a month of service to the employee's principal employer.

A4. Prior Service in Canadian Cases

Only service performed inside the U.S. for a U.S. employer conducting the principal part of its business in the U.S. was creditable as prior service. Service performed outside the U.S. for an employer conducting the principal part of its business outside of the U.S. was not included in an employee's years of service.

If a person, during the last payroll period in which he rendered service to an employer before August 29, 1935, rendered all such service outside the U.S. to an employer not conducting the principal part of his business in the U.S., he was precluded from having an employment relation.

When an employee had an employment relation with an employer conducting the principal part of its business outside the U.S., no greater portion of his service before 1937 could be included in his years of service than:

- The proportion which his total compensation (including compensation in any month in excess of the applicable monthly maximum) for service after 1-1-37, rendered anywhere to an employer conducting the principal part of its business in the U.S. or rendered in the U.S. to any other employer,

  bears to:

- His total compensation (including compensation in any month in excess of the applicable monthly maximum) for service rendered anywhere to an employer after 1-1-37.

  The ratio is:

$$\frac{\text{Total compensation for service after 1-1-37 rendered anywhere to employer conducting principal part of its business in U.S. or rendered in U.S. to any other employer}}{\text{Total compensation for service in the U.S. rendered anywhere to an employer before 1937. After 1-1-37 rendered to an employer conducting principal part of its business outside the U.S.}} \times \text{Total service}$$

= Proportion of service before 1937 that could be included in years of service.

An example of the ratio expressed in figures is:

$ 61,200	x	181	=	68.29 or 69 months of service that could be credited before 1937.
$162,200				

When the ratio described above was used, any resulting fraction of a month was credited as a full month.

A5. Service in Cuba or Mexico Before 1937

Service performed in Cuba or Mexico before 1937 for an employer conducting the principal part of its business in the U.S. was not credited as prior service if performed:

a. By a person not a citizen or resident of the U.S.; and

b. For an employer required by the laws of the country in which the service was performed to employ citizens or residents of the country for service within the country. The laws in force on 8-29-35, were considered as in force at all times before that date.

A6. Claim for Prior Service

A claim for prior service or red cap service is not a legal requirement for crediting the service. The claim is merely a means of obtaining data describing the prior service in order to verify that service.

a. Development Based on Form AA-1

Form AA-1, "Application for Employee Annuity," requests the employee to complete a Form AA-15, "Employee's Statement of Service Performed Before January 1, 1937 to Employers under the RRA" when:

1. He has less than 360 months of railroad service after 1936; and,

2. He worked in the railroad industry before 1937.

The prior service development may already be stored in the RRB claim file, as explained in section (d) below. When the verified prior service is already in the RRB claim file, an AA-15 is not required.

However, the employee should still claim the prior service on the application AA-1 to alert the examiner to look for the prior service.

b. When Prior Service Should Be Claimed

Prior service should be claimed if:

1. In a retirement or survivor case when the subsequent service is less than 120 months and the claimed prior service, when combined with subsequent service, will yield at least 120 months of railroad service; or,

2. In a retirement case when the employee has less than 25 years of subsequent service and the claimed prior service, when combined with subsequent service, will yield at least 300 months of railroad service to qualify for a supplemental annuity.

3. In a retirement case when the employee has less than 30 years of subsequent service and the claimed prior service, when combined with subsequent service, will yield at least 360 months of railroad service.

4. In a survivor case when the employee has less than 30 years of subsequent service and the claimed prior service, when combined with subsequent service, will yield at least 360 months of railroad service for a survivor annuity with a 1981 Amendment tier 2.

c. When Prior Service Should Not Be Claimed

An employee or his survivor should not claim prior service if the employee has at least 30 years of verified subsequent service. There is no advantage in claiming prior service in this situation, because the total years of service may not exceed 30 when prior service is used.

Prior service should not be claimed if the claimed prior service, when combined with the months of subsequent service, will yield less than 120 months of railroad service. Do not develop an application in this type of case unless the individual insists on filing. Explain in remarks on form G-230 (Check List for Employee, Spouse, and Divorced Spouse Annuity/HIB Applications) or on form G-659a “Checklist for Survivor Applications” that the individual insisted on filing.

In a survivor case, prior service should also not be claimed if the employee had 120 months of verified subsequent service and the survivor will receive an LSDP; a survivor tier 1 only annuity; or a survivor annuity with a 1974 Act tier 2.

d. Current Procedure for Development of Prior Service

If the prior service should be claimed, the RRB field office will forward an email inquiry to P&S-RAC to determine if the verification of the prior service is already in the RRB claim file. If so, no further prior service development is required.

If the prior service has not already been verified, the RRB field office will be requested by email to submit either a form AA-15, "Employee's Statement of Service Performed Before January 1, 1937 to Employers Under the RRA", or a properly signed letter from the applicant with the prior service outlined in sufficient detail to identify the employee's service on payroll or other detailed

records. Upon receipt of this information, the Retirement Analysis and Systems section (RAS) will either:

1. Contact the railroad directly when the Employer Data Maintenance (EDM) screens and the Employer Status List indicate the claimed service is creditable for the period in question and the employer is still an operating railroad; or,

2. Request the information from the National Archives and Records Administration (NARA) if the Employer Status List shows "Records filed in Board."

If the claimant is otherwise eligible for an annuity, the RRB field office will secure the appropriate application when the claim for prior service is made. Failure to secure an application immediately might cause loss of benefits if eligibility is retroactive.

e. Previous Procedure

Form AA-15 was developed by the RRB field office. Form AA-2P(R) was then used to verify the prior service, as explained in this Appendix. The Form AA-2P(R) is now obsolete.

A7. Prior Service Claim Forms

Prior service was claimed on the following forms:

a. AA-15 - This form was used to claim prior service, when an application was received indicating service before 1937, but an AA-15 (or its equivalent) was not already in the claim file and there was no verified prior service in the claim file. This form was used for most prior service, including service with a railway labor organization, but not service as an employee representative. If the obsolete Form OE-4 was in the claim file to claim labor organization service, it was still acceptable as a claim.

b. DC-2a - This form was used to claim service as an employee representative. If the obsolete Form RP-4-37 was in the claim file, it was also acceptable as a claim for such service. (This form is now obsolete.)

c. Form RP-4-37 - This form was also acceptable as a claim for service as an employee representative. (This form is now obsolete.)

d. Letter - A properly signed letter claiming prior service was also acceptable as a claim if the prior service was outlined in sufficient detail to enable the employer to identify it on payroll or other detailed records.

A8. When Prior Service or Red Cap Service was Developed in General File Cases

If the employee waited until after 1990 to file his annuity application, the prior service or red cap service development is already in a general file created under the employee's social security number. This general file became the employee's RRB claim file upon receipt of his annuity application.

The prior service or red cap service would have been developed when:

a. An AA-15 or request for a prior service record or annuity estimate was received from:

- An employee age 64 or older for jurisdiction of Medicare only; or
- An employee less than age 64 who indicated an intent to retire within 6 months, or "soon"; or
- A congressman, brotherhood official, or employer official, on behalf of an employee (regardless of employee's age).

b. An earnings request was received from SSA and it was necessary to develop prior service in order to establish 120 months to determine jurisdiction.

c. Prior service was taken into account in arriving at the total years of service for RUIA benefits. The RUIA provided for the extension of UI and SI benefit periods and the early beginning of benefit years based on, among other requirements, years of service.

Prior service or red cap service was not developed if it would not establish at least 120 months.

A9. Prior Service or Red Cap Service for RUIA Claimants

The RUIA provided for the extension of UI and SI benefit periods and the early beginning of benefit years based on, among other requirements, years of service. Prior service or red cap service was taken into account in arriving at the total years of service. The creditability of prior service, in some cases, was determined by the RRB's regional offices and BUSI, and in others by the retirement claims examiner.

The cases in which RBD determined the creditability of prior service were those in which:

a. Development of Employment Relation was required.

b. Service report forms showed other than symbol "C" or "an amount of compensation" in months for which the employee claimed service.

c. Differences in payroll names needed to be reconciled.

When RBD's certification of creditable service was needed in an "A" claim or general file, BUSI made a referral by UI-43, Creditable Military or Prior Service (Railroad Unemployment Insurance Act). This form is now obsolete.

A10. Verified Prior Service and Red Cap Service

"Verified service" as used here, means service reported on the basis of detailed records or personnel records. This service was usually reported by means of symbol "C" (compensation), "W" (red cap) or "M" (missing records). The "M" must have been supported by personnel records.

Employer payroll or other detailed compensation records certified by the employer were the best means of verifying prior service. The term "detailed record" meant a pension record, salary card posted from payroll records, or a time report which established that the employee earned or received compensation and showed the compensation by months.

When an AA-2P(R) in the claim file indicated that the employer verified service that had not been claimed by the employee, the service was still credited unless there was a "reasonable doubt" that it was performed by the claimant.

"Reasonable doubt" depended on the facts in the particular case. If there was a reasonable doubt about the prior service verified by the employer, but not claimed by the employee, and all or part of that prior service would increase the employee's years of service or affect the prior service average, further information was developed to verify that the prior service was creditable.

A11. Prior Service and Red Cap Service Report Form AA-2P(R)

Form AA-2P(R), "Record of Employee's Prior Service," was used to obtain a record of prior service and occupational titles before 1937 from an employer or from records stored at the Federal Archive Records.

Most employers carried redcaps on the payroll beginning with the month of 10-1938. When compensation was reported beginning with that month, a Form AA-2P was requested for a record of non-compensated redcap service only through 9-1938.

Railroads are not legally required to store employment records for more than fifty years. Therefore, if the verified prior service was not already in the claim file, or stored with the Federal Archive Records, the railroads may not be able to verify the prior service.

a. Current Procedure

Form AA-2P(R) is now obsolete. The Office of Programs, Retirement Analysis and Systems section will now either:

- Contact the railroad directly when the EDM screens and the "Employer Status List" indicate the claimed service is creditable for the period in question and the employer is still an operating railroad; or,

- Request the information from NARA if the Employer Status List shows "Records filed in Board."

b. Previous Procedure

The railroad verified the employee's prior service on Form AA-2P(R). This form was basically self-explanatory. A description of a few of the items is as follows:

- Payroll Name - The "Payroll Name", was the name(s) used by the employee during the period of service to be verified, exactly as shown by the employee on his claim for service.

- Name or Employer if not Same as Above - If the employee claimed service with the predecessor or subsidiary of the employer completing the Form AA-2P(R), the name of that predecessor or subsidiary was indicated in Section 2. A separate line was used for each predecessor or subsidiary employer.

- Occupation - This was the last occupation in which the employee worked for the employer shown in the preceding column.

- Date Began - This was the beginning date of the period of claimed service. (This should be the earliest date claimed by the applicant even if the employer was not required to verify all the service shown.)

- Department - This was the name of the railroad department in which the service described in the preceding columns was rendered.

- Location or Division - This was the name of the town or city in which the service described in the preceding columns was rendered. If the location was not known, it was the name of the division.

- Service Record - The railroad indicated the verified the months of service in Section 4. Before 7-1-74 employers were required to furnish information from their payrolls as to the actual amount of compensation earned in each month needed to determine the prior service average. For 7-1-74 or later, the Interstate Commerce Commission (ICC) occupational average was be used to determine the average compensation before 1937.

The railroad was requested to verify only the number of service months needed to qualify the employee for an annuity, a supplemental annuity or a 60/30 benefit. This form was not released if 360 months of subsequent service had been

established or the Employer Status List indicated the records for the period of service in question were not available.

A12. Prior Service Report Form OE-5

Form OE-5 was used when the employee performed service for a railway-labor-organization employer in different capacities. This form is now obsolete.

a. Service as Chairman of Local Lodge - The chairman of a local lodge was also a member of the general grievance committee. Therefore, even though service was claimed for only one of the positions, two sets of OE-5's were requested, one covering service in each position. (For exceptions see b and c below.)

b. Service With Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employees - Each local chairman was also a member of the division committee; the chairman of each division committee was also a member of the system board of adjustment of each railroad. Form OE-5 was requested as follows:

- Local Chairman or Member of Division Committee - Two sets; one covering service as local chairman, the other covering service as member of division committee.
- Chairman of Division Committee or Member of System Board of Adjustment - Three sets; one for service as local chairman, one for service as chairman of division committee, and one for service as member of system board of adjustment.

c. Transportation - Communications Employees Union - Only one set of OE-5's was required when a person claimed service as chairman of a local lodge of the T-CEU or its predecessor, the Order of Railroad Telegraphers. Service as local chairman and member of the grievance committee was reported on a single OE-5.

d. Service in Special Positions - A separate set of OE-5's was requested for service claimed in each of the following special positions:

- Insurance secretary of a local lodge.
- Legislative representative (may have been local, State or national).
- Delegate to grand lodge convention.

A13. Records for Railway Express Agency (REA) Employees

Records for Railway Express Agency (REA) employees in the following states are stored at NARA and can be secured by the Retirement Analysis and Systems section.

Arizona	Michigan	North Dakota	Washington
California	Minnesota	Ohio	Wisconsin
Colorado	Montana	Oregon	Wyoming
Idaho	Nebraska	South Dakota	Hawaii
Illinois	Nevada	Texas	
Iowa	New Mexico	Utah	

Records for Canada and all train messengers are also available. Records for all other states have been destroyed.

A14. Formal Correctness of Report Forms

a. Certification by Employer Official - Each completed service report form was examined to see that it had been properly completed and certified by the employer.

Each of these forms must either have been signed by a proper official, accompanied by a memo or letter signed by a proper official, or authenticated by some other evidence that the form was cleared through proper channels. Reports of railway-labor-organization employers must also have been countersigned by the organization's national reporting officer. (A service report form signed by a properly authorized official was acceptable even though the service reported was that of the official who signed the form.)

Forms AA-2P(R) completed after 6-15-62 by the:

- Northern Pacific Ry Co.;
- Northern Pacific Transport Co.;
- Walla Walla Valley Ry Co.; and
- Duluth Union Depot and Transfer Co.

Must have been signed by:

- Russell H. Dick,
- Richard A. Buelke,
- Beatrice Nachtrieb, or

- K. T. Woodruff.

b. Use of Standard Symbols - The RRB adopted the following symbols that were used by employers in reporting the prior service and compensation data shown in their records:

- "C" - To indicate that the employer's records showed that the employee received compensation during the month for which this symbol was entered.

- "W" - To indicate that the employer maintained a month-to-month record that the employee performed non-compensated redcap service during that month.

- "M" - To indicate that detailed records of the employer are missing or have been destroyed for the month for which this symbol was entered.

- "X" - To indicate that detailed records of the employer were available and were examined, but the employee's name was not found for the service claimed during the month for which this symbol was entered.

- "Amount of Compensation" - To indicate that the employee received compensation during the month for which the amount was reported. Credit this month as a month of service if properly claimed.

Canadian employers who deviated from the use of standard symbols are listed in sections c and d below. If the symbols, or an amount of compensation was omitted for any month for which an employee claimed service, an explanation of the omission made on the service report form or in a accompanying letter was accepted if the appropriate symbol or the amount of compensation for that month was explicitly indicated.

c. Canadian National Railway Company

The following symbols were used by the Canadian National Railway Company in reporting service in section 6 of AA-2P(R):

"A" - Where service was performed in Canada only.

"B" - Where the employee's name was found on payroll but it could not be determined whether any service was performed in the United States.

"C" - Where the payroll records show service was performed in the United States.

The amounts entered represent compensation for service in the United States. When "A" was entered, no amount of compensation was shown. This symbol indicated that compensation was earned only in Canada.

d. Canadian Pacific Railway Company

The symbol "C" on Form AA-2P(R) denotes compensated service in the United States.

The amounts entered for the period 1924-1931 are the total compensation for service performed in both the United States and Canada. The percentage to be applied to those amounts to determine the compensation earned in the United States was stated under "Additional Information" or "Remarks" of the AA-2P(R). If the stated percentage for the overall period did not apply to a particular month or period, the percentage for such month or period was stated as an exception, or the actual amount or amounts allocated to such month or period was shown.

e. Alteration of Service Report Form - Usually, erasures, corrections and additions made on service report forms were initialed. An explanation of these changes should be in "Remarks" of the AA-2P(R), by the official submitting the form to the RRB. However, if the changes were not initialed or an explanation was not furnished, the entry was not questioned unless there was reason to believe it was in error.

A15. When Payroll Name Differences Were Reconciled

If the employer reported any difference in the employee's name (as shown on the prior service report of an employer and the name on the employee's application or the AA-15), and stated that the names referred to the same person, further reconciliation was not necessary.

Otherwise, any difference in the employee's name as shown on the prior service report of an employer and the name on the employee's application or AA-15, was compared to other identifying data in the file, i.e., SSA number, DOB, POB, place of residence, and similar items, in accordance with RCM 4.8.

A16. When Employer Personnel Records were Used to Establish Service

If an employer indicated that detailed records were not available to verify the employee's claimed period of prior service or red cap service, they furnished a personnel record of the employee's employment. The RRB used the personnel record to establish the claimed period of service EXCEPT for any months during the period for which the employer has entered "X" on the service report form. The RRB credited all other months covered by the personnel record, unless there was evidence that the employee did not work during those months.

However, any service verified by employer personnel records was subject to a reduction to allow for probable absences. The reduction was 5 percent of the number of months in each period or the absence reported by the employee, whichever was greater.

EXAMPLE: An employee claimed service with the Rock Island RR from 12-1908 through 10-1916. The employer's personnel record showed that the employee entered its service on 12-10-08 and resigned 10-6-16. The employer reported "C" months for

the period 12-1908 through 3-1910, "M" months for the period 4-1910 through 12-1913, and "X" months for the remainder of the period claimed. Although payroll records indicated that the employee did not work in the months following the period of "M" months, the personnel record was not discredited. Subject to the "5% deduction" rule, the employee can be credited with the entire period of "M" months.

A seniority roster was not considered an acceptable personnel record. However when reference was made to seniority rosters on AA-2P(R)'s completed by the Seaboard Airline Ry. This meant that both the personnel record and the seniority rosters indicated that the employee worked during the periods specified.

A17. Checking Established Service Before Requesting Verification of Additional Service

Before you attempt to establish the maximum allowable period of claimed prior service, refer to EDM to determine the number of months of subsequent service verified for the employee.

If it is determined that additional prior service or red cap service claimed by the employee should be verified to insure payment of maximum benefits, refer the case to the Retirement Analysis and Systems section of the Office of Programs.

A18. Rechecking "X" Months

a. When to Recheck - Request Retirement Analysis and Systems to recheck of "X" months from an employer only if:

- Eligibility for benefits (including minimum annuity) depends upon verification of additional service; or
- The information previously furnished the employer was in some way incomplete or inadequate for verifying the employee's claimed service and establishment of the service would increase the annuity by $.30 or more.

b. Securing Additional Information From Employee - Before asking an employer to recheck "X" months, Retirement Analysis and Systems will obtain additional information or evidence from the employee, such as:

- The name of a predecessor company or contractor for whom the employee worked; or
- The titles of the different occupations in which he worked; or
- The location(s) where the work was performed, the department(s) or division(s) in which he worked and the names of foremen or supervisors under whom he worked; or

- Different names and initials or different spellings of the names used by the employee, which appeared on payroll and other records; or

- How the employee was paid (e.g., check, voucher, cash) and the name of the employer from whom he received his pay; or

- A statement that pay was received for time lost during an identifiable period; or

- Changes in dates of service originally claimed; or

- Names of fellow workers (if the employee was an unskilled laborer or worked with a section crew), the location of the work, section or gang number, and the employee's brass check number if used to identify workers; or

- Personal records, service letters, time books, payroll deduction slips for hospitalization or company insurance plans, copies of tax data furnished employee by employer, and time records of workers supervised by the employee.

A19. When Form G-86 was Used to Establish Service

Form G-86, "Certification in Support of Employer Service for Which no Records are Available," is now obsolete.

a. Previous Use of Form G-86's - There were cases in which prior service or red cap service was required to establish the maximum allowable service period or to insure payment of maximum benefits; the payroll records were missing ("M" months); and, the employer could not furnish a personnel record covering a period of claimed service. The employee, or in a death case the applicant, was given an opportunity to establish his claimed prior service or red cap service by requesting two persons who had personnel knowledge that the employee performed the service in question to complete Form G-86.

   Two separate Form G-86's were completed independently by each of two persons who had personal knowledge that the employee performed the service in question. These persons need not have been fellow workers of the employee. They could have been related to the employee by blood or marriage, or financially obligated to the employee. Their Form G-86 statements were accepted if the relationship or obligation was described in detail under "Remarks" on the Form G-86.

b. Examination of Completed G-86's - Each Form G-86 was carefully examined to see that all answers were complete and consistent; that the person who signed the form had given sufficient plausible information to demonstrate his knowledge of the service; and, to prevent the acceptance of conflicting statements. The following items were carefully checked:

- Age of Certifier at Time Service Was Performed - The certifier's stated date of birth should have agreed with the date on which he stated he first became acquainted with the employee.

Example 1 - A certification in support of service in 1915 which shows that the certifier was born in 1909 was not acceptable because it was not reasonable for a child six years of age to have had personal knowledge of the employee's employment.

Example 2 -If the certifier's given date of birth indicated that he was only 10 years old at the time he stated that he was a fellow worker of the employee, it was presumed that the certifier's statements are contrary to fact. It was unlikely that a boy ten years old would have been so employed. However, if the certifier stated that he was attending school and came into personal contact with the employee in some other way, the Form G-86 was accepted.

- Period and Method of Personal Contact - The certifier must have stated affirmatively that he came into personal contact with the employee at least once a month. The contact may have occurred in person, by letter, telephone or telegraph; also by receipt of employer records completed by the employee, by cashing the employee's pay checks, or any similar means which shows conclusively that the certifier has personal knowledge that the employee performed service for the employer during the period claimed.

- Service Covered by G-86's - The service covered by a Form G-86 only verified that portion of the employee's claimed service for which employer records are not available. The beginning and ending dates of that portion of the employee's prior service which were intended to be substantiated by the Form G-86 certification were entered in the spaces provided for "service beginning date" and "service ending date," respectively. Credit was not allowed for any service before or after the dates shown, or before or after the employee's claimed period of prior service.

IF the Form G-86 also included other periods of service that had detailed employer records that did not discredit the certification. However, any service included on the Form G-86 that was disproved by detailed records of the employer were not allowed.

If the period covered on Form G-86 was shown by years only, rather than by month and year, credit was only allowed from December in the beginning year through January of the ending year. Similarly, if service was shown by seasons, instead of months, as Fall 1910 to Spring 1914, credit was only allowed from the latest month of the beginning season (December) to the earliest month of the ending season (March). The seasons were: Spring, March to June; Summer, June to September; Fall, September to December; Winter, December to March.

- Signature - The certifier must have signed the Form G-86 in his usual and customary manner. The signature must be written in ink or indelible pencil. It was not acceptable if any alterations were made. A signature by mark must have been witnessed by two persons who knew the person making the certification. The witnesses must also have given their addresses.

Where the certifier's mark was made in the presence of an RRB employee, and another witness was not readily available, the RRB employee's signature as a witness sufficed if he stated that he personally knew the signer, or had fully satisfied himself as to the certifier's identity.

A20. How Established Prior Service Was Summarized

a. By G-86 - When acceptable sets of Form G-86 are received covering one or more periods of service, Form G-83 summarized all of the service months included in all Forms G-86.

Any period of claimed service which were verified as to inclusive dates by employer personnel records, service letters, G-86's, or any similar record, rather than by evidence which established some service in each month during the period, were subject to a reduction to allow for probable absences. This reduction was 5 percent of the number of months in each period or the absence reported by the employee, whichever was greater. An exception was made when the employee or the employer submitted evidence which established the actual days or periods of absence.

The calculations were made separately for each period of service verified as to inclusive dates. Fractions obtained in the calculations were dropped. The total creditable "M" months were entered on the G-367 in the folder.

"Each period of service verified as to inclusive dates," as used in this instruction, meant each period of continuous "M" months which were established. Where the continuity of "M" months were broken by a "C" month or by a notation in the personnel record showing that the employee actually worked in a month, e.g., "suspended 10 days for passing red signal on March 15, 1923," the period of "M" months before the "C" month and the period of "M" months after the "C" month were calculated as two separate periods of service.

b. By Employee's Personal Record - An employee was allowed to submit a time book, work report, material requisitions, call books, or any other similar personal record that satisfactorily substantiated his claimed service, if that service could not be verified from payrolls or other employer records. The RRB transcribed the information from these records to a Form AA-2P(R) by entering the symbol "C" in each month verified by the record; describing briefly the evidence submitted on the Form AA-2p(R); and dating and signing the form. After this action was completed, the personal record was returned to the employee by registered mail.

A21. How Prior Service Report Forms Were Marked

All reported service prior service forms were marked in red pencil with the following symbols for the purposes indicated:

a. Solid Red Border - A solid red border was used to block out a period of prior service or an item of compensation which was not creditable or was disregarded for all purposes. This was also the appropriate marking to exclude from the calculations any prior service or compensation which was not needed because it overlapped service verified by two or more employers during a period. If the examiner later needed to reinstate an item of service or compensation which had been blocked out with a red border, he made a black dotted line around the red border.

b. Red Horizontal Brackets - A pair of red horizontal brackets (one at the beginning and one at the end of each period of service) indicated that the particular months of service in each such period were counted as service but that any reported compensation was excluded from the aggregate compensation that was used in determining the average monthly compensation. This was the appropriate marking when, during the period 1924-1931, the employer had shown, for the same month, the symbol "M" and an amount of compensation. It was also used to denote separate periods of "M" service that were included in the total months of service.

c. Vertical Brackets - If two or more service records verify compensation for the same month, a pair of vertical brackets on all but one of the forms was used to indicate that the total aggregate of the compensation was used, but only one service month was credited.

Compensation data for periods other than 1924-1931 were reported on Form AA-2P-BRS. However, if the employer used sec. 7 of AA-2P(R) or otherwise improvised instead of using the prescribed form, a red line was drawn to separate the 1924-1931 period from other periods for which compensation data was furnished.

Claims examiners in the benefit computing groups were responsible for the blocking out of all service in excess of 30 years and/or overlapping service months. In the absence of any markings or brackets, all other service and compensation was included as reported.

A22. How the Results of Prior Service Development was Furnished to the Employee

Since 10-21-59 (the date of Board Order 59-190), the RRB did not issue a FORMAL notification of an employee's prior service record for cases in which the employee had not filed an application for an annuity. The informal notice of a prior service record did not carry protest or appeal rights. If a person believed that the informal determination

notice was incorrect, he must have filed an annuity application for formal determination before he could resort to the RRB's appellate procedure.

A23. Cancellation of Prior Service Report Forms

When a request for the completion of a prior service report form was outstanding and such information was no longer required, a letter to the railroad was prepared to cancel the request. The letter included the form number (i.e., AA-2P), the date it was released, and the employee's name, occupation, department, and division or location where he worked.

Cancellation of the request for the completion of prior service report forms was required under any of the following conditions:

- The applicant was ruled ineligible to receive credit for prior service; or
- An investigation showed that the form was sent to the employer in error; or
- The employer with whom service was claimed was later determined not subject to the RR Act; or
- Maximum years of creditable service had already been verified.

A24. Disposition of Form AA-2P(R)

Form AA-2P(R) is always filed in the employee's RRB general file or RRB claim file.

Appendix B - Abbreviations, Trade Names and Nicknames of Railroads

ABC	Atlanta, Birmingham and Coast Railroad Company
Air Line, The	Louisville, Evansville & St. Louis Consolidated Railroad Company
Albert Lea Route	Minneapolis & St. Louis Railroad Company, The
Alleghany Route, The	Richmond and Alleghany Railroad Company
Annapolis Short Line	Maryland Electric Railways Company
Arkansas River Route	Midland Valley Railroad Company
Artesian Route, The	San Antonio, Uvalde & Gulf Railroad Company

Atlanta & New Orleans Short Line	Atlantic & West Point Railroad (From 1903, see West Point Route) Western Railway of Alabama, The
Augusta and Asheville Short Line	Port Royal and Western Carolina Railway
Balloon Route	Los Angeles Pacific Railroad (electric)
Bay Line, The From 1927	Seaboard and Roanoke Railroad Company, The Atlanta and St. Andrews Bay Railway Company (See also Panama Canal Route)
Bee Line	Dayton & Union Railroad Company; Indianapolis and St. Louis Railway Company, The; Cleveland, Cincinnati and Indianapolis Railway Company
Bee Line From 1909	Atlanta, Birmingham and Atlantic Railroad Company
Berkshire Hills Route	Housatonic Railroad Company
Bessemer Route, The	Bessemer and Lake Erie Railroad Company
"Big Four" Route	Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The (New York Central System since 1909)
Black Band, The	Kanawha and Coal River Railway Company
Blair Line, The	Kansas City, Osceola and Southern Railway Company, The
Blue Grass Route, The	Kentucky Central Railway Company
Bluff Line, The	In 1891, St. Louis, Alton & Springfield Railroad Company, In 1894, St. Louis, Chicago and St. Paul Railroad Company
Boca Grande Route	Charlotte Harbor and Northern Railway Company
"Bonheur - RW & O"	Rome, Watertown and Ogdensburg Railroad Company
Buckeye Route & Chicago Short Line	Columbus, Hocking Valley and Toledo Railway Company, The
Burlington, The	Chicago, Burlington & Northern Railroad Company
Burlington Route	Chicago, Burlington and Quincy Railroad Company

Cairo Short Line	St. Louis & Cairo Short Line (See Egyptian Route, for 1894)
Canal Route, The	Gulf Line Railway Company
Cape Charles Route	New York, Philadelphia & Norfolk Railroad Company
Cedar Rapids Route	Burlington, Cedar Rapids and Northern Railway Company of Iowa, The (See Iowa Route, The - before 1897)
Cedar Valley Road	Waterloo, Cedar Falls and Northern Railway Company
Charleston Line, The	South Carolina and Georgia Railroad Company
Chatauqua Route	Jamestown, Chatauqua & Lake Erie Railway Company
Chicago Outer Belt Line	Elgin, Joliet and Eastern Railway Company (See Joliet Belt Line, 1889)
Chicago Short Line, Buckeye Route	See Buckeye Route
Choctaw Line	Choctaw Coal and Railway Company
Choctaw Route, The	Choctaw, Oklahoma and Gulf Railroad Company
Clinchfield Route, The	Carolina, Clinchfield and Ohio Railway; Later, Clinchfield Railroad Company
Coast Line	Atlantic Coast Line Railroad Company
Clover-Leaf Route	Prior to 1903, Toledo, St. Louis and Kansas City Railroad Company; 1903 and after, Toledo, St. Louis and Western Railroad Company (See Nickel Plate)
Coal & Pig Iron Route, The	Tennessee Coal, Iron and Railroad Company
Cog Wheel Route	Manitou and Pike's Peak Railway Company, The
Colorado Road, The	Colorado and Southern Railway Company, The
Columbia River Route	Colorado Midland Railway Company, The
Columbus & Toledo Short Line	Marietta, Columbus & Cleveland Railway Company

Columbus & Zanesville Route	Columbus and Eastern Railroad Company, The
Copper Country Route	Copper Range Railroad Company
Coon Valley Route	La Crosse & Southeastern Railway Company
Corn Belt Route	Chicago Great Western Railroad Company
Cotton Belt Route	St. Louis Southwestern Railway Company
Crandie Route, The	Cedar Rapids and Iowa City Railway
Cripple Creek Scenic Line	Midland Terminal Railway Company, The
Crouch Lines (to the Black Hills)	Missouri River & North Western Railway Company
"3 C" Route, The	Charleston, Cincinnati and Chicago Railroad Company
Dan Patch Lines	Minneapolis, St. Paul, Rochester and Dubuque Electric Traction Company
Decatur Route	Indianapolis, Decatur and Western Railway Company
Deep Water Route	Gulf, Florida & Alabama Railway Company
Denver Road, The	Fort Worth and Denver City Railway Company
Diamond Route, The	Memphis, Paris & Gulf Railroad Company
Dixie Line, The	Nashville, Chattanooga & St. Louis Railway, The (See also, Lookout Mountain Route)
Dr. Webb's Railroad	Mohawk and Malone Railroad Company, The
Duluth Short Line	St. Paul and Duluth Railroad Company
Eagle Pass Route	Mexican International Railroad Company
Eagle Mere Route	Williamsport and North Branch Railroad Company
East St. Louis Outer Belt Line	Alton & Southern Railroad Company
Edenborn Line	Louisiana Railway & Navigation Company

Egyptian Route, The	(In 1894) St. Louis & Cairo Short Line (See also, Cairo Short Line)
Elberta Route	Prescott & North-Western Railroad Company, The
Elk Route	Charleston, Clendennin & Sutton Railroad Company
Elkhart Line, The	Cincinnati, Wabash & Michigan Railway Company, The
Erie	Erie Railway Company; 1889-93, New York, Lake Erie and Western Erie Lines; 1894-1900, Erie; 1903 on, Erie Railroad Company
Evansville Route	Chicago and Eastern Illinois Railroad Company
Excelsior Springs Route	Kansas City, Clay County and St. Joseph Railway Company (electric)
Fall Brook Line	Fall Brook Coal Company
Feather River Route, The	Western Pacific Railway Company
Fishing Line, The	Grand Rapids & Indiana Railway Company
"Flagler" System	Florida East Coast Railway Company
Florida Fast Line	Richmond, Fredericksburg and Potomac Railroad Company
Flying Crow, Route of the	Kansas City Southern Railway Company, The (See also, Fort Arthur Route)
Fort Dodge Line, The	Ft. Dodge, Des Moines & Southern Railroad Company
Fort Wayne & Penna. Route	Pennsylvania Lines - West of Pittsburgh, Pa.
Freeport Route, The	Houston and Brazos Valley Railway Company
Frisco Lines (Later, Frisco System)	St. Louis-San Francisco Railway Company
Fruit Belt Line, The	(1909) Kalamazoo, Lake Shore and Chicago Railway Company; (1912) Kansas City and Memphis Railway Company

Fruit Belt Route, The	Grand Junction and Grand River Valley Railway Company, The
Gary Line	Chicago, Milwaukee and Gary Railway Company
Grand Canyon Line (1903)	Atchison, Topeka and Santa Fe Railway Company (See also, Santa Fe Route)
Granite & Iron Route	Austin and Northwestern Railroad Company, The
Gray's Peak Route	Argentine & Gray's Peak Railway
Great Gorge Route, The From 1903 on	Niagara Falls & Lewiston Railroad (electric); Niagara Gorge Railroad; Lewiston, Youngstown & Frontier Railway (electric)
Great I B & W Route, The	Ohio, Indiana and Western Railway Company, The
Great Middle Route, The	Atlantic and Pacific Railroad Company
Great Rock Island Route, The	Chicago, Rock Island and Pacific Railway Company (Later, Rock Island Lines)
Great Salt Lake Route, The	Rio Grande Western Railway Company, The (Later, Denver & Rio Grande Western)
Green Bay Route	Green Bay and Western Railroad Company; Iola and Northern Railroad Company; Kewaunee, Green Bay and Western Railroad Company
Green Mountain Route (1906 only)	Central Vermont Railway Company
Gulf Air Line	Houston and Shreveport Railroad Company; Houston East & West Texas Railway Company, The
Gulf Route	Missouri, Oklahoma and Gulf Railway Company
Henderson Route, The	Louisville, Henderson and St. Louis Railway Company
Hiwasee Route	Atlanta, Knoxville & Northern Railway Company
Hoosac Tunnel Route	Fitchburg Railroad Company
Hoosier Route, The	Chicago & South Bend Railroad

Houek Railroads	St. Louis, Memphis and Southeastern Railroad; Chester, Perryville and Ste. Genevieve Railway Company, The; Saline Valley Railway Company; Cape Girardeau & Chester Railroad Company, The; Cape Girardeau & Thebes Bridge Terminal Railway
Illini Trail	Chicago, Ottawa & Peoria Railway Company
Inland Empire System	Spokane & Inland Empire Railroad Company
International Route, The	International-Great Northern Railroad Company (See also The Texas Railroad)
Iowa Route, The	Burlington, Cedar Rapids and Northern Railway Company of Iowa, The (See also, Cedar Rapids Route-'97)
Iron Range Route, The	Wisconsin & Michigan Railway Company
Ithaca-Auburn Short Line	New York, Auburn and Lansing Railroad Company, The
Jacksonville Short Line	Atlantic, Valdosta & Western Railway Company
Jacksonville South Eastern Line	Chicago, Peoria & St. Louis Railway Company; Jacksonville, Louisville and St. Louis Railway Company ('94); Louisville & St. Louis Railway Company
Jersey Central	See New Jersey Central
Joliet Belt Line	Elgin, Joliet and Eastern Railway Company (1889) (See Chicago Outer Belt Line, for later dates)
Kanawha Short Line	Toledo and Ohio Central Railway Company, The
Kankakee Belt Route	Illinois Division of New York Central Lines
Kankakee Line - Big Four (1889)	Cincinnati, Indianapolis, St. Louis and Chicago Railway Company
Katy Route, The	Missouri-Kansas-Texas Railroad Company
Keokuk Route	Keokuk and Western Railroad Company; Des Moines & Kansas City Railway Company
Kay System	San Francisco-Oakland Terminal Railways

Kite Route, The	Denver & Interurban Railroad Company (electric)
Klickitat Valley Route	Columbia River & Northern Railway Company (See also, "The Regulator Line")
Kushequa Route	Mt. Jewett, Kinzua and Riterville Railroad Company
Lackawanna Railroad	Delaware, Lackawanna and Western Railroad Company, The
La Grange Route, The	Macon and Birmingham Railroad Company (See also, Pine Mountain Route)
Lake Huron Shore Line	Detroit and Mackinac Railway Company (See (1912) Mackinac Route)
Lake Shore Route	Lake Shore and Michigan Southern Railway Company, The (New York Central)
Laurel Line	Lackawanna and Wyoming Valley Railroad Company
Leatherstocking Route	Southern New York Power and Railway Corporation (Successor to Otsego and Herkimer Railroad Company)
Lima Route	Western Ohio Railway Company (electric) (In 1930, Dayton & Troy Electric Railway Company)
Line of the Minute Man	Boston and Maine Railroad
Little E Route	Mississippi & Western Railroad Company
Lone Star Line	Texas Central Railway Company, The
Lookout Mountain Route	Nashville, Chattanooga & St. Louis Railway, The (See also, Dixie Line, 1930 and after)
Louisville Belt Line	Kentucky & Indiana Terminal Railroad Company
Low Grade	Allegheny Valley Railroad Company (Pennsylvania Railroad Company, The)
Luce Electric Lines	Electric Short Line Railway Company
Lumber Line, The	Bainbridge Northern Railway
Mackinac Route	Detroit and Mackinac Railway Company (For name prior to 1912, see Lake Huron Shore Line)

Mackinac, The (1889)	Cincinnati, Jackson and Mackinaw Railway Company
McKinley Lines	Illinois Traction, Inc.
Maple Leaf Route, The	Chicago Great Western Railway Company (See also, Corn Belt Route)
Marble Road, The	Crystal River and San Juan Railroad Company, The
Marquette Route, The (1897)	Duluth, South Shore and Atlantic Railway Company, The (See also, Mackinaw Short Line); (1889), See South Shore Lines; and South Shore (1894 and later)
Mason & Dixon Line	Western Maryland Railway Company
Memphis Route	Kansas City, Fort Scott and Memphis Railroad Company
Merced Canyon Route	Yosemite Valley Railroad Company
Middle Plains Route	Gulf, Texas and Western Railway Company
Mid-land Route	Midland Continental Railroad
Midland Route, The	Texas Midland Railroad
Milwaukee Road, The	Chicago, Milwaukee and St. Paul Railway Company (Chicago, Milwaukee, St. Paul and Pacific Railroad Company)
Minneapolis Belt, The	Minneapolis, Northfield and Southern Railway
Mississippi Valley Central Route	Illinois Central Railroad Company
Mississippi Valley Route	(In 1894) Chesapeake, Ohio & South-Western Railroad Company Louisville, New Orleans & Texas Railway Company (See - Mobile, Port-of, Route)
Mobile, Port-of, Route	Alabama, Tennessee and Northern Railroad Corporation (Mobile Line, 1918 to 1930)
Mobile Route, The (1906)	Mobile, Jackson and Kansas City Railroad Company (See (1909) Panama Route)

Moffat Road, The	Denver, Northwestern and Pacific Railway Company, The
Monon Route	Prior to 1900, Louisville, New Albany and Chicago Railway Company; 1900 on, Chicago, Indianapolis and Louisville Railway Company
MOP	Missouri Pacific Railroad Company
Mount Vernon & Panhandle	Cleveland, Akron and Columbus Railway Company, The (Prior to 1900) Pennsylvania Lines - West of Pittsburgh, Pennsylvania)
Nacoochee Valley Route	Gainesville & Northwestern Railroad Company
Napa Valley Route	San Francisco, Napa and Calistoga Railway
Nashville Route, The	Tennessee Central Railroad Company
Natural Gas Route	Lake Erie and Western Railroad Company, The
Natural Tunnel Route, The	South Atlantic and Ohio Railroad Company (became Virginia & Southwestern Railway in 1900)
Nevada Short Line, The	Tonapah and Tidewater Railroad Company
New Canada Short Line	Delaware and Hudson Canal Company, The
New Haven	New York, New Haven and Hartford Railroad Company, The
New Jersey Central	Central Railroad Company of New Jersey, The (Also, Jersey Central)
Niagara Falls Route	Michigan Central Railroad Company, The
Niagara Gorge Route	See Great Gorge Route
Nickel Plate Line	New York, Chicago and St. Louis Railroad Company, The:
<u>Nickel Plate District</u>	
Buffalo Division	Conneaut to Buffalo
Cleveland Division	Bellevue to Conneaut

Fort Wayne Division	Fort Wayne to Bellevue
Chicago Division	Fort Wayne to Chicago
Lake Erie & Western District	
Sandusky Division	Sandusky to Frankfort
Peoria Division	Frankfort to Peoria
Indianapolis Division	Indianapolis to Michigan City
New Castle Division	Fort Wayne to Connersville and including New Castle to Rushville
Clover Leaf District	
Frankfort to Toledo	Includes First and Second Subdivisions
St. Louis to Frank-fort	Includes Third and Fourth Subdivisions
North Arkansas Line	Missouri and North Arkansas Railroad Company (See also, Ozarka-North Arkansas Route)
North Bank Road, The	Spokane, Portland and Seattle Railway Company
North Shore Line	Chicago North Shore and Milwaukee Railroad Company
North Star Route	Minneapolis & Rainy River Railway Company
Northwest Route	Kansas City, Wyandotte & Northwestern Railroad Company
Northwestern Line, The	Chicago and North Western Railway Company; Also, Fremont, Elkhorn and Missouri Valley Railroad Company; Chicago, St. Paul, Minneapolis and Omaha Railway Company in 1891; Sioux City and Pacific Railroad in 1891
Ohio Valley Line	Ohio River Railroad Company
Oil Belt Line	Cisco & Northeastern Railway Company
Oil Belt Route	Wichita Falls, Ranger & Fort Worth Railroad Company

O K Route	Quincy, Omaha & Kansas City Railroad Company (See also, Quincy Route)
Okefinokee Route	Waycross and Southern Railroad Company
Orem Electric	Salt Lake and Utah Railroad Company (electric)
Orient Lines, The	Kansas City, Mexico and Orient Railway Company, The (See also, Port Stilwell Route)
Overland Route, The	Union Pacific Railroad Company
Ozarks-North Arkansas Route	Missouri and North Arkansas Railway Company (See also, North Arkansas Line)
Ozone Route	New Orleans Great Northern Railroad Company
Panama Canal Route	Atlanta & Saint Andrews Bay Railway Company (See also, Bay Line)
Panama Route (1909)	Mobile, Jackson and Kansas City Railroad Company (See also, Mobile Route)
Panhandle, Texas - Route	Fort Worth and Denver City Railway Company; Denver, Texas and Fort Worth Railroad Company, The Denver, Texas and Gulf Railroad Company, The
Panhandle Route	Pennsylvania Lines - West of Pittsburgh, Pa.; Pittsburgh, Cincinnati, Chicago and St. Louis Railroad Company, The
Paradise Valley Route	Tacoma Eastern Railroad Company
Pend Oreille River Route	Idaho & Washington Northern Railroad
Peoria Gateway Line, The	Minneapolis and St. Louis Railroad Company, The (Only 1918); (See Albert Lea Route)
Peoria Road, The	Toledo, Peoria & Western Railroad
Peoria Route, The	Rock Island and Peoria Railway Company
Piedmont Air Line	Richmond and Danville Railroad Company, The (Southern Railway)

Pigeon Mountain Line	Chattanooga Southern Railway Company
Pike's Peak Route	Colorado Midland Railway Company, The
Pilchuek Valley Route	Washington Western Railway Company
Pine Leaf Route	Fernwood and Gulf Railroad Company
Pine Mountain Route	Macon and Birmingham Railroad Company (See also, (1903) La Grange Route)
Pine Valley Route	Lake Erie, Alliance & Wheeling Railroad Company, The
Plant System	Savannah, Florida and Western Railway Company, The; Charleston and Savannah Railway Company; South Florida Railroad Company; Brunswick and Western Railroad Company Became, Atlantic Coast Line Railroad Company
Port Arthur Route	Kansas City, Pittsburgh and Gulf Railroad Company (See also, Route of the Flying Crow)
Port-of-Mobile Route	See Mobile, Port-of Route
Port St. Joe Route	Apalachicola-Northern Railroad Company
Port Stilwell Route	Kansas City, Mexico and Orient Railway Company, The (See also, Orient Lines)
Poughkeepsie Bridge Route	Central New England and Western Railroad Company (Central New England Railway Company)
Promised Land Route	Cache Valley Railroad
Quanah Route	Quanah, Acme & Pacific Railway Company
Queen & Crescent Route	Cincinnati, New Orleans and Texas Railway Company, The; Also, Alabama Great Southern Railroad Company, The; New Orleans and Northeastern Railroad Company; Vicksburg & Meridian Railroad Company; Vicksburg, Shreveport and Pacific Railroad Company
Quincy Route	Quincy, Omaha & Kansas City Railroad Company (See also, O K Route)
Rabun Cap Route	Tallulah Falls Railway Company

Rathburn System (Canada)	Kingston, Napanco & Western Railway; Bay of Quinte Railway & Navigation Company; Thousand Islands Railway Company; Deseronto Navigation Company, Ltd.
Redwood Empire Route	Northwestern Pacific Railroad Company
Redwood Route, The	California Western Railroad & Navigation Company
Regulator Line, The	See Klickitat Valley Route
Rhine, the Alps and the Battlefield Line, The	Chesapeake and Ohio Railway Company, The
Richmond-Washington Line	Richmond, Fredericksburg and Potomac Railroad Company (See Florida Fast Line)
Ringling Lines	Oklahoma, New Mexico and Pacific Railway Company
Rio Grande	Denver and Rio Grande Western Railroad Company, The
Rock Island Lines	Chicago, Rock Island and Pacific Railway Company, The (See Great Rock Island Route)
Rockford Route	Illinois, Iowa and Minnesota Railway Company
Rocky Mountain Route	St. Louis, Rocky Mountain and Pacific Railway Company
Royal Gorge Route	Denver and Rio Grande Western Railroad Company, The (See Scenic Line of the World)
Royal Route, The	Philadelphia and Reading Railway Company
R - S Pacific Route	Roscoe, Snyder and Pacific Railway Company
Sacandaga Route	Fonda, Johnstown and Gloversville Railroad
Sacramento Short Line	San Francisco-Sacramento Railroad Company
Salt Lake Route	San Pedro, Los Angeles & Salt Lake Railroad Company
Santa Fe Route	Chicago, Santa Fe & California Railway (1889); Atchison, Topeka and Santa Fe Railway Company, The (1891 to date); (See Grand Canyon Route, 1903)

"S A P"	San Antonia and Arkansas Pass Railway Company, The
Savannah Short Line	Georgia and Alabama Railway
Scenic Line of the World	Denver and Rio Grande Western Railroad Company, The (See Royal Gorge Route)
Sea Shore Line, The	Los Angeles Terminal Railway Company
Shawmut Line, The	Pittsburgh, Shawmut & Northern Railway Company, The
Sheboygan Freight Line	Wisconsin Light & Power Company
Shell Bark Route	Coal Belt Railway (St. Louis, MO)
Saint Claire Tunnel Service	Canada to Detroit
Shenandoah Valley Route	Norfolk and Western Railway Company
Sierra Nevada Route	Nevada-California-Oregon Railway Company
Silver San Juan Scenic Line	Rio Grande Southern Railroad Company, The
Soo Line, The	Minneapolis, St. Paul & Sault Ste. Marie Railway Company
Soo-Mackinaw Short Line, The	Duluth, South Shore and Atlantic Railway Company, The (See Soo-South Shore Lines)
Soo-South Shore Lines	Minneapolis, St. Paul & Sault Ste. Marie Railway Company (See Soo Line); Duluth, South Shore and Atlantic Railway Company, The; (See South Shore, after 1900; "Marquette Line," 1897; "Soo-Mackinaw Short Line in 1889")
South Bend Gateway	Indiana Northern Railway Company
South Park Line	Denver, Leadville and Gunnison Railway Company, The
South Haven Route	Toledo and South Haven Railroad Company
South Shore	Duluth, South Shore and Atlantic Railway Company, The (Cleveland)

South Shore Lines	Chicago, Lake Shore & South Bend Railway
Southwestern Route	El Paso and Southwestern Railroad Company
Split Log	Kansas City, Fort Smith & Southern Railroad Company
Straight Line, The	Chicago, Cincinnati & Louisville Railroad Company
Sugar Belt Route	St. Louis, Avoyelles & Southwestern Railway Company
Sumatra Leaf Route	Georgia, Florida & Alabama Railway Company
Sumter Route	South Carolina Railway Company, The
Sunset Route	Southern Pacific Company (Also, Odgen & Shasta Route)
Suwanee River Route	Georgia Southern and Florida Railway Company
Switzerland Trail, The	Colorado & Northwestern Railway Company; Denver, Boulder & Western Railroad Company
Tangent Line	Findlay, Fort Wayne and Western Railway Company, The
Taos Route, The	San Luis Valley Southern Railway Company, The
Tarpon Route, The	Orange Belt Railway Company
Texas Panhandle Route	See Panhandle, Texas - Route
Texas Railroad, The	International and Great Northern Railway Company
Three C Route, The	Charleston, Cincinnati and Chicago Railroad Company
Timber Belt Line	Texas Southern Railway Company
Trans-Virginias Route	Chesapeake & Western Railroad Company
Tri-City Route	Davenport, Rock Island and North Western Railway Company
Tropical Line, The	Tavares and Gulf Railroad Company
Tropical Trunk Line	Jacksonville, Tampa and Key West Railway Company

Utah Coal Route	Utah Railway Company
Valley Line, The	St. Joseph Valley Railway Company
Vandalia Line	Penna. Lines - West of Pittsburgh, Pa.; Terre Haute & Indianapolis Railroad before 1905
Velasco Route	Houston & Brazos Valley Railway Company
Vermilion Route	Duluth and Iron Range Railroad Company, The
Vicksburg Route	Alabama and Vicksburg Railway Company, The; Vicksburg, Shreveport and Pacific Railroad Company, The; Formerly Part of Queen & Crescent
Vidalia Route, The	Macon, Dublin & Savannah Railroad Company
Waco-Beaumont Route	Waco, Beaumont, Trinity & Sabine Railway Company
Water Level Route	New York Central System
Watkins Route, The	Kansas City, Watkins and Gulf Railway and Belt Line Railway Company, The; Also (In 1903) Western Railway of Alabama (See Atlanta & N.O. Short Line)
West Point Route, The	Atlanta and West Point Railroad Company (See Atlanta & N.O. Short Line)
White Oaks Route	El Paso and Northeastern Railway Company
Wichita Falls Route	Wichita Falls and Northwestern Railway Company of Texas, The; Wichita Falls & Southern Railway Company, The
Willamette Route	Oregon Electric Railway Company
Winona Lines	Winona Railroad Company, The
Yellowstone Park Line	Northern Pacific Railway Company

Appendix C - Employment Relation (ER) on August 29, 1935

C1. Employment Relation Forms

The RRB determined the existence or non-existence of an employment relation on August 29, 1935, on the basis of evidence, according to RRB regulations. The responsibility for making the determination was not delegated to the employer, employee, or to any representative of either.

The following forms were used to make an employment relation determination:

a. ERR-8 - Employment Relation Questionnaire - This form was completed by the railroad employer. This form is now obsolete.

b. ERR-9 - Employment Relation Decision - This form was completed by the claims examiner and authorized. This form is now obsolete.

C2. General Definition Of Employment Relation (ER)

A person could receive credit for prior service (railroad service before 1-1-37) only if he met one of the following work requirements on August 29, 1935, the enactment date of the 1935 Railroad Retirement Act:

a. He was an employee representative; or

b. He was "in service for compensation" within the U.S. with an employer conducting the principal part of its business in the U.S.; or

c. He had an "employment relation" on August 29, 1935, with a railroad employer conducting the principal part of its business in the U.S.

C3. In Service for Compensation

When a person was regularly assigned to and occupied a continuing position before the enactment date (August 29, 1935) and returned to the same position after that date with status unchanged, he was considered "in service for compensation.

However, he was not considered "in service for compensation" if he was considered by the employer as being on leave of absence, on furlough, or if he was recorded as absent because of sickness or disability under the rules and practices applicable to him and the absence exceeds 30 days.

A person was on furlough if involuntarily absent from active service by action of the employer under an established rule or practice. A furlough cannot exist unless, during the period of absence, the person was subject to call for service and ready and willing to serve. The rules or practices that governed the absence must have allowed the

employee to be restored to active service when certain, definite events or conditions occurred.

In the following examples the person was considered, in all respects as "in service for compensation" on the enactment date.

EXAMPLE 1: A trainman, an engineer or other employee who was not actually working on August 29, 1935, because that day was his lay over day.

EXAMPLE 2: A trainman or engineer not working on August 29, 1935, because he had earned all the mileage which the employer permitted him to accumulate for that calendar month.

EXAMPLE 3: An employee who was on a paid vacation on August 29, 1935.

EXAMPLE 4: An employee absent on jury duty.

EXAMPLE 5: An employee on the extra board who normally would perform work during each month but who was not working on that day.

EXAMPLE 6: A crossing watchman, telegraph operator, or other employee regularly used in relief work but was not actually working on the enactment date.

C4. When an Employment Relation was Precluded

An "employment relation" on August 29, 1935, could not be established or deemed under the following conditions:

a. Retired or Discharged before August 29, 1935 - An employee who was retired or discharged before August 29, 1935, was deemed not to have been in an employment relation to an employer on August 29, 1935. Consider an employee to have retired or discharged under the following conditions:

- The employer terminated the person's rights as an employee under a rule or practice in effect; or
- The employee was discharged, or granted a continuing pension or gratuity, or had reached the mandatory retirement age; or
- The employee's record was closed out; or
- The employee resigned, relinquished his rights; or otherwise separated himself from employer service.

b. All Service Outside U.S. - If a person, during the last payroll period in which he rendered service to an employer before August 29, 1935, rendered all such service outside the U.S. to an employer not conducting the principal part of his business in the U.S., he was not deemed to have an employment relation.

c. Service for Local Lodge or Division - A person could not have an employment relation if his only service for an employer was for a local lodge or division of a railway labor organization in the capacity of employee of the local lodge or division.

C5. General Conditions Establishing an Employment Relation

Unless precluded by the conditions shown in C4, a person who was not actually working for a railroad employer, or was not regarded as being "in service for compensation" on August 29, 1935, was considered to have had an "employment relation" on that date, for the purpose of crediting prior service, if:

a. He was on a leave of absence expressly granted by his employer or his employer's authorized representative and the grant of leave was satisfactorily established with the RRB before July 1947; or

b. He was in the service of an employer in 6 calendar months between August 29, 1935, and January 1, 1946 (the months need not be consecutive); or

c. He was absent from employer service because of a discharge that was protested as wrongful (within 1 year after its effective date) to an appropriate labor representative and the discharge was followed by reinstatement in good faith, to his former service with all seniority rights, within 10 years after its effective date; or

d. He did not retire and was not retired or discharged from the service of his last employer (or its corporate or operating successor) before August 29, 1935, but:

- He had ceased employer service solely because of his physical or mental disability and remained disabled until age 65; or,
- He was not called back to service on or after August 29, 1935, and before August 1945 by his last employer or its successor, solely because of his disability; or,
- He was called, but solely because of his disability, he was unable to render service in six calendar months between August 29, 1935, and 1-1946.

C6 When Leave of Absence Provided an Employment Relation

A leave of absence was action by the employer permitting or requiring the employee to remain away from active service and relieving the employee from the obligations or conditions attached to active service. It ceased to exist whenever the person was reached in a reduction in force, when he retired, or when the approved period of leave of absence expired. A leave of absence did not exist unless there was a position to which the employee had a right to return.

For purpose of crediting prior service, a leave of absence gave a person an employment relation, if the leave was established in the RRB's records before 7-1-47.

a. Leave Granted Orally - Evidence establishing a leave of absence granted orally must have been convincing. The employer or his authorized representative must have granted the leave and the person granting the leave must have had the authority to do so.

b. Leave Granted in Writing - A leave of absence granted in writing must have been in consideration of the circumstances in an individual case and not have been an automatic action under a rule or practice applicable to a whole class or group of employees. If a leave was expressly granted, it was usually for a specified period. However, if an indefinite leave was granted, evidence that it extended through August 29, 1935, must have been clear and definite.

c. Leave not in Effect on August 29, 1935 - If a leave of absence was granted purporting to extend through August 29, 1935, but actually was nullified before that date by a furlough, retirement, or similar occurrence, the person was not considered to have been on leave on that date.

C7. Six Months of Service Rule

The performance of creditable service for an employer, other than service for a local lodge or division of a railway labor organization, in at least 6 calendar months between August 29, 1935 and January 1, 1946, established an employment relation on August 29, 1935. The months of service did not need to be consecutive and may have been rendered either before or after the employee attained age 65. It was immaterial whether before, during, or after the 6 months of service the person was discharged or otherwise separated from RR service.

a. General - If 6 months of railroad service were posted to a Form G-73, "Request for Subsequent Service and Earnings Transfer," for months between August 29, 1935, and January 1, 1946, the employment relation was established on that basis. No further development was required.

b. Canadian Employer - A person, whose last service before August 29, 1935, was for an employer not conducting the principal part of its business in the U.S., had an employment relation if he performed some service in the U.S. during the last payroll period in which he worked before August 29, 1935. A person who DID NOT perform some service in the U.S. during the last payroll period in which he worked before August 29, 1935, did not have an employment relation, even if he performed 6 months of service in the U.S. between August 29, 1935, and January 1, 1946.

C8. Cases that Required Special Handling

a. Canadian Employer Cases - When an employment relation decision could not be reached on the basis of the information in file, a Form AA-2P was released with the following notation in item 2 of the form:

"NOTE: If this person did not perform any service in the U.S. on August 29, 1935, nor in the last payroll period in which he worked before that date, a statement to that effect will be sufficient and this form need not be completed."

If the only service on August 29, 1935, was with an employer conducting the principal part of its business outside the U.S., there must also be a statement by the employer that the employee was in compensated service in the U.S. on August 29, 1935 or, on that date, he was on a continuous run which started or ended in the U.S.

b. B&O RR Relief Department Cases - Persons who, since ceasing service, had been continuously disabled and carried on the Baltimore and Ohio Railroad Company relief department rolls, were generally regarded, for the purpose of the employment relation definition, as not having been "retired" before August 29, 1935. Continued payment of relief benefits to a person was evidence of a belief on the part of the employer that the person was still its employee. The fact that a person's name has been removed from the seniority roster under the conditions outlines above would not constitute retirement as defined under the RR Act for the purpose of determining an employment relation. (See L-48-557.)

Exception: This did not apply if the employee had been notified that upon recovery from his disability he would not be permitted to resume service or he had otherwise been formally dismissed or he had resigned.

C9. Determinations that Involved Service to a Local Lodge or Division of a Railway Labor Organization

When a person claimed simultaneous prior service with a local lodge or division of a railway labor organization, and with a railroad employer, the employment relation determination was based only on the service to the railroad employer on or after August 29, 1935.

If a completed OE-5 verified compensated service for the month of August 1935 with a labor-organization employer, in a capacity other than as an employee of a local lodge or division, an employment relation was established. Compensated service was established for a person in an elective position if the employer entered the symbol "C" or an amount of compensation for the month of August 1935 in section II of Form OE-5. Service claimed in a non-elective position was substantiated by a specific statement by the labor-organization employer indicating that the service was performed on August 29, 1935.

However, if service was rendered solely to a local lodge or division of a railway labor organization in a capacity of employee of the local lodge or division, an employment relation was precluded. A memorandum addressed to "The File" was placed in the folder. The memorandum reflected the facts on which the denial of such service was based, and included a statement that the decision was not to be construed as affecting the person's right to an annuity based on other creditable service. The memorandum was signed by both the examiner handling the case and by an authorizer.

C10. Determinations in Time Lost Cases

Credit for service and compensation in "time lost" cases was allowed only if the recipient of remuneration for "time lost" had an employee status during the entire period for which he received such remuneration. The "rules" and "practices" in effect at the time of the absence governed the determination of an employee status. Usually this information was obtained from an ERR-8b or LQ-10. (Both forms are now obsolete, but valid as to the information contained thereon.)

a. Established Rule - An established rule was an authoritative binding declaration, definitely and specifically formulated and of general application to employees within the same class.

   A rule may have been expressed either in form of specific authoritative instructions in force on the employer or in a contract or working agreement made between the employer and labor organization. It derived its authoritative effect from the authority of the officer issuing the declaration or from the binding nature of the contract between the employer and the labor organization.

b. Established Practice - An established practice was a custom not expressed in the form of a rule but followed with such frequency and uniformity that there was reasonable assurance it would be followed in the case of the person under consideration. When such a practice was widely known, it could be stated in the form of a rule.

C11. Effect of Disability on Employment Relation

A person who was not retired and who was not precluded from having an employment relation was deemed to have had an employment relation, if before August 29, 1935 he ceased to render service to an employer, solely because of physical or mental disability and remained disabled until age 65 or August 1945, whichever occurred first.

a. Employee Age 65 Before August 29, 1935 - If an employee ceased service solely because of disability and attained age 65 before August 29, 1935, he will have been in an employment relation, if his disability continued until age 65 and his employee status was not terminated before August 29, 1935. It was immaterial whether:

- He could have returned to service had he recovered from disability after age 65 or after 7-1945; or

- He retained rights to return to service after August 29, 1935.

b. Employee Not Recalled Due to Disability - If an employee was not precluded from an employment relations (see section C4 above), and, between August 28, 1935, and August 1945, he was not recalled to service solely because his disability made him unable to perform the duties of the positions to which he would, otherwise, have been called, he was deemed to have an employment relation.

- Junior Employee Called - If a junior employee was called to service from a seniority roster maintained by rule or practice during a period in which the person was disabled, this was considered sufficient evidence that the person would have been called had he not been disabled, provided:

  - There was nothing to show that the person would not have been called; and

  - The employer stated that the person would have been called. (If an employer did not make such a statement because of inadequate records of the transaction, other available facts and circumstances were considered.)

- Non-Agreement Employee - In these cases the determination was made from any available evidence as to whether a junior employee was called to service during a period in which the employee was disabled. An established practice (with other evidence) was given such weight as the circumstances warranted.

c. Six Months Service Not Acquired Due To Disability - A person was deemed to have an employment relation on August 29, 1935, if on or after that date and before 8-1945, he was called to return to the service of an employer (or its successor) by whom he was employed before August 29, 1935, but solely because of his disability, he was unable to render service in 6 calendar months.

If a person was called for a job of 6 month's duration and was unable to respond solely because of disability, it was immaterial that he was not disabled either before or after the period. It was also immaterial whether a person was disabled before or after each of 2 or more periods of service totaling 6 or more months, if he remained disabled during the time that the positions were open and while he was subject to call.

The following conditions must have been present to establish that a person did not perform employer service in 6 calendar months, solely because of disability:

a. No other circumstances existed that would have prevented the rendition of service during the period; and

b. The position to which he was called was of at least 6 month's duration; and

c. There was evidence that he did not cease service before the sixth month because of:

- Retirement; or
- Leave of absence; or
- Personal reasons other than disability; or
- Suspension or a furlough.

C12. Effect of Reinstatement on Employment Relation

A reinstatement following a discharge in effect on August 29, 1935, could have given the employee an employment relation. It was immaterial whether the discharge was improper. It was only necessary that, within one year of the effective date, the discharge was protested as wrongful and was followed, within ten years, by the employee's reinstatement in good faith to his former service with full seniority rights.

a. Reimbursement or Active Service - If in good faith, it did not matter whether the employee received pay for time lost or reentered active service of the employer after reinstatement. If the employee did not reenter active service, it must have been shown that the reinstatement was made in contemplation of a return to service.

b. Physical Test as Condition of Reinstatement - If the employee was required to pass a physical test as a condition of reinstatement and did not do so, the reinstatement did not occur. However, if after the reinstatement occurred, he failed to pass a mental or physical examination as a condition of his return to active service, failure to pass the examination was not taken to be evidence of lack of good faith in the part of the employee or the employer.

C13. Military Service

Creditable military service performed between August 29, 1935, and January 1, 1946, was counted toward the establishment of an employment relation as if the military service was service to a railroad employer.

C14. How Information was Secured for an Employment Relation Determination

When a person was not precluded from having an employment relation and one could not be established by the "6 months of service" rule, the following information was secured from the employer, employee, or other sources, in that order.

a. From Employer - A Form ERR-8, "Employment Relation Questionnaire," was usually released to the last employer in combination with an AA-2P(R). If it was obvious that the employee did not have an employment relation, the employer was asked to disregard the AA-2P(R) and complete only the ERR-8.

An ERR-8 completed after 6-15-62 by the:

- Northern Pacific Ry Co.;
- Northern Pacific Transport Co.;
- Walla Walla Valley Ry Co.; and
- Duluth Union Depot and Transfer Co.

Must have been signed by:

- Russell H. Dick,
- Richard A. Buelke,
- Beatrice Nachtrieb, or
- K. T. Woodruff.

b. From Employee - When a decision could not be made on the basis of information on the ERR-8, the employee's statement on his AA-1, AA-15 or correspondence giving the reason why he was not working on August 29, 1935, was carefully considered to determine any further action required to develop an employment relation or lack of an employment relation.

For example, if an applicant last worked for an employer before August 29, 1935, and claims that he was not working on that date because of disability, the RRB asked him for a satisfactory medical statement or a report (including a diagnosis) to substantiate his claim.

Any medical evidence was furnished at no expense to the RRB and was requested only if it was clear that the applicant was not precluded from having an employment relation. The evidence must have shown the dates of the periods during which the employee remained disabled. If the employee claimed inability to work for anyone since becoming disabled, the RRB asked him what his means of livelihood had been.

If the employee lived in the United States or Canada, the RRB field office developed the information needed. If the employee resided in a foreign country other than Canada, BRB requested the information directly from the employee.

c. Other Sources - The rules summary file, agreements, and precedent legal opinions were sources of information. The use of the rules summary file was generally confined to a determination whether or not a retirement occurred before August 29, 1935, within the meaning of section 204.6 of the RRB regulations.

When the employer had no record or the records were incomplete and the employee was unable to furnish satisfactory evidence to substantiate his claim to an employment relation, information was obtained from railway labor organizations. In certain cases, these organizations were able to furnish data on the removal from or reinstatement to a seniority roster of an applicant's name, rules and practices in effect with respect to a group or class of employees, in some instances medical reports or decisions based on physical or mental examinations, records of individual cases of grievance handled by the organization, etc.

C15. How Employment Relation was Developed When Disability was a Factor

When disability was a factor for determining an employment relation, evidence that established when the disability began, the period or periods of duration, and the extent of the disability was required.

a. Employer Record of Disability History - When a completed ERR-8 stated that the employee was off because of disability, and the detailed questions about such disability listed on the form were satisfactorily answered, further evidence of disability was not required.

If, however, a decision could not be made based on the information furnished, the employer was asked to submit any evidence it may have had that indicated the employee was disabled, especially evidence that the disability continued until the employee attained age 65 or until August 1, 1945, whichever occurred first.

If possible the following types of evidence were obtained:

- The conditions of the separation of the employee from the railroad service.
- Medical reports by the employer physician.
- Reports of any periodic reexaminations.
- Any other record related to the person's disability.

b. Evidence of Disability To Be Furnished by Employee - When the employer records were incomplete, were destroyed, or were otherwise not available, the

RRB field office asked the employee to submit a satisfactory medical statement or report including a diagnosis to substantiate his claim. The medical evidence was furnished at no expense to the RRB and should have shown the following:

- Nature of the disability.
- Beginning date of disability.
- Periods during which disability existed, if not continuous.

NOTE: Evidence based on an examination, medical report or finding of disability made at or near the time of the employee's separation from employer service was preferred. However, if such evidence could not be obtained, the employee furnished a medical statement or report including a then current diagnosis. Where practical, the RRB attempted to use such evidence in making their decision.

c. Employment After Becoming Disabled - Any work performed for an employer under the RRA or for any person or company not an employer under the RRA, after the employee claimed to have become disabled was fully developed, so that any such employment was reconciled with a determination of disability.

When the employee claimed that he had not worked since he was separated from RR service because of disability, the RRB field office was requested to determine his source of livelihood during the period claimed. If there was an indication that he was employed during the time he claimed disability, the RRB field office obtained the following information:

- The name and address of his employer(s).
- The dates of his employment.
- His occupation.
- The nature of his duties.
- The frequency with which he worked (full-time, part-time, or intermittently).

C16. Disability Determinations

For the purpose of crediting prior service, physical or mental disability existed when a person was unable to perform the duties of his regular occupation in accordance with the standards recognized in the RR industry.

a. Static Disability - If the disability was static, the disability determination was made by the claims examiner. Conditions of static disability were:

- Heart disease which confines the employee to home or bed; or

- Active tuberculosis; or
- Total blindness; or
- Total loss of hearing; or
- Loss of arm or leg; or
- Loss of motion of 50% or more of the spine; or
- Cancer, regardless of its location; or
- Confinement in a mental institution; or
- Epilepsy (one or more attacks a month); or
- Hemiplegia or stroke resulting in paralysis; or
- Parkinson's disease; or
- Loss of speech; or
- Any condition requiring the appointment of a legal guardian for the employee.

b. Other cases of disability - Other cases of disability, or cases in which there may be doubt that the disability was static, were referred to the disability rating section, after all available information and evidence pertaining to an employee's disability and employment (if any) after becoming disabled was received. After that division made its determination, the case was returned to the adjudication unit for the employment relation determination.

c. Use of Form G-325 - A Form G-325, "Disability Decision Sheet," was used to request a determination of disability from the disability rating section. The form was completed in accordance with RCM Part 11. However, answers to the following questions were also requested:

- Did the disability in this case continue until age 65 or until August 1, 1945, whichever was earlier?
- Did the disability in this case prevent the applicant from being recalled for service on or after the enactment date and before August 1, 1945?
- Did the disability in this case prevent the applicant from working an aggregate period of six months from August 29, 1935, to January 1946?
- Where the person was employed after the last RR service, was the outside employment reconciled with the disability?

C17. Employment Relation Established

When the information and evidence submitted was sufficient to establish an employment relation, an authorized Form ERR-9 was placed in a general file stating the basis for the decision.

a. GF or Inactive "A" Case - The employee was notified of the decision. If there was an indication that the employee intended to retire in the near future, development was initiated to verify sufficient prior service to provide the maximum allowable benefit. If there was no indication of immediate retirement, no further action was taken.

b. Active "A" Case - The employee was notified of the decision if he requested notification and any other necessary adjudicative action was taken.

C18. Employment Relation not Established

Where full development was completed and an employment relation was not established based on the information and/or evidence submitted, Form ERR-9 was placed in the claim file, stating the basis for the decision.

a. Notice To Employee or Applicant - Each employee or applicant was notified of the denial of the claim for prior service when an employment relation could not be established. If the employee had not filed an annuity claim, only an informal disallowance was made. A formal denial on appeals (AB-25) stationery was made only if the employee had filed an application for an annuity. This formal denial was made at the same time as the award or denial of the employee's application for annuity.

   A copy of the prior service denial was sent to the RRB field office servicing the area in which the applicant lived.

b. Notice To Employer - A copy of the employment relation denial or disallowance letter was sent to the last railroad employer. If the employee worked for a different RR employer before August 29, 1935, a copy was sent to that employer. These copies were subject to the disclosure limitations and were addressed to employers in the same manner as other denials (see RCM 8.1).

c. Other Action - Specific Cases

   - Active "A" Cases - Less Than 120 Months - When less than 120 months of subsequent service was established, the claim was transferred to SSA (see RCM 7.2).

   - Active "A" Cases - 120 or More Months - When the applicant was eligible based only on the employee's subsequent service, he was notified of the denial of prior service. Any annuity payable was processed.

C19. Redetermination of Employment Relation

Due to the 1946 amendments to the RRA, a redetermination of an employee's employment relation may have been required.

a. Decisions Made Before 7-31-46 - The establishment of an employment relation before 7-31-46 remained effective if the person was awarded an annuity before that date. If no annuity was awarded, the decision was no longer effective, and a redetermination of the employment relation was made.

b. Validity of Old Forms

1. ERR-8 and ERR-8a - The information reported on an old ERR-8 or ERR-8a was acceptable and, when applicable, was used wholly or partially as the basis of determination of existence or non-existence of an employment relation. However, when additional information was required for a determination, the employer completed a new ERR-8.

2. ERR-9 - When full development was completed, the employment relation redetermination was made on a new authorized ERR-9.

   The employee had previously been notified that his prior service was creditable. If, upon redetermination, the service was later determined not creditable, a full explanation for the reversal of the previous decision was sent to the employee.

Appendix E - How Compensation before 1937 was Verified

E1. General

Before 7-1-74 employers were required to furnish information from their payrolls as to the actual amount of compensation earned in each month needed to determine the prior service average. Effective July 1, 1974 or later, verification of compensation for service before 1937 was no longer required. If the prior service compensation record was not already available at the RRB, the ICC occupational average was used to determine the average compensation before 1937. The ICC average was the combined average of employee earnings reported to the ICC for the years 1924-1931 for employees in the occupations in which an individual was employed during the 1924-1931 period, or in a similar occupation.

E2. How Employer Reported Occupational Title

If an applicant claimed service before 1937, the Form AA-2p released to the employer indicated the number of months the employer needed to verify to establish 360 months and requested the occupational title for those months. The occupational titles were requested for only those months that were used to determine the average monthly

compensation. (See Appendix F of this chapter for instructions on determining prior service average.)

a. Employee Claimed At Least 18 Months during Base Period (1924-1931) - The employer was requested to report occupational titles for all months in this period which were then included in the "years of service."

NOTE: Beginning with 1-1962, service in the 1924-1931 period was not needed for 360 months when the employee had service in each month after 12-1931. However, it was necessary to request the occupational titles for the latest 18 months in the base period, even though these months were not used as service. The occupational titles reported for service in the base period were necessary to determine the prior service average.

b. Employee Claimed to Have Worked Less Than 18 Months during Base Period (1924-1931) - The employer was asked to verify all service before 1937 that were included in the "years of service" and was ask to report the occupational titles for those months in the period 1924-1936.

c. Employee Claimed No Service during Period 1924-1936, But Claimed Service Before 1924 - The employer was asked to verify all of the service that was included in the years of service and to report the exact title of the employee's last occupation in the last month for which service was verified.

d. Occupational Titles Required From More Than One Employer - When service with two or more employers was claimed or indicated during a period needed to determine the prior service average, the occupational titles were obtained from each employer for all months involved.

E3. Verification of Express Commissions

A claim for express commissions was not solicited unless there was a definite indication of joint service with a carrier and an express company during a period used in determining the prior service average.

If an employee claimed joint service with a carrier and express company during the period used to determine the prior service average and the records were available at the RRB, the case was handled as follows:

a. Creditability of Express Commissions Earned in Joint Employment (Cases Where Actual Compensation was Available to the RRB Before July 1, 1974) .- The full amount of the verified express commissions, minus expenses, for any month in the period was used to determine the prior service average. When the employee performed joint service for a carrier and an express company during that month, the $300 monthly maximum was applied after crediting the NET express commissions.

b. Claimant Statements - If the "location" of the service was not shown on other material in file, that information was secured from the claimant before releasing an AA-2P. This was essential because the express company records were kept by "location."

When express commissions were already available at the RRB for months in the period used to determine the prior service average, the claimant must have furnished the RRB with a certification of expenses incurred during his express service.

E4. Compensation for Part of Month of Creditable Service for International Employer

When the fractional part of a month is to be credited as a full month of service and falls within a period used for determining the employee's average monthly compensation for prior service, the total compensation reported as earned in the U.S. is to be included as creditable compensation.

Appendix F - Determining Prior Service Average

F1. Definition of Terms Used

The following list of terms were frequently used in determining the prior service average:

a. ICC Average - The combined average of employee earnings reported to the IICC for the years 1924-31, by Class I employers for employees in the occupations in which an individual was employed during the 1924-31 period, or in a similar occupation (see Appendix H).

b. Months Proved - The months of service verified by any of the methods described in Appendix A.

c. Months for Which Compensation Records Available - The months of verified service for which an employer previously submitted a complete record of compensation. Any month in which compensation records were wholly or partly missing could not be considered a month for which compensation records were available.

d. Years of Service - The period including an employee's service after 1936 and his service before 1937 taken in reverse order up to a maximum of 360 months.

F2. How the ICC Average was Determined

The "Alphabetical List and Index to Occupational Classification and Reporting Divisions," indicated the ICC "reporting division number" that was required to determine the ICC average. The average for that occupation in Appendix D of this chapter is opposite the corresponding “reporting division number.”

When more than one occupation was involved, the following rules determined ICC average:

A. More Than One Occupation Reported in Same Month - It was assumed that the employee worked the entire month in the occupation having the highest ICC average.

B. Service in More Than One Occupation to Be Considered - The ICC average for each occupation was multiplied by the number of months reported for that occupation and then divided by the total number of service months in the period used to determine the monthly average.

F3. How AMR/AMC was Determined

Except for a redcap or other station attendant, Board Order 59-19 determined the computation of the AMR or AMC for service before 1937, in accordance with F4 - F6 below, whichever is applicable.

The provisions of Board Order 59-19 applied in all cases in which the annuity was awarded on or after 1-28-59. Since it was not possible to compute the AMR under the provisions of this Board Order on the day of approval, some awards as late as 2-9-59 were NOT based on an average computed under B.O. 59-19. When an annuity was awarded on or after 1-28-59 and the AMR was not determined in accordance with B.O. 59-19, the case was not reopened solely to recompute the monthly average under the new rules.

If the AMR was properly determined under rules applicable at that time (whether before, on, or after 1-28-59), the case may have been reopened if compensation records become available for one or more months for which the records were considered not available when the previous determination was made AND the redetermination will increase the AMR. This applied even when an annuity was terminated for any reason (i.e., return to LPE or recovery from disability) and the employee became re-entitled to an annuity at a later date.

F4 Actual Compensation Prior to 1937 Considered In Determining Prior Service Avg

a. At Least 18 Months of Service Proved in the Period 1924-31 Were Included in "Years of Service"

   1. If compensation records WERE available for at least one-half but not less than 18 of the months proved, the creditable compensation earned during those months was divided by the number of months in the period 1924-31 included in the "years of service" for which compensation records were available.

2. If compensation records WERE NOT available for one-half or for 18 of the months (whichever is higher) of service proved in the 1924-31 period, the monthly compensation was the higher of:

   - The monthly average of the compensation earned in the months in the 1924-31 period which are included in the "years of service" and for which compensation records are available; or

   - The ICC average.

b. At Least 18 Months of Service Proved in the Period 1924-31 - Less Than 18 Months Included in "Years of Service"

   1. If compensation records WERE available for all of the last 18 months of service verified in the 1924-31 period, the monthly average was the monthly average of the compensation earned in those months.

   2. If compensation records WERE NOT available for all of the last 18 months in the period 1924-31, the monthly compensation was the higher of:

      - The monthly average of the compensation earned in the last 18 months of proved service in the 1924-31 period for which compensation records were available; or

      - The ICC average.

c. Service Began Before 1932 - Less Than 18 Months Service Proven in 1924-31 Period.-The AMC was the higher of:

   1. The monthly average of the compensation earned in the months in the 1924-36 period which were included in the "years of service" and for which compensation records were available; or

   2. The ICC average.

d. No Service Proved in 1924-1936 Period but Service Prior to 1924 is Proved Which is Included in "Years of Service" - The monthly compensation is the ICC average for the last occupation for which service prior to 1924 is proved.

e. Service Began After 1931 - The monthly compensation is the higher of:

   1. The monthly average of the compensation earned in the months in the period 1932-36 which were included in the "years of service" and for which compensation records are available; or

   2. The ICC average.

F5. Actual Compensation for all Prior Service Months was not Reported

a. Years of Service Included At Least 18 Months of Service Proved in the Period 1924-31 - The prior service average was the ICC average for the months in the 1924-31 period which were included in the "years of service".

b. At Least 18 Months of Service Proved in the Period 1924-31 - Less Than 18 Months Included in "Years of Service" - The prior service average was the ICC average of the last 18 months of proven service in the 1924-31 period.

c. Service Began Before 1932 - Less Than 18 Months Service Proven in 1924-31 Period - The prior service average was the ICC average for the months in the 1924-36 period which are included in the "years of service."

d. No Service Proved in 1924-1936 Period But Service Prior to 1924 Was Proved and Included in "Years of Service" - The monthly compensation was the ICC average for the last occupation for which service prior to 1924 was proved.

e. Service Began After 1931 - The monthly compensation was the ICC average for proven months in the period 1932-36 which were included in the "Years of Service."

F6. Both ICC Average and Actual Compensation was Included

There were some cases where both the actual compensation and the ICC average were included in the prior service average. This occurred when we had actual prior service compensation in file and additional prior service was later claimed. Verification of the compensation for the additional prior service months was not requested. Instead, the applicable ICC average was applied to all additional prior service months verified and the prior service average was computed in accordance with F4 above. The ICC average used for the additional prior service months was considered as actual compensation.

Appendix G - Agreements Covering House Rent, Meals, and Miscellaneous Facilities

Employer		
Alabama Great Southern Railroad Company, The		
Position	Period Covered	Allowance
(Sou. Ry.)	4/1/26 to 1/15/28	$ 5.00 per mo.
Section Foremen	1/16/28 thru 10/13/37	$ 7.50 per mo.

	(Sou.)	
Atchison, Topeka and Santa Fe Railway Company, The		
Section Foremen	8/1/29 to date	$ 5.00 per mo.
Yard Foremen	Employer letter	
(M of W)	4/3/46	
Atlanta and West Point Railroad Company		
Section Foremen	7/30/23 to 9/1/37	$15.00 per mo.
Yard Foremen		
Apprentices		
Asst. Foremen		
B&B Foremen, with Families		
Atlanta, Birmingham and Coast Railroad Company		
Section Foremen	10/16/41 thru 9/19/44	$15.00 per mo.
Atlantic Coast Line Railroad Company		
Section Foremen	1/21/23 thru 12/18/41	$12.00 per mo.
Augusta and Summerville Railroad Company		
Section Foremen	5/16/22 to 9/1/37	$15.00 per mo.
Yard Foremen		
Apprentices		
Asst. Foremen		
B&B Foremen, with Families		
Baltimore and Ohio Railroad Company, The		

Agent	10/8/28 thru 2/4/41	$15.00 per mo.
Greenville, Ohio		
Belt Railway Company of Chattanooga		
Section Foremen	9/21/29 thru 10/13/37	$ 7.50 per mo.
	(Sou.)	
Canadian National Railways		
Agent, Fraser (rent, light, fuel & water)		$200 per annum
Central of Georgia Railway Company		
Section Foremen	10/1/22 thru 10/8/40	$15.00 per mo.
Yard Foremen		
Apprentices		
Asst. Foremen,		
B&B Foremen with		
Families		
Extra Gang Foremen	3/1/28 thru 10/8/40	$15.00 per mo.
without camp cars		
Charleston and Western Carolina Railway Co.		
Section Foremen	12/5/23 to 5/31/38	$10.00 per mo.
Yard Foremen	6/1/38 thru 8/8/38	$12.00 per mo.
Chesapeake and Ohio Railway Employees' Hospital Association		
All Employees	No allowance creditable	
Meals or Lodging		
Chesapeake and Ohio Railway Company, The		
Section Foremen	9/1/23 thru 3/31/36	$6.00 per mo.

	(basic rental)	
	More or less than $6.00 for particular houses	
Chicago and North Western Railway Company		
Agents	No allowance creditable	
Section Foremen	(Except in particular instances)	
Chicago, Burlington and Quincy Railroad Company		
All Employees	No allowance creditable	
Chicago, Milwaukee, St. Paul and Pacific Railroad Company		
All Employees	No allowance creditable	
Cincinnati, Burnside and Cumberland River Railway Company		
Section Foremen	9/16/29 to -	$ 7.50 per mo.
	(Sou.)	
Cincinnati, Georgetown Railroad Company, The		
All Employees	No allowance creditable	
	(Unless adjudicated in special cases)	
Cincinnati, New Orleans and Texas Pacific Railway Company, The		
Section Foremen	9/16/29 thru 10/13/37	$ 7.50 per mo.
	(Sou.)	
Columbus and Greenville Railway Company		
Section Foremen	4/1/30 to -	$10.00 per mo.
Copper Range Railroad Company		
All Employees	No allowance creditable	
Dardanelle and Russellville Railroad Company		
All Employees	No allowance creditable	

Denver and Rio Grande Western Railroad Company, The		
Agents	No allowance creditable	
Section Foremen		
Duluth, Missabe and Iron Range Railway Company		
All Employees	No allowance creditable	
Felicity and Bethel Railroad		
All Employees	No allowance creditable	
	(Unless adjudicated in special cases)	
Florida East Coast Railway Company		
Section Foremen	7/1/22 thru 8/24/38	$15.00 per mo.
Yard Foremen		
Track Foremen	4/12/32 thru 8/24/38	(Same as above)
Bridge Tenders		
Pumpers		
Fred Harvey and Fred Harvey Service, Inc.		
All Employees	No allowance creditable	
(Meals)		
Georgia Railroad, Lessee Organization		
Section Foremen	5/16/22 thru 5/15/37	$15.00 per mo.
Yard Foremen		
Apprentices		
Asst. Foremen		
B&B Foremen, with		
Families		

Georgia Southern and Florida Railway Company

Section Foremen	9/16/29 thru 10/13/37	$ 7.50 per mo.

Great Northern Railway Company

Dining Car	No allowance creditable
Employees (Meals)	
Section Foremen	No allowance creditable

Gulf and Ship Island Railroad Company

See Illinois Central Railroad Company

Gulf, Colorado and Santa Fe Railway Company

See Atchison, Topeka and Santa Fe Railroad Company

Gulf, Mobile and Northern Railroad Company

Section Foremen	7/1/21 thru 1/1/37	$ 8.00 per mo.

Yard Foremen

(1) Effective 6/16/26 this allowance raised to $10.00 per mo. for section foremen on Sections 0 and 1 at Mobile and section in Meridian Yards.

(2) Effective 7/1/27 this allowance raised to$10.00 per mo. for section foremen on Section 12, South Laurel.

Gulf, Mobile and Northern Railroad Company - Louisiana Division

(formerly N.O.G.N. RR.)

Section Foremen	7/1/21 thru 1/11/37	$ 5.00 per mo.

Yard Foremen

Apprentices

Asst. Foremen

B&B Foremen

(Effective 5/1/27 this allowance increased to$10.00 per mo. for section foremen and yard foremen on this division)		
Gulf, Mobile and Ohio Railroad Company		
Section Foremen	12/16/21 to 12/31/26	$ 5.00 per mo.
	1/1/27 to 12/31/31	$10.00 per mo.
Harriman and Northeastern Railroad Company		
Section Foremen	9/16/29 thru 10/13/37	$ 7.50 per mo. (Sou.)
High Point, Randleman, Asheboro and Southern Railroad Company		
Section Foremen	4/1/26 to 1/15/28	$ 5.00 per mo.
	1/16/28 thru 10/13/37	$ 7.50 per mo.
Illinois Central Railroad Company		
Section Foremen	1/1/24 thru 11/5/40	$ 5.00 per mo.
(House rent allowances, when applicable, are included in the amounts of compensation reported on service report forms. Therefore, unless affirmative evidence of record in a particular case indicates that the house rent allowance has been omitted, amounts reported on the service report form shall not be questioned.)		(Standard) Exceptional houses allowance between $5 an $15 per mo.
Agents	No allowance creditable	
Telegraphers		
Jacksonville Terminal Company		
Section Foremen	3/1/20 thru 9/2/42	$12.00 per mo.
*Roadmaster	3/1/20 thru 9/2/42	$25.00 per mo.
*(oral agreement)		
Kansas City Kaw Valley and Western Railroad Company, The		
Kansas City Southern Railway Company, The		
Foremen and	1-1-22 to 12/31/26	$10 to $15 per mo.

Asst. Foremen in the M of W Dept.	1/1/27 thru 7/15/38	$10.00 per mo.
Lorain and West Virginia Company, The		
All Employees	No allowance creditable	
Macon, Dublin and Savannah Railroad Company		
Section Foremen	3/1/23 thru 1/1/37	$ 8.00 per mo.
Midland Continental Railroad		
Section Foremen		
Missouri and Arkansas Railway Company		
Section Foremen		
Missouri Pacific Railroad Company		
All Employees	No allowance creditable	
Nashville, Chattanooga & St. Louis Railway, The		
All Employees	No allowance creditable	
Nevada Copper Belt Railroad Company		
Agent Telegrapher, Hudson, Nev.	3/1/36 to 10/5/38	$ 7.50 per mo.
New Orleans and Northeastern Railroad Company		
Section Foremen	9/16/29 thru 10/13/37	$ 7.50 per mo. (Sou.)
New Orleans Terminal Company		
Section Foremen	9/16/29 thru 10/13/37	$ 7.50 per mo.
Northern Alabama Railway Company		
Section Foremen	4/1/26 to 1/15/28	$ 5.00 per mo.

	1/26/28 thru 10/13/37	$ 7.00 per mo.
Northern Pacific Railway Company		
All Employees	No allowance creditable	
Pacific Electric Railway Company		
Vacation Camp Employees (Meals and Lodging)	No allowance creditable	
Panhandle and Santa Fe Railway Company		
Section Foremen	8/1/29 thru 2/9/39	$ 5.00 per mo.
Yard Foremen		(AT&SF)
Pere Marquette Railway Company		
St. Johns River Terminal Company		
Section Foremen	9/16/29 thru 10/13/37	$ 7.50 per mo. (Sou.)
St. Louis-San Francisco Railway Company		
Section Foremen		
Seaboard Air Line Railway Company		
Section Foremen	7/1/21 to 4/30/24	$ 8.00 per mo.
Agents-Telegraphers (CH&N Ry. Co.)	5/1/24 thru 1/4/38	$12.00 per mo.
Southern Pacific Company		
All Employees (House Rental)	No allowance creditable	
Southern Railway Company		
Section Foremen	4/1/26 to 1/15/28	$ 5.00 per mo.

	1/16/28 thru 10/13/37	$ 7.50 per mo.
Extra Gang Foremen		.40 per day
on camp cars (Board)	commutation for subsistence 5/22/17 thru 2/16/39	
Spokane, Portland and Seattle Railway Company		
All Employees	No allowance creditable	
Texas and New Orleans Railroad Company		
Agents-Telegraphers	No allowance creditable	
Section Foremen	No allowance creditable except actual cash payments constituting part of compensation applicable to a position	
Texas and Pacific Railway Company, The		
Section Foremen	No allowance creditable	
Union Pacific Railroad Company		
All Employees	No allowance creditable	
Virginia and Truckee Railway		
All Employees	No allowance creditable	
Western Pacific Railroad Company, The		
All Employees	No allowance creditable	
Western Railway of Alabama, The		
Same as for Atlanta and West Point Railroad Company		
Wheeling and Lake Erie Railway Company, The		
All Employees	No allowance creditable	
Winston-Salem Southbound Railway Company		
Section Foremen	1/21/23 thru 12/18/41	$ 8.00 per mo.
Woodstock and Blocton Railway Company		
Section Foremen	9/16/29 thru 10/13/37	$ 7.50 per mo.

Yazoo and Mississippi Valley Railroad Company, The

Same as for Illinois Central Railroad Company

Appendix H - Interstate Commerce Commission Averages

Combined Average Monthly Compensation by Occupation

Computed From Annual Report to ICC on Employees

Service and Compensation for Period 1924-1931

(All Class I Railroads Combined)

Div. No.	Occupation	Average Monthly Comp.
Executives, Officials and Staff Assistants		
1.	Executives and assistants	$300.00
2.	Division officers and assistants	300.00
Professionals, Clerical and General		
3.	Engineering assistants (A)	248.51
4.	Engineering assistants (B)	189.85
5.	Sub-professional assistants	138.43
6.	Legal assistants	232.35
7.	Chief clerks (major departments)	239.83
8.	Chief clerks (minor departments)	184.26
9.	Clerks and clerical specialists (A)	164.97
10.	Clerks (B)	128.63
11.	Clerks (C)	101.19
12.	Office machine operators	112.11

13.	Stenos and secretaries. (A)	157.94
14.	Stenos and typists (B)	120.99
15.	Storekeepers, sales agents and buyers	168.45
16.	Ticket agents and assistant ticket agents	165.02
17.	Traveling auditors or accountants	215.66
18.	Telephone operators and office assistants	79.04
19.	Messengers and office boys	57.64
20.	Elevator operators and office assistants	79.98
21.	Lieutenants and sergeants of police	153.19
22.	Patrolmen	113.31
23.	Watchmen (no police authority)	83.07
24.	Supervising traffic agents	300.00
25.	Traffic, development and advertising agents	220.68
26.	Fire prevention, smoke and time service inspectors and office building superintendent	198.87
27.	Claim agents and investigators	222.58
28.	Real estate and tax agents and investigators	236.97
29.	Examiners, instructors and special investigators	228.07
30.	Miscellaneous trades workers (not plumbers)	145.46
31.	Motor vehicle operators	106.47
32.	Teamsters and stablemen	117.74
33.	Janitors and cleaners	75.32

Maintenance of Way and Structures		
34.	Roadmakers and general foremen (MW&S)	238.80

35.	Asst. general foremen (MW&S)	213.44
36.	Supervisors M of W and scale inspectors	187.50
37.	M of W inspectors	177.22
38.	Bridge and bldg. gang foremen (skilled labor)	166.60
39.	Bridge and bldg. carpenters	122.94
40.	Bridge and bldg. ironworkers	149.93
41.	Bridge and bldg. painters	119.64
42.	Masons, bricklayers, plasterers and plumbers	149.52
43.	Skilled trades helpers (MW&S)	98.22
44.	Regular apprentices (MW&S)	87.87
45.	Portable steam equip. operators (MW&S)	140.96
46.	Portable steam equip. helpers (MW&S)	97.00
47.	Pumping equipment operators (MW&S)	68.92
48.	Gang foremen (extra gang and work train)	129.29
49.	Gang foremen (bridge, bldg., signal and telegraphers)	163.36
50.	Gang or section foremen	123.27
51.	Laborers (extra gang and work train)	73.89
52.	Track and roadway section laborers	72.17
53.	M of W laborers (except track and roadway)	76.26
54.	General foremen (signal and teleg.)	244.75
55.	Asst. general foremen (signal and telegraphers)	216.29
56.	Gang foremen (signal and telegraphes, skilled labor)	191.11
57.	Signalmen and signal maintainers	157.80
58.	Linemen and groundmen	148.65

59.	Asst. signalmen and signal maintainers	127.24
60.	Signalmen helpers	105.77
Maintenance of Equipment and Stores		
61.	General foremen (ME)	276.00
62.	Assistant general foremen (ME)	235.96
63.	General foremen (stores)	175.02
64.	Assistant general foremen (stores)	166.24
65.	Equip. shop and elec. inspectors (ME)	213.72
66.	Material and supplies inspectors	179.30
67.	Gang foremen (skilled labor)	189.81
68.	Blacksmiths	150.35
69.	Boilermakers	158.93
70.	Carmen (A)	150.08
71.	Carmen (B)	145.26
72.	Carmen (C)	144.30
73.	Carmen (D)	132.64
74.	Electrical workers (A)	157.79
75.	Electrical workers (B)	146.15
76.	Electrical workers (C)	133.26
77.	Machinists	156.48
78.	Molders	143.03
79.	Sheet-metal workers	155.79
80.	Skilled trade workers (ME&S)	110.46
81.	Helper apprentices (ME&S)	108.85

82.	Regular apprentices (ME&S)	77.37
83.	Gang foremen laborers (ME&S)	122.58
84.	Coach cleaners	82.55
85.	Laborers (ME&S)	82.21
86.	Common laborers (ME&S)	79.87
87.	Stationary engineers (steam)	138.21
88.	Stationary firemen and oilers (steam and electric)	111.98
89.	Coal passers and water tenders (steam and boiler rooms)	99.26

Transportation (Other Than Train, Engine and Yard)		
90.	Train dispatchers and directors	247.62
91.	Station agents (supervisory major stations)	238.06
92.	Station agents (supervisory small stations)	163.20
93.	Station agents (non-supervisory small stations)	98.50
94.	Station agents (telegraphers and telephoners)	130.04
95.	Chief telegraphers and telephoners	176.92
96.	Clerk-telegraphers and telephoners	128.50
97.	Telegraphers, telephoners and towermen	133.90
98.	Stationmasters and assts.	180.33
99.	Supervising baggage agents	166.61
100.	Baggage agents and assistants.	118.53
101.	Baggage, parcel room and station attendants	93.11
102.	General foremen (freight stations, warehouses., grain elevevators and docks)	172.39

103.	Asst. general foremen (freight, stations, warehouses., grain elevators and docks)	152.62
104.	Gang foremen (freight stations, wearhouses., grain elevators and docks)	133.77
105.	Callers, loaders, scalers and sealers	105.10
106.	Truckers (stations, warehouses. and platform)	92.29
107.	Laborers (coal and ore docks and grain elevators)	104.46
108.	Common laborers (stations, warehouses, platform and grain elevators)	82.71
109.	Stewards, rest and lodging house managers	127.97
110.	Chefs and first cooks (dining cars and restaurants)	112.37
111.	Second and third cooks (dining cars and restaurants)	77.89
112.	Waiters and lodging house attendants	52.95
113.	Camp and crew cooks and kitchen helpers	63.94
114.	Barge and launch officers and lighter workers	111.87
115.	Deck officers (ferryboats and tow vessels)	185.00
116.	Engine-room officers (ferryboats and tow vessels)	182.50
117.	Deck and engine-room workers (ferryboats and tow vessels)	116.59
118.	Deck and engine-room officers and workers (steamers)	69.00
119.	Shore workers (floating equipment)	101.33
120.	Transport. and dining service inspectors	202.10
121.	Parlor and sleeping car conductors	142.47
122.	Train attendants	87.40
123.	Bridge operators and helpers	92.61
124.	Cross and bridge flagmen and gatemen	65.07

125.	Laundry workers and foremen	83.36

Transportation (Train, Engine and Yard)		
126.	Yardmasters and assitants	223.40
127.	Switch tenders	127.14
128.	Outside hostlers	154.95
129.	Inside hostlers	140.59
130.	Outside hostler helpers	123.16
131.	Road passenger conductors	254.27
132.	Asst. road passenger conductors	212.48
133.	Road frt. conductors (thru frt.)	216.29
134.	Road frt. conductors (local)	256.28
135.	Road passenger baggagemen	193.04
136.	Road passenger brakemen and flagmen	171.75
137.	Road frt. brakemen and flagmen (thru frt.)	156.69
138.	Road frt. brakemen and flagmen (local)	197.47
139.	Yard conductors and foremen	203.88
140.	Yard brakemen and helpers	172.92
141.	Road passenger engineers and motormen	273.99
142.	Road frt. engineers (thru freight)	246.65
143.	Road frt. engineers (local)	300.00
144.	Yard engineers and motormen	210.65
145.	Road passenger firemen and helpers	206.40
146.	Road frt. firemen and helpers (thru freight)	172.35

147.	Road frt. firemen and helpers (local)	221.23
148.	Yard firemen and helpers	158.92

Appendix A – Railroad Employer Pension Table

Click Railroad Employer Pension Table to access the Table.

Appendix B - Explanation of Closing Date for Employees Born Before September 2, 1916

B1 Closing Date Requirement for Sup Ann.

Effective October 1, 1981, the "closing date" provision described in this appendix does not apply to employees born September 2, 1916, or later. The "closing date" provisions described below still apply to employees who were born prior to September 2, 1916.

The supplemental annuity "closing date" provision became effective January 1, 1971. The closing date indicated in a schedule based on the employee's date of birth. Each employee's closing date was the last day that employee could perform compensated service for an RR Act employer and still be entitled to a supplemental annuity. At that time, the "closing date" requirement applied to all employees, including those who had already retired.

If employees performed any service after their closing date, they were not eligible for the SUP ANN. If annuitants performed employer service after their closing dates, their SUP ANNs terminated as of the last day of the month before the month they returned to service. An exception was made for an employee who had at least 276 months of service but less than 300 months of service on the scheduled closing date, as explained below.

The RRB discontinued releasing closing date notices in 1975. Employees should have been advised of their closing date if they submitted advance proof of age.

If annuitants worked through their closing dates and alleged that they received erroneous advice from RRB as to the last date that they could work and receive SUP ANNs, the case were referred to the Methods and Procedures section for consideration. Particular attention was paid to those cases in which individuals had a birthday on the first day of the month and attained the age that determined their closing date in the preceding month.

B2. Schedule Of Closing Dates.

Initially, this provision applied to employees who were age 68 or over in 1970. The age was gradually reduced over the next 3 years until it reached age 65 in 1973. For employees who attained age 65 after 1973, their "closing date" was the last day of the month following the month in which they attain age 65.

An employee's "closing date" was determined from the following schedule:

EE DOB	Employee Attains	Closing Date
Before 1/2/1903	Age 68 before 1/1971	1/31/1971
1/2/1903 - 2/1/1903	Age 68 in 1/1971	2/28/1971
2/2/1903 - 3/1/1903	Age 68 in 2/1971	3/31/1971
3/2/1903 - 4/1/1903	Age 68 in 3/1971	4/30/1971
4/2/1903 - 5/1/1903	Age 68 in 4/1971	5/31/1971
5/2/1903 - 6/1/1903	Age 68 in 5/1971	6/30/1971
6/2/1903 - 7/1/1903	Age 68 in 6/1971	7/31/1971
7/2/1903 - 8/1/1903	Age 68 in 7/1971	8/31/1971
8/2/1903 - 9/1/1903	Age 68 in 8/1971	9/30/1971
9/2/1903 - 10/1/1903	Age 68 in 9/1971	10/31/1971
0/2/1903 - 11/1/1903	Age 68 in 10/1971	11/30/1971
1/2/1903 - 12/1/1903	Age 68 in 11/1971	12/31/1971
2/2/1903 - 1/1/1904	Age 68 in 12/1971	1/31/1972
1/2/1904 - 1/1/1905	Age 67 in 1971	1/31/1972
1/2/1905 - 2/1/1905	Age 67 in 1/1972	2/29/1972
2/2/1905 - 3/1/1905	Age 67 in 2/1972	3/31/1972
3/2/1905 - 4/1/1905	Age 67 in 3/1972	4/30/1972
4/2/1905 - 5/1/1905	Age 67 in 4/1972	5/31/1972
5/2/1905 - 6/1/1905	Age 67 in 5/1972	6/30/1972
6/2/1905 - 7/1/1905	Age 67 in 6/1972	7/31/1972
7/2/1905 - 8/1/1905	Age 67 in 7/1972	8/31/1972
8/2/1905 - 9/1/1905	Age 67 in 8/1972	9/30/1972
9/2/1905 - 10/1/1905	Age 67 in 9/1972	10/31/1972
0/2/1905 - 11/1/1905	Age 67 in 10/1972	11/30/1972
1/2/1905 - 12/1/1905	Age 67 in 11/1972	12/31/1972
2/2/1905 - 1/1/1906	Age 67 in 12/1972	1/31/1973
1/2/1906 - 1/1/1907	Age 66 in 1972	1/31/1973
1/2/1907 - 2/1/1907	Age 66 in 1/1973	2/29/1973
2/2/1907 - 3/1/1907	Age 66 in 2/1973	3/31/1973
3/2/1907 - 4/1/1907	Age 66 in 3/1973	4/30/1973
4/2/1907 - 5/1/1907	Age 66 in 4/1973	5/31/1973
5/2/1907 - 6/1/1907	Age 66 in 5/1973	6/30/1973
6/2/1907 - 7/1/1907	Age 66 in 6/1973	7/31/1973
7/2/1907 - 8/1/1907	Age 66 in 7/1973	8/31/1973
8/2/1907 - 9/1/1907	Age 66 in 8/1973	9/30/1973
9/2/1907 - 10/1/1907	Age 66 in 9/1973	10/31/1973
10/2/1907 - 11/1/1907	Age 66 in 10/1973	11/30/1973
11/2/1907 - 12/1/1907	Age 66 in 11/1973	12/31/1973
12/2/1907 - 1/1/1908	Age 66 in 12/1973	1/31/1974
1/2/1908 - 1/1/1909	Age 65 in 1973	1/31/1974
1/2/1909 - 9/1/1916	Age 65 after 1973 The last day of the month following the month in which age 65 is attained.	
After 9/1/16	Age 65 after 9/1981 Closing date provision eliminated.	

B3. Special Closing Date For Employees Who Had Between 23 And 25 Years Of Railroad Service On The Regular Closing Date.

A special closing date provision applied for employees born before September 2, 1916, if they had at least 276 months but less than 300 months of creditable railroad service on their regular closing date and they were not entitled (or potentially entitled) to an RIB before their regular closing date. However, if these employees had the required service months but lacked a current connection, the special closing date was the last day of the month in which the current connection was acquired. The closing date was extended to the earliest of the following dates:

A. The last day of the month before the month in which RIB entitlement (or potentially entitlement) began; or

B. The last day of the month in which the 300th service month was acquired; or

   Example: John Dell was born 8-25-16, had 299 service months through 9-30-81 (his regular closing date) and had a current connection. He earned his 300th service month in 10-81, ceased railroad employment as of 10-31-81. His special closing date was 10-31-81, and he was entitled to a SUP ANN since he ceased railroad service on that date.

C. The last day of the month in which the current connection was acquired.

B4. How Special Closing Date Was Determined Based On Month Employee Became Entitled Or Potentially Entitled To Rib.

If employees became entitled or potentially entitled to an RIB after their regular closing date, their special closing date was the last day of the month before the month of RIB entitlement. In determining the special closing date, it was assumed that the point in time when employees became potentially entitled to an RIB was the day they earned the dollar amount that gave the qualifying quarter of coverage and not the effective date of potential entitlement.

Example: Alice Smith was born 8-25-16, was concurrently employed by a railroad and an employer covered by the SS Act. She had 298 service months as of 10-1981 (her regular closing date was 9-30-81) and a current connection. She needed one quarter of coverage to qualify for an RIB. In 11-1981 she performed work that gave her the qualifying quarter of coverage and her 299th service month. In 12-1981 she acquired her 300th service month and ceased railroad service on 12-31-81. Her special closing date was 10-31-81, the last day of the month before the month in which she earned her qualifying quarter of coverage. She was not entitled to a SUP ANN since she performed railroad service after that date.

B5.How Special Closing Date Was Determined When Employee First Qualified For A Sup Ann And Became Entitled Or Potentially Entitled To Rib In Same Quarters.

In absence of evidence to the contrary, it was assumed that employees performed RR service before they earned the dollar amount that made them entitled or potentially entitled for an RIB. In this situation, the employees' closing date was the last day of the month they first became eligible for a SUP ANN and they were entitled to SUP ANNs providing they did not perform RR service after that date. This principle applied even if the employee became eligible for a SUP ANN and an RIB in the same calendar month.

Example: Mr. Casey Jones was born 8-25-16 and was concurrently employed by a railroad and an employer covered by the SS Act. He had 299 service months as of 10-1981 (his regular closing date was 9-30-81) and a current connection. He needed one quarter of coverage to qualify for RIB. In 11-1981 he performed work that gave him his qualifying quarter of coverage, acquired his 300th service month, and ceased railroad service. Since both events occurred in the same month, his special closing date was 11-30-81, which was the last day of the month in which he acquires 300 months of service. He was entitled to a SUP ANN since he did not perform railroad service after that date.

B6. Effect Of Vacation Pay, Pay For Time Lost, Sick Leave, Separation Pay, And Similar Payments Reported For A Period After The Closing Date.

A. Vacation Pay. - Vacation pay was not credited to a period after the closing date for employees whose actual DLW was before that date and who were otherwise entitled to a SUP ANN. This was true even for individuals who retained status as an "employee" for the period covered by the vacation pay after their DLW and closing date. Vacation pay was never credited in such a manner that it would constitute service after an employee's closing date as that would have caused loss of entitlement to a SUP ANN.

B. Pay for Time Lost, Sick Leave, Separation Pay, and Similar Payments. - If, under existing procedure, such a payment would be credited to a period after the employee's closing date, the employee was given an opportunity to have the payment allocated to a period before the closing date.

Appendix_C - Employee Annuity Legislative History

The Age and Service Employee Legislative History is in RCM 1.1, Appendix A.

The Employee Disability Annuity Legislative History is in DCM 3, Appendix D. (The Employee Disability Freeze and DIB (O/M) Legislative History is in DCM 6 Appendix 4).

Appendix_D - Supplemental Annuity Rates

D1. 1974 Railroad Retirement Act Supplemental Annuities (Before Reduction For Employer Pension)

The supplemental annuities paid under the 1974 Railroad Retirement Act (RR Act) began January 1, 1975, or later. The minimum SUP ANN rate is $23.00 for 25 years of service. The years of service used to compute the net SUP ANN under the 1974 RR Act are not rounded and the SUP ANN rate is not rounded to the next higher nickel. The employee's tier 2 rate does not include a reduction for the SUP ANN.

YRS/MOS. OF SERVICE	1974 RR ACT SUP ANN RATE	YRS/MOS. OF SERVICE	1974 RR ACT SUP ANN RATE
25	23.00	25 - 1/12	23.33
25 - 2/12	23.67	25 - 3/12	24.00
25 - 4/12	24.33	25 - 5/12	24.67
25 - 6/12	25.00	25 - 7/12	25.33
25 - 8/12	25.67	25 - 9/12	26.00
25 - 10/12	26.33	25 - 11/12	26.67
26	27.00	26 - 1/12	27.33
26 - 2/12	27.67	26 - 3/12	28.00
26 - 4/12	28.33	26 - 5/12	28.67
26 - 6/12	29.00	26 - 7/12	29.33
26 - 8/12	29.67	26 - 9/12	30.00
26 - 10/12	30.33	26 - 11/12	30.67
27	31.00	27 - 1/12	31.33
27 - 2/12	31.67	27 - 3/12	32.00
27 - 4/12	32.33	27 - 5/12	32.67
27 - 6/12	33.00	27 - 7/12	33.33
27 - 8/12	33.67	27 - 9/12	34.00
27 - 10/12	34.33	27 - 11/12	34.67
28	35.00	28 - 1/12	35.33
28 - 2/12	35.67	28 - 3/12	36.00
28 - 4/12	36.33	28 - 5/12	36.67
28 - 6/12	37.00	28 - 7/12	37.33
28 - 8/12	37.67	28 - 9/12	38.00
28 - 10/12	38.33	28 - 11/12	38.67
29	39.00	29 - 1/12	39.33
29 - 2/12	39.67	29 - 3/12	40.00
29 - 4/12	40.33	29 - 5/12	40.67
29 - 6/12	41.00	29 - 7/12	41.33
29 - 8/12	41.67	29 - 9/12	42.00

YRS/MOS. OF SERVICE	1974 RR ACT SUP ANN RATE	YRS/MOS. OF SERVICE	1974 RR ACT SUP ANN RATE
29 - 10/12	42.33	29 - 11/12	42.67
30 or more	43.00		

D2. 1937 Railroad Retirement Act Supplemental Annuities (Before Reduction For Employer Pension)

The SUP ANN paid before 1975 under the 1937 RR Act continue to use the 1937 SUP ANN rates. The years of service used to compute the net SUP ANN under the 1937 RR Act remains rounded if more they include a fraction of 6/12 or larger and the SUP ANN rate remains rounded to the next higher nickel amount (except the $70.00 maximum amount). The employee's equalized tier 2 rate includes a reduction for the SUP ANN.

YRS/MOS. OF SERVICE	1937 RR ACT SUP ANN RATE	YRS/MOS. OF SERVICE	1937 RR ACT SUP ANN RATE
24 - 6/12	45.05	24 - 7/12	45.05
24 - 8/12	45.05	24 - 9/12	45.05
24 - 10/12	45.05	24 - 11/12	45.05
25	45.05	25 - 1/12	45.45
25 - 2/12	45.85	25 - 3/12	46.25
25 - 4/12	46.75	25 - 5/12	47.15
25 - 6/12	50.05	25 - 7/12	50.05
25 - 8/12	50.05	25 - 9/12	50.05
25 - 10/12	50.05	25 - 11/12	50.05
26	50.05	26 - 1/12	50.45
26 - 2/12	50.85	26 - 3/12	51.25
26 - 4/12	51.75	26 - 5/12	52.15
26 - 6/12	55.05	26 - 7/12	55.05
26 - 8/12	55.05	26 - 9/12	55.05
26 - 10/12	55.05	26 - 11/12	55.05
27	55.05	27 - 1/12	55.45
27 - 2/12	55.85	27 - 3/12	56.25
27 - 4/12	56.75	27 - 5/12	57.15
27 - 6/12	60.05	27 - 7/12	60.05
27 - 8/12	60.05	27 - 9/12	60.05
27 - 10/12	60.05	27 - 11/12	60.05
28	60.05	28 - 1/12	60.45
28 - 2/12	60.85	28 - 3/12	61.25
28 - 4/12	61.75	28 - 5/12	62.15
28 - 6/12	65.05	28 - 7/12	65.05
28 - 8/12	65.05	28 - 9/12	65.05

YRS/MOS. OF SERVICE	1937 RR ACT SUP ANN RATE	YRS/MOS. OF SERVICE	1937 RR ACT SUP ANN RATE
28 - 10/12	65.05	28 - 11/12	65.05
29	65.05	29 - 1/12	65.45
29 - 2/12	65.85	29 - 3/12	66.25
29 - 4/12	66.75	29 - 5/12	67.15
29 - 6/12	70.00	29 - 7/12	70.00
29 - 8/12	70.00	29 - 9/12	70.00
29 - 10/12	70.00	29 - 11/12	70.00
30 or more	70.00		

Appendix_E - Supplemental Annuity Historical Background

E1. Legislative History

Effective Date	Supplemental Annuity Provision
11-01-66	Limited eligibility to annuitants first awarded regular annuities after June 30, 1966. Required coordination of SUP ANN benefits with railroads with approved private railroad pension plans to reduce the SUP ANN and create supplemental annuity tax credits for the railroads based on those reductions. The RRB Supplemental Annuity Tax Credit/Tax Liability (TACAL) program was established to create quarterly reports of supplemental annuity tax credits for these railroads. Established operation of the program for a fixed period of time (5 years). Financed benefits through a separate supplemental annuity account maintained by employer contributions only. Subjected SUP ANN payments to Federal income tax.
04-01-1970	Established borrowing authority. SUP ANN payments due between 12-1-1969 and 3-1-1970 had been delayed until sufficient tax receipts were received to cover the SUP ANN payments. Limited entitlement to eligible employees who ceased RR service on or before their "closing date".

	Established permanent SUP ANN program as part of the Railroad Retirement system. Gave RRB authority to adjust the man-hour SUP ANN tax rate quarterly. Established "Supplemental Annuity Tax Liabilities" for employers with pension plans established through collective bargaining agreements (negotiated pension plans). The TACAL program was expanded to create quarterly reports of supplemental annuity tax liabilities for these railroads.
01-01-1975	Extended SUP ANN eligibility to annuitants age 60 with 30 years of service whose annuities were first awarded after June 30, 1974. Changed supplemental annuity rates for new entitlements- from minimum $23 at 25 years of service plus $4 for each additional year up to a maximum of $43 at 30 years of service. For new entitlements, also removed SUP ANN reduction from the regular annuity computation. For cases converted from the 1937 RRA to the 1974 RRA, the 1974 RRA conversion rate left the SUP ANN at the old rate (i.e. $70.00) and left the reduction to the basic annuity. The 1974 RRA tier 2 was based on an “equalized amount.”
10-01-1981	Eliminated the closing date requirement effective 10-1-81, for employees born 9-2-16 or later. Required employees to have at least one month of railroad service before 10-1-81 to be eligible for a SUP ANN. Stopped rounding years of service.
12-01-1988	Permitted last pre-retirement non-railroad (LPE) after the after ABD with earnings deductions in tier 2 and supplemental annuity.
10-1-1987	PL 100-119 (Gramm-Rudman) cut back SUP ANN by 8.5%. Withheld amounts later restored.
10-1-1989	PL 100-119 (Gramm-Rudman) cut back SUP ANN by .7%.
10-1-1990	Restored full SUP ANN. Stated that SUP ANN is exempt from any further cutbacks for PL 100-119.

1-1-2002	Section 203(b) of the Railroad Retirement and Survivor's Improvement Act of 2001, removed the supplemental annuity tax, supplemental annuity tax credits, and supplemental annuity tax liabilities from the Internal Revenue Code sections 3221(c) and 3221(d) effective for months after December 2001. The SUP ANN is now funded by part of the railroad tier 2 taxes.
1-1-2003	The TACAL program created reports in the year 2002 for adjustments for months before January 2002 only. The TACAL program was shut down.

E2. SUP ANN Cutbacks From 1987 Through 1990

Supplemental annuity funds were sequestered for two periods under the provisions of PL100-119, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (also referred to as the Gramm-Rudman). However, it was later determined that the SUP ANN is not subject to sequestration under this Act. Therefore, only the two periods listed below are affected by this legislation.

The SUP ANN Tax Credit (TACAL) cases were not affected by this cutback. The cutback applied to the SUP ANN rate after reduction for the employer pension.

A. November 1987 through January 1988.--The net SUP ANN rate for recurring SUP ANNs or SUP ANN accruals was cut back by 8.5%. However, the accumulated cutback amounts was subsequently paid to the employees in a special DAISY run on February 5, 1988, as "one payment only." All SUP ANN Tax Liability (TACAL) records with a net SUP ANN greater than zero show this accrual posted to the month of April 1970.

B. October 1989 through September 1990.--

1. The net SUP ANN rate for recurring SUP ANNs or SUP ANN accruals was cut back by 2.7% from November 1989 through February 1990.

2. Beginning with payments for February 1990, the reduction percentage was changed to .7% and made retroactive to October 1989. The accumulated cutback amounts to that point (difference between 2.7% and .7%) were paid to the employees in a February 1990 mass adjustment. All SUP ANN Tax Liability (TACAL) records with a net SUP ANN greater than zero included this accrual in the month in which the accrual was paid; and,

3. The cutback of .7% continued through September 1990.

C. October 1990 or Later.--Effective October 1,1990, no new or increased SUP ANN payments were cutback. Initial supplemental annuity payments made October 1, 1990 or later or SUP ANN reinstatements were not cutback, even if they retroacted

into the October 1, 1989 through September 30, 1990 period. However, the amount withheld from SUP ANN from October 1989 through September 1990 was not paid to the annuitants who did not need a SUP ANN adjustment for some other reason. The cutback remained for the closed period.

E3. Effect of Railroad Retirement and Survivors Improvement Act (RRSIA) on Supplemental Annuity

Employer Tax Liabilities

A. Effective January 2002 or Later - The RRSIA of 2001 amendments deleted Section 3221(d) from the Internal Revenue (IRS) Code effective with calendar year 2002. That section had been the basis for supplemental annuity tax liabilities. The RRB supplemental annuity is now funded through the tier 2 tax on employers.

B. Before January 2002 - A supplemental annuity tax liability was billed to the railroad as a "Special Supplemental Tax" under Section 3221(d) of the Internal Revenue Code for any month for which the employee was paid an RRB supplemental annuity when, prior to retirement, the employee was covered under a private pension plan, approved by the RRB's Bureau of Law, that was established pursuant to a collective bargaining (union) agreement. These are referred to as collective bargaining (CB) cases. Effective January 1, 2000 through December 2001, the employee must have been a member of the collective bargaining unit before retirement to be considered a CB case.

There was a "Special Supplemental Tax" (in lieu of the work-hour tax) that was equal to the amount of the supplemental annuity being paid in CB cases, plus a percentage added to reimburse the RRB for administrative costs. However, if the employee's supplemental annuity was reduced to zero by the collective bargaining private pension, then the employer had no supplemental annuity tax liability for that employee.

The supplemental annuity tax liabilities were accumulated mechanically by the Supplemental Annuity Tax Credit/Tax Liability (TACAL) program for each employee record and mailed to the railroad employers after the end of each calendar quarter. Form G-241, Summary Statement of Quarterly Railroad Retirement Supplemental Annuity Tax Liabilities, provided the total supplemental annuity tax liabilities for that calendar quarter to each railroad with an approved pension based on a collective bargaining agreement. The Form G-241 stated that the amount of the SUP ANN Tax Liability was due to the Internal Revenue Service no later than the last day of the second month after the quarter ended.

At the end of the calendar year, the railroad attached the Form G-241 for each calendar quarter to their Form CT-1, Employer's Annual Railroad Retirement Tax Return, to determine any adjustment for the taxes paid.

The TACAL program produced Form G-241 through the four quarters in calendar year 2002. No amounts were posted to months after December 2001. Instead, TACAL processed corrections for months before January 2002, as "increases" or "decreases" for a previous quarter. The employer must have filed a corrected Form CT-1 within three years to claim these corrected amounts. Employers who had no corrections for months before January 2002 did not receive any TACAL quarterly reports in the calendar year 2002.

RRA Maximum Reduction

A. Effective for Rates Payable January 1, 2002, or Later – The Railroad Retirement and Survivors Improvement Act (RRSIA) of 2001, removed the RRA maximum reduction from all annuities effective January 1, 2002, regardless of the employee or spouse annuity beginning date.

B. 1974 Railroad Retirement Act Rates Payable Before January 1, 2002 – The 1974 Railroad Retirement Act (RRA) established a maximum of monthly annuities that an employee and spouse could initially receive. If the total of the applicable annuity components exceeded the RRA maximum, the law provided for reducing certain components so that the total annuities paid did not exceed the RRA maximum. The reduction applied to the annuity components in the following order:

- net spouse tier 2; then
- gross supplemental annuity; then
- net employee tier 2.

When the employee's supplemental annuity was reduced for the RRA maximum, the reduction was applied to the gross supplemental annuity, before any reduction for a railroad pension based on employer contributions. If an employee's supplemental annuity was subject to reduction by both the RRA maximum and the railroad pension, L-80-37 stated that the RRA maximum reduction was applied first. This caused the railroad to lose tax credits which it would normally have received if the supplemental annuity was first reduced for the pension.

The railroad was notified when a supplemental annuity has been reduced for the RRA maximum. The notation "SUP ANN REDUCED FOR RRA MAXIMUM" was shown on monthly RL-5A listings provided to requesting employers.

E4. Effect of Supplemental Annuity on Regular Annuity Under 1937 Act

A. Before February 1968 - A regular annuity was generally paid at the pre-1966 formula rate for any month the annuitant was also entitled to payment of a SUP ANN. In a few cases when the SUP ANN rate was less than the 7 percent regular annuity increase under the 1966 amendments, the regular annuity rate was increased to an amount which added to the SUP ANN equaled the 1966 amendment rate.

B. Beginning February 1968 - The table and minimum increases provided by the 1968 amendments were reduced because of an annuitant's entitlement to payment of a SUP ANN.

C. Beginning January 1970 - The 15 percent increase provided by the 1970 amendments was not reduced because of an annuitant's entitlement to payment of a SUP ANN. However, in a few cases the regular annuity rate was increased under the L-70-207 Guaranty to an amount which added to the SUP ANN equaled the regular annuity rate that would have been payable if there was no SUP ANN entitlement. The L-70-207 Guaranty applied in cases where there was no SS entitlement when the table increase in the 1968 COMP was reduced by:

- The SUP ANN rate; or
- 6.55 percent of the basic annuity rate and the difference between that amount and the SUP ANN was less than 15 percent of the 6.55 reduction amount. (This usually occurred when the SUP ANN was less than $30.)

E5. TACAL Program

The TACAL program was used prior to the year 2003 to store the amount of supplemental tax credit or supplemental tax liability for the railroads in an “Ideal History” format for the years that the employee supplemental annuities are reduced under section 2(h)(2) of the Railroad Retirement Act for their employer pension. It produced quarterly reports that the railroads attached to their Form CT-1 Employer's Annual Railroad Retirement Tax Return when paying their RRB taxes to the Internal Revenue Service. The program is now obsolete.

Appendix_F - Spouse Annuity Legislative History

The Spouse Annuity Legislative History is in RCM 1.3, Appendix A.

Appendix_G – Retirement O/M Legislative History

The Retirement O/M Age and Service and IPI Legislative History are in RCM 1.5, Appendix B.

The DIB O/M Legislative History is in the Disability Claims Manual

Appendix_H - Glossary Of Terms - Felony Case Development

1. Felony - A crime is a felony if it is an offense which constitutes a felony under applicable law. If the law does not classify any crime as a felony (e.g., law of New Jersey, Uniform Code of Military Justice), an offense punishable by death or imprisonment for a term exceeding one year is considered a felony for this procedure.

A felony may have been committed even if the resulting sentence is less than one year. The length of the sentence is not an indication of a felony, except as stated in the preceding paragraph.

Also note that a person charged with a felony may plead guilty to, and be convicted of, a lesser charge; in that case, benefits are not suspended.

A juvenile charged with, and tried for, a felony as an adult, will be affected if convicted.

2. Conviction - Tier I or the O/M will not be suspended until the individual has actually been convicted of a felony, and is confined to a penal institution or correctional facility. A grand jury indictment or otherwise being charged with a crime does not cause suspension. If an individual is confined but not convicted, and is subsequently convicted, suspension is effective with the month of conviction.

   When a person has been convicted of a felony but the conviction is under appeal, tier I or the O/M is subject to suspension. If a conviction is overturned, benefits are payable as if the person had never been imprisoned for that conviction. If a pardon is granted, it will be reviewed at headquarters to determine the effect of the pardon on the status of the criminal case.

3. Confinement - A penal institution or correctional facility includes any facility which is under the control and jurisdiction of the agency in charge of the penal system, or any facility in which convicted criminals may be incarcerated. This includes, for example, a mental hospital for the criminally insane which is used for incarcerating convicted criminals, regardless of whether that institution is operated by the correctional authority.

   A person is considered confined even if temporarily hospitalized outside the facility, or temporarily or intermittently outside the facility to work or attend school, or because he escaped or failed to report to begin confinement. Transfer from prison to a half-way house or a work-release facility is considered confinement, if the individual remains under a sentence of confinement.

   A prisoner released on parole, or because his sentence has ended, been suspension or overturned, is not under a sentence of confinement.

4. Court of law is any duly consituted judicial tribunal administering the laws of the state or nation. It includes a judge or judicial officer with authority to approve a prisoner's participation in a rehabilitation or training program.

Appendix_I - Addresses Of State Correctional Authorities

ALABAMA
State Board of Corrections

101 S. Union St.
Montgomery, AL 36130

ALASKA
Department of Health & Social Service
Division of Corrections
Pouch HO 3, Health & Social Service Bldg.
Juneau, AK 99811

ARIZONA
Department of Correction
1601 West Jefferson St.
Phoenix AZ 85007

ARKANSAS
Department of Correction
Post Office Box 8707
Pine Bluff, AR 71611

CALIFORNIA
Department of Correction
P.O. Box 714
Sacramento, CA 95803

COLORADO
State Department of Corrections
Attn: Records
2862 South Circle Drive Suite 400
Colorado Springs CO 80906

CONNECTICUT
Department of Correction
340 Capitol Ave.
Hartford, CT 06106

DELAWARE
Department of Correction
80 Monrovia Ave
Smyrna, DE 19977

DISTRICT OF COLUMBIA
Department of Correction
614 H Street NW
Washington, D.C. 20001

FLORIDA
Department of Correction

2601 Blair Stone
Tallahassee, FL 32399-2500

GEORGIA
Department of Offender
Rehabilitation
800 Peachtree St. NE
Atlanta, GA 30308

HAWAII
Department of Social Service
and Housing, Correction Division
P.O. Box 339
Honolulu, HI 96809

IDAHO
Department of Correction
Box 7309
Boise, ID 83707

ILLINOIS
Department of Correction
201 Amory Bldg.
Springfield, IL 62706

INDIANA
Department of Correction
804 State Office Bldg.
Indianapolis, IN 46204

IOWA
Department of Social Service
Division of Correction
Hoover Building
Des Moines, IA 50319

KANSAS
Department of Correction
535 Kansas Ave.
Topeka, KS 66603

KENTUCKY
Bureau of Correction
State Office Building
Frankfort, KY 40601

LOUISIANA

Department of Correction
P.O. Box 44304
State Capitol Station
Baton Rouge, LA 70804

MAINE
Department of Mental Health and Corrections
411 State Office Bldg.
Augusta, ME 04333

MARYLAND
Department of Public Safety and Correction Services,
Division of Correction
6314 Windsor Mill Rd.
Baltimore, MD 21207

MASSACHUSETTS
Department of Correction
Saltonstall Office Bldg.
100 Cambridge St.
Boston, MA 02202

MICHIGAN
Department of Correction
Stevens T. Mason Bldg.
Lansing, MI 48913

MINNESOTA
Department of Correction
430 Metro Square Bldg.
Seventh and Roberts Streets
St. Paul, MN 55101

MISSISSIPPI
Department of Correction
723 North President St.
Jackson, MS 39202

MISSOURI
Department of Social Service
Division of Correction
Jefferson City, MO 65101

MONTANA
Department of Institution
Corrections Division
1539 11th Ave.

Helena, MT 59601

NORTH DAKOTA
Director of Institutions
State Capitol
Bismark, N.D. 58505

NEBRASKA
Department of Correctional Service
P.O. Box 94661
Lincoln, NE 68509

NEVADA
Department of Prisons
P.O. Box 7000
Carson City, NV 89701

NEW HAMPSHIRE
(no central dept. of corrections)
adult felons are committed to:
New Hampshire State Prison
Box 14
Concord, N.H. 03301

NEW JERSEY
Department of Corrections
P.O. Box 7387
Whittlesey Rd.
Trenton, N.J. 08628

NEW MEXICO
Criminal Justice Department
Correction Division
State Rd. 14
P O Box 27116
Santa Fe, N.M. 87502

NEW YORK
Department of Correctional Services
State Office Building Campus
Albany, NY 12226

NORTH CAROLINA
Department of Correction
840 West Morgan St.
Raleigh, N.C. 27603

OHIO
Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, OH 43229

OKLAHOMA
Department of Corrections
3400 N. Eastern 75 Howard Ave.
P.O. Box 11443
Oklahoma City, OK 73111

OREGON
Department of Human Resources
Correction Division
318 Public Service Bldg.
Salem, OR 97310

PENNSYLVANIA
Department of Justice
Bureau of Correction
P.O. Box 598
Camp Hill, PA 17011

RHODE ISLAND
Department of Correction
Cranston, RI 02920

SOUTH CAROLINA
Department of Correction
4444 Broad River Road
P.O. Box 21787
Columbia, S.C. 29221

SOUTH DAKOTA
Board of Charities & Correction
Office of Correctional Services
Suite 402-403 Foss Building
Pierre, SD.

TENNESSEE
Department of Corrections
Rachel Jackson Building
Ground Floor - MIS
320 6th Avenue North
Nashville, TN 37243

TEXAS

Department of Corrections
Box 99
Huntsville, TX 77340

UTAH
For adult offenders:
Dept of Corrections
Records Bureau
14717 S Minuteman Dr
Draper UT 84020
(801) 545-5700
(801) 545-5702 (fax)

For juvenile offenders:
Department of Social Services
Division of Corrections
150 W. North Temple
Salt Lake City, UT 84103

VERMONT
Agency of Human Services
Department of Corrections
State Office Building
Montpelier, VT 05602

VIRGINIA
State Department of Corrections
P.O. Box 26963
4615 West Broad St.
Richmond, VA 23261

WASHINGTON
Dept. of Social & Health Service,
Adult Correction Division
(Mail Stop FN - 61)
Olympia, WA 98504
Division of Juvenile Rehabilitation
(Mail Stop OB 42 - J)
Olympia, WA 98504

PUERTO RICO
Administration of Correction
Call Box 71308
San Juan, PR 00936

WEST VIRGINIA
Department of Correction

1116 Quarrier St.
Charleston, WV 25301

WISCONSIN
Department of Health and Social
Service, Division of Corrections
Madison, WI 53701

WYOMING
State Board of Charities and Reform
Capitol Building
Cheyenne, WY 82002

Appendix_J – CSX Separation Payments Elected by Disability Annuitants in 1999 and 2000

Background.

- A number of disability annuitants elected voluntary separation payments (buyouts) from the CSX Corporation in 1999 and 2000.
- By electing this buyout, the annuitant relinquished seniority rights.
- The buyout amount was creditable as compensation in the month elected.
- Per Legal Opinion 99-18, election of the buyout constituted compensated service. A copy of the opinion is available on the RRB website under Legal Decision/Compensation/Separation Allowance.
- No annuity is payable in any month an annuitant renders compensated service for an employer.
- No annuity was payable for the month in which this buyout was elected.

Operations Handling.

Most of these annuitants elected to receive separation payments in December 1999. The others elected to receive the payments some time in 2000. In either case, the annuity for the month in which the payment was elected was recoverable.

RBD handled the initial recovery action using ORCS. For the December elections they also prepared an adjustment award to include the compensation added due to the separation payment. Any resulting accrual was used to partially offset the overpayment. If the buyout was elected January 2000 or later, a call-up was set for May 2001 to adjust the annuity to include the compensation added in 2000.

The PARS overpayment code for these cases is O3D ("CSX Separation Elected"). By entering this code, ORCS should have offered only cash/credit card refund or full withholding. Also, paragraph #1735 was added to ORCS to explain the overpayment to the annuitants. It reads as follows:

"In month year, you elected a lump sum separation payment from the CSX Railroad under their Voluntary Early Retirement and Separation Program. According to the Railroad Retirement Board's regulations, this payment is creditable as compensation. Also, the Railroad Retirement Act specifies that no annuity is payable for any month in which an individual renders compensated service to an employer. By electing the separation payment, you are considered to have rendered compensated service. This means your annuity was not payable for month year because you elected the separation in that month."

To our knowledge, CSX informed those who elected the buyouts that their annuity for the election month was not payable and was to be recovered by RRB.

Appendix A - Widow(er) Legislative History

The Widow(er) Legislative History is inRCM 2.1, Appendix A.

Appendix B – Surviving Young Mother/Father Legislative History

The Surviving Young Mother/Father Insurance Annuity Legislative History is in RCM 2.3, Appendix A

Appendix C - Surviving Child's Legislative History

The surviving Child's Insurance Annuity Legislative History is in RCM 2.4, Appendix A.

Appendix D - Surviving Parent's Legislative History

The surviving Parent's Insurance Annuity Legislative History is in RCM 2.5, Appendix A.

Appendix A - Guides to Canadian and Mexican Secondary School Systems

Canada

Each province in Canada is responsible for the establishment and regulation of its own school system. Thus, secondary-level school systems vary among provinces with some schools offering 13-year training and some less. Although Canadian high schools are considered educational institutions, attendance beyond the 12th grade level (13th grade-college prep) is considered to be postsecondary-level FTA.

Mexico

The RRB field office nearest the Mexican school develops the forms and proofs required for the students. These RRB field offices should work with the Federal Benefits Unit in the American Consulate General office nearest the school to develop information concerning Mexican schools as EIs.

A. Mexican Secondary Schools.- The secondary school system in Mexico is divided into two levels of training. The Basic Cycle (media basica) lasts three years. This can be considered to be secondary-level education.

It is followed by the Upper Cycle which also lasts three years. The part of the Upper Cycle that may be secondary-level education is called the preparatory school (preparatoria). It leads to the bachillerto diploma. There are two types of preparatory schools: general and technical.

B. Mexican Technical Schools.- Mexico's Secretariat of Public Education (SEP) issues a catalog entitled "escuelas y Carreras de Educacion Tecnologica" (schools and careers in Technical Education) which lists, by Mexican State, the technical schools which it has approved. Those which provide secondary-level education are shown under the heading "media superior." A copy of this catalog can be reference by the American Consulate General office nearest the school. Request a photocopy of the listing for the school which the student is attending.

Generally, it can be assumed that a Mexican technical school is a secondary-level school if it is a "secondaria" or it is approved by SEP and listed in the SEP catalog as being on the "media superior" level (i.e. Nivel Media Superior" is shown in the heading for the column showing the school's name). The school seal or other information must show the school to be approved by the SEP. The school provides a bachillerato degree.

Technical schools at the secondary-level currently have names such as: Centro de Bachillerato Tecnologicos, Centro de Estudios Tecnologicos, Colegio Nacional de Educacion Prefesional Tecnica.

Schools which do not appear to operate on any special level (such as secretarial, language, beauty schools, etc.) can qualify as EIs if they are authorized or approved by SEP to provide "media superior" education.

However, the "Capacitacion" (vocational) schools offer short courses for skills needed by industry and services. Admission does not require completion of a specified education level. Since they are not operated as part of the primary-level or secondary-level education system, a student at one of these schools is not considered to be attending an EI. Generally, these schools are called "Centro de Capacitacion para el Trajabo …"

Some Upper Cycle technical schools (then known as Instituto Tecnologicos Regional - now Instituto Technologicos de …) provided both secondary-level and postsecondary-level education. This system is now being changed to remove preparatory (secondary-level) schools from these institutions and make them independent schools.

1. Creditable Mexican "Instituto Tecnologico" EIs.- The following table lists the Mexican Instituto Tecnologicos which still provide **creditable** preparatory (secondary-level) education.

Instituto Tecnologico of	**Preparatory (Secondary-Level) Education Still Provided. Ending Date Not Yet Established.**
Matamoros,Tamps.	Yes
Morelia, Mich.	Yes
Nuevo Laredo, Tampa.	Yes
Saltillo, Coah.	Yes
Tapachula, Chis.	Yes
Tehuacan, Pue.	Yes
Tepic, Nay.	Yes
Tialnepantla, Mex.	Yes
Tuxtla Gutierrez, Chis.	Yes

2. Non-Creditable Technical Institutions Because of Attendance Requirement.- The following table lists the Technical Institutions who provide preparatory courses for non-matriculating students in an open

(arbierto) program. Enrollment in these does not qualify as FTA because no classroom attendance or minimum hours of attendance are required.

Instituto Tecnologico of	**Minimum Attendance Requirement for Secondary-Level Education?**
Acapulco, Gro.	No
Ciudad Madero, Tampa.	No
Istmo, Juchitan, Oax.	No
Oaxaca, Oax.	No
Orizaba, V.C.	No
Toluca, Mex.	No
Zacatepec, Mor.	No

3. No Longer Provide Secondary Education.- The following table lists the Technical Institutions which provided preparatory (secondary-level) education up to the date shown. The secondary-level education stopped as of the date shown.

Instituto Tecnologico of	**Preparatory (Secondary-Level) Education Provided in the Months Prior to:**
Aguascalientes, AC	12/1986
Apizaco, Tlax	12/1984
Celaya, Gto.	12/1988
Chetumal, Q.R.	9/1986
Chihuahua, Chih.	2/1979
Ciudad Guzman, Jal.	1/1988
Ciudad Juarez, Chih.	1/1980
Culiacan, Sin.	7/1986

Hermosillo, Son.	7/1986
La Laguna, Torreon, Coah.	7/1987
La Paz, B.C.	7/1989
Leon, Gto.	12/1988
Matamoros, Tamps.	2/1989
Minatitlan, V.C.	9/1984
Nogales, Son.	7/1988
Pachuca, Hgo.	9/1985
Parral, Chih.	7/1988
Puebla, Pue.	9/1984
Queretaro, Qro.	9/1982
Tijuana, B.C.	1/1981
Veracruz, V.C.	9/1984
Villahermosa, Tab.	9/1982

C. Mexican Normal Schools.- Mexican Normal Schools which train preschool and elementary teachers can be considered secondary-level schools only for FTA prior to March 23, 1984. Prior to April 1984, training for preschool and elementary teachers was done in the normal schools (i.e. escuela normals) operated in the upper cycle of secondary-level education. However, a Presidential Decree of March 22, 1984, made these schools part of the postsecondary-level education.

Appendix B - Guides To Foreign Secondary School Systems

Refer to SSA POMS RS 0205.895

Appendix C - Pre-1981 Amendment Full-Time Student Provisions

I. General

The following appendix describes some of the full-time student provisions as they were prior to August 1982. Only those provisions are included in this section.

II. Definitions

A. Full-Time Student - A full-time student was an unmarried dependent, age 18-22 child who was in full-time attendance at an educational institution (EI).

1. Definition of FTA - A child could have met the definition of FTA for some months in and after the month in which age 22 was attained if (s)he:

   - Had not completed the requirements for, or received a degree from a 4-year college or university; and
   - Was in actual full-time attendance at an EI in a quarter, semester, or course of study that began in or before the month (s)he had attained age 22.

2. Attainment of Age 22 - If a student met the requirements in section (1) above, he or she was deemed to have attained age 22 (for termination purposes) on:

   - The first day of the month following the month in which the quarter or semester, in which the student was enrolled, ended; or
   - If the school in which the student was enrolled did not operate on a quarter or semester system, the earlier of
     - the first day of the month following completion of the course, or
     - the first day of the third month following the month in which age 22 was attained.

B. Educational Institution - An EI was a school, junior college, college, university, trade or technical school:

1. Which was operated or directly supported by the U.S., or by any State or local government or political subdivision; or
2. Which had been approved by a State, or accredited by a State-recognized or nationally-recognized accrediting agency; or
3. Whose credits are accepted, or transferred, by not less than three institutions which have been accredited by a State-recognized or nationally-recognized accrediting agency, on the same basis as if transferred from an institution so accredited. If the school had qualified as an EI solely in accordance with this provision, the district office would have had to secure verification of the acceptance of credits by 3 specifically mentioned schools.

Also, included as EI's were nonpublic schools that were directly supported by the U. S.; any State, local government or political subdivision thereof.

III. Determining Whether A School Was An EI.

A. Institutions of Higher Education - A list was published annually by the Office of Education furnishing the institutions of higher education:

1. That were accredited by a nationally-recognized accrediting body; or

2. Whose credits were accepted on transfer by at least 3 accredited institutions,

Any school on this list was accepted as an EI.

B. Technical, Trade or Vocational, or Other Schools Not Covered Above - The RRB field office determined if the school was an EI except in the case of foreign schools. Therefore, the RRB field office indication that the school had been approved by the State was accepted.

IV. Foreign Schools

Although the criteria for determining whether or not a school was an educational institution and whether a student was in full-time attendance was the same for foreign students as for domestic students, with the exception of Italian university students, foreign schools actually met the definition of an EI only under the requirement which refers to transfer of credits, i.e., credits had been accepted by at least 3 accredited U. S. schools to which students had transferred.

A. Secondary Schools - All foreign SECONDARY schools were considered EI's. The foreign school was considered a secondary school if:

1). The school was in the usual line of academic progression between the primary and college or university levels and its curricula include the usual academic subjects; or

2). Its curricula included only vocational or technical courses but the school was operated as an integral part of the secondary school system of the country.

B. Other Schools - If a foreign school was not established as a secondary school, was not listed in RCM 2.4, Appendix B as an EI, and no previous EI determination had been made for the "EI" or "NOT EI" files in the Director of Claims Operations Office, it was determined whether the transfer of credits requirement was met (i.e., credits had been accepted by at least 3 U. S. schools to which students had transferred.)

NOTE: If the school did not qualify as an EI on its own merits, but was an integral part of or was affiliated with another school that was considered an EI, the school in question was considered an EI if that relationship could have been established.

Appendix D - Effect of the 1981 Amendments on Student Benefits

I. General

The Omnibus Reconciliation Act of 1981 made significant changes in the eligibility and entitlement requirements for student beneficiaries under the Social Security Act (SS Act). The intent of this change was to limit the amount of benefits paid to students. Before the SS Act was amended in 1981, student benefits could have been paid when a child was age 18 through 21 and a full-time student at either a secondary or post-secondary school. The amendments contained provisions to phase-out benefits for then currently entitled students over a 3 year period. The amendments phased out benefits paid to all students age 19 through 21 and phased out benefits paid to students who were full-time students at post-secondary schools.

All students were classified as either a phase-out or a non phase-out student. Students age 18 through 21 who were in full-time attendance at a post-secondary school before May 1982 and who were entitled to a child's benefit for August 1981 could continue to receive benefits as a phase-out student. The phase-out was completed in April 1985.

Since the tier I computations of a student's annuity is based on the SS Act, students paid under the Railroad Retirement Act (RRA) were also affected. However, the amendments to the SS Act affected the payment of the tier I only. Since the RRA was not amended until September 1983, the tier II payment continued to be paid under the rules in effect prior to August 1982. A student, who was entitled to benefits in April or August 1983, continued to be entitled to the tier II benefits until attaining age 22. If the student was entitled to a 1974 Act tier II, the tier II would be reduced to zero at age 19. A student entitled to a 1981 amendment tier II would continue to receive payment of the tier II under the provisions in effect prior to August 1982 until attaining age 22 or graduating from a post-secondary school.

The 1983 amendments to the RRA changed the entitlement requirements for the tier II to those of the tier I.

A non phase-out student was any student who could not meet the requirements for a phase-out student. Students who were first entitled to child's benefits after August 1981 (or, if entitled to child's benefits in August 1981, were not in full-time attendance at a post-secondary school before May 1982) were considered non phase-out students. They could receive student benefits while age 18 through 21 based on full-time attendance at a post secondary school, but only for months through July 1982.

II. Phase-Out Student Defined

A phase-out student was a student enrolled at a post-secondary school before May 1982 and entitled to benefits in August 1981. A phase-out student must have met the following requirements:

A. Must have been an unmarried child of a railroad employee between the ages of 18 and 22;

B. Must not have been disabled;

C. Must have been in full-time attendance (FTA) at an educational institution (EI);

D. Must have been entitled to a child's insurance benefit (included in the retirement O/M or paid a survivor benefit as either a minor child, disabled child or student) in August 1981; and

E. Must have been in FTA at a post-secondary school for any month prior to May 1982.

NOTE: Between the ages of 18 and 22, it did not matter whether a phase-out student was attending a post-secondary EI as a graduate or undergraduate student.

III. Payment Of Benefits To Phase-Out Students

If a phase-out student lost eligibility for student benefits before August 1985, that student could not become re-entitled as a student.

A. Non-Payment Months. No benefit was payable to a phase-out student for the months of May, June, July and August, beginning in 1982, even if the student was in FTA at summer school.

B. Reduced Payment Months

1. September 1982 through April 1983. - Benefits payable to a phase-out student were the lesser of:

   - The amount of the student's original benefit (75% of the PIA for a survivor student, 50% of the PIA for a retirement student) in effect for August 1981 reduced by 25%, or

   - The student's share of the family maximum.

2. September 1983 through April 1984. - Benefits payable to a phase-out student were the lesser of:

   - The amount of the student's original benefit in effect for August 1981 reduced by 50%; or

- The student's share of the family maximum.

3. September 1984 through April 1985. - Benefits payable to a phase-out student were the lesser of:

   - The amount of the student's original benefit in effect for August 1981 reduced by 75%; or

   - The student's share of the family maximum.

C. Termination. All phase-out students were terminated by August 1985. April 1985, however, was the last month for which benefits could actually be paid to phase-out students. Survivor students were terminated mechanically and were sent a termination letter in May 1985. Field offices were also sent a copy of the termination notice.

D. Redistribution of Family Benefits. When a student's share of the family maximum or O/M was not payable or was reduced because of the 1981 SS Act Amendments, the portion not payable to the student was redistributed among other family members to provide additional benefits, up to each beneficiaries statutory maximum.

Field offices were furnished with a microfiche of the 1982, 1983 and 1984 adjustments. See FOM-I-1615 for a description of the microfiche. The 6-1-85 operation was documented with file copies of the termination letters. Effective 6-1-85 redistribution of family benefits was done manually in both retirement and survivor cases.

IV. Continuing Entitlement

When a phase-out student who was previously paid a Child's Annuity or included in the O/M computation of the employee's annuity as an FTS resumed FTA, benefits could have been reinstated effective with the same date on which they were previously suspended.

Example: A student ceased full-time attendance on May 15 and his annuity was suspended effective June 1 because he did not intend to resume FTA. He resumed FTA on September 6. His entitlement went back to June 1. As a phase-out student, however, he could not be paid for May through August.

V. Re-entitlement

A phase-out student, whose Child's Annuity or inclusion as an IPI in the O/M was terminated after August 1982, could not become re-entitled.

A phase-out student, whose inclusion as an IPI in the O/M was terminated before September 1982, could have become re-entitled before June 1985 if he:

- was under age 22 (actual or deemed),
- was a full-time student, and
- had not married since he was last entitled, or if he had married, the marriage was void or annulled.

Example 1: A student who was included as an IPI in the O/M in August 1981 was in actual FTA through May 1982, and during the spring 1982 policing indicated he would be resuming FTA in September 1982. In September 1982, the student changed his intent to resume FTA and his entitlement terminated after September 1982. Although the student resumed actual FTA in January 1983, he cannot become re-entitled.

Example 2: A child who was included as an IPI in the O/M in August 1981 ceased FTA at a post-secondary EI in April 1982. He resumed FTA in October 1983. He could become re-entitled because the termination event took place prior to September 1982.

If this child ceased FTA after August 1982, he cannot again be re-entitled because the controlling event was the termination happening after August 1982.

Appendix E - History Of Student Adjustments

A student's annuity under the Railroad Retirement Act consists of a tier I amount, which is computed under the social security formula, and a tier II amount, which is computed under the railroad retirement formula. Benefits to new students were paid to a more narrowly defined category of individuals. Since no conforming amendments were made to the Railroad Retirement Act until August 1983, entitlement provisions for a student annuity remained unchanged, however, the annuity amount payable was changed. This appendix will provide a brief description of the actions taken to implement the new procedures.

All students were classified into one of two categories; phase-out or non phase-out. Since phase-out and non phase-out students were treated differently as far as entitlement, termination events and annuity computations, the first step in determining how a student's annuity was affected by the 1981 amendments was to classify the students already on the rolls as either a phase-out or a non phase-out student.

As part of the March 1982 monitoring of students, the field offices made designation determinations of all students for which they had active files and who had filed an AA-19s before March 1, 1982. Determinations for students who had filed an application on or after March 1, 1982 were made by claims examiners. A special letter was sent by the field offices advising students of their classification and the changes in payment of their annuity.

In May 1982, there was a mechanical job to suspend the annuities of phase-out students. Those annuities were reinstated by a September 1982 job. The September mechanical job was done in two parts, Part I reinstated the student's annuity and Part II

readjusted the annuities of family group members and paid-out any accrual due because the student was not paid. In May 1983 and 1984 a mechanical job was run to suspend all phase-out students and adjust family group members. In May 1985 a mechanical program terminated all remaining phase-out students. Family groups' annuity rates were manually adjusted. The annuities were reinstated in a September 1983 and 1984 job.

Non phase-out students were divided into four categories; KS (1974 Tier II, Tier I terminates before or on 8/82), TS (9/74 Tier II, Tier I may remain payable after 8/82), NS (1981 Tier II, Tier I may remain payable after 8/82), PS (1981 Tier II, Tier I terminates before or in 8/82). In August 1982, a mechanical program was run to terminate the annuities of non phase-out students having beneficiary symbol KS; and suspend the annuities of non phase-out students having beneficiary symbol PS. The tier II for "PS" type students was reinstated manually in the modular units.

The 1983 Railroad Retirement Amendments conformed student benefits under the Railroad Retirement Act to the Social Security Act. A new category of student, LS, (1981 tier II who attained age 18 or was first entitled in September 1983 or later) was created.

Appendix F – Student Legislative History

The Retirement O/M Student Legislative History is in RCM 1.5, Appendix B

The Survivor Student Annuity Legislative History is in RCM 2.4, Appendix A

Appendix A – Lump-Sum Death Benefit Legislative History

Effective Date	LSDP Provision
Employee deaths on or after 1-1-47	LSDP equal to 8 times Basic Amount (BA) payable when no person is eligible for monthly survivor benefits in month of employee's death. Priority of payment: (1) widow(er); (2) children; (3) parents; (4) payers of employee's B/E. Deferred LSDP payable in same priority as LSDP if total insurance annuities paid in first year after employee's death are less than LSDP.
Employee deaths on or after 10-30-51	Maximum LSDP increased to 10 times BA.
Employee Deaths on or after 10-1-58	LSDP priority changed to (1) "living with" widow(er); (2) payers of employee's B/E.
Employee deaths on or after 10-1-65	Deferred LSDP only payable to "living with" widow(er).
10-30-66	FH eligible for LSDP if: (1) person who assumes responsibility for B/E assigns payment to FH; or (2) after 90 days after DOD, no one has assumed responsibility for B/E. LSDP to equitably entitled persons paid in following priority: (1) FH expenses; (2) grave opening and closing expenses; (3) burial plot expenses; (4) any remaining expenses.
Employee deaths on or after 1-1-75	The new law divides employees who die on or after 1-1-75 into two categories for LSDP purposes. The conditions for paying the LSDP (and deferred LSDP) are not changed. However, the employee does not need sufficient quarters of coverage to be insured under the SS act, for an LSDP to be payable. Category 1 - Employees who have at least 120 months of creditable RR service before 1975.

	The maximum LSDP is still equal to 10 times the basic amount. However, in computing the BA, the employee is deemed to have died on 1-1-75 and RR and SS earnings after 1974 are disregarded. Category 2 - Employees who acquire their 120the month of creditable RR service after 1974. The maximum LSDP is three times the PIA or $255, whichever is less. The LSDP may be less than $255 if the PIA bend points are reduced to the deceased employee's non-covered service pension. To receive the LSDP, or the deferred LSDP, the widow(e) must have been "living in the same household" as the employee when he died.
Employee deaths after August 1981	If the employee belongs to Category 2 above, the widow(er) living in the same household as the employee is the only beneficiary who can receive the LSDP.
Employee deaths on or after 10-1-81	If employee acquired 120th month of RR service before 1975, an LSDP is payable if a surviving divorced spouse is the only person eligible for monthly benefits in the month of the employee's death.
Employee deaths after December 2001	LSDP payable based on the earnings record of a deceased employee who had less than 120 months of creditable railroad service, but had at least 60 months of creditable RR service after 1995, an SS Act insured status and a current connection with the railroad industry.

Appendix B - Tax Exempt Organizations

B1. Organizations Tax Exempt Under Sec. 501(c)(3) Of The IRC

The following organizations are organized and operated exclusively for religious, charitable, or educational purposes (as such, they are considered exempt from income tax under sec. 501(c)(3) of the Internal Revenue Code:

- American Red Cross, local chapters;
- Boy Scouts of America;

- Churches, local, of known and recognized denominations;
- Girl Scouts of America;
- Goodwill Industries;
- Salvation Army;
- Volunteers of America;
- Young Men's Christian Association;
- Young Men's Hebrew Association;
- Young Women's Christian Association;
- Young Women's Hebrew Association.

B2. Fraternal Organizations Tax Exempt Under Sec. 501(c)(8) Of The IRC

The following nationally known and recognized beneficiary societies and their local lodges, chapters, etc., are exempt from income tax under sec. 501(c)(8) of the IRC:

- Artisan's Order of Mutual Protection
- American Slovenian Catholic Union
- B'nai B'rith
- Catholic Daughters of America
- Catholic Workman
- Catholic Association of Foresters
- Daughters of America
- Degree of Honor Protective Association
- Eagles, Fraternal Order of
- Elks, Benevolent Protective Order of
- First Catholic Slovak Union of the USA
- Foresters, Independent Order of
- Greater Beneficial Union of Pittsburgh

- Hibernions of America, Ancient Order of
- Hungarian Reform Federation of America
- Knights of Columbus
- Knights of the Golden Eagle
- Knights of Pythias
- Loyal Christian Benefit Association
- Masonic Order (see below)
- Modern Woodmen of America
- Moose, Loyal Order of
- National Slovak Society of the USA
- Odd Fellows, Independent Order of
- Owls, Order of
- Police and Fireman's Insurance Association
- Polish Falcons of America
- Polish National Alliance of the U.S. of North America
- Polish Roman Catholic Union of America
- Praetorians
- Protected Home Circle
- Redmen, Improved Order of
- Royal Neighbors of America
- Royal Arcanum, Supreme Council of
- Scottish Clans, Order of
- Security Benefit Association
- Slovene National Benefit Society

- Sons of Italy in America
- Standard Life Associations
- Thriven Financial For Lutherans
- Travelers Protective Association of America
- USA Life Insurance
- United American Mechanics, Junior Order of
- United Commercial Travelers of America
- Verhovay Fraternal Insurance Association
- Western Fraternal Life Association
- Woman's Benefit Association
- Woodmen Circle, Supreme Forest of
- Woodmen of the World
- Woodmen of the World Life Insurance Society
- Workman's Benefit Fund of the USA
- Workmen's Circle

The following are some of the many Masonic orders (the rule on tax exemption also applies to any bonafied Masonic order not included in this list):

- Ancient Accepted Scottish Rite of Free Masonry
- Ancient Arabic Order of the Nobles of the Mystic Shrine
- Ancient Egyptian Order of Sciots
- Ancient Free and Accepted Masons
- Ancient and Illustrious Order of Knights of Malta
- Ancient York Masons
- Blue Lodge
- Eastern Star

- Grottoes
- Knights Templar
- Mystic Order of the Veiled Prophets of the Enchanted Realm
- Order of the White Shrine of Jerusalem
- Order of Amaranth
- Order of DeMolay for Boys
- Order of Job's Daughters
- Order of Rainbow for Girls
- Royal Arch Masons
- Royal and Select Masons
- Tall Cedars of Lebanon

Appendix C - Dispensing With Formal Administration of Estate

Introduction

Where the amount of a payment under the RRA due the estate of a deceased person is $1,000 or over, the appointment of an administrator is ordinarily required. Such an appointment is not required in a case where the statutes of the State are such as to permit the court in its discretion, to release the estate funds if the estate's assets do not total more than a specific dollar amount, pursuant to a duly executed affidavit. If the benefit will be paid under the small estate statutes, only one certified copy need to be submitted, however, each of the distributees named must file an application, AA-21.

The following lists certain States which have a small estate statute and certain other information concerning the requirements that must be met in the case. Even though the case apparently meets all the requirements set forth in the statute, the court in its discretion does not necessarily have to dispense with formal administration. If the affidavit received does not meet the requirements shown in this appendix, refer the case to the Deputy General Counsel.

The States listed in this appendix do not comprise all the States which have a small estate statute. Only those States for which the Social Security Administration has made a favorable ruling in this connection are listed. The RRB Deputy General Counsel has determined that RRB may apply the rules as written in Social Security Program Operations Manual System. When a claimant, attorney or representative of a claimant insists that a payment in excess of $1,000 may be made under the probate laws of the

State in question without formal administration, and such State is not listed in this appendix, field employees are to refer the inquiry to headquarters. Headquarters (ORSP) employees are to refer the inquiry to the Deputy General Counsel.

ALASKA

Alaska Statutes, Title 13, Section 13.16.080 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

ARKANSAS

Arkansas Statutes Annotated sec. 62-2127 provides that the distributees of an estate shall be entitled thereto without the appointment of a personal representative when (a) no petition for the appointment of a personal representative is pending or has been granted, (b) forty-five (45) days have elapsed since the death of the decedent, (c) the value, less encumbrances, of all property owned by the decedent at the time of death, excluding the homestead and the statutory allowances for the benefit of a spouse or minor children, if any, of the decedent, does not exceed twenty-five thousand dollars ($25,000); and when there is furnished to any person owing any money, having custody of any property, or acting as registrar of transfer agent of any evidence of interest, indebtedness, property or right, a copy of an affidavit, certified by the clerk of the probate court of the county of proper venue for administration, which states:

(1) That the decedent left no will or that his will have been admitted to probate, and

(2) That there are no unpaid claims or demands against the decedent or his estate, and

(3) An itemized description and valuation of the property of the decedent, including the homestead, and

(4) The names and addresses of persons having possession of the property, and

(5) The names, addresses and relationship to the decedent of the persons entitled to and who will receive the property.

Arkansas Statutes Annotated sec. 62-2128 provides that "the person making payment, transfer or delivery pursuant to the affidavit described in Section 66 sec. 62-2127 shall be released to the same extent as if made to a personal representative of the decedent and he shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit ***."

ARIZONA

Ariz. Rev. Stat., Title 14, Section 3971 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

CALIFORNIA

California Probate Code, Section 13100, provides that if the gross value of the decedent's real and personal property in the state (excluding certain property described in Sections 13050 of the Code) does not exceed $100,000 and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property: (a) Collect any particular item of property that is money due the decedent. (b) Receive any particular item of property that is tangible personal property of the decedent. (c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

In order to do this, an affidavit or declaration under penalty of perjury under the laws of the state must be furnished to the holder of the decedent's property. The information that must be included on the affidavit or declaration is described in Section 13101 of the Code.

COLORADO

Colorado Probate Code, Section 15-12-1201, provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if the person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

DELAWARE

The Delaware Code Section 2306 provides that the spouse, child, parent, sibling, grandparent, grandchild, aunt or uncle, niece or nephew, or first cousin of a decedent or the trustee of a trust created by the decedent, shall (with preference granted to the first six categories in descending order) be entitled to the decedent's personal estate without formal administration or probate of a will, upon presentation of an affidavit which states:

(1) No petition for formal administration is contemplated;

(2) 30 days have passed since decedent's death;

(3) The total value of non-exempt property does not exceed $12,500.00;

(4) All known debts are paid or provided for;

(5) Any amount of estate funds reserved under Delaware Code section 2308 has been paid, provided for, or waived; and

(6) Decedent was not the sole owner of any real estate.

Section 2307 of the Delaware Code states that a person making a payment in reliance upon such an affidavit is released from further liability to the same extent as if the payment had been made to a personal representative.

FLORIDA

Florida Statutes Annotated Section 735.04 (effective January 1, 1972) provides that the County Judge may dispense with the administration of an estate when the decedent, testate or intestate, died, either a resident or nonresident; and the estate is not in debt and does not exceed $10,000 and there is a sole heir or surviving spouse, or the surviving spouse, if any, and all heirs agree upon the distribution of the estate.

Florida Probate Code Sections 735.101 through 735.107 provide for family administration of the estate of an individual when it appears:

(1) In an intestate estate, that the heirs at law of the decedent consist solely of a surviving spouse, lineal descendants, and lineal ascendents, or any of them.

(2) In a testate estate, that the beneficiaries under the will consist of a surviving spouse, lineal descendants, and lineal ascendents, or any of them, and that any specific or general devise to others constitutes a minor part of the decedent's estate.

(3) In a testate estate, that the decedent's will does not direct administration as required by chapter 733.

(4) That the value of the gross estate, as of the date of death, for federal estate tax purposes is less than $60,000.

(5) That the entire estate consists of personal property or, if real property forms part of the estate, that administration under chapter 733 has proceeded to the point that all claims of creditors have been processed or barred." (Section 735.101 quoted in part.)

When a petition for family administration is filed, the court issues an order of family administration which gives the distribution of assets. When the order lists the asset and to whom it is to be distributed, the property in question is to be distributed to the name

individual. Therefore, if the benefit due the estate from the Railroad Retirement Board were listed, it would be payable to the person named in the Order of Family Administration.

GEORGIA

Title 113, Section 1232 of the Code of Georgia, Annotated, provides as follows:

"When any person owning real or personal property located in this State has died intestate, and no administration in this State has been had upon the estate, any heir at law of such deceased owner may file a petition in the court of ordinary of the county of the residence of the deceased owner, if such deceased was a resident of this State, or in the county in which such property is located, if the deceased was not a resident of this State, praying for an order that no administration is necessary. The petition shall be sworn to, shall show the names, ages and places of residence of all of the heirs at law of such deceased owner, the amounts and description of the real and personal property in this State owned by the deceased owner, that the estate of decedent owes no debts, and that the heirs at law have agreed upon a division of the estate amicably among themselves."

Subsequent sections of the Code provide that notice of the petition shall be given to persons interested in the estate so that they may file objections to the granting of the order; that is, shall be the duty of the Ordinary to ascertain who are the heirs at law of the decedent; and that the Ordinary is authorized to enter an order finding that administration is not necessary.

IDAHO

Gen'l. Laws of Idaho, Section 15-125-1201 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

ILLINOIS

Under Section 247 of chapter 3, Smith - Hurd Illinois Statutes, Annotated, it may be possible to secure from the court having jurisdiction, an order dispensing with formal administration where:

1. There are no unpaid creditors of the estate; and

2. All surviving heirs are residents of the State of Illinois and are of legal age; and

3. All persons in interest desire to settle the estate without administration; and

4. No tax would be due the United States or the State of Illinois.

It may be possible to dispense with formal administration even without a court order by filing of an affidavit which complies with the conditions set forth below:

In cases where the total assets of the deceased person's estate, including the benefit payable under section 6(c)(1) of the RR Act, is not more than $5,000 ($3,000 before 7-1-65) payment may be made without court order, to the heirs named in an acceptable affidavit filed by one of the heirs who is a resident of Illinois.

INDIANA

Sections 7.203 to 7.207 inclusive, Title 7, Burns Indiana Statutes Annotated (1953) provided that a petition may be made to the appropriate court for an Order of No Administration for payment of the amounts, less than $5,000 ($3,500 before 9-1-71), due the heirs of the estate. Where the total assets of the estate do not exceed $5,000 ($3,500 before 9-1-71), payment of the amount due to the heirs of the estate, may be made to those named in the court order as entitled to the estate. The court order should state that all debts have been fully paid and settled and that the RRB shall be released from any and all further liability on said claim to the estate, or heirs or assigns.

IOWA

Section 633.356 of the Iowa Probate Code provides that when the value of an estate is less than $25,000.00 and 40 days have passed since the death of the decedent, the person or persons who are entitled to certain property may obtain that property by submitting an affidavit attesting to the following items listed in subsection 3 of the provision: the decedent's name and the date and place of his or her death; that at least 40 days have elapsed since the decedent's death; that the gross value of the estate does not exceed $25,000.00; a description of the property concerned; the name, address and social security number of the successor(s) to the property and whether the successor(s) is under a legal disability; if applicable, that an attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in the office of a clerk of the district court; that no one other than those listed is entitled to the property; that the affiant requests that the property be transferred to the successor(s); and that the affiant affirms under penalty of perjury that the affidavit is true and correct.

KANSAS

Sections 59-2239, 59-2250 and 59-2251 of the General Statutes of Kansas provide that whenever any person has been dead for more than 9 months and has left property, or any interest therein, and no will has been admitted to probate, or there has been no formal administration, and no demands or liens against the estate of the said decedent has been filed or remain unsatisfied, a petition may be made to the probate court for a determination of descent and for issuance of a decree of descent. Where formal administration is not made within 9 months from the date of death, the rights of creditors

in personal property of the estate are determined in such a proceeding and payment of the residue may be made on the basis of the court order.

LOUISIANA

The courts have issued "Judgement of Possession" in certain cases where the estate is over $1,000 directing that a certain person or persons are placed in possession of all of the property of the deceased, and ordering all banks, corporations, agencies or person in possession or control of any property, rights, or credits of the succession, to deliver and transfer such property to such person or persons. The requirements that must be met before the court will consider "Judgement of Possession," are not specifically set out in the State statute.

The statutory provision dealing with (a) simple acceptance of a succession by an heir, (b) his personal liability under such acceptance and (c) the conditions under which he may revoke his acceptance, are Articles 947, 1013, and 1009, respectively, of the Louisiana Civil Code.

Article 3431 of L.S.A. Code of Civil Procedure states that it is unnecessary to formally administer a "small succession" of an intestate decedent leaving no immovable property, and whose sole heirs are his descendants, ascendants, or surviving spouse. Article 3421 L.S.A. Code of Civil Procedure defines a "small succession" as property in Louisiana having a gross value of $50,000 or less. Article 3432 reads in full:

> "When it is not necessary under the provisions of Article 3431 to open judicially a small succession, the competent major heirs of the deceased, and the surviving spouse thereof, if any, may submit to the inheritance tax collector one or more multiple originals of their affidavit setting forth:
>
> (1) The date of death of the deceased, and his domicile at the time thereof;
>
> (2) The fact that the deceased died intestate and left no immovable property;
>
> (3) The marital status of the deceased, and the names and addresses of the surviving spouse, if any, and of the heirs and their relationship to the deceased; and
>
> (4) A brief description of the movable property left by the deceased, and a showing of the value of each item thereof, and the aggregate value of all such property, at the time of the death of the deceased."

Article 3434 L.S.A. Code of Civil Procedure provides that presentation of a multiple original of an affidavit executed pursuant to article 3432, bearing the endorsement of the inheritance tax collector that no inheritance taxes are due, constitutes proper authority to deliver property or made any payment described in the affidavit.

MAINE

18A Maine Revised Statutes Annotated section 3-1201 essentially adopts the small estates provision of the Uniform Probate Code which provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

MASSACHUSETTS

Massachusetts has two statutes dealing with residents' estates comprised entirely of personal property not exceeding $5,000. Chapter 195, section 16, Annotated Laws of Massachusetts, General Laws, provides for informal administration by the decedent's surviving spouse, child, grandchild, brother, sister, parent, niece, nephew, aunt, or uncle, providing that they are of legal capacity and themselves state residents. Informal administration may also be undertaken by guardians of institutionalized decedents. Chapter 195 16A provides for voluntary administration by the individual named as executor by the decedent's will.

Under both section, the appropriate individual may, thirty days after decedents's death, and provided that no petition for letters testamentary or letters of administration has been filed, file with the probate court a sworn statement containing:

"(a) the name and residential address of the affiant, (b) the name, residence and date of death of the deceased, (c) the relationship of the affiant to the deceased, (d) a schedule showing every asset of the estate know to the affiant and the estimated value of each such asset, (e) a statement that the affiant has undertaken to act as voluntary administrator of the state of the deceased and will administer the same according to law, and apply the proceeds thereof in conformity with this section, (f) the names and addresses of surviving joint owners of property with the deceased, know to the affiant, and (g) the names and addresses know to the affiant of the persons who would take ... in the case of intestacy."

In addition, where the decedent has left a will, section 16A requires the affiant to list the names and addresses of persons who would take property under the will. In either case, the delivery of an asset listed in the statement upon presentation of the affidavit, discharges the deliverer in the same respect as if he had dealt with a duly appointed personal representative. Therefore, in order to pay a railroad retirement benefit under these statutes, the benefit must be listed as an asset of the estate in the affidavit.

MICHIGAN

Section 700.102 of the Michigan Compiled Laws Annotated (1980) provides that if the estate of a deceased person consists of property of the value of $2,500 or less, the

court may issue an order that the property be turned over to the surviving spouse, if any, or to the payer of burial expenses, and if there is not a spouse or such other payee, to the heirs of the decedent.

MINNESOTA

M.S.A. Section 524.3 - 1201 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

MISSISSIPPI

The Mississippi code Section 91-7-322 states:

"(1) Except as may be otherwise provided by section 81-5-63, 81-12-135, 81-12-137 and 91-7-323, at any time after 30 days from the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment when due of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent, as defined herein, upon being presented an affidavit made by the successor stating:

(a) That the value of the entire estate of the decedent, wherever located, excluding all liens and encumbrances thereon, does not exceed ($5,000.00);

(b) That at least (30) days have elapsed since the death of the decedent,

(c) That no application or petition for the appointment of a personal representative of the decedent is pending, nor has a personal representative of the decedent been appointed in any jurisdiction; and

(d) The facts of relationship establishing the affiant as a successor of the decedent.

(2) For the purpose of this section, "successor" means the decedent's spouse; or, if there is no surviving spouse of the decedent, then the adult with whom any minor children of the decedent are residing; or, if there is no surviving spouse or minor children of the decedent, then any adult child of the decedent; or, if there is no surviving spouse or children of the decedent, then either parent of the decedent.

(3) Any person who is the successor of the decedent, because the person in an adult with whom the minor children of the decedent are living, shall receive any property or payments of or for the decedent for the use and benefit of said children.

(4) The successor of a decedent, upon complying with the provisions of subsection (1) of this section, shall be empowered to negotiate, transfer ownership and exercise all other incidents of ownership with respect to the personal property and instruments described in subsection (1) of this section.

(5) Any person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to the provisions of subsection (1) of this section shall be discharged and released to the same extent as if such person had dealt with a personal representative of the decedent. Such person shall not be required to see to the proper application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered, in accordance with the provisions of subsection (1) of this section, refuses to pay, deliver, transfer or issue any personal property or evidence thereof to the successor, such property or evidence thereof may be recovered or its payment, delivery, transfer of issuance compelled upon proof of the successor's right in a proceeding brought in chancery court for such purpose by or on behalf of the persons entitled thereto. Any person to when payment, delivery, transfer or issuance is made shall be answerable and accountable to the personal representative of the estate, if any, or to any other person having a superior right."

MISSOURI

The probate Code of Missouri permits direct payment to the distributees of an estate not exceeding $5,000 ($3,500 before 9-30-71) in value (when no spouse or unmarried children survive, the decedent left no will, no unpaid debts or claims exist, and no formal administration is pending or in effect) on the filing, with the probate court of the county of decedent's residence, of an affidavit setting forth certain facts in connection with the decedent and his property (Vernon's Annotated Missouri Statutes (1955 Missouri Probate Code Sec. 473.097)). In view of this, and since by Section 473.100 of the Code a person making payment pursuant to the affidavit prescribed in Section 473.097 "is discharged and released to the same extent as if payment were made to an executor or administrator of the decedent," payment of the amount due under the RR Act to the estate may safely be made, without formal administration of the estate, to the distributees of the estate under the procedure set forth in section 473.097 of the Missouri Probate Code as amended in 1955.

MONTANA

Rev. Code of Mont. Section 91A-3-1201 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an

affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

NORTH CAROLINA

North Carolina General Statutes Section 28A-25-6 provides that if no administrator has been appointed, the Clerk of the Superior Court has authority to receive and disburse any amounts less than $2,000 due the estate. The Clerk of the Superior Court only has this authority when the employee dies intestate.

In addition, North Carolina General Statutes section 28A-25-1 provides that any person indebted to the decedent may make payment to a person claiming to be an heir of the decedent not otherwise disqualified, upon presentation of a certified copy of an affidavit properly filed in the office of the clerk of the superior court. The affidavit must state:

"(1) The name and address of the affiant and the fact that he or she is an heir of the decedent;

(2) The name of the decedent and his residence at the time of death;

(3) The date and place of death of the decedent;

(4) That 30 days have elapsed since the death of the decedent;

(5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed five thousand dollars ($5,000);

(6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;

(7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and

(8) A description sufficient to identify each tract of real property owned by the decedent at the time of his death."

Section 28A-25-2 provides that a "person" who delivers property pursuant to an affidavit meeting the requirements of section 28A-25-1 is discharged to the same extent as if he had dealt with the personal representative of the decedent.

NORTH DAKOTA

N.D.C.C., ch. 30.1 Section 23-01 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or

property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a person representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

NEBRASKA

N.R.R.S. 1943, Section 30-24, 125 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

NEVADA

Section 146.080 of the Nevada Revised Statutes (Nev. Rev. Stat. 146.080 (1979)) provides for the transfer of personal property of a decedent not exceeding $5,000 in value, without letters of administration or awaiting the probate of a will. The beneficiary may, 40 days after the death of the decedent, collect any money due the decedent by furnishing an affidavit which should provide as follows:

(a) The affiant's name and address, and that the affiant is entitled by law to succeed to the property claimed;

(b) That the decedent was a resident of Nevada at the time of his death;

(c) That the gross value of the decedent's property in this state, except amounts due to the decedent for services in the Armed Forces of the United States, does not exceed $5,000, and that the property does not include any real property nor interest therein nor lien thereon;

(d) That at least 40 days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent, including funeral and burial expenses, have been paid or provided for;

(g) A description of the personal property and the portion claimed;

(h) That the affiant has given written notice, by personal service or by certified mail, identifying his claim and describing the property claimed to every person whose right to succeed to the decedent's property is equal or superior to that of the

affiant, and that at least 10 days have elapsed since the notice was served or mailed; and

(i) That the affiant is personally entitled to full payment or delivery of the property claimed or is entitled to payment or delivery on behalf of and with the written authority of all other successors who have an interest in the property.

NEW HAMPSHIRE

Effective 7-3-61, section 553.31 provides that 30 days after death, where an estate consists entirely of personal property not exceeding $2,000, the decedent's spouse, parent, lineal descendant, brother or sister of legal age domiciled in New Hampshire, may file an affidavit as voluntary administrator in the probate court of the county where the deceased was domiciled. The court clerk will then issue a certified copy of the affidavit to be used to collect assets of the estate. The voluntary administrator shall pay the debts and distribute the balance in accordance with the law of descent and distribution, and is personally liable for his actions.

NEW JERSEY

Section 3A:6-6 of the New Jersey Statues provides that, effective January 18, 1980, where an individual dies without a will and leave no surviving spouse, one who is next of kin, after obtaining written consent from any other next of kin, may execute an affidavit before the surrogate of the county where the decedent died which will entitle the affiant to receive the personal assets of the decedent for the benefit of all next of kin and creditor. Such summary administration is limited to estates where the value of real estate and personal property do not exceed $5,000. Furthermore, section 3A:6-6 shall fully discharge any person making payment pursuant to its provisions from any liability with regard to the administration of the decedent's estate.

NEW MEXICO

N.M.S.A. Section 45-3-1201 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

NEW YORK

The Surrogate Court Act, Article 8 B, effective 3-1-64, provides for the settlement of small estates without court administration. A small estate is defined as the estate of a resident who dies intestate leaving personal property of a gross value of $3,000 or less, without regard to his real property, and provides for a voluntary administrator who may be the spouse, child, grandchild, parent, brother or sister of the decedent, and a

resident of New York. The administrator is required to file an affidavit with the Clerk of the Surrogate Court, who sends notice to each distributee name in the affidavit. A certified copy of the affidavit is delivered to anyone holding personal property of the decedent and constitutes a release for delivery of estate assets pursuant to the affidavit. An accounting must be made by the voluntary administrator to the Clerk of the Court.

Effective 9-1-65, in cases where the assets of an estate do not exceed $3,000, payments may be made to the surviving spouse, or an adult child, or a parent, or a brother or sister of the deceased, in the order named, upon receipt of an acceptable affidavit.

OHIO

Under certain circumstances the formal administration of an estate can be dispensed under a provision of the Ohio statutes. Section 2113.03 of the Ohio Revised Code provides, in part, as follows:

"(A) Upon the application of any interested party, ... the court, when satisfied that the assets of an estate are fifteen thousand dollars or less in value, and that creditors will not be prejudiced, may make an order relieving the estate from administration and directing delivery of personal property and transfer of real estate to the persons entitled to them".

"When a delivery, sale, or transfer of personal property has been ordered from an estate that has been relieved from administration, the court may appoint a commissioner to execute all necessary instruments of conveyance. The commissioner shall receipt for the property, distribute the proceeds of the conveyance upon court order, and report to the court after distribution."

"When the decedent died testate the will shall be presented for probate, and if admitted to probate, the court may relieve the estate from administration, and order distribution of the estate under the will."

OKLAHOMA

Section 58-393 of the Oklahoma Statutes provides that payments to a party may be made in connection with the death of an annuitant where an affidavit is submitted attesting that the estate concerned is less than $10,000.00; that no application or petition for the appointment of a personal representative is pending or has been granted; that each claiming successor is entitled to payment or delivery of the property in the proportions set forth in the affidavit; and that all taxes and debts of the estate have been paid or otherwise provided for or are barred.

OREGON

Sections 114.505 through 114.555 of the Oregon Revised Statutes deal with small estates. Section 114.535 provides authorization by the probate court for payment,

transfer or delivery of personal property to the person filing an "Affidavit of Claiming Successor Intestate Estate." A "Claiming Successor" is defined as an heir or devisee of the decedent. The Affiant" is, generally, the claiming successor. Such affidavit is allowed when the estate consists of personal property having a fair market value of $10,000.00 or less, or real property having a fair market value of $20,000.00 or less, or a combination of personal real property worth $10,000 or less or $20,000.00 or less respectively.

PENNSYLVANIA

Section 3102 of the Pennsylvania Probate, Estate and Fiduciary Code provides that when a Pennsylvania domiciliary dies leaving a gross estate not exceeding $10,000 (exclusive of any real estate or any wages, employee benefits, deposit accounts or life insurance payable pursuant to section 3101), any party in interest may petition for an order directing distribution of the property to the parties entitled thereto. Delivery of the property enumerated in the decree to the designated person has the same effect as decree of distribution after an accounting by a personal representative, with the exception that any party in interest may petition to revoke the decree within one year if an improper distribution is ordered.

A lump-sum death benefit may be paid pursuant to an order of distribution issued under section 3102 if that order directs that the benefit be paid to an individual as executor of the employee's estate. The lump sum may be paid regardless of whether the amount of the benefit is listed in the order, provided the assets of the estate and the amount of the lump sum combined do not exceed $10,000. The individual named as distribution agent in order of disbursement properly entered under section 3102 may be recognized as the personal representative of the employee.

Section 3101 of the Code provides, in pertinent part, that:

"(a) Wages, salary or employee benefits.--Any employer of a person dying domiciled in this Commonwealth at any time after the death of the employee, whether or not a personal representative has been appointed, may pay ... any employee benefits due to the deceased in an amount not exceeding $3,500 to the spouse, any child, the father or mother, or any sister or brother (preference being given in the order named) of the deceased employee. Any employer making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and he shall not be required to see the application thereof. Any person to whom payment is made shall be answerable thereof to anyone prejudiced by improper distribution."

Lump-sum benefits up to $3,500 may be paid to the relatives of a deceased employee pursuant to section 3101 in the order of preference specified therein if the benefits would otherwise be payable to the employee's personal representative.

SOUTH DAKOTA

In accordance with Section 29A-3-1201 of the South Dakota Codified Laws (SDCL), a lump-sum death payment is payable to the estate of the deceased employee without formal administration if an affidavit is submitted, signed by or on behalf of the applicant, that states the following:

- at least 30 days have elapsed since the employee's death;
- the value of the entire estate does not exceed $50,000.00;
- the deceased employee is not in debt to the Department of Social Services for medical assistance for nursing home or other medical institutional care;
- the applicant is entitled to the payment.

SDCL Section 29A-3-1202 further states that the statements in the affidavit do not need to be verified, and that any payment made in accordance with the affidavit is as if it were made to the personal representative of the deceased employee.

TENNESSEE

Section 30-2002 of Tennessee Statutes annotated defines a small estate as one which contains personal property not exceeding $10,000 in value. Section 30-2003 states that 45 days after the death of the decedent, one or more of the decent's heirs, next of kin, or, in the case of a will, the decedent's legatees or devisee may file an affidavit with the clerk of the court, provided that the court may reduce the 45-day period at its discretion. The affidavit must state (1) whether decedent left a will, (2) the creditors of the decedent and the amount due each, (3) a description of all property, and (4) the name, age, relationship and address of each heir, legatee or devisee, or next of kin. Payments owed the decedent's estate must be made to the affiant upon presentation of the affidavit, and payment so made discharge the person making the payment from further liability without the necessity of inquiry into the regularity of the document (section 30-2004).

TEXAS

Article 180 of the Texas Probate Code provides as follows:

"Effect of Finding That No Necessity for Administration Exists. When application is filed for letters of administration and the court finds that there exists no necessity for administration of the estate, the court shall recite in its order refusing the application that no necessity for administration exists. An order of the court containing such recital shall constitute sufficient legal authority to all person owing money, having custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right belonging to the estate, and to person purchasing or otherwise dealing with the estate for payment or transfer to the distributees of the

decedent, and such distributees shall be entitled to enforce their right to such payment or transfer by suit. Acts 1955, 54 Leg. Page 88, Chapter 55."

The effective date is established under a general provision of the Texas Probate Code which provides:

"Section 2, Effective Date and Application. (a) Effective Date. This Code shall take effect on and after January 1, 1956. The procedure herein prescribed shall govern all probate proceeding in county and probate courts brought after the effective date of this Act, and also all further procedure in proceedings in probate then pending, except to the extent that in the opinion of the court, with respect to proceedings or part thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

Per section 89 of the Texas Probate Code, a Court order admitting a will to probate as a "Muniment of Title" constitutes sufficient legal authority to all persons owing payment to the state for payment of the estate to person named in the will without administration. The "Muniment of Title" is a means by which the Court allows informal administration of a small estate. Once the "Muniment of Title" is in effect, it serves the same purpose and has the same legal authority as if the Court had ordered letters testamentary.

UTAH

U.C.A., Title 75, Section 3-1201 provides that any person indebted to the decedent or having possession of tangible personal property of the decedent deliver such debt or property to the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. The effect of payment by such person in accordance with the affidavit is the same as if such person dealt with a personal representative of the decedent's estate. Such person is thereby discharged and released of any further liability to the estate.

WISCONSIN

Wisconsin Statutes Annotated, sections 867.03, provides the following:

"(1) When a decedent leaves solely-owned property in this state which does not exceed $5,000 in value, any heir of the decedent may collect any money due the decedent, receive the property of the decedent if it is not an interest in or lien on real property and have any evidence of interest, obligation to or right of the decedent transferred to the affiant upon furnishing the person owing the money, having custody of the property or acting as registrar or transfer agent of the evidence of interest, obligation to or right, with an affidavit in duplicate showing:

(a) A description of and the value of the property to be transferred, and

(b) The total value of the decedent's property in this state at the date of decedent's death.

(2) Upon the transfer to the heir furnishing the affidavit, and mailing a copy of the affidavit to the Department of Revenue, the transferor is released to the same extent as if the transfer had been made to the personal representative of the estate of the decedent.

(3) This section is additional to the provisions of S. 103.39 for payment of decedent's wages by an employer directly to the decedent's dependents."

WYOMING

Section 2-1-201(a) of the Wyoming Statutes states that not earlier than 30 days after the death of the decedent, "any person indebted to the decedent" may make payment to a person or persons claiming to be the distributees of the property upon being presented with a certified copy of an affidavit which has been filed with the county clerk and states (1) the value of the estate does not exceed $150,000; (2) thirty days have elapsed since the death of the decedent; (3) no personal representative is or will be appointed in any jurisdiction; (4) the claiming distributee(s) relationship to the decedent; and (5) no other distributee(s) exist(s) with a right to succeed to the property under probate proceedings.

If payment is made pursuant to a properly executed affidavit, the person making payment is discharged to the same extent as if he had dealt with a formally appointed personal representative (Section 2-1-202).

Appendix D - Order of Descent and Distribution

The following is a summary of the laws of descent and distribution of intestate personal property of each State and the District of Columbia for use in cases where inheritance rights under state intestacy laws may determine eligibility.

Field office should use this appendix for information only. It should not be used as adjudicative material. Examiners will make all decisions regarding eligibility, with the aid of the General Counsel when necessary.

In determining inheritance rights to personal property in the various States, it should be understood that the property passes to the persons or classes named, and in such portions as are described.

Where none of the person named in the nearest (first) class of heirs of an intestate survive him, the persons named in the next succeeding class will, except as otherwise specified, take equally, if equal in degree of relationship, and by representation (per stirpes), if not equal degree.

ALABAMA

1. If a widow and no children or descendants of a deceased child survive, all to the widow. If there is one child or descendants of a deceased child, the widow gets

one-half; of more than one child, children, or descendants of deceased children are not more than four survive, the widow gets a child's share; and if there are more than four, as above, she gets one-fifth. An adopted child will inherit from adopting parents as though he were their natural child or issue, and the adopted child's surviving spouse and descendants will inherit through him from his adopting parents as though he were their natural child or issue.

2. If a woman is survived by a widower, he takes one-half of the personalty.

3. Subject to the widow's or widower's share, to the children or their descendants, in equal parts, with children of a deceased child taking by representation.

4. To the father and mother in equal parts.

5. If only one parent survives, one-half to the parent and one-half to the brothers and sisters or their descendants by representation.

6. If one parent and no spouse, child, descendant of a child, brothers and sisters or their descendants survive, all to the parent.

7. To the brothers and sisters of the intestate, with children of a deceased brother or sister taking their parents' share by right of representation.

8. If no child, descendant of a child, parent, brother, sister or descendant of a brother or sister survive, all to spouse.

9. To the next of kin of the intestate in equal degree, in equal parts.

Those of half blood inherit equally with those of whole blood.

No Small Estates Statute.

ALASKA

1. All to the spouse, if there is no issue; if issue survives, one-half to the widow and one-half to child, children, and issue of a deceased child, by representation. An adopted child becomes the child, legal heir, and lawful issue of the adopting parents.

2. If no spouse, to children equally, with issue of a deceased child taking by representation.

3. To mother and father equally, or the survivor.

4. To the brothers and sisters of the intestate in equal shares and to the issue of any deceased brother or sister by representation.

5. To next of kin in equal degree, except where there are two or more related in equal degree but claiming through different ancestors, those claiming through nearest ancestor are preferred.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estates of $2,000 or less.

ARIZONA

1. If a husband or wife and a child, children or descendant of children survive, one-third to the husband or wife, with the remainder to the child, children and descendants. When a part of one class is dead and a part living, the issue of those dead take share of their deceased parent by representation.

2. If no child, children or descendants of children survive, all to the husband or wife.

3. If no husband or wife survives, all to the children and their descendants. An adopted child becomes entitled to full rights of a child of full blood and heir at law, as if born to adopting parents.

4. To the mother and father equally.

5. If only one parent survives, one-half to the parent and one-half to brothers and sisters, and to their descendants.

6. If only one parent and no brothers and sisters or their descendants survive, all to the parent.

7. To brothers and sisters and to their descendants.

8. The estate is divided into moieties (halves) one of which shall go to the paternal grandparents and their descendants and the other to the maternal grandparents and their descendants, to be divided one-half to grandparents and one-half to descendants.

Where the entitled collateral kindred consists of persons of whole blood and also persons of half blood, those of half blood inherit only half as much as those of whole blood. If all are half blood, they inherit whole portions.

Small Estates Statute - Estate of $500 or less. Effective 6-20-68, Estate of $1500 or less. Effective 1-1-74 the amount is increased to $5,000 or less.

ARKANSAS

1. Spouse is entitled to one-third of personalty.

2. Children or their descendants are entitled to two-thirds if spouse survives, or to all if no spouse survives with descendants of a deceased child taking by representation. If spouse and no child or descendant of a child survives, one-half to spouse and one-half to those next in line. An adopted child may inherit from but not through adoptive parent.

3. To the mother and father equally, with all to the surviving parent.

4. To the brothers and sisters of deceased, with the children of a deceased brother and sister taking their parents' share by representative.

5. To grandfather, grandmother, uncles, aunts in equal parts, with descendants taking by representation.

6. One-half to brothers and sisters, and their descendants of the father, and one-half to brothers and sisters, and their descendants, of the mother of deceased, i.e., uncles and aunts of deceased. If all those in a class survive the intestate, they take per capita or equal shares. If part are dead, their descendants take by representation.

7. If no children or their descendants, father, mother or their descendants or paternal or maternal kin capable of inheriting survive, all to the spouse, and if in addition no spouse survives, to the heirs of the spouse.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $3000 or less.

CALIFORNIA

1. If a spouse and one child, or the issue of a deceased child survive, one-half to the spouse and one-half to the child or issue, with the issue of a deceased child taking by representation.

2. If a spouse and more than one child, or a child and issue of a deceased child or issue of deceased children survive, one-third to the spouse and remainder in equal shares to the children, with issue of a deceased child taking by representation. If all descendants are of the same degree, they share equally, otherwise they take by representation.

3. If no spouse survives, all to issue, and if all descendants are of equal degree, they share equally, otherwise they take by representation. An adopted child may inherit as if a natural child or issue from or through the adopting parent.

4. If no issue, the spouse takes one-half and one-half to the parents, with the full one-half to the surviving parent, if one is dead. If both parents are dead, one-half to their issue and the issue of either, by representation.

5. If a spouse, but no issue, parent, brother, sister or issue of brother or sister survives, all to the spouse.

6. To mother and father equally with all to the survivor.

7. To the brothers and sisters, with the descendants of deceased brothers and sisters taking by representation.

8. To the next of kin in equal degree, but if there are claimants in equal degree of kin to the deceased and claiming through different ancestors, those claiming through the nearest ancestor must be preferred.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $2000 on affidavits filed before 11-8-67. Estate of $3000 on affidavit filed on or after March 7, 1974. The affidavit must be a surviving relative (or his conservator or guardian).

COLORADO

1. If a spouse and child, children or descendants of children survive, one-half to the spouse, and one-half to the child, children with descendants of a decease child taking by representation.

2. If no child, children or descendants of a deceased child survive, all to the spouse.

3. If no spouse survives, to the child or children, with descendants of a deceased taking by representation. An adopted child and his descendants shall be entitled to inherit from the adoptive parents as if born in lawful wedlock to them, but may not inherit through an adoptive parent.

4. To parents equally, with all to survivor.

5. To the brothers and sisters of intestate with descendants of the deceased brothers and sisters taking by representation.

6. To the grandchildren, uncles and aunts in equal shares, with the descendants of the deceased uncles and aunts taking their parents' share by representation.

7. To the nearest lineal ancestors and their descendants, with the descendants taking by representation.

If any collateral relatives of the whole blood survive, relatives of the half blood take only a half share.

Small Estates Statute - Before June 8, 1967 estate of $1,000 or less; effective June 8, 1967 estate of $5,000 or less.

CONNECTICUT

1. If a spouse and no children or descendant of deceased children survive, the spouse takes all of the estate up to $5,000 and one-half of the remainder of the estate.

2. If no child, descendant of a deceased child, or parent survives, the spouse takes all the estate.

3. If a spouse and a child or descendant of a deceased child survives, the spouse takes one-third of the estate, and the remainder is divided among the children, with descendants of a deceased child taking by representation. An adopted child inherits from or through his adoptive parents as though he were the natural child or issue of such parents.

4. The residue of (1) or all to mother and father equally or to the survivor of them.

5. To the brothers and sisters of whole blood of the intestate with descendants of deceased brothers and sisters taking by representation.

6. To the brothers and sisters of half blood of the intestate with descendants of deceased half brothers and sisters taking by representation.

7. To the next of kin in equal degree, those of whole blood taking in preference to those of half blood in equal degree.

Small Estates Statute - Effective 10-1-67, amounts not exceeding $1000 may be paid to a surviving spouse, next of kin or funeral director under a simplified procedure.

DELAWARE

1. If a spouse and a child, or children, or issue of a deceased child survive, the spouse takes one-third, and two-thirds to the child or children, with issue of a deceased child taking by representation.

2. If a spouse and no child or descendant of a deceased child survive, the spouse takes all the personal estate.

3. If no spouse survives, all to the child or children, with lawful issue of a deceased child taking by representation. An adopted child shall inherit from adoptive parents and from collateral or lineal relatives of adoptive parents.

4. To the parents equally or the survivor.

5. To the brothers and sisters of whole blood, with the lawful issue of deceased brothers and sisters taking by representation.

6. To the brothers and sisters of half blood of the intestate and the lawful issue of those deceased taking by representation.

7. To the next of kin of the intestate in equal degree, and the lawful issue of such kin of equal degree who are deceased, taking by representation.

Small Estates Statute - Before May 14, 1962 estate of $500 or less; effective May 14, 1962 estate of $1,500 or less.

DISTRICT OF COLUMBIA

1. If a spouse and no child, parent, grandchild, brother or sister, or child of a brother or sister survives, all to the spouse.

2. If a spouse and child, children or descendant of a deceased child survive, one-third to the spouse and the balance to be divided among the children, with descendants of deceased children taking by representation.

3. If a spouse, and father, mother, brother, sister, or child of a brother or sister survives, but not child or descendant of a child survives, the spouse takes one-half and the other one-half passes to the person below in groups (5), (6), (7), and (8).

4. If no spouse survives, all to the children, with descendants of deceased children taking by representation.

An adopted child shall take from, through, and as a representative of adoptive parents as if their child by birth.

5. To the parents equally or to the survivor.

6. To brothers and sisters of the intestate, each entitled to an equal share, with the child, children or descendants of a deceased brother or sister of intestate taking by representation.

7. To all collateral relations in equal degree with no representation among such collaterals.

8. To grandparents or such of them that survive.

Relatives of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $500 or less before August 11, 1971. Effective August 11, 1971, estate of $2,500 or less.

FLORIDA

1. To the spouse and lineal descendants, in equal shares, and descendants of a deceased child taking by representation.

2. If there are no lineal descendants, all to the surviving spouse.

3. If there is no spouse, all to the lineal descendants, with descendants of a deceased child taking by representation. An adopted child shall be regarded as a lineal descendant or issue of his adopting parent.

4. To the parents equally or to the survivor.

5. To the brothers and sisters, with the descendants of deceased brothers and sisters, taking by representation.

6. The estate is divided into moieties (halves) one of which goes to the paternal and the other to the maternal kindred in the following way:

    a. To the grandfather and grandmother equally or to the survivor.

    b. To the aunts and uncles with the descendants of deceased aunts and uncles taking by representation.

    c. To the great grandparents equally or to the survivor.

    d. To the brothers and sisters of the grandparents, with the descendants of them taking by representation.

    e. To the next of kin.

7. Where no one survives on either the paternal or maternal side, the other side is entitled to the whole estate.

8. If no kindred of deceased survives, the whole estate will go to the kindred of the deceased spouse of the intestate as if deceased spouse had survived intestate and then died entitled to the estate.

Where deceased is survived by collateral kin of both half and whole blood, those of half blood inherit only half as much as those of whole blood and if all are half blood, they shall have whole portions.

Small Estates Statute - Estate of $5,000 or less before January 1, 1972. Effective January 1, 1972, estate of $10,000 or less.

GEORGIA

1. IF a spouse and no child or descendant of a deceased child survives, all to the spouse.

2. If a widower and child, children, or descendants of a deceased child survive, the estate is divided in equal shares between the widower and children (including deceased children) with descendants of children taking by representation.

3. If a widow and child, children, or descendants of a deceased child survive, the estate is divided in equal shares between widow and children (including deceased children) with descendants of children taking by representation, except that when the share exceed five, the widow gets one-fifty.

   An adopted child shall be considered as if a child of natural "issue" of adoptive parents and shall take under laws of descent (or under any testamentary provision unless expressly excluded therefrom).

4. To the parents and brothers and sisters of the intestate equally, with the children or grandchildren of a deceased brother or sister taking by representation.

5. If all the brothers and sisters are dead, distribution is between the nephews and nieces per capita, with children of a deceased nephew or niece taking by representation.

6. To cousins, aunts and uncles inheriting equally.

7. To the next of kin.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Where estate of deceased owes no debts and heirs have agreed on a division of the estate.

HAWAII

1. If deceased is survived by issue, all to the child or children, with issue of a deceased child taking by representation. If all descendants are of the same degree, they share equally.

2. If no descendants survive, one-half to the spouse and one-half to:

   a. The father and mother, or survivor.

      To the brothers and sisters, with issue of deceased brothers or sisters taking by representation.

3. If no issue, parents, brothers and sisters, or descendants of brothers and sisters survive, all to the spouse.

4. If no spouse, issue, or parents survive, to the brothers and sisters, with descendants of deceased brothers and sisters taking by representation.

5. To the next of kin in equal degree with no representation.

Small Estates Statute - Estate of $1,500 or less.

IDAHO

1. All to spouse, if no issue, father or mother survives.

2. If a spouse and only one child, or the lawful issue of one deceased child survive, one-half to the spouse and one-half to child, or to issue of the child if deceased.

3. If a spouse and more than one child, or one child and lawful issue of a deceased child survives, one-third to the spouse and the remainder in equal shares to children and lawful issue of the deceased child, by representation. An adopted child's right to inherit as "issue" not decided.

4. If no child survives, all to deceased's lineal descendants, and if all descendants are of same degree, they share equally.

5. If no issue survives, one-half to the spouse and one-half to the parents or survivor of them.

6. To parents equally, or the survivor.

7. In equal shares to the brothers and sisters, with children of a deceased brother or sister taking by representation.

8. To the next of kin in equal degree, with those claiming through the nearest ancestor preferred.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estates of $2,500 or less.

ILLINOIS

1. If a spouse and a descendant survive, one-third to the spouse and two-thirds to children, with descendants of a deceased child taking by representation.

2. If no spouse, but a child, children or issue of a deceased child survives, to the child, children or issue of the deceased child, taking by representation.

3. If a spouse and no descendant survives, all to the spouse, even though a parent, brother, sister, or descendant of a brother of sister survives.

4. An adopted child is deemed a descendant or issue of the adopting parent for purposes of inheritance from the adopting parent and lineal and collateral kindred of the adopting parent.

5. To the parents, brothers and sisters in equal parts, allowing to the surviving parent, if one is dead, a double portion, with descendants of deceased brothers and sisters taking by representation.

6. If there is no surviving spouse, descendant, parent, brother, sister, or descendant of a brother and sister, but a grandparent or descendant of a grandparent:

    a. One-half to the maternal grandparents in equal parts or the survivors of them, or if none survives to their descendants by representation, and

    b. One-half to the paternal grandparents in equal parts, or to the survivors of them, or if none survives, to their descendants by representation.

7. If there is no surviving paternal or descendant of a paternal grandparent, all to the maternal side as above and if none on maternal side survives, all to paternal side.

8. If no grandparent, or descendant of a grandparent survives, as in (6) and (7) above, through great grandparents.

9. To next of kin of equal degree, without representation.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $7,500 or less.

INDIANA

1. The spouse shall receive:

    a. One-third, if 2 or more children or a child and issue of a deceased child, or issue of 2 or more deceased children survive.

    b. One-half, if only one child or issue of one decease child survives.

    c. Three-fourths, if there are no surviving issue but one or both parents survive.

    d. All, if no issue or parent survives.

2. The estate other than the spouse's share descends:

a. To the issue, with children of a deceased child taking by representation.

b. If no issue survives, to the surviving parents.

c. An adopted child shall inherit as issue from or through adoptive parents. Effective 7-6-61, if a natural parent of a child born in wedlock shall have married the adopting parent, the adopted person in addition shall be entitled to inherit as a child from and through both of his natural parents.

3. If no spouse or issue survives, to the parents, brothers, sisters, and issue of deceased brothers and sisters taking by representation, with parents taking a share equal to a brother or sister, but not less than one-fourth of the estate so divided.

4. To the descendants of brothers and sisters. IF all of same degree of kinship they take equally; if of unequal degree those more remote take by representation.

5. Equally to the surviving grandparents.

6. The estate shall be divided into the number of shares equal to the sum of the number of brothers and sisters of the decedent's parents surviving decedent, plus the number of deceased brothers and sisters of the decedent's parent who have living issue surviving both them and the decedent, and one share goes to each brother and sister of decedent's parents, or to their issue, taking by representation.

Small estates statute under $2,000 before September 1, 1971. Effective September 1, 1971, estate under $5,000.

1. Where decedent died before January 1, 1964:

a If a spouse and issue survive, spouse takes one-third; two-thirds of intestate personal property or all, if no spouse survives, descends in equal shares to his children and if one or more is dead, the heirs of such (interpreted by Iowa courts as children, not husband or wife) shall inherit his share as if such child had outlived its parent.

b. If a spouse and no issue survives, all of the estate up to $15,000 and one-half of the excess to the spouse; the other one-half of the excess to the parents.

c. If one parent is dead, that parent's share and, if the spouse is dead, the share which would have gone to the spouse, shall go to the remaining parent.

d. If both parents are dead, the heirs of the father and mother inherit as they would have done if both parents had survived the intestate and each had

died in possession of one-half of the estate, and so on, through ascending ancestors, and their issue.

e. If there are no heirs as above, see (3) below.

2. Where decedent died after December 31, 1963:

a. If a spouse and issue survive, spouse is entitled to $15,000, which includes one-third of the real estate and all personal property exempt from execution, plus one-third of all personal property, with the remainder of the personal property in equal shares to the children, with issue of a deceased child taking by representation.

b. If a spouse and no issue survives, spouse receives property, including one-third of real estate, to the value of $15,000, plus one-half of the remainder of the estate, and one-half of the remainder to the parents or surviving parent.

c. If there is no surviving spouse, the estate shall go in equal shares to the children, with issue of deceased child taking by representation.

d. If no spouse, children, or issue of deceased children survive, to the surviving parents in equal shares, or to the surviving parent.

e. If no spouse, children, issue of a deceased child or parents survive, to such persons as would be entitled to take, if the parents of the decedent had outlived him and died in possession of the estate, and to their ascending ancestors and heirs.

f. If there are no heirs as above, see (3) below.

3. If there are no heirs as above, all to the spouse, or heirs of such spouse if dead. If intestate had more than one spouse, and one survived, the estate shall be divided between the one who is living and the heirs of those who are dead, or between the heirs of all, if all are dead; the heirs taking by representation.

4. An adopted child may inherit as issue of adoptive parents. Parents by adoption inherit as if natural parents.

No Small Estate Statute.

KANSAS

1. If a spouse and issue survive, one-half to the spouse and one-half to the child or children, with issue of deceased child taking by representation.

2. If spouse and no child of a child survives, all to the spouse.

3. If no spouse but children and/or issue of a deceased child survive, to them in equal shares, with issue of a deceased child taking by representation. "Issue includes adopted children of deceased children or issue."

4. If no spouse or issue survives, to surviving parent or parents, including adoptive parents.

5. To the heirs of the parents (excluding their respective spouses) the same as it would have passed had such parents owned it in equal shares and died intestate at the time of his death, but if either of said parents left no heirs, then his property shall pass to the living heirs of the other parent.

6. To the children of the parents (i.e., brothers and sisters of the deceased) with children of a deceased child taking by representation.

No property shall pass except by lineal descent, to a person further removed from the decedent than the sixth degree.

7. Effective 6-30-63, to the living heirs of the intestate's last spouse, dying prior to the death of the intestate.

No Small Estates Statute.

KENTUCKY

1. Spouse is entitled to one-half of personal property as well as $1,500 widow's exemption, if widow.

2. The other one-half or all if no spouse survives, to children, with descendants of a deceased child taking by representation. An adopted child is regarded as issue of adoptive parents.

3. To the parents equally, or to the survivor.

4. To the brothers and sisters, with the descendants of deceased brothers and sister taking by representation.

5. The estate is divided into half; one-half to the paternal kin and one-half to the maternal kin, each half to go:

    a. To the grandparents equally, or to survivor.

    b. To the aunts and uncles, with descendants of a deceased uncle or aunt taking by representation.

    c. To the great grandparents.

d. To the brothers and sisters of the grandparents, with the descendants of those deceased taking by representation.

6. If there are no kin on either the maternal or paternal side, and if there are no heirs on either side, the estate goes to the kin of the husband or wife.

Those of half blood inherit only half as much as those of whole blood.

Small Estates Statute - Where no debts owed by estate.

LOUISIANA

1. A surviving spouse is entitled only to deceased's share of the community property not disposed of by will, when deceased is not survived by descendants or parents.

2. Legitimate children or their descendants. An adopted child for all purposes is considered the legitimate child and the forced heir of the adoptive parents and may inherit through, from, or to the adoptive parents.

3. One-half to father and mother, one-half to brothers and sisters, with children and grandchildren of a deceased brother or sister taking by representation.

4. If only one parent survives, one-fourth to such parent, and three-fourths to the brothers and sisters, with the children and grandchildren of a deceased brother or sister taking by representation.

5. If no parents survive, all to brothers and sisters, with the descendants of a deceased brother or sister taking by representation.

6. If the brothers and sisters are of two or more marriages, the estate is divided equally between the paternal and maternal lines.

7. To next of kin.

8. Natural children inherit from their mother, when acknowledged and if she left no lawful children or descendants, to the exclusion of her father, mother or other lawful kindred.

9. If deceased left no lawful descendants, ascendants or collateral relations, his estate passes to his surviving spouse.

10. If deceased left no lawful descendants, ascendants, collateral relations or widow, to his acknowledged natural children.

Small Estates Statute - Not over $500 on simple court procedure.

MAINE

1. If a spouse living with deceased survives, and no issue, after payment of debts the residue of the estate through $10,000 to the spouse, plus one-half of the amount over $10,000, and one-half balance to the next kin of equal degree through kin in the second degree. If no kin through the second degree survives, all to the spouse.

2. If no spouse survives, to the child or children, with issue of a deceased child taking by representation. If all the issue are of the same degree, they share equally. An adopted child shall inherit as issue of adoptive parents, but not from their collateral kin, by right of representation.

3. To the father and mother equally.

4. If either parent is dead, one-half to the surviving parent and one-half in equal shares to the brothers and sisters, with children or grandchildren of a deceased brother or sister taking by right of representation.

5. If either parent is dead and there are no brothers and sisters living, all to the surviving parent, to the exclusion of issue of deceased brothers and sisters.

6. To the next of kin in equal degree. Those of half blood inherit equally with those of whole blood.

No Small Estates Statute.

MARYLAND

1. If a spouse and no child, grandchild, parent, brother, sister or child of a brother or sister survives, the entire estate to the spouse.

2. If a spouse and a child or descendant of a deceased child survives, one-third to the spouse and two-thirds to the child or children, with descendants of a deceased child taking by representation.

3. If a spouse and father or mother, but no children or descendants of a deceased child survives, one-half to the spouse and one-half to the parents or surviving parent.

4. If a spouse and brother, sister or descendant of a deceased brother or sister, and no child, descendant of a deceased child or parent, survive, $4,000 to the spouse, and one-half of the residue to the spouse, with the other one-half to brother, sister, with descendants of deceased brother or sisters taking by representation.

5. To the children, with descendants of a deceased child taking by representation. An adopted child shall take from, through and as a representative of its adopting parents as if a child by birth or issue.

6. To the parents equally or to the survivor.

7. To the brothers and sisters equally, with children and grandchildren of a deceased brother and sister taking by representation.

8. To the collateral relatives in equal degree with no representation and no distinction between half or whole blood.

9. To surviving grandparents.

Small Estates Statute - Estate of $1,000 or less.

MASSACHUSETTS

1. If a spouse and no issue survive, the spouse shall take the whole estate up to $25,000 and one-half of the remaining personalty. If no issue or kindred survives, all the estate to the spouse.

2. If a spouse and issue survive, one-half to the spouse and one-half to children, with descendants of deceased children taking by representation. If all surviving descendants are of the same degree, they share equally. An adopted child may inherit as issue of adoptive parents and of kindred.

3. If children survive, but no spouse, all to the children equally with descendants of a deceased child taking by representation.

4. To parents equally or to the survivor.

5. To brothers and sisters, with the issue of deceased brothers and sisters taking by representation.

6. If there are no surviving brothers and sisters, to the issue of deceased brothers and sisters. If all the issue are in the same degree of kindred to intestate, they share equally; otherwise, by representation.

7. To the next of kin, and if two or more are in equal degree, to the one claiming through the nearest ancestor.

Those of half blood to inherit equally with those of whole blood.

Small Estates Statute - Estate of $800 or less before 8-30-66 and $1,000 effective 8-30-66.

MICHIGAN

1. If a widow and no issue survives and the estate does not exceed $3,000, all to the widow. If the estate does exceed $3,000, the amount over $3,000 goes one-half to the widow and one-half:

    a. To the parents or surviving parent.

    b. To brothers and sisters with children of deceased brothers and sisters taking by representation.

    c. To the widow, if none of the above survives.

2. If a woman is survived by a widower and no issue, the widower receives one-half and the other half goes:

    a. To the parents or the surviving parent.

    b. To brothers and sisters with children of deceased brother and sisters taking by representation.

    c. To the widower, if none of the above survives.

3. If a spouse and one child, or issue of a deceased child survives, one-half to the spouse and one-half to the child or issue of the deceased child.

4. If a spouse and children or issue of decease children survive, one-third to the spouse and two-thirds to the children, with children of a deceased child taking by representation. An adopted child shall inherit from and through adopting parents and from lineal or collateral kin of adopting parents as issue.

5. If no father, mother, child, issue of a deceased child, brother, sister or child of deceased brother or sister survives, all to the spouse.

6. If children survive, but no spouse, all to the children equally with descendants of a deceased child taking by representation.

7. To the parents equally or to the survivor.

8. To the brother and sisters, with children of deceased brothers and sisters taking by representation.

9. If only children of deceased brothers and sisters survive and they are of the same degree of kinship to the intestate, they share equally.

10. To the next of kin.

Half bloods inherit equally with whole bloods.

Small Estates Statute - Estate of $1,500 or less.

MINNESOTA

1. If a spouse and one child or issue of a deceased child survive, one-half to the spouse and one-half to the child or issue of the deceased child.

2. If a spouse and more than one child or one child and issue of a deceased child or issue of deceased children survive, one-third to the spouse and two-thirds to the children, with issue of a deceased child taking by representation.

3. If no child or issue of a deceased child survives, all to the spouse.

4. If no spouse, to the child or children, with issue of deceased child taking by representation.

5. To the parents equally or the survivor.

6. To the surviving brothers and sisters and to issue of deceased brothers and sisters taking by representation.

7. If only issue of deceased brothers and sisters survive, they take per capita, with their issue (grandnephews and grandnieces) taking by representation.

8. To the next of kin in equal degree, with those claiming through a nearer ancestor taking all.

Those of half blood inherit equally with those of whole blood.

Where there is a will - it must be probated.

Small Estates Statute - Only where person has been dead over five years.

MISSISSIPPI

1. If a spouse and no child or descendant of a deceased child survives, all to the spouse.

2. If a spouse and child or descendants of a deceased child survive, the spouse takes a child's share, and the estate goes in equal shares to spouse and children, with descendants of a deceased child or grandchild taking by representation.

3. If no spouse survives, all to the child or children, with descendants of a deceased child taking by representation. An adopted child shall inherit from and through the adoptive parents as issue and from other children of the adoptive parents.

4. To the father and mother and brothers and sisters, with the issue of deceased brothers and sisters taking by representation.

5. To the grandparents and uncles and aunts in equal parts.

6. In equal parts to the next of kin of the intestate in equal degree.

No representation among collaterals, except among the descendants of the brothers and sisters of the intestate.

Those of whole blood take over those of half blood in equal degree. If there are none of whole blood those of half blood take.

No Small Estates Statute.

MISSOURI

1. The surviving spouse receives one-half if the intestate is survived by issue, father, mother, brother, sister or their descendants, and all the estate if there is no surviving issue, father, mother, brother, sister or their descendants.

2. The other one-half, or all if there is no surviving spouse, descends:

    a. To the children or their descendants and where all are of the same degree they share equally; otherwise they take by representation. An adopted child shall inherit from and through the adoptive parents as issue.

    b. To the mother and father, brothers and sisters in equal parts with the descendants of deceased brothers and sisters taking by representation.

    c. To the grandfathers, grandmothers, uncles and aunts in equal parts with the descendants of deceased uncles and aunts taking by representation.

    d. To the great-grandfathers, great-grandmothers in equal parts with the descendants taking by representation.

    e. To the nearest lineal ancestors and their children with their descendants taking by representation, provided that collateral relatives, those who are neither ancestors nor descendants of the deceased, may not inherit beyond the 9th degree.

3. To the kin of the wife or husband of the deceased, as if such husband or wife had survived the deceased and then died.

Where several descendants all of equal degree survive they take equally, per capita - where part are living and part dead, the issue of those dead take per stirpes or the share of the parent.

If part of the collateral relatives are of whole blood and part of half blood, those of half blood take only half as much as those of whole blood. If only collaterals of the half blood survive, they take whole portions.

Small Estates Statute - Effective October 13, 1967, estate of $2,000 or less on claim of creditor or payer of the funeral expenses. Estate of $5,000 on claim of distributees of estate.

MONTANA

1. If a spouse and only one child or issue of a deceased child survives, one-half to the spouse and one-half to the child or issue of a deceased child.

2. If a spouse and more than one child or issue of deceased children, or a child and issue of a deceased child survive, one-third to the spouse and the remainder to the children, with issue of a deceased child taking by representation.

3. If no spouse survives, all to the children, with issue of a deceased child taking by representation. An adopted child shall inherit from or through the adoptive parents as if a natural child or issue.

4. If no issue survives, all to the surviving spouse.

5. To the parents equally or to the survivor.

6. To the brothers and sisters, and the children of any deceased brother and sister by right of representation.

7. To the next of kin in equal degree, with the one claiming through nearest ancestor being preferred.

8. Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Where there is a widow or minor child - $1,500 after payment of priority creditors, $3,000 after payment of all creditors.

NEBRASKA

1. If the estate, after payment of funeral charges and administration, is less than $500.00, all to the spouse or minor child.

2. If a spouse and only one child, or issue of a deceased child of whom the spouse is a parent survives, one-half to the spouse and one-half to the child or descendants of the deceased child.

3. If the surviving spouse is not the parent of all the children of the deceased, one-fourth to the spouse and the remainder to the child or children, with issue of a deceased child taking by representation.

4. If the spouse is the parent of all the children of deceased, and two or more children or a child and issue of one or more children survive, one-third to the spouse and two-thirds, or the entire estate if no spouse survives, to the child, children or issue of the deceased child. If all descendants are of the same degree, they share equally. An adopted child will inherit as if the natural child or issue of adoptive parents.

5. To the parents or to the survivor.

6. To the brothers and sisters, with the children of a deceased brother or sister taking by right of representation.

7. To the next of kin in equal degree, with those claiming through the nearest ancestor being preferred.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate not exceeding $10,000 to surviving spouse, minor child or distributees (effective July 12, 1974).

NEVADA

1. If a spouse and only one child or issue of a deceased child survives, one-half to the spouse and one-half to the child or issue of the deceased child.

2. If a spouse and more than one child, or one child issue of a deceased child or issue of deceased children survive, one third to the spouse and the remainder to the child or children, with issue of a deceased child taking by representation.

3. If no child, but issue of a deceased child or children survive and they are all of the same degree, they share equally; otherwise, by representation. An adopted child shall inherit from the adoptive parents or their relatives as if a legitimate child or issue of the adoptive parents.

4. If no spouse but issue survives, all to the issue with each child receiving a child's share, and issue of a deceased child taking by representation.

5. If a spouse and no issue survives, one-half to the spouse and one-half:

    a. To the parents or to the survivor.

    b. To brothers and sisters, with children of a deceased brother or sister taking by representation.

6. If no issue, father, mother, brother or sister, or issue of a deceased brother or sister survives, all to the spouse.

7. To the parents or to the survivor.

8. To brothers and sisters, with children of any deceased brother or sister taking by right of representation.

9. To the next of kin in equal degree with the one claiming through the nearest ancestor being preferred.

Those of half blood inherit equally with those if whole blood.

Small Estates Statute - Surviving wife, husband, or child $1,000 - no surviving wife, husband, or child $400.

1. If a spouse and no issue survive, all the estate through $10,000.00 plus one-half of the remainder over $10,000.00 to the spouse.

2. If a spouse and no issue, parent, brother or sister survive, the spouse shall take $10,000 plus $2,000 for each full year from the date of the marriage to the death of his or her spouse plus one-half of the remaining estate.

3. The remaining amount not disposed of above, or the entire estate if no spouse survives, to the children with legal representatives of deceased children taking by representation. An adopted child will inherit as if natural child or issue of adopting parent.

4. To the parents equally or to the survivor.

5. To the brothers and sisters of their representatives.

6. To the next of kin in equal shares.

No representation will be allowed among collaterals beyond the degree of brothers' and sisters' grandchildren.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $2,000 or less.

NEW JERSEY

1. If a spouse and a child, children or representative (issue) of a deceased child survive, one-third to the spouse and the remainder in equal portions to the child, children and such persons as legally represent any child who may have died (issue).

2. If there be no child or legal representative (issue) of a child, all to the spouse.

3. If no spouse survives, to the child, children and legal representatives (issue taking by representation) of a deceased child. An adopted child shall have the

same rights of inheritance as if born in lawful wedlock to the adoptive parents and is deemed "lawful issue."

4. To the parents and brothers and sisters equally, with the children of deceased brothers and sisters taking by representation.

5. To the next of kin in equal degree with those claiming through the nearest ancestor taking.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $2,500 or less before August 27, 1971. Effective August 27, 1971, estate of $5,000 or less.

NEW MEXICO

1. If a spouse and issue survive, one-fourth to the spouse and the remainder in equal shares to the children, with issue of a deceased child taking by representation.

2. If no issue survives, all to the spouse.

3. If no spouse survives, all to the child or children, with issue of deceased children taking by representation. An adopted child shall inherit "without exception" as a natural child of the adopting parents.

4. To the parents, with all to the surviving parent.

5. If both parents are dead, the portion which would have been theirs shall be disposed of as if they had outlived the intestate and then died.

6. One-fourth to the surviving spouse of the parent, and three-fourths to the parents, children, with issue of deceased children taking by representation.

7. If no heirs survive the intestate or his parents, to the heirs of the deceased spouse of intestate and if he or she had more than one spouse who died, it shall be equally divided between the heirs of all such spouses, taking by representation.

Small Estate Statute - Estate of $3,000 or less.

NEW YORK

1. Where decedent died before March 1, 1964:

    a. If a spouse and only one child, or issue of a deceased child survives, one-half to the spouse and one-half to the child, or issue of the deceased child.

b. If a spouse and more than one child, or a child and issue of a deceased child, or issue of deceased children survive, one-third to the spouse and the remainder to the child or children, with issue of deceased children taking by representation.

c. If a spouse and both parents survive, but no child or descendant of a deceased child survives, the spouse shall take $5,000 and one-half of the residue, with the other half to the parents, or the surviving parent.

d. If a spouse and no issue or parents survive, the spouse takes $10,000 and one-half of the residue, and balance is divided among the brothers and sisters with issue of a deceased brother or sister taking by representation.

e. If no spouse survives, all to the children with issue of a deceased child taking by representation. An adopted child inherits from the adoptive parents and their natural children, but shall not inherit through the adoptive parents.

f. To the parents or to the survivor.

g. To the brothers and sisters, with issue of deceased brothers and sisters taking by representation.

h. To the next of kin.

Those of half blood share equally with those of whole blood.

Small Estates Statute - Estate of $1,000 or less.

2. Where decedent died after February 29, 1964:

a. If a spouse and only one child, or issue of a deceased child survives, the spouse takes $2,000 and one-half of the residue, with the other half going to the surviving child or issue of the deceased child.

b. If a spouse and more than one child, or a child and issue of a deceased child, or issue of deceased children survive, $2,000 to the the spouse and one-third of the residue, with the remainder of the residue to the children, or issue of deceased children, taking by representation.

c. If a spouse and both parents survive, but no child or issue of a deceased child survives, the spouse takes $25,000 and one-half of the residue, and the parents take the other one-half of the residue; and if there is no surviving spouse, the parents each take one-half of the whole.

d. If only one parent survives, and no child or issue of a deceased child survives, the spouse takes $25,000 and one-half of the residue, and the

surviving parent takes the balance; if there is no surviving spouse, the surviving parent takes the whole.

e. If a spouse survives, and no descendants or parents survive, the spouse is entitled to the whole estate.

f. If there is no surviving spouse, the whole descends and is distributed equally to the children, with issue of deceased children taking by representation. An adopted child inherits from the adoptive parents and their natural children. An adopted child shall not inherit from his natural parents, but inherits as "issue" of his adoptive parents.

g. If there is no surviving spouse, child, issue of a deceased child, or parents, to the brothers and sisters with issue of deceased brothers and sisters taking by representation.

h. If there is no surviving spouse, child, issue of a deceased child, parents, brothers and sisters, or issue of deceased brothers and sisters, to the surviving grandparents in equal shares. If there are no grandparents, then to the issue of the grandparents in the nearest degree of kinship. There should be no representation among collaterals after the descendants of brothers and sisters.

Those of half blood share equally with those of whole blood.

Small Estates Statute - Estate of $3,000 or less.

NORTH CAROLINA

1. If a widow and no issue survive, and the estate does not exceed $10,000 after payment of debts and administration, all to the widow. If the estate exceeds $10,000, $10,000 to the widow plus one-half of the remainder, with the other half to the next of kin.

2. If a widow or widower and issue survive, in equal shares, and the spouse takes a child's share.

3. If a widower and no issue survive, all to the widower.

4. If no spouse survives, to the children, with descendants of a deceased child taking by representation. An adopted child shall inherit from the adoptive parents but not as issue.

5. To the next of kin, with surviving parents taking first, and if neither survive, to brothers and sisters, with children of deceased brothers and sisters taking by representation.

Those of half blood take equally with those of whole blood.

No Small Estates Statute, as such. However, there is a simple procedure by Clerk of Superior Court of County - if not over $1,000.

NORTH DAKOTA

1. If a spouse and no issue survives:

    a. Where decedent died before 7-1-61, and the estate is not over $25,000, all to the spouse. If the estate is over $25,000, $25,000 to the spouse, and the excess is divided one-half to the spouse and one-half to the parents or surviving parent.

    b. Where decedent died after 6-30-61, and the estate is not over $50,000, all to the spouse. If the estate is over $50,000, $50,000 to the spouse, and the excess is divided one-half to the spouse and one-half to the parents or surviving parent.

2. If a spouse and no issue or parents survive:

    a. Where decedent died before 7-1-61, the entire estate to a value of $50,000 to the spouse, with the excess over $50,000 divided one-half to the spouse and one-half to the brothers and sisters, with children of a deceased brother or sister taking by representation.

    b. Where descendent died after June 30, 1961, the entire estate to the value of $100,000 to the spouse, with the excess over $100,000 divided one-half to the spouse, and one-half to the brothers and sisters, with children of a deceased brother or sister taking by representation.

    c. Where decedent died after 6-30-61, if a spouse and no issue, parent, brother, sister, or children of a deceased brother or sister, survives, all to the spouse.

3. If a spouse and only one child or issue of a deceased child survives, one-half to the spouse and one-half to the child or issue.

4. If a spouse and more than one child or one child and issue of one or more deceased children, one-third to the spouse, with the remainder to the children, with issue of deceased children taking by representation. If all the descendants are of the same degree they share equally.

5. If no spouse survives, all to the child or children, with issue of a deceased child taking by representation. If all the issue are of the same degree they share equally. An adopted child inherits as if born in lawful wedlock or issue to the adoptive parents.

6. To the parents equally or all to the survivor.

7. To the brothers and sisters, with children of deceased brothers and sisters taking by representation.

8. To the next of kin.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $2,500 or less.

OHIO

1. If a spouse and one child or its issue survive, one-half to the spouse and one-half to the child or issue of the deceased child.

2. If a spouse and more than one child, or a child and issue of a decease child or issue of deceased children survive, one-third to the spouse, with the remainder to the children equally with issue of a deceased child taking by representation.

3. If no children or descendants of children survive, three-fourths to the spouse, and one-fourth to the parents or the surviving parent.

4. If no child, issue of a deceased child, or parents survive, all to the spouse.

5. If no spouse survives, all to the child or children, with issue of a deceased child taking by representation. An adopted child shall inherit as if born in lawful wedlock or as issue to the adoptive parents.

6. To the parents or surviving parent.

7. To the brothers and sisters, whether whole or half blood, with descendants of a deceased brother or sister taking by representation.

8. One-half to the paternal grandparents equally or the survivor of them, and one-half to the maternal grandparents equally or the survivor of them.

9. To the lineal descendants of the deceased grandparents by representation.

10. To the next of kin of the intestate, with no representation among such next of kin.

11. To the stepchildren or their descendants by representation.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $5,000 or less (effective 12-3-71).

OKLAHOMA

1. If a spouse and one child, or issue of one child survives, one-half to the spouse and one-half to the child, or issue of deceased child.

2. If a spouse and more than one child, or a child and issue of one or more deceased children, or issue or more than one deceased child survive, one-third to the spouse, and the remainder to the children, with issue of a deceased child taking by representation unless all descendants are of the same degree, then they share equally.

3. If a spouse and no issue survives, one-half to the spouse and one-half to the father and mother, or the surviving parent.

4. If a spouse and no issue or parents survive, one-half to the spouse and one-half to the brothers and sisters, and to the children of deceased brothers and sisters by representation.

5. If a spouse and no issue, parents, or brothers and sisters survive, all to the spouse.

6. If no spouse survives, all to children with issue of a deceased child taking by representation. An adopted child shall inherit from and through the adoptive parents as issue.

7. To the parents, with all to the surviving parent.

8. To the brothers and sisters, with children of deceased brothers and sisters taking by representation.

9. To the next of kin of equal degree, with preference to one claiming through the nearest ancestor.

Those of half blood inherit equally with those of whole blood.

Small Estate Statute - Summary administration of estate $5,000 or less (effective 10-1-71).

OREGON

1. If a spouse and issue survive, one-half to the spouse, with the remainder in equal shares to the children, with issue of a deceased child taking by representation.

2. If a spouse and no issue survive, all to the spouse.

3. If no spouse survives, to the children, with issue of a deceased child taking by representation. If all the descendants are of the same degree they share equally. An adopted child shall inherit as the natural child of the adopting parents.

4. To the parents equally or to the survivor.

5. To the brothers and sisters, with issue of any deceased brother and sister taking by representation.

6. To next of kin in equal degree with those claiming through the nearest ancestor preferred.

Those of half blood share equally with those of whole blood.

Small Estates Statute - Estate consists of personal property having a fair market value of $10,000.00 or less, or real property having a fair market value of $20,000.00 or less, or a combination of personal and real property worth $10,000.00 or less, or $20,000.00 or less, respectively.

PENNSYLVANIA

1. If a spouse and only one child, or one child and issue of a deceased child survive, one-half to the spouse and one-half to the child, or issue of a deceased child.

2. If more than one child, or one child and issue of a deceased child, or issue of deceased children survive, one-third to the spouse and the remainder to the issue.

3. If a spouse, and no issue survives, $20,000, effective 10-9-67, and one-half of the balance of the estate to the spouse.

4. If a spouse and no issue, parent, brother, sister, child of a brother or sister, grandparent, uncle or aunt survives, all of the estate to the spouse.

5. The estate other than the surviving spouse's share, or the entire estate if no spouse survives, to the issue of decedent. When all persons entitled to take, other than the surviving spouse are all of the same degree of consanguinity to the decedent, they take in equal shares.

6. To the parents or to the survivor.

7. To the brothers and sisters equally, with the issue of deceased brothers and sisters taking by representation.

8. To the issue of decedent's parents.

9. If a grandparent survives, one-half to the paternal grandparents or grandparent and one-half to the maternal grandparents or grandparent, and if both paternal and maternal grandparents are dead, to their children and issue of deceased children. If on either side no grandparent or grandchildren survives, all to the other side.

10. To the next of kin.

Small Estates Statute - Before November 10, 1959 estate of $1,500 or less; effective November 10, 1959 estate of $2,500 or less; effective May 5, 1970 personal property not in excess of $5,000.

RHODE ISLAND

1. If a spouse and no issue survive, $50,000 and one-half of the remainder to the spouse.

2. If a spouse and issue survive, one-half to the spouse, and one-half to the issue.

3. If issue and no spouse survive, all to the issue. An adopted child shall inherit as lawful issue of the adoptive parent after May 8, 1956.

4. To the parents equally or to the survivor.

5. To the brothers and sisters and their descendants, or such of them as there be, with descendants of deceased sisters and brothers taking by representation.

6. The property to be divided into moieties (halves); one-half to the maternal kin and one-half to paternal kin, each half to go:

    a. To the grandparents.

    b. To the uncles and aunts and the descendants of deceased uncles and aunts by representation.

    c. To great grandparents in equal shares.

    d. To great uncles and aunts or the descendants of those deceased by representation and so without end.

If none on either the paternal or maternal side survives, both halves go to the other side.

If no kin survive intestate, the property will pass to the kin of wife or husband, as if spouse had survived and died intestate.

Small Estates Statute - Effective 9-1-67, a small estates procedure is authorized that does not protect the Board from liability.

SOUTH CAROLINA

1. If a spouse and only one child survive, one-half to the spouse and one-half to the child.

2. If a spouse and more than one child survive, one-third to the spouse and the remainder to the children, with descendants of a deceased child taking by representation.

3. If a spouse and no child or issue of deceased child survive, one-half to the spouse and the other half to be divided equally among the father, mother and brothers and sisters of whole blood, with children of deceased brothers and sisters taking by representation.

4. If a spouse and only sisters or brothers of half blood survive, one-half to the spouse and one-half to the sisters and brothers of half blood, with children of deceased brothers and sisters of whole blood taking a share by representation.

5. If a spouse and lineal ancestor survive, one-half to the spouse and one-half to the lineal ancestor.

6. If a spouse but no kin through 5 survive, all to the spouse.

7. If no spouse but issue survive, all to the issue with descendants of a deceased child taking by representation. An adopted child shall inherit as issue of adoptive parents.

8. To the mother and father and brothers and sisters of whole blood, with the children of a deceased brother and sister of the whole blood taking by representation.

9. If no brothers or sisters of whole blood and parents survive, to the brothers and sisters of half blood and children of deceased brothers and sisters of whole blood, with the children of each deceased brother or sister taking a full share among them.

10. If no brothers or sisters survive, to the children of deceased brothers and sisters of whole blood taking by representation.

11. To the uncles and aunts, with the children of deceased uncles and aunts taking by representation.

12. To the next of kin.

13. To stepchildren.

Small Estates Statute - Estate of $1,000 or less.

SOUTH DAKOTA

1. If a spouse and 1 child, or issue of a deceased child survive, one-half to the spouse, and one-half to the child, or to issue of the deceased child. (An adopted child does not inherit as issue of a deceased child.)

2. If a spouse and more than 1 child, or issue of 2 or more deceased children, or 1 child and issue of a deceased child, survive, one-third to the spouse, and the remainder divided among the children, with issue of deceased children taking by representation. If all descendants are of the same degree, they share equally.

3. If a spouse and no issue survive, the spouse takes the estate through $50,000 plus one-half of the balance, with the other one-half over $50,000 to:

    a. The parents or the survivor.

    b. The brothers and sisters, with descendants of deceased brothers and sisters taking by representation.

4. If a spouse and no issue, parents, brothers and sisters or descendants of brothers and sisters survive, all to the spouse.

5. If no spouse survives, all to the children, with descendants of a deceased child taking by representation.

6. To parents with survivor taking all.

7. To brothers and sisters, with descendants of deceased brothers and sisters taking by representation.

8. To the next of kin, with those claiming through nearest ancestor preferred.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Estate of $2,500 or less.

TENNESSEE

1. In equal shares to the spouse and children, with descendants of child taking by representation.

2. If no child or descendant of a child survives, all to the spouse.

3. If no spouse survives, all to the child or children, with issue of a deceased child taking by representation. An adopted child shall inherit from the adoptive parents, other adopted children or natural born children of adoptive parents, but not through adoptive parents as issue.

4. To the mother and father or to the survivor of them. However, if parents divorced and custody of intestate awarded to one parent, the other parent entitled to nothing.

5. To the brothers and sisters, with children of deceased brothers and sisters taking by representation.

6. To the next of kin in equal degree.

No representation among collaterals after nieces and nephews.

Those of half blood share equally with those of whole blood.

No Small Estates Statute

TEXAS

1. If a spouse and child or children, or issue of a deceased child survive, one-third to the spouse and the balance to the child, children or issue of a deceased child.

2. If a spouse and no child or issue of a deceased child survives, all to the spouse.

3. If no spouse survives, all to the child or children, with issue of a deceased child taking by representation. An adopted child shall inherit as if natural born child or issue of adoptive parents.

4. To the father and mother in equal portions.

5. If only the father or mother survives, one-half to the surviving parent and one-half to the brothers and sisters, with descendants of a deceased brother or sister taking by representation.

6. If only a parent and no brothers and sisters or descendants of deceased brothers and sisters survive - all to the surviving parent.

7. If neither parent survives, to the brothers and sisters, with descendants of a deceased brother or sister taking by representation.

8. The estate is divided into two moieties (halves) one to the paternal line and one to the maternal line, each half to go:

    a. To the grandfather or grandmother in equal shares, and if one be dead, that share to the descendants of the deceased grandparent.

    b. If neither grandparent survives - to their descendants in equal degree.

    c. If there are no descendants, all to the surviving grandparent.

Intestate's children, brothers, sisters, uncles, aunts, and other relatives standing in the same degree take per capita. However, when a part of them are living and a part are dead, the descendants of the deceased ones take by representation.

Those of half blood take one-half as much as those of whole blood. If all are of half blood they share equally.

Small Estates Statute - Estate of $2,500 effective 9-1-69. Estate of $5,000 effective 9-1-75.

UTAH

1. If a spouse and one child, or issue of a deceased child survive, one-half to the spouse and one-half to the child, or issue of the deceased child.

2. If a spouse and more than one child, or a child and issue of a deceased child, or issue of more than one deceased child survive, one-third to the spouse and the remainder to the child or children, with issue of a deceased child taking by representation. If no child survives, and all the issue are of the same degree, they share equally.

3. If a spouse and no issue survives:

    a. Where decedent died before 5-10-61, the estate up to $25,000 to the spouse, plus one-half of the remainder. The other half to the parents equally or to the surviving parent. If no parent survives, to the brothers and sisters with descendants of deceased brothers and sisters taking by representation.

    b. Where decedent died after 5-9-61, if a spouse and no issue survives, the estate to a net value of $100,000 to the spouse, plus one-half of the remainder. The other one-half of the remainder to the parents equally, or to the surviving parent. If no parent survives, to the brothers and sisters, with descendants of deceased brothers and sisters taking by representation.

4. If a spouse and no issue, parents, brothers and sisters, or issue of brothers and sisters survive, all to the spouse.

5. If no spouse survives, all to the children, with the issue of a deceased child taking by representation. An adopted child may not inherit as "issue" of adoptive parents, from adoptive parents's relatives.

6. To parents equally or to the survivor.

7. To the brothers and sisters in equal shares, with the descendants of a deceased brother or sister taking by representation.

8. To the next of kin with those claiming through the nearest ancestor being preferred.

Those of half blood inherit equally with those of whole blood.

Small Estates Statutes - Estate of $1,500 or less.

VERMONT

1. If a spouse and child, children, or issue of a deceased child survive, one-third to the spouse and the balance in equal shares to the children, with issue of deceased children taking by representation.

2. If a spouse and no issue survive and the spouse does not take one-third of the real estate, or waives under the will, the spouse shall take the entire personal estate if it does not exceed $8,000 or $8,000 and one-half of the remainder. The other half shall descend as if no spouse survived. If no other kin survives, spouse shall be entitled to entire estate.

3. If no spouse survives, in equal shares to the children, with issue of deceased children taking by representation. An adopted child shall inherit from the adoptive parents and their children, but not as issue of the adoptive parents, and may still inherit from or through the natural parents.

4. To the parents equally, or to survivor.

5. To the brothers and sisters, with issue of deceased brothers or sisters taking by representation.

6. To the next of kin in equal degree, with no right of representation to the share of such next of kin who has died.

Those of half blood inherit equally with those of whole blood.

No Small Estates Statute.

VIRGINIA

1. If no child or descendants of a deceased child survives, all to the spouse.

2. If a spouse and child, children or descendants of a deceased child survive, one-third to the spouse and the balance to the child, children or descendants of a deceased child, with such descendants taking by representation.

3. If no spouse survives, all to the child, children, or descendants of a deceased child with such descendants taking by representation. An adopted child shall inherit from and through the adoptive parents as if natural child or issue.

4. To the parents or to the survivor.

5. To the brothers and sisters, with descendants of deceased brothers and sisters taking by representation.

6. The estate is divided into moieties (halves); one-half to the paternal side and one-half to the maternal side, each half to:

a. The grandfather and grandmother or to the survivor.

b. The uncles, aunts; descendants of deceased uncles and aunts taking by representation.

c. The great-grandparents.

d. The brothers and sisters of the grandparents, with the descendants of those deceased taking by representation.

e. The next of kin.

If there are no paternal kin, all to the maternal side; if there are no maternal kin, all to the paternal side. If no kin of the intestate survive, all to the kin of the husband or wife, as if spouse had died entitled to the estate.

Those of half blood inherit only one-half as much as those of whole blood. If all collaterals are of half blood, the ascending kin, if any, shall have double portions.

Small Estates Statute

- Before January 1, 1970, not over $1,000 due from State or the United States as "pension" or burial allowance.
- Effective January 1, 1970, not over $2,500 due from State or the United States as "pension" or burial allowance.

1. If a spouse and issue survive, one-half to the spouse, and one-half to the issue.

2. Before 6-10-65 if a spouse and no issue survive, all to the spouse. Effective 6-10-65, three-quarters to the spouse, if no issue survive, but intestate is survived by one or both parents or by one or more issue of one or both parents.

3. Effective 6-10-65, all to the spouse if no issue, parent or issue of parent survive.

4. If no spouse survives, to the children in equal shares, with issue of a deceased child taking by representation. If no child survives and all issue of deceased children are of the same degree, they share equally. An adopted child is included in "issue," "child," or "children."

5. To the parents or to the survivor.

6. To the brothers and sisters and to the children of any deceased brother or sister, by representation.

7. Before 6-10-65, to the next of kin in equal degree, with those claiming through the nearest ancestor preferred. Effective 6-10-65, to the surviving grandparent or

grandparents, maternal grandparent or grandparents sharing equally with paternal grandparent or grandparents.

8. Effective 6-10-65, to the issue of any maternal grandparent sharing equally with the issue of any paternal grandparent.

Those of half blood inherit equally with those of whole blood.

Small Estates Statute - Only where will provides for non-intervention by the court.

WEST VIRGINIA

1. If a spouse and no issue survives, all to the spouse.

2. If a spouse and issue survive, one-third to the spouse, and the balance to the children with the descendants of a deceased child taking by representation.

3. If no spouse survives, all to the children, with issue of a deceased child taking by representation. An adopted child shall inherit from and through the adoptive parents as if their natural born child or issue.

4. To the parents equally or all to the survivor.

5. If no spouse, child, descendant of a deceased child, father or mother survives, all to the brothers and sisters, with descendants of deceased brothers and sisters taking by representation.

6. The estate is divided into moieties (halves); one-half to paternal and one-half to maternal kin, each half:

    a. One-half to grandfather and one-half to grandmother. If either is dead, that half to uncles and aunts on the same side and the descendants of deceased uncles and aunts by representation.

    b. If no grandparents survive, to the uncles and aunts on same side and the descendants of deceased uncles and aunts by representation.

    c. If only one grandparent among those in a and b survive, the entire moiety to the grandparent.

    d. To the next of kin.

If no one survives on either maternal or paternal side, all to the other side. If neither maternal or paternal kin survive, to the kin and spouse as if spouse had survived and inherited.

Those of half blood inherit one-half as much as those of whole blood. Those of ascending kin, if all surviving are of half blood, take double portions.

No Small Estates Statute.

WISCONSIN

1. If a spouse and issue survive:

    a. Prior to July 23, 1961, all to issue as in 2.

    b. Effective July 23, 1961, the spouse is entitled to the greater of:

    - The same share as a child is only one child survives, and in other cases, one-third, with two-thirds to the issue, or

    - When the deceased leaves no lawful issue by a previous marriage, all of the estate up to value of $10,000.

    c. (Effective April 1, 1971):

    - If issue survives, all of whom are issue of surviving spouse, the first $25,000 plus one-half of the balance if only one surviving child or issue of a deceased child survives, or one-third of the balance in other cases to surviving spouse.

    - If issue survives, and one or more is not issue of surviving spouse, one-half of estate to surviving spouse if only one child, or only issue of a deceased child survives, and in other cases, one-third of estate to surviving spouse.

2. To the children and lawful issue of a deceased child by representation. If no child survives, and all lineal descendants are of the same degree, they share equally. An adopted child shall inherit from or through the adoptive parent as "issue."

3. If no issue survive, all to the spouse.

4. To the parents, with all to the survivor.

5. To the brothers and sisters, with descendants of any deceased brother or sister taking by representation.

6. To the grandparents.

7. To the next of kin in equal degree.

Small Estates Statute - $5,000 or under - summary procedure.

Effective April 1, 1971, Small Estate Affidavit on estate not exceeding $1,500.

WYOMING

1. If a spouse and child or descendants of a deceased child survive, one-half to the spouse and one-half to the child or children with descendants of deceased children taking by representation.

2. If a spouse and no issue survive, all the estate, after the payment of debts and administration, up to $20,000 to the spouse, with the amount over $20,000 divided, three-fourths to the spouse and the one-fourth to:

   a. The father and mother, or the surviving parent.

   b. If both parents are dead, to the brothers and sisters taking by representation, in equal shares.

3. If a spouse and no issue, parents, brothers and sisters survive, all to the spouse.

4. To the children, and descendants of deceased children by representation. An adopted child is entitled to the same rights as an heir at law of the adopting parents.

5. To the parents, brothers and sisters in equal shares, with descendants of deceased brothers an sisters taking by representation.

6. To the grandparents, uncles and aunts in equal parts, with their descendants taking by representation.

Children and descendants of children of half blood inherit as is whole blood, but collateral relatives of half blood take one-half that taken by those of whole blood.

Small Estates Statute - Estate of $500 or less.

Appendix E - Appointment Of Fiduciary

E1. Proof Of Appointment

Evidence of appointment will be required when any fiduciary files an application in his official capacity on behalf of an estate. Fiduciary includes, among others, administrators and executors.

E2. Legal Representative Appointed By Court

Evidence of appointment may be:

- A certified copy of letters of appointment; or
- A "short" certificate; or

- A certified copy of the order of appointment; or
- Any official document issued by the clerk or other proper official of the appointing court.

The document submitted must bear the court seal or the signature of the court clerk and where the order specifies conditions to be complied with before issuance of letters of appointment, it must appear that those conditions have been met; e.g., if a bond is required, such bond must have been furnished.

Certifications of the appointment made more than a year before filing and transcriptions or certifications by anyone other than the proper court office are not acceptable. If the representative had been appointed more than a year before filing, the certification must show that the appointment is still in full force and effect. If the representative had been appointed within the year before filing, the certification must show that the appointment is still in full force and effect only where the circumstances indicate that the appointment may have ended.

If the representative is a "special administrator" (i.e., his powers are limited) and not a general administrator, the certification must show that the appointment is in full force and effect in all cases.

E3. Public Administrator

The application and supporting documents of a public administrator or other State official authorized to distribute estate monies must contain:

- His full title,
- A copy of a document needed to place the estate within his jurisdiction,
- Such other evidence of his authority as we may need.

Appendix F - Payment Of LSDP Before 10-30-66

F1. Eligibility And Entitlement Requirements

Conditions for Payment	DOD before 10-1958	DOD after 9-1958 & before 10-30-66
1. The employee must be completely or partially insured.	Yes	Yes

2.	There must be no surviving widow(er), child, or parent entitled to an insurance annuity on the basis of the employee's death.	Yes	Yes
3.	An application must be filed before the second anniversary of the employee's death.	Yes	Yes
4.	Applicant must be:		
	a. "Living-with" widow(er) of employee;	No*	Yes
	b. Child(ren) and/or child(ren) of deceased child(ren) of employee;	Yes	No
	c. Parent(s) of employee;	Yes	No
	d. Person(s) equitably entitled for having paid employee's B/E.	Yes	Yes

* "Living with" not required for widow(er) prior to 10-1958.

F2. Priority Of Payment

Person(s) and amount(s) payable		**DOD before 10-1958**	**DOD after 9-1958 & before 10-30-66**
1.	"Living-with" widow(er); full amount.	No*	Yes
2.	Child(ren) and/or child(ren) of deceased child(ren): Proportions payable under applicable State Law for distributing employee's intestate personal property	Yes	No
3.	Parent(s): One-half to each; full amount to sole survivor.	Yes	No
4.	Person(s) equitably entitled: One person receives amount equal to reimbursable B/E(s)he paid or LSDP, whichever is less; two or more share in LSDP to extent and proportion they paid B/E.	Yes	Yes

* "Living with" not required for widow(er) prior to 10-1958.

F3. Relatives As Applicant

A. Relatives Defined - The applicant must have the status of the deceased employee's widow(er), child (or person entitled to share with child), or parent under the intestacy law of the State of the employee's last domicile; and

1. Must not be disqualified from inheriting the deceased employee's intestate personal property under the law of the State of the employee's last domicile; and

2. Must not have been finally convicted of the felonious homicide of the employee.

NOTE: Neither a stepchild nor a stepparent may receive an LSDP by virtue of such relationship to the deceased employee since neither may take intestate personal property under State law. They may, however, receive the LSDP by reason of being equitably entitled.

B. Adopted Child as Relative - Follow the instructions in chapter 4.4, "Family Relationships," in determining an adopted child's rights as a relative of the deceased employee.

F4. When Relative's Rights Pass To Another

An applicant entitled by virtue of his relationship to the deceased employee must be living on the date RRB determines his relationship in order to prevent entitlement of groups below his. The date the RRB determines relationship is interpreted to be the date on which such person's claim for the LSDP is approved for payment by an authorizer.

Thus, if an employee's widow(er) filed for the LSDP but died before the date her/his claim was approved for payment, the employee's children could file within the two-year period and become entitled. However, if the widow(er) died on or after the date her/his claim was approved for payment, entitlement to the LSDP passed to her/his estate.

Appendix A4 - Age Information In Census Records

A. General

In most years the census taker asked individuals their age in terms of "age at last birthday" as of the Census Day. The person's age was written in whole years, except as noted in the last column of the table below. At no time has the exact day of birth ever been asked.

Except for the 1950 census (see "Note" in F below), the census transcript shows complete years and months.

B. Example 1

The transcript shows "0/12 months." This indicates that the child was not yet one month old on the Census Day for that year's enumeration.

C. Example 2

The transcript shows "1 3/12", indicating that the child was one year and three months old on the Census Day.

D. Example 3

A child enumerated in the 1920 census who was born on 10/20/18 would be shown on the transcript as "1 2/12".

E. Use judgment

Since the census was rarely taken on Census Day, the census transcripts may not always reflect accurate information as of the Census Day. Exercise judgement when evaluating a census transcript which shows the age in months.

F. Census Day for period 1900 - 1970

The following table shows the date of the Census Day for the period 1900 - 1970, and how the age was asked for each census.

1900	June 1	age, month, and year
	Age shown in years and months if under 1 year old.	
1910	April 15	age at last birthday
	Age shown in years and months if under 2 years old.	
1920	January 1	age at last birthday

	Age shown in years and months if under 5 years old.	
1930	April 1	age at last birthday
	Age shown in years and months if under 5 years old	
1940	April 1	age at last birthday
	Age shown in years and months if under 1 year old	
1950	April 1	age at last birthday
	Age shown in years and months if under 1 year old (see note below).	
1960	April 1	quarter of year in which birth occurred and year
1970	April 1	age, month, and year

NOTE: In the 1950 census, the month of birth is shown for children who were less than 1 year old on April 1.

G. Different Census Day

In the following areas, the Census Day was not always the same as the Census Day for the rest of the U.S.

Area	Census Years	Census Taken As Of.
Alaska	1910	12/31/09
	1930	01/01/29
	1940	10/01/29
U.S. Virgin Islands	1920	11/01/17

Appendix A6 - Navajo Indian Tribal Census Rolls

A. Policy

Certifications from the official Navajo Indian tribal census rolls of the U.S. Bureau of Indian Affairs may be treated as public records of birth. Thus, a birth or religious record need not be sought if:

- The file contains such a certification, and

- The individual was enrolled in the tribal census before age 5.

B. Basis for records

Navajo tribal census records are normally established at birth based on copies of the same hospital notice as those sent to the various public recorders serving the Navajo reservations.

C. Location of records

These records are maintained at Window Rock, Arizona.

D. How to request information from records

Make requests for information from these records by letter to the Navajo Tribe through the RRB F/O, Albuquerque NM.

Include the following information about the claimant:

- Full name (including Indian name and nicknames), and
- DB, and
- Place of birth (if known), and
- Parents' names (including Indian names and nicknames), and
- Parents' census number, and
- The individual Navajo census number involved.

NOTE: Altered Tribal Census Records must be carefully evaluated in combination with other documents if a material discrepancy exists.

Appendix A7 - Seneca Indian Tribal Census Rolls

A. Policy

Certifications from the tribal census rolls of the Seneca Nation of Indians may be treated as public records of birth under the same conditions as for Navajo Indians (see Section A6 above).

B. Basis for records

From 1882 until about 1940, a yearly census was conducted in the Seneca Indian Nation. Beginning about 1906, these census records were based on New York State birth records. The individual's specific DB was recorded in the first census taken after his/her birth.

C. Location of records

The records are maintained by the clerk of the Seneca Nation. The clerk is changed every 2 years when the headquarters of the Nation is rotated between the Allegheny reservation in Salamanca, NY (serviced by the Olean FO) and the Cattaraugus reservation in Irving, NY (serviced by the Dunkirk FO). Both are serviced by RRB F/O, Buffalo, NY.

The records will be in Salamanca from November 1982 to November 1984; they will then return to Irving for 2 years and continue to rotate in November of even-numbered years.

D. How to request records

Make requests for these records by letter to the clerk of the Seneca Nation through the RRB F/O, Buffalo, NY.

Include the following information about the claimant:

- Name at birth, date of birth, and parents' names.

NOTE: There is no charge to members of the Seneca Nation.

Appendix A8 - National Archives Indian Records

A. Types

The National Archives in Washington, D.C. has extensive records from the Bureau of Indian Affairs. Two types of records are especially helpful for establishing age for Indian claimants, the Indian Census Rolls, and the Quarterly Reports of Indian Schools.

B. Indian Census Rolls 1885-1940

Indian Census Rolls (1885-1940) are grouped by families. They show the age or DB of each person and his/her relationship to the head of the family.

The records are not complete because:

- A census was not taken for every reservation or group of Indians for each year.
- Some Indians are not listed because they did not maintain a formal affiliation with a tribe under Federal supervision.

Few records are kept for the following Oklahoma tribes:

- Cherokee, Chickasaw, Choctaw, Creek, Seminole

C. Quarterly Reports of Indian Schools, 1910 - 1939

Quarterly Reports of Indian Schools (1910-1939) involve both Federal Government operated and private contract schools. They list students and their ages. The records are not complete in that they do not list all schools or even all students in a given school.

D. Other records

For a particular tribe, other types of records may be available. Because of the variety of information contained in the National Archives, it is best to consider each case on an individual basis. If enough information about a claimant is known, the personnel at the National Archives can determine what types of records might list the claimant.

E. Requests for Information

Make requests for information from Indian records in the National Archives, Washington (Downtown), DC District Office, 2100 M Street, NW, Washington, DC 20203.

The request should contain the following information regarding the claimant:

- Name (including Indian name and nicknames), and
- Tribe, band, reservation, or agency if known, and
- Date and place of birth, and
- Parent's names (including Indian names and nicknames), and
- Place(s) of residence as a child, and
- Siblings' names, and
- Name and location of Indian school(s) attended, and
- Approximate dates of school attendance.

Appendix D - Common-Law and Similar Marriages

D1. The following is a digest of State laws regarding the recognition of common-law marriages.

Alabama

Recognized. Where a marriage (ceremonial or common-law) is contracted while an impediment exists, cohabitation of the parties in good faith after removal of the impediment will establish a valid common-law marriage as of the day the impediment is removed. Even if the parties at the time the marriage was contracted were aware of the

impediment but they nevertheless manifest or demonstrate their desire to live as a married couple (i.e., conduct themselves and their affairs as would a married couple). Continued cohabitation after the removal of the impediment raises a presumption that a valid common-law marriage arose immediately upon removal of the impediment.

Alaska

Recognized from March 7, 1939, through December 31, 1963; marriage license required, but solemnization not mandatory; however, there must be a marriage contract. Not recognized after December 31, 1963.

American Samoa

Submit to the deputy general counsel if alleged.

Arizona

Not recognized. See D2 and D3 for the possibility that a putative marriage may have been created. If persons, while domiciled in Arizona, contract a common-law marriage in a State where common-law marriages can be contracted, the marriage will not be recognized as valid in Arizona if the parties intended by their actions to evade Arizona's laws.

Arkansas

Not recognized.

California

Not recognized. However, see D2 and D4 for the possibility that a putative marriage may have been created.

Colorado

Recognized. A temporary stay by nonresidents will not of itself establish a common-law marriage. See D2 and D5.

Connecticut

Not recognized.

Delaware

Not recognized.

District of Columbia

Recognized. Both an express mutual agreement to enter into a present marriage and cohabitation after the agreement are required. If the parties agree to be husband and

wife in ignorance of, or with the knowledge of, a legal impediment to their marriage, upon removal of that impediment, a common-law marriage results between the parties if they continue to live together as husband and wife.

Florida

Recognized before January 2, 1968. The elements of a common-law marriage were legal capacity to contract marriage, mutual agreement of the parties to presently become husband and wife, and consummation of the agreement by cohabitation. Where the relationship was not valid in the beginning because one party had a prior undissolved marriage, their cohabitation as husband and wife after removal of the impediment and before January 2, 1968, created a common-law marriage; no new agreement of marriage after removal of the impediment had to be established.

Where a purported common-law marriage arose before January 2, 1968, and such marriage was not valid because of an impediment but such impediment was removed after January 1, 1968, then a common-law marriage did not arise.

Georgia

Recognized before January 1, 1997. Georgia does not recognize common-law marriages entered into on or after January 1, 1997. Common-law marriages entered into prior to January 1, 1997 are recognized and may be evidenced by cohabitation and repute alone, from which an agreement may be inferred in the absence of evidence negating such an agreement. Good faith by at least one party must be shown to establish a common-law marriage by cohabitation and reputation. Where at least one of the parties to a common-law relationship, void from the beginning, believed in good faith that the marriage was valid and they continued to cohabit for many years after removal of the impediment and children were born of the relationship, it may be inferred that the parties agreed, after removal of the impediment, that they would be husband and wife.

Guam

Not recognized since at least 1948. If common-law marriage is alleged to have been contracted prior to 1948, submit to the deputy general counsel.

Hawaii

Not recognized.

Idaho

Not recognized unless the common law marriage contract was established prior to January 1, 1996.

Illinois

Not recognized. (See D2 and D6 for the possibility that a putative marriage may have been created.) Illinois does not recognize the common-law marriage of its domiciliaries which arise out of brief sojourns to common-law marriage States.

Effective October 1, 1977, Illinois recognizes as valid a void marriage, which would have been valid but for an impediment, after removal of the impediment.

Effective October 1, 1977, a ceremonial marriage prohibited because it was entered into prior to the dissolution of a prior marriage becomes valid when the impediment is removed and the parties continue to cohabit. Where the parties did not cohabit subsequent to September 30, 1977, this statute is not applicable and the marriage is not validated.

Indiana

Recognized before January 1, 1958. If parties in good faith had attempted to contract a marriage to which there was an impediment, but both parties had believed in good faith they were validly married, a valid common-law marriage was created by their having lived together as husband and wife in Indiana after removal of the impediment. If either party knew of the impediment before its removal, it is necessary to have an agreement or ceremonial marriage after removal of the impediment in order to establish a valid marriage.

Iowa

Recognized. Evidence of cohabitation of the parties after the agreement to be husband and wife is not required.

Kansas

Recognized. Evidence of cohabitation of the parties after the agreement to be husband and wife is not required. In the absence of proof to the contrary, an agreement to be husband and wife may be implied where the parties have cohabited as husband and wife and were reputed to be such. Where a marriage is contracted while an impediment exists, cohabitation of the parties in good faith after removal of the impediment will establish a valid common-law marriage.

Kentucky

Not Recognized.

Louisiana

Not recognized. However, see D2 and D7 for the possibility that a putative marriage may have been created.

While a common-law marriage, valid where entered into is ordinarily recognized, a relationship originally bigamous and known to be such by the parties will not be recognized as a common-law marriage in the absence of a new ceremonial marriage or specific marital agreement even though continued cohabitation after removal of the impediment would give rise to a common-law marriage under the laws of the State where entered into.

Maine

Not recognized.

Maryland

Not recognized.

Massachusetts

Not recognized. However, by statute, if parties domiciled in Massachusetts enter into a ceremonial marriage while one party is barred from remarrying by a Massachusetts divorce, and one party entered into the marriage in good faith, a valid marriage will arise upon removal of the impediment if the parties are at that time domiciled in Massachusetts. A new ceremonial marriage is not required.

Michigan

Recognized before January 1, 1957. A common-law marriage could have been created in Michigan if the parties had agreed to be husband and wife and had held each other out to the public as such. If they had agreed to be husband and wife in a State not recognizing common-law marriage, their mere cohabitation as husband and wife in Michigan would have established a valid common-law marriage.

Even though there was no evidence of an express agreement to be husband and wife before January 1, 1957, it is possible to infer such an agreement. This inference can be based on long cohabitation of the parties during which time they had consistently held themselves out to friends, relatives, and to the public as husband and wife.

Minnesota

Recognized before April 27, 1941. (See D2 and D8 for the possibility that a putative marriage may have been created.) Minnesota will not recognize the common-law marriage of its domiciliaries which arise out of brief sojourns to common-law marriage States.

Mississippi

Recognized before April 5, 1956.

Missouri

Not recognized.

Montana

Recognized.

Nebraska

Not recognized.

Nevada

Recognized before March 29, 1943.

New Hampshire

Not recognized. However, persons cohabiting and acknowledging each other as husband and wife and generally reputed to be such for three years and until one of them dies shall thereafter be deemed to have been legally married. All events must occur in New Hampshire.

New Jersey

Not recognized.

New Mexico

Not recognized.

New York

Not recognized.

North Carolina

Not recognized.

North Dakota

Not recognized.

Ohio

Recognized before October 10, 1991. A temporary stay by nonresidents will not suffice as grounds for establishing a common-law marriage. Common-law marriages arising on or after October 10, 1991 will not be recognized.

Oklahoma

Recognized. A temporary stay by nonresidents will not suffice as grounds for establishing a common-law marriage.

Oregon

Not recognized.

Pennsylvania

Recognized on or before January 1, 2005. Prior to January 2, 2005, an agreement to be husband and wife was essential to establish a common-law marriage in Pennsylvania; however, this agreement was implied if the parties cohabited as husband and wife for many years unless evidence indicated the parties did not agree to be husband and wife.

Where only one of the parties to a marriage, including a common-law marriage, knew it was void because of an impediment, the marriage was valid without a new agreement if the parties continued to live together, as of January 1, 1954, or the date of removal of the impediment, whichever was later. Where both of the parties knew it was void because of an impediment, a new agreement was necessary after the removal of the impediment. If neither party knew of the impediment, mere cohabitation of the parties as husband and wife in Pennsylvania after removal of the impediment made the marriage valid.

Puerto Rico

Not recognized.

Rhode Island

Recognized. Where parties contracted a bigamous ceremonial marriage, a valid common-law marriage will arise from the parties' cohabitation as husband and wife after removal of the impediment. No new agreement of marriage is required if the evidence establishes clearly and convincingly that the parties intended at all times to be husband and wife. It is not necessary that the bigamous marriage be contracted in good faith by either party. However, if a bigamous common-law marriage is involved and the parties were aware of the impediment, a new agreement is necessary.

South Carolina

Recognized. Where parties contract a bigamous marriage in good faith and both parties believe they are married, a valid common-law marriage arises if they cohabit as husband and wife after removal of the impediment. However, if either party knew of the impediment, a new agreement of marriage after removal of the impediment, followed by cohabitation as husband and wife, is required to establish a common-law marriage.

South Dakota

Recognized before July 1, 1959. Where both parties to an attempted common-law marriage knew it was bigamous, a new marriage contract was required to establish a valid common-law marriage after removal of the impediment.

Tennessee

Not recognized. However, where parties free to marry have lived together for a long time and held themselves out to the public as husband and wife, both parties as well as third parties, are in law not permitted to deny that they were validly married, provided there is an affirmative showing that (1) both parties acted in good faith in that they each honestly believed the relationship constituted a valid legal marriage; or (2) the party seeking the benefit of estoppel relied in good faith upon the representation of the other that the relationship constituted a valid legal marriage; or (3) the cohabitation followed a defective ceremonial marriage which the parties believed constituted a valid ceremonial marriage. This relationship in effect gives the survivor, and children of the marriage, inheritance rights in Tennessee; it has no effect outside Tennessee.

Texas

Recognized.

Prior to January 1, 1970, good faith at the inception of the relationship on the part of at least one of the parties, or a new agreement after removal of the impediment was required. Good faith means an intent to marry, together with the belief that there is no impediment to such marriage. If the parties enter into a relationship and all elements for a valid common-law marriage are present except there is a prior undissolved marriage known to the parties, there need be no new express agreement to give rise to a valid common-law marriage after removal of the impediment. Such agreement may be implied from continued cohabitation of the parties and their holding out to the public that they are husband and wife if during their relationship they maintained a continuous matrimonial intent.

Effective January 1, 1970, where the relationship was not valid because there was a prior undissolved marriage, a common-law marriage becomes valid when the prior marriage is dissolved if, since that time, the parties have lived together as husband and wife and presented themselves to others as being married.

The marriage of a man and woman may be proved by evidence that (1) they agreed to be married (prior to September 1, 1989 this agreement could be inferred if (2) was proved); and (2) after the agreement they lived together in Texas as husband and wife and represented to others there that they were married.

The parties to an "informal marriage" may execute a declaration of such marriage, which will be recorded by the county clerk. The Texas law provides that such an "informal marriage" may be proved by evidence that a declaration of marriage was

validly executed and further provides that the execution of a declaration is prima facie evidence of the marriage. Forward to the Deputy General Counsel all cases in which such a declaration is submitted and the evidence in file does not establish that factors (1) and (2) listed in the preceding paragraph are met.

A temporary stay by non-residents in Texas will not of itself establish a common-law marriage.

Effective September 1, 1989, any judicial or administrative proceeding in which a common-law marriage is to be proved must commence no later than one year after the date on which the relationship ended (usually, separation or death) or no later than one year after September 1, 1989, whichever is later. See D9 for an explanation of the one year time limit.

Also effective September 1, 1989, an agreement to be married may no longer be inferred based on proof that the parties to an alleged common-law marriage lived together as husband and wife. Whether or not an agreement exists requires a separate determination.

Utah

Effective April 27, 1987, a common-law marriage will be recognized in Utah if it arises out of a contract between two consenting parties who: 1) are capable of giving consent; 2) are legally capable of entering a solemnized marriage under Utah law; 3) have cohabited; 4) mutually assume marital rights, duties and obligations; and 5) who hold themselves out as and have acquired a uniform and general reputation as husband and wife. The determination or establishment of a marriage must occur during the relationship or within one year following the termination of that relationship. Evidence of a marriage may be manifested in any form. See D10 for an explanation of the one year time limit.

Vermont

Not recognized.

Virginia

Not recognized.

Virgin Islands

Recognized before September 1, 1957.

Washington

Not recognized.

West Virginia

Not recognized.

Wisconsin

Not recognized. However, if parties enter into a common-law marriage in good faith in a State where such marriages could be contracted during a period when an impediment to their marriage exists, Wisconsin will recognize their marriage as valid if they later live in Wisconsin and cohabit as husband and wife after removal of the impediment. A valid marriage will arise without any new agreement of marriage by the parties. Wisconsin will not recognize the common-law marriage of its domiciliaries which arise out of brief sojourns to common-law marriage States.

Wyoming

Not recognized.

D2. Putative Marriages

Under the laws of some States, the innocent party to a void marriage may acquire inheritance rights as a spouse. This relationship is called a putative marriage. The essential basis of a putative marriage is a good faith belief in the existence of a valid marriage at its inception, and continuing until the spouse's application is filed in a life case or until the employee dies in a death case. The marriage may be invalid because of some defect of which the putative spouse was unaware, such as a prior undissolved marriage of one of the parties, or failure to meet the requirement of solemnization. Putative marriages should be distinguished from deemed marriages, discussed in RCM section 4.3.15.

A person who maintained a putative marriage with the employee under applicable State law and who was then divorced from the employee may qualify as a divorced spouse or surviving divorced spouse. The good faith belief must have lasted until a final divorce was obtained.

D3. Arizona

A person who maintained a good faith belief in the validity of a legally invalid marriage is accorded certain inheritance rights to property acquired during the course of the relationship, and therefore, acquires the status of putative spouse in Arizona. Examiners will submit to the General Counsel any case in which either party alleges a putative marriage in Arizona. Where the putative spouse learned of the defect in the marriage before the time as of which status as a spouse must be established, but the parties undertook within a reasonable time to legalize their marriage, then the status as a spouse continues.

D4. California

Prior to February 4, 1983, where at least one of the parties to an invalid marriage, either ceremonial or common-law, entered into the marriage in good faith, believing that it was valid, a spouse has status as a putative spouse and inheritance rights as a spouse so long as such good faith belief continued. Where the putative spouse learned of the defect in the marriage before the time as of which status as a spouse must be established, but the parties undertook within a reasonable time to legalize their marriage, then the status as a spouse continued.

With one limited exception noted below, a putative marriage based on a common-law relationship is no longer recognized in California. This is a change of position effective for claim determinations on or after February 4, 1983. A putative marriage can now be established only on the basis of an invalid ceremonial marriage.

EXCEPTION: If the parties secured a marriage license but did not go through a marriage ceremony, and if they were inexperienced foreigners unfamiliar with U.S. customs and California laws, they might have had reason to believe that the license alone made them legally married.

Examiners will submit any such case to the General Counsel, after development of the statement regarding the parties' good faith belief, their language ability, length of stay in the U.S., and general information on the marriage laws in their native country.

D5. Colorado

Any person who has cohabited with another to whom he/she is not legally married, in the good faith belief that he/she was married to that person, is a putative spouse, until knowledge of the fact that he/she is not legally married terminates his/her status and prevents acquisition of further rights. Children born of putative spouses are legitimate. A putative spouse acquires the rights conferred upon a legal spouse, whether or not the marriage is prohibited under State law, declared invalid, or otherwise terminated by court action. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses.

A putative marriage may be established in Colorado to give the status of wife or husband to a person who applies for benefits as the spouse of a railroad employee on or after January 1, 1974, or to give the status of widow or widower to a person who applies for benefits as the surviving spouse of a railroad employee who died on or after January 1, 1974.

Any case in which either party alleges a putative marriage in Colorado will be submitted by examiners to the General Counsel.

D6. Illinois

Effective October 1, 1977, the Illinois Marriage and Dissolution of Marriage Act provides the following with regard to the concept of putative spouse in Illinois:

Any person, having gone through a marriage ceremony, who has cohabited with another to whom he/she is not legally married in the good faith belief that he/she was married to that person is a putative spouse; until knowledge of the fact that he/she is not legally married terminates his/her status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, whether or not the marriage is prohibited or declared invalid under state law. If there is a legal spouse or other putative spouse, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses. The provision of Illinois law concerning putative marriages does not apply to common-law marriages contracted in the State after June 30, 1905.

D7. Louisiana

If at least one of the parties of a ceremonial marriage, or to what one of the parties actually believes was a ceremonial marriage, reasonably and in good faith believes that the marriage is valid, a putative marriage may be created under Louisiana law. A putative marriage, if in force at the death of one party, gives inheritance rights to the innocent spouse and any children born of the relationship even though the marriage is bigamous or otherwise void.

D8. Minnesota

Any person who has cohabited with another to whom he/she is not legally married, in the good faith belief that he/she was married to that person, is a putative spouse until knowledge of the fact that he/she is not legally married terminates his/her status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse whether or not the marriage is prohibited or declared a nullity.

A putative marriage may be established in Minnesota to give the status of wife, husband, widow, or widower to a person who applies for benefits as a spouse or surviving spouse on or after March 1, 1979, or who filed an application before March 1, 1979, that has not yet been finally adjudicated.

Any case in which a putative marriage is alleged in Minnesota will be submitted by examiners to the General Counsel.

D9. Texas

The one year time limit is satisfied if an applicant seeking to prove a common law marriage

1. Files an application with the RRB no later than one year after the relationship ended (usually the date of separation or death). The determination does not have to be made before the end of the time limit; or

2. Submits a favorable determination from a Texas judicial or administrative proceeding.

D10. Utah

The one year time limit is satisfied if the determination or establishment of a common law marriage occurs during the relationship or within one year following the termination of that relationship. To ensure that the determination is timely, develop promptly any claim where a Utah common law marriage is alleged.

If a Utah common law marriage has not been proved timely in a Utah proceeding, the marriage never existed.

Appendix G - Right Of Adopted Child To Inherit From Natural Parent

1. General

The list of States in this appendix deals with the right of an adopted child to inherit from his/her natural parent where the adoption occurred before the death of the natural parent. When an adopted child retains inheritance rights, dependency must be established to be eligible for an insurance annuity; the child must have been living with or receiving contributions from his/her natural parent. Dependency is not a requirement for a lump-sum payment (RLS, deferred LSDP, or annuities due but unpaid at death).

Where a child was adopted in a State in which he/she kept the right to inherit from the natural parent and the natural parent died domiciled in a State where an adopted child may not inherit from a natural parent or visa versa, refer the case to for submission to the DGC.

References below to effective dates based upon the death of the natural parent before or after a given date should also be read to refer to an application for benefits as a child of a living parent filed before or after the given dates.

2. States Where Adopted Child May Inherit From The Natural Parent

Alabama	Maine	Texas
Alaska	Oklahoma	Utah
Illinois	Rhode Island	Vermont
Kansas	South Dakota	Wyoming

Louisiana Tennessee

3. States Where Adopted Child May Not Inherit From Natural Parent

Connecticut New Hampshire

South Carolina - Effective 1-1-76

4. States And Territories Where Adopted Child's Right To Inherit From The Natural Parent Is Questionable

When the natural parent died before the law was amended to provide that an adopted child may not inherit from the natural parent, the law applied will be that in effect at the time the natural parent died.

American Samoa

HQ will submit to DGC.

Arizona

If either an interlocutory or final decree of adoption was entered before 6/26/52, forward for submission to DGC. If both decrees were entered on or after 6/26/52, child may not inherit unless the natural parent is the spouse of the adopting parent.

Arkansas

May inherit if adopted prior to 7/5/77. Effective with adoptions on or after 7/5/77, child may not inherit unless the natural parent is the spouse of the adopting parent.

California

Child may not inherit unless natural parent is spouse of adopting parent and retains custody and control of child.

Colorado

If natural parent died before 5-1-61, the child may inherit. If the natural parent dies after 4-30-61, the child may not inherit unless the natural parent is the spouse of the adopting parent.

Delaware

If natural parent died before 7-1-52, child may inherit. If natural parent of child, adopted 6-30-52, dies after that date, child may not inherit unless natural parent is spouse of

adopting parent. If adoption occurs before 7-1-52, and natural parent dies after that date, HQ will submit to DGC.

District of Columbia

Child adopted after 8-24-37 may not inherit unless natural parent is spouse of the adopting parent.

Florida

On and after 1/1/76, an adopted person can inherit from the adoption parent(s) who die on or after that date but not from the natural parent(s) unless the person is adopted by the spouse of the natural parent. If the adopting or natural parent(s) died prior to January 1, 1976, the adopted person could inherit from either or both the natural and adopting parent(s).

Georgia

Prior to January 1, 1978, may inherit. Effective January 1, 1978, may not inherit, except in limited circumstances where the parent died without having surrendered or terminated parental rights. Circumstances where parental rights have not been surrendered or terminated are: (1) where the child has been abandoned by the parent; (2) where the parent cannot be found after diligent search; or (3) where the parent is insane or otherwise incapacitated form surrendering such rights, and the court is of the opinion that adoption is for the best interest of the child. Also, surrender or termination of parental rights is not a prerequisite to adoption if the petitioner for adoption is the spouse of the other parent of the child, brother, sister, aunt, or uncle of the child, or son or daughter of either parent if: the parent failed for one year or longer prior to the filing of petition for adoption to (1) communicate (or make a bonafide effort to communicate) with the child; or (2) provide for the care and support of the child under law or pursuant to a judicial decree if court believes adoption is in the best interest of the child. Submit case to the DGC if there is a question about whether parental rights have been surrendered.

Guam

HQ will submit to DGC.

Hawaii

Child may not inherit unless natural parent is spouse of adopting parent and dies on or after 7-1-53. If natural parent is spouse of adopting parent but died before 7-1-53, HQ will submit to DGC.

Idaho

Child adopted on or after 7-1-71 may inherit if natural parent is spouse of adopting parent. Child adopted between 7-1-69 and 6-30-71 inclusive may not inherit. If adoption occurred before 7-1-69, HQ will submit to DGC.

Indiana

If natural parent died before 1-1-54, child may inherit. If natural parent dies after 12-31-53, child adopted during minority may not inherit unless natural parent is spouse of adopting parent. If natural parent dies after 7-5-61, child who was adopted during minority may not inherit unless such deceased natural parent or other natural parent is spouse of adopting parent, and child was born in wedlock.

Iowa

If natural parent died before 7-1-69 or on or after 1-1-77, the child may inherit. If the natural parent died on or after 7-1-69 and before 1-1-77 child may not inherit unless he had attained majority at the time of adoption or was related to one or both of the adopting parents within the fourth degree of consanguinity. Prior to 7-1-72, a child attained majority at age 21 or marriage, whichever occurred first. 7-1-72, or later a child attained majority at age 19 or marriage, whichever occurs first. Cases involving question of whether a child is related to the adoptive parents within the fourth degree of consanguinity will be submitted to DGC.

Kentucky

If natural parent died before 2-27-56, the child may inherit. If natural parent dies after 2-26-56, child may not inherit unless natural parent is spouse of adopting parent.

Maryland

If natural parent died prior to 6-1-63, child may inherit. If natural parent died after 5-31-63, child may not inherit.

Massachusetts

If natural parent died before 7-4-67, child may inherit. If child is adopted before natural parent's death and natural parent dies after 7-3-67, child may not inherit.

Michigan

If natural parent died before 1/1/75, child may inherit. If natural parent died on or after 1/1/75, child may not inherit.

Minnesota

Child adopted before April 19, 1951, may inherit from natural parent. After April 18, 1951, child may not inherit unless the natural parent is the spouse of an adopting stepparent.

Mississippi

Child may inherit from the natural parent, unless provided otherwise in the decrees of the adoption.

Missouri

Child may not inherit except in some cases where adoption is by stepparent. When adoption is by stepparent, and where natural parent who is spouse of stepparent is joint petitioner, child may inherit from such natural parent who dies after 5-20-48. Other cases where natural parent in question is spouse of adopting stepparent will be submitted to DGC.

Montana

If the natural parent died before 10/1/81, the child may inherit. If the natural parent dies after 9/30/81, the child may not inherit unless a natural parent is the spouse of the adopting parent.

Nebraska

If the natural parent died before January 1, 1977, the child may inherit unless the child was adopted before August 29, 1943, and the terms and conditions of consent and petition for adoption provide otherwise. If the natural parent dies on or after January 1, 1977, the child may not inherit unless the natural parent is the spouse of the adopting parent.

Nevada

If parent died before 3-28-53, child may inherit. If parent dies after 3-27-53, child may not inherit unless the natural parent is the spouse of the adopting parent.

New Jersey

If the natural parent died before 1-1-54, child may inherit. If natural parent dies after 12-31-53 and prior to 7-21-66, child may not inherit unless the natural parent is the spouse of the adopting parent and consented to the adoption. If either parent dies after 7-20-66, child may inherit from such natural parent provided adopting parent is spouse of one natural parent and natural parent married to adopting parent consented to the adoption.

New Mexico

If natural parent died before 6-8-51, child may inherit. If natural parent dies on or after 6-8-51, child may not inherit unless the natural parent is the spouse of the adopting parent.

New York

If natural parent died before 3-1-64, child may inherit. If natural parent died on or after 3-1-64, child may not inherit unless natural parent is the spouse of the adopting parent and consented to the adoption.

North Carolina

Child adopted before March 15, 1941, may inherit from natural parent. Child adopted for life after March 14, 1941, and before March 11, 1949, may not inherit except where otherwise the estate would escheat to the State. If adopted only for the minority of the child, adopted child may inherit. Child adopted after March 10, 1949, may inherit, except where adoption proceedings had begun before that date and were completed after that date in accordance with law in effect between March 15, 1941 and March 11, 1949. In such cases above rule covering that period would apply. However, where natural parent dies after 6-30-55, the case will be submitted to DGC.

North Dakota

Children who are adopted by proceedings which were pending on or before 7-1-71 may inherit from their natural parents. Where adoption proceedings are instituted after 7-1-71, an adopted child may no longer inherit form his natural parents, except (a) with respect to his natural parent who is the spouse of the petitioner in the adoption proceedings, and (b) with respect to a natural parent who died without the parent-child relationship having been terminated when the child subsequently is adopted by a spouse of the surviving natural parent.

Ohio

After 8-27-51, a child generally may not inherit. However, if the natural parent is the spouse of the adopting parent, inheritance rights are not terminated unless there is evidence of relinquishment or forfeiture of rights by the natural parent. Send the case to HQ for submittal the case to the DGC if a natural parent is the spouse of the adopting parent and there is reason to believe that the natural parent's rights may have terminated.

Oregon

If the natural parent died before 7-21-53, child may inherit. If the natural parent dies on or after 7-21-53, child may not inherit unless the natural parent is the spouse of the adopting parent. These rules apply regardless of the date or place of adoption.

Pennsylvania

Child may not inherit unless the natural parent is the spouse of the adopting parent.

Puerto Rico

Child adopted after September 12, 1953, may not inherit. Child adopted before September 12, 1953, may inherit unless petition that such adoption be governed by law in effect after September 12, 1953, is granted.

Virgin Islands

Any case which arises involving the laws of the Virgin Islands should be referred to the DGC.

Virginia

If natural parent died before 6-30-54, child may inherit. If natural parent dies after 6-29-54, child may not inherit unless the child is adopted by a stepparent.

Washington

If natural parent died before 7-1-67, child may inherit. If natural parent died after 6-30-67, child may not inherit.

West Virginia

If natural parent died before 3-11-59, child may inherit. If natural parent dies after 3-10-59, child may not inherit unless the natural parent is the spouse of the adopting parent.

Wisconsin

If natural parent died before 7-1-56, child may inherit. If natural parent dies after 6-30-56, child may not inherit unless the natural parent is the spouse of the adopting parent.

Appendix H - Effective Date And Availability Of Adoption Decree

1. Explanation of Entries

In those States followed by symbol (1), certified copies of adoption decrees may be obtained without a court order. In those States followed by symbol (2), adoptive parents may obtain copies without a court order. In those States followed by symbol (3), copies of adoption decrees may not be obtained without a court order.

2. Effective Date of Adoption Decrees Under State Laws

This digest of State laws below gives the number and types of decrees and the effective dates for entitlement to child's benefits.

Alabama (2)

There is an interlocutory decree to be followed by a final decree after child has lived with adopting parents for 6 months (1 year, prior to 9/15/61). Court has power to omit interlocutory decree where adoption is by stepparent and child has lived with stepparent for 1-year. Also, after 9/14/61, court has power to omit interlocutory decree where adoption is by child's grandparent, brother, sister, aunt, uncle (singly or with their spouses) and child has lived with adopter for 1 year.

Adoption is effective from date of final decree.

Alaska (3)

There is one decree; adoption is effective from date of decree.

American Samoa

There is one decree; adoption is effective from date of the decree. If adoption is by other than judicial proceedings, forward to an adjudication unit for submission to DGC.

Arizona (3)

There is an interlocutory decree to be followed by a final decree after the child has lived for 6 months in the home of the adopting parents after entry of interlocutory decree (1 year prior to 6/20/68.)

Adoption is effective from date of final decree.

Arkansas (3)

The Arkansas Supreme Court issued a decision in 1982 to clarify the effective date of adoptions. This decision provides that, "after November 22, 1982, any adoption decree is a final decree unless subsequent hearing is required by the terms of the decree."

There was one decree before June 12, 1947. From 6/12/47 through 7/4/77, an interlocutory decree was granted followed by a final decree after 6 months. The adoption was effective on the date of the interlocutory decree.

On and after 7/5/77, a court may issue either a final decree or an interlocutory decree which automatically becomes a final decree on a day specified therein. An adoption is effective on the date of the final decree or on the date specified in the interlocutory decree as the date that the decree automatically becomes final.

California (2)

There is one decree; adoption is effective from date of the decree.

Colorado (3)

There was one decree before 5/20/49. From 5/20/49 through 3/28/51, there was an interlocutory decree to be followed by a final decree in period of 1 year or less, as court might deem advisable. After 3/28/51, court has discretion to enter final decree immediately or interlocutory decree to be followed by final decree after one year or less, as court may deem advisable.

Adoption is effective from date of final decree.

Connecticut (2)

There is an interlocutory decree to be followed by final decree within not less than 12 or more than 13 months. Court has discretion to omit interlocutory decree and enter final decree immediately.

Adoption is effective from date of interlocutory decree or, if omitted, from date of final decree.

Delaware (3)

Before 7/1/52, there was an interlocutory order to be followed after 1 year by final order. Court had discretion to omit interlocutory order and enter final order immediately. After 6/30/52, there was one decree, a final decree.

Adoption is effective from date of final decree if after 6/30/52. Before 7/1/52, adoption was effective from date of interlocutory order or, if omitted, from date of final order.

District of Columbia (3)

In proceedings instituted before 6/9/54, court could enter either final decree or interlocutory decree reciting date (within 6 months from entry of such decree) upon which it would become final. In proceedings instituted after 6/8/54, court can enter either final decree, or interlocutory decree reciting date (not less than 6 months, nor more than 1 year, from entry of such decree) upon which it will become final.

Adoption was effective from entry of final decree or date interlocutory decree became final, where proceedings were instituted before 6/9/54; adoption is effective from date of entry of final or interlocutory decree if proceedings were instituted after 6/8/54.

Florida (3)

Before 5/20/55, there was in interlocutory decree to be followed by a final decree after period not exceeding 1 year. After 5/19/55, there is a final decree.

Adoption is effective from date of final decree.

Georgia (3)

Where a petition was filed before 5/1/66, there was an interlocutory decree followed after 6 months by a final decree.

Adoption was effective from date of the final decree.

Where a petition is filed after 4/30/66, there is only a final decree which is entered not less than 90 days from the filing of the petition. Adoption is effective from the date of final decree.

Guam

There is one decree; adoption is effective from date of decree.

Hawaii (3)

Statute provides for one decree, but postpones creation of a complete adoptive status for a period not exceeding 6 months at discretion of court. Adoption is effective from date recited therein.

Adoption is effective for termination purposes from date of entry of decree. Forward to the adjudication unit for submission to DGC if effective date of decree is subsequent to its entry. Adoption is effective for purposes of entitlement to child's benefits from date recited in decree.

Idaho (3)

There is one decree; adoption is effective from date of decree.

Illinois (1)

There was one decree before 1/1/60. After 12/31/59, there is interim order of custody and control to be followed in 6 months by decree of adoption. Court may waive interim order.

Adoption is effective from date of decree.

Indiana (3)

There is one decree; adoption is effective from date of decree.

Iowa (3)

There is one decree; adoption is effective from date of decree.

Kansas (2)

Before 6/30/51, there was an interlocutory order to be followed after 6 months by final order. After 6/29/51, there is only final order which may be entered not less than 30 days after filing of petition.

Adoption is effective from date of final order.

Kentucky (3)

There is one decree. However, under special acts granting certain orphan homes authority to contract for adoption, no decree is required.

Adoption is effective from date of decree (date contract recorded in County Clerk's office).

Louisiana (3)

In proceedings involving children under 17, an interlocutory decree is first entered, followed in not less than 6 months by a final decree. Court may dispense with interlocutory decree procedure and enter final decree immediately in some cases where child has been in adopter's home for 6 months. Adoption is effective from date of final decree.

For children 17 or over, adoption is by notarial act of adoption, filed with the clerk of the court of the parish where executed (Register of Conveyances in parish of Orleans). Adoption is effective from date of filing. Forward copy of instrument to the adjudication unit for submission to DGC for an opinion as to its validity as a deed of adoption.

Maine (3)

There is one decree; adoption is effective from date of decree.

Maryland (3)

On and after 6/1/47, there is usually one decree, but court may enter an interlocutory decree for a period up to 1 year. Adoption is effective from interlocutory or final decree.

With respect to final decrees entered before 6/1/47, and decrees entered in proceedings pending before such date, there is only one decree, enrolled 30 days from entry. Adoption is effective from date of enrollment for final decrees entered before 6/1/47, or decrees entered in proceedings pending before such date.

Massachusetts (2)

There is one decree; adoption is effective from date of decree.

Michigan (3)

There is an interlocutory order, to be followed after 1 year by final decree. Court may waive 1-year period.

Adoption is effective from final decree.

Minnesota (3)

There is one decree; adoption is effective from date of decree.

Mississippi (3)

There is one decree before 7/1/55. On and after that date the court may enter a final decree or, at its discretion, enter an interlocutory decree with a final decree to be entered not earlier than 6 months from the date of interlocutory decree. Final decree may be entered earlier in cases.

Adoption is effective from date of final decree.

Missouri (3)

There is one decree; adoption is effective from date of decree.

Montana (3)

There is one decree before 7/1/57. After 6/30/57, interlocutory decree is to be followed after 6 months by final decree. Court may waive 6-month period.

Adoption is effective from date of final decree.

Nebraska (3)

There is one decree; adoption is effective from date of decree.

Nevada (3)

There is one decree; adoption is effective from date of decree.

New Hampshire (3)

On or after August 21, 1973, there is an interlocutory decree to be followed by final decree after the child has lived with the adopting parents for six months. The court may extend the interlocutory period. It may also waive the interlocutory decree where the petitioner or the petitioner's spouse is a natural parent of child.

Adoption is effective from the date of the final order completing adoption.

New Jersey (3)

There is one decree; adoption is effective from date of decree.

New Mexico (3)

There is one decree; adoption is effective from date of decree.

New York (3)

There is one decree; adoption is effective from date of decree.

North Carolina (3)

Where proceedings were begun before 3/11/49, interlocutory decree is to be followed after at least 1 year, but not more than 2 years, by final decree. Adoption is effective for termination purposes from date of final decree. Adoption is effective for entitlement proposes from date of petition to adopt (i.e., final decree when granted is retroactive to date petition filed with court.)

Where proceedings are begun after 3/10/49, interlocutory decree is to be followed by final decree within 3 years of filing petition. When child is blood grandchild, nephew, niece, or stepchild, court may waive interlocutory decree. Adoption is effective from date of final decree.

When proceedings are begun after 3/29/53, court may also waive interlocutory decree if child is at least 16 years of age and has resided in home of petitioners for 5 years prior to filing of petition, and child consents to adoption. Adoption is effective from date of final decree.

North Dakota (2)

After June 30, 1971, the court may issue a final decree of adoption or an interlocutory decree of adoption to become final in not less than 6 months or more than 1 year. The adoption is effective from the date of the final decree of adoption or from the date of the interlocutory decree of adoption if the interlocutory decree has not been vacated, amended, or appealed.

Prior to July 1971, there was one decree and the adoption was effective from the date of the decree.

Ohio (2)

There is an interlocutory decree to be followed after 6 months by final decree. Interlocutory decree may be waived in certain specified cases.

Adoption is effective from date of interlocutory decree, or final decree if interlocutory decree has been waived.

Oklahoma (3)

There is one decree before 8/28/57. On and after that date there is an interlocutory decree to be followed after 6 months by final decree. Court has discretion to omit interlocutory decree and enter final decree immediately.

Adoption is effective from date of final decree.

Oregon (3)

There is one decree; adoption is effective from date of decree.

Pennsylvania (3)

There is one decree; adoption is effective from date of decree.

Puerto Rico (2)

If adoption occurred before 5/6/48, submit to regional attorney through channels. On or after 5/6/48, there is one decree; adoption is effective from date decree is signed by judge of court of issue.

Rhode Island (3)

There is one decree; adoption is effective from date of decree.

South Carolina (1)

There is one decree if proceedings commenced on or before 2/3/64. After 2/3/64 there is an interlocutory decree to be followed by final decree after child has lived with adopting parents for 6 months. Court, however, may waive interlocutory decree and 6-month waiting period where child is related by blood to one of petitioners, is a stepchild of petitioner, or court is satisfied that adoption is for child's best interest.

Adoption is effective from date of final decree.

South Dakota (2)

There is one decree; adoption is effective from date of decree.

Tennessee (2)

Prior to 4/11/49, there is one decree, which may limit rights of child. After 4/10/49, and prior to 3/16/51, there is one decree. After 3/15/51, there is an interlocutory decree to be followed by final decree after 1 year. Final decree may be entered earlier in certain cases. Interlocutory related by blood to one of petitioners, is a stepchild of petitioner, or court is satisfied that adoption is for child's best interest.

Adoption is effective from date of final decree.

South Dakota (2)

There is one decree; adoption is effective from date of decree.

Tennessee (2)

Prior to 4/11/49, there is one decree, which may limit rights of child. After 4/10/49, and prior to 3/16/51, there is one decree. After 3/15/51, there is an interlocutory decree to be followed by final decree after 1 year. Final decree may be entered earlier in certain cases. Interlocutor decree may be waived where child is by blood, a grandchild, nephew, or niece, or is a stepchild of one of the petitioners.

Prior to 4/11/49, adoption is effective from date of decree if there is no limitation. If limitation is made, forward to the adjudication unit for submission to DGC. After 4/10/49 adoption is effective from date of final decree.

Texas (2)

There is one decree; adoption is effective from date of decree.

Utah (3)

There is one decree; adoption is effective from date of decree.

Vermont (3)

There is one decree approving the adoption, which is appended to an instrument of adoption executed by the parties.

Adoption is effective from date of decree.

Virginia (2)

There is an interlocutory decree to be followed by final decree. Interlocutory decree may be waived and court may grant final decree upon first hearing.

Adoption is effective from date of interlocutory decree or, if omitted from date of final decree.

Virgin Islands (1)

There is one decree; adoption is effective from date of decree.

Washington (3)

There is one decree, which remains to a limited extent interlocutory for 6 months. Adoption is effective from date of decree.

West Virginia (2)

There is one decree; adoption is effective from date of decree.

Wisconsin (3)

There is one decree; adoption is effective from date of decree.

Wyoming (3)

Prior to 5/17/63, there is one decree. After 5/16/63, there is an interlocutory decree to be followed by a final decree after child has live with adopting parents for 6 months. If the child has lived with petitioners for a period of 6 months, the court may waive the entry of the interlocutory decree and forthwith grant a final decree of adoption where the child is related by blood to one of the petitioners, is a stepchild of the petitioner, or if the court finds that the best interests of the child will be furthered thereby.

Adoption is effective from date of final decree.

Appendix J - Void Marriage Statutes

1. True Void Marriage Statutes

A true void marriage statute gives the child of a void marriage legitimate status without court action. The States listed in sec. D4 have adopted such statutes.

Generally, a child of an attempted marriage contracted in good faith by at least one of the parties is deemed to be in legitimate child of both parents. An attempted marriage may include attempted common-law marriages even if common-law marriage is not recognized under applicable State law. An attempted common-law marriage also includes a marriage which is invalid because an impediment exist to a valid common-law marriage. Exceptions to these general statements are noted in D4.

2. Statutes Legitimating Children Of Marriages Decreed Void

Some States which have not adopted true void marriages statutes have laws providing that a child of a marriage declared void by judicial decree is or may be decreed legitimate. These States are listed in sec. D5.

In some of these States, the laws have been interpreted to mean that the child of a void marriage may be considered legitimate even though no judicial decree of legitimation was obtained.

3. Determining Which State Law Is Applicable

The status of a child is determined by applying the law which would be applied by the courts of the State in which the employee was domiciled at his death or, if living, at the time the child's application is filed by applying the law of the State as if the court was

deciding the distribution of his personal property in the event that he died without leaving a will.

Sometimes an employee, at his death or when the child's application is filed, is domiciled in a different State than the one in which he was domiciled at the time of the child's birth. In these cases, usually the courts of the State of a person's domicile, in applying laws of inheritance, will look to the law of the State in which he was domiciled at the time of the child's birth to determine the child's status. (See Appendix E of RCM Chapter 4.4, or Appendix K of FOM Part I, Article 9)

Thus, a child may still be considered legitimate even if the State in which the employee is domiciled at death or when the child applies for benefits is not one of those listed under sec. D4, or if listed, has a requirement such as "ceremonial marriage" or "good faith" which prevents a child from being considered legitimate in that State. The child may qualify as legitimate under the laws of the State of his father's domicile at the child's birth, or he may have been legitimated in a State in which the employee had subsequently been domiciled. By referring to the entries or the appropriate States in Appendix E of RCM chapter 4.4, or Appendix K of FOM Part I, Article 9 and in this appendix, you will, in most cases, be able to determine whether a child is legitimate in the State of the father's domicile at the child's birth or has been legitimated in some State of domicile other than the State of the employee's last domicile. A child found to be legitimate in accordance with the foregoing will usually be recognized as legitimate in all States and able to inherit from the father as a child. Where the child's status cannot be determined, the case will be submitted to the BOC.

4. States That Have Adopted True Void Marriage Statutes

Alabama	-	incestuous marriages only.
Arizona	-	if child was born after 3/17/21.
Arkansas	-	good faith need not be shown if marriage was ceremonial. Good faith by at least one party must be shown if marriage was common-law.
California	-	good faith need not be shown if the marriage was ceremonial. Good faith by at least one party must be shown if marriage was common-law.
Colorado	-	applies only to child of father alive on 7/1/57. Good faith need not be shown if marriage was ceremonial. Good faith by at least one party must be shown if marriage was common-law.
Connecticut	-	applies to child or father alive on 10/1/63, if marriage was ceremonial. If father died before 10/1/63, or if

		nonceremonial marriage alleged, submit to DGC.
Delaware		
District of Columbia	-	legitimate child only of parent capable of contracting a valid marriage.
Georgia	-	good faith need not be shown if marriage was ceremonial. Good faith by at least one party must be shown if marriage was common-law.
Hawaii	-	ceremonial marriage only.
Idaho		
Illinois	-	ceremonial marriage only.
Indiana		
Kansas		
Kentucky	-	incestuous marriages only.
Maryland	-	ceremonial marriages only.
Michigan	-	except bigamous marriage prior to November 2, 1967. Beginning November 2, 1967, unqualified "True Void Marriage Statute" applicable.
Minnesota		
Mississippi	-	applies to children conceived after bigamous ceremonial or common-law marriages entered into before 4/5/56, and to children conceived after bigamous ceremonial marriages entered into on, or after, the date, but does not apply if parent died before 7/16/62.
Missouri		
Montana		
Nevada		
New Jersey	-	ceremonial marriage only. Good faith need not be shown on part of either parent.
North Carolina	-	ceremonial marriage only. Applies only to child of father

alive on 7/1/51.

North Dakota - if at least one parent did not contract marriage in good faith, or if common-law marriage is alleged, submit to DGC.

Ohio - good faith need not be shown on part of either parent if marriage was ceremonial. If common-law marriage is alleged, good faith on the part of at least one parent must be shown.

Oklahoma

Oregon - Submit to DGC.

Pennsylvania - if void marriage entered into prior to 12/17/59, void marriage statute applies only if the party to whom the relationship is claimed is alive on that date. Good faith need not be shown if marriage was ceremonial. If common-law marriage is alleged, good faith on the part of at least one parent must be shown.

Rhode Island - applies to all void marriages, whether ceremonial or common-law, if at least one of the parties act is good faith in contracting the marriage and the child was born before the marriage was judicially annulled. If neither party contracted the marriage in good faith or the child was born after the marriage was judicially annulled, submit to DGC.

Unless the marriage is void because it was contracted between persons related within prohibited degrees of consanguinity and affinity; this provision is a change of position, effective 12/10/68. Claims previously disallowed because the void marriage in question was not contracted by such related persons may be reopened as permitted in change of position cases. Otherwise, entitlement may be based only on a new application.

South Carolina - child born on or after 4/13/51, of a bigamous marriage contracted on or after that date is deemed legitimate if either parent is contracted such marriage in good faith and in ignorance of incapacity of other party.

South Dakota

Tennessee - ceremonial marriage only; good faith need not be shown.

Texas

Utah		
Virginia		
Washington	-	alleged marriage, whether ceremonial or noncermonial, must be of record. Good faith need not be shown.
West Virginia	-	except bigamous common-law marriage.
Wisconsin	-	good faith need not be shown on the part of either party to a ceremonial marriage, but good faith on the part of at least one party must be shown where common-law marriage is alleged.

5. States In Which A Child Of A Marriage Declared Void By Judicial Decree Is Or May Be Decreed Legitimate

Except for New York, submit cases involving application of the statutes of these States to the DGC for determination as to whether the child may be considered legitimate for annuity purposes.

Iowa		
Maine		
Massachusetts		
New Mexico		
New York	-	Unless State court prior to 4-17-61, has found child to be illegitimate, child born of a void ceremonial marriage is deemed to be legitimate child of either parent. Good faith or competence to marry on the part of either party need not be shown. If common-law marriage is alleged, child born of such "void marriage" may be considered legitimate child of either parent if at least one of the parents entered into the purported marriage in good faith.
Vermont		
Wyoming		

Appendix L - Minimum Age For Marriage Without Parental Consent

State	Age of Males	Age of Females	Effective Date
Alabama	21	18	----------
Alaska	21	18	917-present
Arizona	21	18	----------
Arkansas	21	18	
California	21	18	7-29-21-present
	18	15	through 7-28-21
Colorado	21	18	----------
Connecticut	--	--	law not specific
Delaware	21	18	----------
District of Columbia	21	18	1901-present
Florida	21	21	----------
Georgia	17	18	----------
Hawaii	20	18	6-6-69-present
	20	20	1929-6-5-69
	20	18	through 1928
Idaho	18	18	----------
Illinois	21	18	----------
Indiana	21	18	----------
Iowa	21	18	----------
Kansas	21	18	1905-present
Kentucky	21	21	----------
Louisiana	21	21	----------
Maine	21	18	----------

Maryland	21 21	18 16	1920-present through 1919
Massachusetts	21	18	----------
Michigan	18	18	----------
Minnesota	21	18	----------
Mississippi	-- 21	-- 18	no requisite age from 7-1-58-present through 6-30-58
Missouri	21	18	----------
Montana	21	18	----------
Nebraska	21 21	21 18	1921-present through 1920
Nevada	21	18	----------
New Hampshire	20 18	18 16	1923-present 1907-1922
New Jersey	21	18	----------
New Mexico	21	18	----------
New York	18 21	18 18	9-1-74-present 1907-8-31-74
North Carolina	18	18	----------
North Dakota	21	18	----------
Ohio	18 21 21	18 21 18	1974-present 1923-1973 through 1922
Oklahoma	21	18	----------

Oregon	21	18	----------
Pennsylvania	21	21	----------
Rhode Island	--	--	law not specific
South Carolina	18	18	1911-present
South Dakota	21	18	----------
Tennessee	16 18 16	16 18 16	1937 to present 1919-1936 through 1918
Texas	21	18	----------
Utah	21	18	----------
Vermont	21	18	----------
Virginia	21	21	----------
Washington	21	18	----------
West Virginia	21	21	----------
Wisconsin	21	18	----------
Wyoming	--	--	law not specific
Puerto Rico	21	21	----------

NOTE: There is no provision for consent by parents and the age referred to is the minimum marriageable age fixed by statute in the following States:

- Georgia
- Michigan
- South Carolina
- Tennessee (for 1919-1936 and 1937-present records).

Appendix M Summary of State Laws on Divorce and Remarriage

The following is a summary of State laws regarding divorce and remarriage.

Alabama

A final decree of divorce ends the marriage relationship as of the date of the decree. The remarriage of either party to the divorce to a third person is prohibited for 60 days following the decree. A divorce decree may also indicate whether the guilty party may ever remarry. However, if there is no such prohibition in the decree against the defendant's remarriage, any marriage of the defendant after 60 days following the decree is valid. A marriage contracted in Alabama before the end of the 60-day prohibited period or in violation of the prohibition against remarriage would be held to be void in Alabama. However, Alabama would hold to be valid a marriage entered into in another State within the 60-day period or contrary to the prohibition against the remarriage of the guilty party if the marriage met all statutory requirements of that second State and if the parties had not gone outside Alabama for the marriage in order to evade its prohibitions against remarriage. A marriage entered into in another State in contravention of the restrictions imposed by Alabama would be recognized as valid in other States, since such restrictions have no extraterritorial effect. for validity of remarriage in States which have adopted the Uniform Marriage Evasion Act.)

Alaska

There are no restrictions against remarriage following a divorce decree.

American Samoa

A divorce decree is final on rendition and there are no restrictions on remarriage.

Arizona

Prior to 7/23/66, divorced persons were prohibited from remarrying within 1 year of the decree of divorce. However, a marriage contracted during the prohibited period is not void. Such a marriage contracted in Arizona is voidable. However, a remarriage entered into in another State during the prohibited period would be recognized as valid in Arizona and in other States.

After 7/22/66, there are no restrictions against remarriage following a divorce decree.

Arkansas

Prior to 7/1/79, a divorce decree was effective from the date it was announced in “open court”.

After 6/30/79, a divorce decree is final only after **both** a docket entry and a final decree have been entered. A divorce decree rendered during vacation of court does not become effective until entered on record.

There are no restrictions against remarriage following a divorce decree.

California

Prior to 9/17/65, an interlocutory decree was first entered and at the expiration of 1 year (if there had been no appeal motion for the new trial or reversal of the interlocutory decree) a final decree could be entered.

From 9/17/65, through 12/31/69, (and for actions in which judgment was entered or a new trial granted between these dates) a final decree could be entered immediately after the interlocutory decree if 1 year had expired from the date of service of summons and complaint on the defendant spouse. A final decree of divorce severed the marital relationship and permitted either party to remarry. There was no waiting period after the entry of the final decree.

A marriage contracted with a third party after the interlocutory decree but before the final decree is void whether contracted in California or in another jurisdiction because the parties are not divorced until the entry of the final decree.

Since 1/1/70, (and for actions filed before that date with respect to issues as to which no interlocutory decree or judgment had been entered by that date) a final judgment dissolving the marriage may be entered, upon the motion of either party or the court, 6 months after the date of service of summons and complaint or appearance of the respondent. Such final judgment restores each party to the status of a single person and after its entry either may marry.

Colorado

Prior to 7/58, an interlocutory decree was first entered followed by a final decree after a lapse of 6 months. An interlocutory decree automatically became final 6 months after the entry of the interlocutory decree. During this 6-month period the parties were not capable of contracting a valid marriage in Colorado or in any other State, and no jurisdiction would recognize a marriage contracted within such period.

After 6/58, a decree of divorce rendered pursuant to suit filed after 6/58 is final when entered, and there is no restriction against remarriage to the parties thereafter.

Connecticut

A divorce decree is final immediately and there is no restriction against remarriage.

Delaware

Prior to 6/8/49, a statute provided for the entry of a decree nisi which became absolute at the expiration of 1 year, unless appealed from, or unless proceedings for review were pending, or unless the court before the expiration of the period otherwise ordered. The divorce did not become final until the entry of the final decree at the expiration of the 1-year period upon the plaintiff's application to the court. A remarriage entered into in

Delaware or in any other State before the entry of the final decree would be held to be void by the courts of Delaware and of all other States.

From 6/8/49 through 7/4/74, a decree nisi became final after the expiration of 3 months from the date of entry upon application of the plaintiff for a decree absolute. During the 3-month period a remarriage contracted in Delaware or in any other State would be held to be void in Delaware and in all other jurisdictions.

After 7/4/74, a decree granting a petition for divorce is final when entered, subject to the right of appeal. However, an appeal, which must be filed within 30 days of judgment from a decree granting a divorce that does not challenge the finding that the marriage is irretrievably broken, does not delay the finality of the decree, and thus allows either of the parties to remarry pending appeal.

District of Columbia

From 8/7/35 through 9/28/65, a decree of divorce did not take effect until the expiration of 6 months after its date, or, if later, the final disposition of an appeal therefrom. Since the marriage relationship continued during that period, a remarriage entered into in that period is void in all jurisdictions, whether entered into in or out of the District of Columbia.

Beginning 9/29/65, a decree of divorce does not take effect until the time for noting an appeal has expired or, if such notice of appeal has been entered, the date of final disposition of the appeal. Prior to 7/29/70, notice of appeal must have been filed within 10 days from the date of the decree. Beginning 7/29/70, the appeal period is 30 days with provision for an additional 30 days upon a showing of excusable neglect. However, if no appeal is noted during the 60-day period, the divorce is effective after the 30-day period. Since the marriage relationship continues until the decree becomes effective, a remarriage entered into prior to that time is void in all jurisdictions, whether entered into in or out of the District of Columbia.

Florida

There are no restrictions against remarriage following a divorce decree.

Georgia

Prior to 1946, a total divorce granted the plaintiff in a divorce action would not free the defendant to remarry unless a final jury verdict authorizing the divorce specifically removed the defendant's disability to remarry.

From 1/28/46 to 3/17/60, a party to a Georgia divorce could not remarry during the lifetime of the former spouse unless (1) divorce was granted to such party, or (2) the divorce decree expressly authorized such person to remarry or such party's disability was removed by a jury in a court action brought for that purpose subsequent to the divorce. Remarriage in Georgia in violation of a prohibition is void; however, the prohibition has no extraterritorial effect. A remarriage in another jurisdiction in violation

of the prohibition, valid under the law of that jurisdiction, will be recognized as valid by the courts of Georgia in the absence of evidence of lack of good faith revealing that the parties went to the other State for the purpose of evading the Georgia prohibition. If the parties, being residents of Georgia, remarried in another State for the purpose of evading the Georgia prohibition and with the intent of continuing to reside in Georgia, such remarriage would be held void by the courts of Georgia even though valid in the State where contracted.

From 1/27/46 to 3/6/56, in addition to the foregoing, divorces granted during this period did not terminate the marriage until 30 days after the decree; consequently, remarriages during the 30-day period were bigamous regardless of where contracted. After 3/5/56, divorces became effective upon rendition of the decree.

From 3/17/60 through 4/3/79, both parties have the right to remarry unless there is in the pleading a special prayer that the other party be placed under a disability and that party is placed under a disability by the jury or the judge.

Prior to 4/4/79, by statute, a defendant left under a disability may subsequently file an action requesting removal of the disability in the same court wherein the divorce was granted. The party has the right to remarry if the disability is removed.

Beginning 4/4/79, by statute, a divorce decree cannot be rendered that would place either party under a disability to remarry.

Guam

An interlocutory decree is first entered and at the expiration of 1 year if there has been no appeal, motion for a new trial or reversal of the interlocutory decree, a final decree is entered upon motion of either party or the court which severs the marital relationship and permits either to remarry. There is no waiting period after the entry of the final decree.

A marriage contracted with a third party after the interlocutory decree but before entry of a final decree is void, whether contracted in Guam or in another jurisdiction, because the parties are not divorced until the entry of the final decree.

Hawaii

Prior to 5/8/65, all divorce decrees became final within a month at a time fixed by the judge and the marriage was not terminated until the date fixed. A remarriage contracted before that time in Hawaii or elsewhere would be held to be void by the courts of Hawaii and for all other jurisdictions.

Except as provided below, after 5/7/65, a divorce decree becomes final at a date fixed by the court in the decree, but not more than 1 month from and after the date of the decree.

From 5/8/65 through 5/14/67, an interlocutory decree was entered if there was a minor child of the marriage living or in posse. When 1 year had expired after the entry of the interlocutory decree and no reconciliation between the parties had been effected, a final decree dissolving the marriage was entered by the court on its own motion or on the motion of either party. However, where all the children of the parties or any one of them reached majority, got married or were otherwise emancipated, or on the death of all the minor children or on the death of either party within 1 year after the entry of the interlocutory decree, the court entered the final decree effective as of the date of such event.

From 5/15/67 through 6/2/69, the court entered an interlocutory decree if there was a child of the parties under 18 or *in posse*. Such interlocutory decree was effective from and after such time as was fixed by the court in the decree. This was not earlier than the date of final hearing or later than one month after the date of the decree. When 1 year had expired after the date of the interlocutory decree and no reconciliation between the parties had been effected, a final decree dissolving the marriage was entered by the court on its own motion or on the motion of either party. However, when all of the children of the parties either attained age 18, got married, were otherwise emancipated or were adopted or died, or upon the death of either party within 1 year of the date of interlocutory decree, the court upon motion and proof of the facts entered the final decree effective as of the date of the event. If the parties were separated for more than 1 year under a decree of separation or of separate maintenance, the court did not enter an interlocutory decree.

After 6/2/69, the rules remain the same as in the preceding paragraph except that the period between the interlocutory decree and the final decree (referred to in the fourth sentence) and the period referred to in the last sentence were reduced to 6 months.

Idaho

Prior to 4/29/43, a statute on polygamous marriages provided that a subsequent marriage contracted by any person during the life of a former husband or wife, unless to that former husband or wife was illegal and void unless the former marriage had been annulled or dissolved more than 6 months. However, the courts have held that such a marriage contracted within Idaho within the 6-month period is voidable only and is valid without a court finding of fact and decree to that effect. A marriage entered into in another State within 6 months of the Idaho decree would be recognized as valid by the courts of Idaho and of all other States.

After 4/28/43, there is no publication against remarriage after a divorce.

Illinois

There are no restrictions against remarriage following a divorce decree.

Indiana

Where a divorce has been granted against a person who received no notice other than publication in a newspaper, such person may have the decree opened within 2 years. The divorce decree in such case would specify that it was unlawful for the party who obtained the divorce to remarry within the 2-year period. A marriage by the party who obtained the divorce, in violation of such prohibition in the divorce decree, or the other party, would be voidable, but not void. If the divorce is not set aside, the remarriage of either party becomes valid after the expiration of the 2-year period. If one of the parties dies within the 2-year period, the remarriage becomes valid as of the date of its inception, provided no property rights of the deceased party are involved. This restriction upon remarriage has no extraterritorial effect. Therefore, a remarriage entered into outside the State of Indiana within 2 years by a party so restricted, or the other party, would be held to be valid by the courts of Indiana and of other States.

There is no restriction upon the remarriage of either party to a divorce in which the summons was personally served on the defendant provided the decree does not specify that the party obtaining the divorce is restricted from remarrying.

Iowa

Prior to 7/1/76, Iowa law provided that neither party to a decree of dissolution of marriage (or divorce) shall remarry within one year from the date of filing of the decree unless permission to do so was granted by the court in such decree. However, a marriage entered into in Iowa within the restricted period without permission of the court is a misdemeanor only and the marriage is merely voidable and not void. A marriage entered into outside of Iowa within the restricted period is valid in the State of remarriage and in Iowa since the restriction has no extraterritorial effect.

After 7/1/76, there are no restrictions against remarriage following a decree of dissolution of marriage.

Kansas

Prior to 1/1/64, it was unlawful for either party to marry another person within 6 months from the date of the decree of the divorce. Any marriage entered into in Kansas in violation of this restriction is void. Likewise, a marriage entered into in another State for the purpose of evading the effect of this provision would also be held to be void by the courts of Kansas, if the parties in the marriage returned to reside in Kansas after the event. In other States, the remarriage outside Kansas would be recognized as valid even if the parties went outside of Kansas to enter into marriage for the express purpose of avoiding the prohibition.

After 12/31/63, but prior to 6/30/65, the period following the date of decree of a Kansas divorce during which the parties thereto are prohibited from remarrying is 30 days. After 6/29/65, but prior to 7/1/75, the period of prohibition is 60 days after the entry of the decree. After 6/30/75, the period of prohibition is 30 days after the entry of the decree.

After 6/29/65, if an appeal is taken, the period of prohibition from remarrying continues until the clerk of the appropriate district court receives the final decision of the Supreme Court of Kansas with respect to the appeal. The validity of a remarriage in violation of this prohibition continues to be the same as above.

Kentucky

Prior to 6/16/66, and after 6/12/68, there was and is only one divorce decree, a final one.

After 6/15/66, and before 6/13/68, the law provided for both an interlocutory and a final decree of divorce. The final judgment of divorce could not be granted before the end of 60 days from the interlocutory decree, and until the final decree was granted, the marriage continued.

There are no restrictions against remarriage following an absolute divorce.

Louisiana

A remarriage prior to 7/29/70, by the female within 10 months of her divorce decree is voidable if contracted in the State of Louisiana, but if entered into in another State, the remarriage would be recognized as valid both by Louisiana and by the other State since the restriction has no extraterritorial effect.

Maine

There are no restrictions against remarriage following a divorce decree.

Maryland

There are no restrictions against remarriage following a divorce decree.

Massachusetts

If entered on or after 3/4/85, the divorce law provides for the granting of a decree nisi which does not become absolute so as to terminate the marriage until after the expiration of 90 days from the entry date unless the court otherwise orders. Decrees nisi entered prior to 3/4/85, did not become absolute so as to terminate the marriage until 6 months from entry unless the court otherwise ordered. During the period between the granting of the decree nisi and the date the decree becomes absolute the parties must remain married. A remarriage entered into during this period is therefore void in all States whether contracted within or outside Massachusetts.

However, by statute, Massachusetts provides that if the remarriage was ceremonial and entered into by one of the parties in good faith and without knowledge of such impediment and the parties continued to cohabit thereafter in Massachusetts as husband and wife after removal of the impediment, the marriage will be recognized as valid beginning at the point in time the impediment is removed.

Prior to 11/15/65, the libelee was prohibited from remarrying for 2 years after the divorce became absolute unless the libelant died earlier. A remarriage in such period is void in Massachusetts; however, if the remarriage was ceremonial and entered into by one of the parties in good faith and without knowledge of such impediment and they continued to cohabit thereafter as husband and wife in Massachusetts, the remarriage is validated upon expiration of the 2-year period.

Where the libelee was a resident of Massachusetts and went to another State to contract a marriage during the prohibited period, upon returning to Massachusetts that marriage is void in Massachusetts as though it had been contracted in Massachusetts. But if the libelee was not a resident of Massachusetts at the time of the remarriage and continued to reside outside of Massachusetts afterward, the marriage would be recognized as valid by Massachusetts.

A remarriage entered into before 11/15/65, in another State by the libelee within 2 years of the entry of the divorce decree would be held to be valid by States other than Massachusetts whether or not Massachusetts might hold it to be void since this restriction had no extraterritorial effect.

After 11/14/65, there is no restriction on remarriage after the decree becomes final. Either party may marry again as if the other were dead. The removal of the 2-year bar against libelee marriages did not validate a purported marriage entered into in violation of the restriction before 11/15/65.

Michigan

In the absence of an express provision in the divorce decree, there is no waiting period following a final divorce during which both parties are prohibited from remarrying. The court can in its discretion specify in the decree that the guilty party shall not marry again within a time fixed by the court, but not to exceed 2 years from the time of the decree. However, a remarriage contracted within the waiting period specified by the court in a divorce decree would not be invalid even if the remarriage was contracted in the State of Michigan. Unless the judgment or decree of divorce expressly provides otherwise, a divorce judgment or decree is final when rendered.

After 10/10/47, but prior to 8/11/56, in any divorce case involving minor children under the age of 17, an interlocutory decree was first entered and the divorce did not become final until 6 months thereafter, except in a hardship case the court might specify a shorter period. Also, effective 10/1/53, upon the death of either party during the 6-month period, the decree was deemed final as of the date of death unless previously vacated or reversed. The marital relationship was not dissolved until the divorce decree became final. A remarriage before the decree became final, no matter where contracted, would therefore be held to be void by Michigan and by all other States.

Minnesota

Prior to 3/1/79, the law provides for a waiting period of 6 months following the granting of a divorce during which the parties cannot remarry. A remarriage entered into in Minnesota during this 6-month period is merely voidable, however, and not void until and unless set aside. A marriage contracted in another State in violation of this prohibition in the Minnesota statute would nevertheless be valid both in Minnesota and in the other State since the prohibition has no extraterritorial effect.

Effective 3/1/79, there are no restrictions against remarriage following a divorce decree. A divorce decree is now final for all purposes when it is entered. This rule is subject to two exceptions: (1) If it has been contested in the divorce proceedings that the marriage is irretrievably broken (effective 3/1/79, this is the single ground for divorce), neither party may remarry before the time for appeal has expired. The appeal period is ninety days following entry of the decree. If the divorce proceeding is uncontested as to the grounds for divorce, either party may remarry before the time for appeal has expired. (2) If either party appeals the divorce decree on the ground that the other party is not entitled to a divorce, neither party may remarry pending disposition of the appeal. Unless there is evidence in file to the contrary, assume that neither of the exceptions applies and that both parties were free to marry before the expiration of the appeal period. A remarriage entered into in Minnesota during the appeal period or while an appeal is pending is merely voidable and not void until and unless set aside.

Mississippi

There is no period following the entry of a divorce decree during which both parties are prohibited from remarrying, although the decree may provide in the discretion of the court whether or when a party guilty of adultery shall marry again. Forward to the PC for possible submittal to the chief counsel any case in which there is a question as to the validity of a remarriage entered into in Mississippi in violation of such a prohibition.

A marriage entered into outside of Mississippi, by a person prohibited from marrying by a Mississippi divorce decree, would be held to be valid by the courts of another State and also by the courts of Mississippi, unless action had already been taken in Mississippi to declare such remarriage void.

Missouri

There are no restrictions against remarriage following a divorce decree.

Montana

Prior to 7/1/63 and after 1/1/68, there was and is no restriction against remarriage following a divorce decree.

Where a Montana resident or a person who was a party to an action for divorce in a Montana court contracts a marriage after 6/30/63, and prior to 1/2/68, less than 6 months after that person obtained a decree of divorce, such marriage shall be void from the date its nullity is declared by decree of a court of competent jurisdiction. In the

absence of such decree, such remarriage contracted within 6 months after a decree of divorce of either party shall not be considered invalid because it was so contracted.

Nebraska

The general rule in Nebraska is that a decree dissolving a marital relationship becomes final and operative thirty days after the decree is entered or on the death of one of the parties to the dissolution, whichever occurs first; or if appealed, upon dissolution of appeal, if later. For the purposes of remarriage, other than remarriage between the parties, a divorce decree becomes final and operative six months after the decree is entered or on the date of death of one of the parties to the dissolution, whichever occurs first. If the decree becomes final and operative upon the date of death of one of the parties of the dissolution, the decree shall be treated as if it became final and operative the date it was entered. For purposes of continuation of health insurance coverage, a decree dissolving a marriage is final and operative six months after the decree is entered.

Prior to September 9, 1995, a divorce decree did not become final until six months after the decree was rendered. During this six-month period, the parties to the dissolution remained legally married. However, Legislative Bill 544 revised this statute to reflect the language of the current law. See Laws 1995, LB 544, § 2. Neb. Rev. St. § 42.372.

Nevada

There are no restrictions against remarriage following a divorce decree.

New Hampshire

There are no restrictions against remarriage following a divorce decree.

New Jersey

Prior to 6/11/69, the statutes provided for the entry of a decree nisi which became final after the expiration of 3 months from the entry thereof unless prior to that time an appeal or proceeding for review had been taken and was pending, or the court had otherwise ordered. Prior to 9/15/48, a final decree had to be entered after the expiration of the 3-month period upon application of the successful party to the proceedings unless prior to that time there had been such an appeal or other review proceeding or court order. Since a marriage is not dissolved until the final decree is entered, a remarriage prior to that time would be held to be void by the courts of all jurisdictions, no matter where the marriage may have been contracted.

After 6/10/69, if the court after the hearing determines that the plaintiff or claimant is entitled to a judgment of divorce or nullity of marriage, a final judgment is entered which dissolves the marriage. Appeals are taken only from the final judgment.

There is no waiting period after the entry of the final divorce decree during which the parties to the divorce are prohibited from remarrying.

New Mexico

There are no restrictions against remarriage following a divorce decree.

New York

Prior to 9/1/46, in an action for divorce the decision of the court or report of the reference was filed and an interlocutory decree was entered. In some instances the final judgment was entered automatically after the expiration of 3 months, and in other instances, action had to be taken (usually by the plaintiff) to have judgment entered within 30 days after the end of the 3-month period. If no such final judgment was entered, the marriage was never dissolved.

After 8/31/46, and prior to 6/16/68, the interlocutory decree automatically became final after the expiration of 3 months without the formal entry of judgment unless for cause the court ordered otherwise in the interim.

After 6/15/68, a divorce decree is effective immediately upon entry. An interlocutory decree entered between 3/16/68, and 6/15/68, became final on 6/16/68.

Where the final judgment dissolving a marriage is entered prior to 9/1/67, the innocent party may marry again without restriction, but the party guilty of adultery is prohibited from marrying again during the lifetime of the spouse unless permission of the court is obtained 3 years following the date of the final judgment. A marriage entered into in New York in violation of this prohibition without the court's permission is void. However, a second marriage entered into in a State outside of New York after entry of the final decree even if with the express purpose of evading the New York restriction would be recognized as valid by New York and by other States, since this restriction has no extraterritorial effect.

Prior to 9/1/67, New York also prohibited the party guilty of adultery from remarrying in that State for a period of 3 years following the divorce, even though the divorce was granted in another State. A marriage in New York within 3 years following the divorce was void even though such marriage was not prohibited by the divorce decree or by the laws of the State in which granted. However, if the marriage was entered into in another State, this provision of New York law had no application.

After 8/31/67 (for benefits payable no earlier than 9/67), there are no restrictions on remarriage, whether the divorce decree was entered prior or subsequent to such date. However, this statute does not validate remarriages entered into prior to 9/1/67.

North Carolina

There are no restrictions against remarriage following a divorce decree.

North Dakota

Neither party may marry except in accordance with the decree of the court granting the divorce. The court granting the divorce is obliged to specify in the decree whether either or both of the parties shall be permitted to marry, and if so, when. The court may modify a restriction in a decree at any time so as to permit one or both of the parties to marry. Should one of the parties to a divorce marry in violation of the restrictions imposed by the court, that remarriage would nevertheless be valid in North Dakota or in any other jurisdiction.

Ohio

There are no restrictions against remarriage following a divorce decree.

Oklahoma

The statute, while prohibiting a marriage of either party to a divorce for 6 months after the rendition of the decree, does not declare such marriage invalid. Any marriage contracted in Oklahoma within 6 months after a divorce decree was granted is valid unless set aside. A marriage entered into outside of Oklahoma within the 6-month period would be held to be voidable by the courts of Oklahoma and valid by the courts of other States as the prohibition has no extraterritorial effect.

Where there is no objection either in the motion for new trial or the petition in error to the granting of the divorce, a divorce decree is final and takes effect as of the date of rendition.

Where the final judgment dissolving a marriage was entered prior to 5/7/69, a divorce decree is considered effective upon the expiration of a six-month period after the date the final judgment was rendered, or in the case of an appeal, after such appeal has been determined.

Oregon

Prior to 8/13/65, the parties to a dissolved marriage were prohibited from remarrying for 6 months after the date of the decree, or if an appeal had been taken, until it was heard and disposed of, but in no case until the expiration of 6 months from the date of the decree.

A marriage entered into in Oregon or in another State within the 6-month period following a divorce was held to be void by the courts of Oregon (except for the situation noted in the following paragraph). A marriage contracted in violation of such prohibition was valid under the laws of other States since the Oregon divorce decree dissolved the marriage.

Certain marriages entered into within the 6-month period following a divorce decree have been validated periodically by curative legislation. Thus, marriages entered into prior to 2/19/41; 3/24/45; 4/21/47; 4/28/53; 1/1/59; and 1/1/65, have been legislatively declared valid if otherwise legal and regular, irrespective of whether the marriage was entered into in a State other than Oregon. However, these validating statutes have no

effect in cases where one or both of the parties died prior to the effective date of the validating statute next succeeding the date of marriage; the respective enactment dates of the above-mentioned statutes being 6/14/41; 6/16/45; 7/5/47; 7/21/53; 4/14/59; and 5/14/65.

Under the 1965 amendments to the Oregon Divorce Law, the 6-month period during which the parties are prohibited from remarrying following a divorce granted before 8/3/65, is reduced to 60 days. Where the marriage occurred within 60 days of a divorce granted on or after 8/13/65, and the action was filed before 8/13/65, forward the case to the PC for possible submittal to the chief counsel.

Where an Oregon divorce is based upon a divorce action filed after 8/13/65, and before 8/1/81, the marital status of the parties is not affected until 60 days from the date of the decree or, if an appeal is taken, until the suit is determined on appeal, whichever is later. However, where either party dies within the 60-day period, the marriage relationship is terminated immediately before such death. Forward to the PC for possible submittal to the chief counsel any case in which there is a question whether another jurisdiction would give effect to the termination provision where one party died within 60 days of the divorce decree.

Certain marriages entered into before the expiration of 60 days from the date of a decree declaring a previous marriage of one or both of the contracting parties void or dissolved also have been validated periodically by curative legislation. Marriages contracted prior to 1/1/71; 1/1/73; and 7/31/81, which are in all other respects legal and regular, have been declared valid.

Effective 8/1/81, the waiting period during which the parties are prohibited from remarrying following a divorce is further reduced to 30 days.
Where the marriage occurred within 30 days of a divorce granted on or after 8/1/81, and the action was filed before 8/1/81, forward the case to the PC for possible submittal to the chief counsel.

Where an Oregon divorce is based upon a divorce action filed on or after 8/1/81, the marital status of the parties is not affected until 30 days from the date of the decree or, if an appeal is taken, until the suit is determined on appeal, whichever is later. However, where either party dies within the 30-day period, the marriage relationship is terminated immediately before the date of the death.

Effective 10/23/99, a marriage relationship is terminated when the court signs the judgment of dissolution of marriage.

Pennsylvania

Prior to 4/2/80, the defendant in a divorce granted in Pennsylvania who had been guilty of adultery could not marry the co-respondent during the lifetime of his/her former spouse. A marriage in Pennsylvania in violation of this prohibition was void if the identity of this co-respondent appeared in the record or in the evidence of the divorce.

Such a marriage was also void if entered into in another State for the purpose of evading the restriction. However, Pennsylvania would recognize as valid a marriage entered into in good faith in another State if the party who remarried had established a domicile in the other State.

A marriage entered into in another State in violation of the prohibition in a Pennsylvania divorce decree would, following the general rule, be recognized as valid by the courts of States other than Pennsylvania, without regard to whether or not the parties left Pennsylvania for the marriage in order to evade the effect of the Pennsylvania statute.

Effective 4/2/80, the provision restricting remarriage in a divorce granted for adultery was repealed. Thus, any remarriage entered into in Pennsylvania (regardless of when the prior divorce was granted or when the remarriage took place) that was in violation of this provision is considered a valid, legal marriage.

Puerto Rico

The divorce laws do not impose any restrictions on remarriage after divorce. However, the marriage laws prohibit the parties to an adultery who have been convicted by final judgment from marrying each other for 5 years after such judgment.

Prior to 6/2/76, the marriage law provided that the following persons (among others not divorced) are incapacitated to contract marriage: a woman whose marriage had been declared null or had been dissolved within a period of 301 days from the date of nullity or dissolution.

When a marriage had been contracted by an individual incapacitated under this statute, the Puerto Rican Code stated that the marriage was null and void. However, the courts of Puerto Rico have held that a marriage entered into by a woman within 301 days of her divorce is at the most voidable; and where the question did not arise until after the expiration of the 301-day period, and it could be shown that no child was born during that period, the marriage would be held to be valid.

A marriage entered into in Puerto Rico in violation of the prohibition against the marriage of the parties to an adultery would not be void unless at least one of the parties had been convicted of adultery and the other party sufficiently identified at that proceeding.

No cases requiring a determination as to the validity of a marriage entered into outside Puerto Rico in contravention of these restrictions have come to our attention. However, following the general rule that such prohibitions have no extraterritorial effect, it may be presumed that such a marriage entered into outside of Puerto Rico would be held to be valid by the courts of Puerto Rico and of other States.

Effective 6/2/76, a woman seeking to remarry during the 301-day period (the date of nullity or dissolution of the prior marriage to the date of the present marriage) must

present a form to an authorized person stating whether or not she is pregnant. A marriage performed in contravention of this requirement is voidable.

Rhode Island

Prior to 6/5/76, a divorce decree did not become final by operation of statute but only upon entry of the final decree upon the expiration of at least 6 months after the trial and decision. A remarriage in Rhode Island or in any other jurisdiction during that 6 months, is void in all States because the parties to the divorce are still husband and wife. There is no period following the final decree during which the parties are prohibited from remarrying.

After 6/4/76, a divorce decree does not become final by operation of statute but only upon entry of final decree upon the expiration of at least 3 months after the trial and decision. A remarriage in Rhode Island or any other jurisdiction during that 3 months is void in all States because the parties to the divorce are still husband and wife. There is no period following the final decree during which the parties are prohibited from remarrying.

South Carolina

Prior to 4/15/49, the constitution prohibited the granting of absolute divorces.

After 4/14/49, a final divorce decree terminates the marriage; there is no interlocutory decree and no period during which the parties to the divorce are prohibited from remarrying.

South Dakota

The party guilty of adultery cannot marry any person except the former spouse until the death of such spouse. A marriage in South Dakota in violation of such restriction would be held valid but voidable in South Dakota. A marriage entered into in a State outside of South Dakota would be recognized as valid by South Dakota and by other States.

Tennessee

Prior to 1/30/70, the defendant in a divorce action who had been guilty of adultery could not marry the person with whom he/she had committed adultery during the lifetime of the former spouse. A marriage in Tennessee or in another State by a person so prohibited from remarrying would be held to be void by the courts of Tennessee. This restriction had no extraterritorial effect; therefore, a marriage entered into in a State outside of Tennessee in violation of such prohibition would be considered valid by other States.

After 1/29/70, there are no restrictions against remarriage. Generally a divorce decree does not become effective until it is recorded in the minutes of the court.

Texas

Prior to 1/1/70, where a divorce was granted upon the ground of cruel treatment, neither party could marry another person for a period of 12 months.

A marriage in Texas in violation of this prohibition was voidable. A marriage entered into outside the State of Texas during the 12-month period would be recognized as valid by the courts of Texas and of other States.

After 12/31/69, neither party to a divorce may marry a third party for a period of 6 months following the date the divorce is decreed. However, this prohibition may be waived by the court granting the divorce for good cause shown either at the time of the divorce decree or thereafter as to either or both of the parties. The divorced parties may marry each other at any time. A marriage to a third party in Texas within the 6-month prohibited period is voidable.

Effective 1/1/74, if either party to a divorce marries a third party within the 30-day period immediately following the date the divorce is decreed, such a marriage is voidable and subject to annulment on the suit of a party to the marriage if the suit is brought within one year from the date of the marriage. However, the parties divorced may marry each other at any time.

Utah

Prior to 5/13/69, a statute provides that a decree of divorce shall become absolute and terminate a marriage at the expiration of 6 months (3 months if decree granted after 5/13/57) from the date of entry; if an appeal is taken, the marriage terminates when the decree is affirmed. A remarriage anywhere within such periods is void in Utah and all other States.

After 5/12/69, a statute permits a decree of divorce to become absolute immediately upon the date of entry, or to continue interlocutory until a waiting period as long as 6 months from the signing and entry of the decree has elapsed, in the discretion of the court for good cause shown.

Vermont

Prior to 4/8/70, the guilty party in a divorce action was prohibited from marrying anyone except the former spouse for a period of 2 years after the divorce decree became final, unless the spouse died before that time. A marriage in Vermont within the waiting period (depending upon when the divorce was granted) is void. A marriage entered into in another State by a person under such restriction would be held to be valid by the courts of other States and also of Vermont. If, however, the marriage was entered into in another State by residents of Vermont for the purpose of evading the restriction, Vermont would hold such a marriage to be void.

On or after 4/8/70, it is provided that in a suit for divorce, a decree nisi is first entered which does not become final until 3 months from its entry, although the court which grants the decree may fix an earlier date upon which it may become absolute. A

remarriage any time within 3 months of the decree nisi (unless the court sets a shorter date) would be held to be void in all jurisdictions since the marriage has not been dissolved.

On or after 4/8/70, there is no restriction against remarriage following a divorce decree which has become final (whether rendered before, on, or after 4/8/70). Where remarriage occurred prior to 4/8/70, and both parties thereto did not survive until that date, validity of remarriage must be determined under former law. If remarriage occurred before 4/8/70, and both parties survived until said date, forward the case to the PC for possible submittal to the chief counsel.

Virginia

Prior to 1/13/20, the only restriction in the divorce law which prohibited either party to a divorce granted for a cause arising subsequent to the date of the marriage from remarrying was that the court in the decree could impose on the guilty party a prohibition against remarriage during the life of the other party. If such a party entered into a subsequent marriage in Virginia without having that part of the divorce decree revoked, the marriage would be void. In case of a remarriage entered into in another State, the prohibition would have no extraterritorial effect and would be valid in the other State and in Virginia. However, Virginia would deem the remarriage void if the guilty party left Virginia for the purpose of remarrying in violation of the decree, and intended to return and subsequently did return to Virginia.

After 1/12/20, the restrictions against the remarriage of the party guilty of adultery remained in the law and a provision was added that upon the rendition of a divorce decree neither party shall be permitted to remarry for 6 months (4 months effective 6/24/44) from the date of the decree. A remarriage by one party to another person, entered into in Virginia or elsewhere within the 6 months (or 4 months) prohibited time period while the other party to the divorce was still alive, is void in Virginia and in all other jurisdictions. (Exception: A remarriage entered into outside Virginia within the prohibited time and which is otherwise valid, would be regarded as valid in New York.)

However, marriages entered into in violation of any prohibition against remarriage in a divorce granted for a cause arising subsequent to marriage, are deemed valid ab initio if (1) the parties resided together as husband and wife until such time as one of the parties died prior to 7/1/60, or (2) the parties have continued to reside together as husband and wife until 7/1/60. In the case of (1) above, the marriage is validated ab initio effective 6/27/60. In the case of (2) above, the marriage is validated ab initio effective 7/1/60. (This applies where the remarriage occurred in Virginia and the parties were domiciled at all times thereafter in Virginia. In all other cases, submit to the PC for possible submittal to the chief counsel for an opinion as to whether the particular marriage would be considered validated.)

After 6/26/60, there is only a final decree which becomes effective when granted unless the court decrees that neither party shall remarry pending the perfecting of an appeal.

Also, the provisions for a court-imposed restriction against the remarriage of a party guilty of adultery continue in effect.

Virgin Islands

The remarriage of the parties to a divorce in this jurisdiction is prohibited until the action is heard and determined on appeal, or if no appeal is made, until the expiration of the appeal time of 30 days. After 1/27/45, a marriage contracted within the prohibited period would be void regardless of where it was celebrated. Forward to the PC for possible submittal to the chief counsel any case in which a remarriage took place prior to expiration of this prohibited period, and before 1/28/45.

Washington

Before 6/8/49, an interlocutory decree was first entered. A final decree of divorce was not entered until the expiration of 6 months from the date of the interlocutory decree upon the motion of either party, or if an appeal was taken, not until the judgment on that appeal was rendered. A remarriage entered into anywhere before the entry of the final decree or the judgment on appeal was void in all jurisdictions, since during such time the prior marriage was still in existence. There was no waiting period after the entry of final decree or judgment on appeal.

After 6/7/49, there is only a final decree of divorce which becomes effective when granted unless an interlocutory decree was entered on or before 6/8/49.

West Virginia

Before 4/1/69, both parties to a divorce suit were prohibited from remarrying within 60 days from the date of a decree of divorce. In addition, the court might further prohibit the guilty party from remarrying within 1 year. A remarriage entered into in West Virginia in violation of these prohibitions is void. A marriage entered into in another State in contravention of the prohibitions would be valid under the laws of other States, but if the validity of such a marriage is subsequently questioned in the courts of West Virginia, its courts will refuse to recognize it on the grounds that such recognition would be contrary to the public policy of West Virginia.

After 3/31/69, there is no restriction upon remarriage as to either party after divorce.

Wisconsin

Before 4/12/72, a divorce became final one year after it was granted. The date of the granting of the decree, usually the date of the trial, commenced the running of the 1-year period which must elapse before the divorce became final. A remarriage in any State prior to the expiration of that 1-year is void, because the decree granted has the same effect as a decree nisi and does not sever the marital ties. (If either party dies within the 1-year period indicated above, the marriage is deemed dissolved by final decree immediately before such death.) (See last paragraph of entry for change of position.)

After 4/11/72, and before 2/1/78, the date of the granting of the decree, usually the date of the trial, commenced the running of the 6-month period which must elapse before the divorce became final. This applied to a divorce decree resulting from the service of a summons upon the defendant before 2/1/78. A remarriage in any State prior to the expiration of that 6 months is voidable. (If either party dies within the 6-month period indicated above, the marriage is deemed dissolved by final decree immediately before such death.)

On or after 2/1/78, a divorce decree resulting from the service of a summons upon the defendant is final immediately, except that a 6-month waiting period during which the parties must not marry will be established in each decree. Any marriage in violation of this prohibition is voidable.

All marriages referred to under the former laws as being void are now considered voidable. Any remarriages can become valid if the marriage is entered into by one of the parties in good faith and if the parties continue to live together following the removal of the impediment; i.e., the expiration of the waiting period. This is a change of position effective 12/27/78.

Wyoming

There is no restriction upon remarriage after divorce.

THE UNIFORM MARRIAGE EVASION ACT

The Uniform Marriage Evasion Act, which has two main provisions, has been adopted by the following States:

- Illinois
- Louisiana
- Massachusetts
- Vermont
- Wisconsin

The first provision:

If a resident prohibited from marrying under the law of the State goes to another State for the purpose of avoiding this prohibition and contracts a marriage which would be void within his/her home State, that marriage will be held to be void by the home State, just as if the marriage had been entered into there. (Several States which have not adopted the Uniform Marriage Evasion Act as a whole have adopted this first provision; see summary of State laws in Appendix

The second provision:

Prohibits the marriage within the State of persons residing and intending to continue residing in another State, if the marriage would be void if contracted in the individual's home State. A marriage in violation of this prohibition is void in the State of marriage,

just as it would be void in the State of divorce or in the individual's home State. It is also void in all jurisdictions by the general rule that, in determining the validity of a marriage, the courts will look to the law of the jurisdiction where the marriage occurred.

Appendix C - Special Minimum PIA Conversion Chart

No. of Yrs. Creditable Coverage	Dec 1992 SPC MIN PIA 3% Increase	Family Maximum	No. of Yrs. Creditable Coverage	Dec 1992 SPC MIN PIA 3% Increase	Family Maximum
11	24.50	36.90	21	270.90	406.60
12	48.90	73.80	22	295.40	443.40
13	73.70	111.00	23	320.20	480.90
14	98.30	147.70	24	344.80	517.70
15	122.90	184.40	25	369.30	554.30
16	147.60	221.80	26	394.20	591.90
17	172.20	258.70	27	418.90	628.70
18	196.90	295.60	28	443.30	665.40
19	221.50	332.60	29	467.90	702.60
20	246.00	369.30	30	492.50	739.30

SPECIAL MINIMUM PIA CONVERSION CHART

No. of Yrs. Creditable Coverage	Dec 1993 SPC MIN PIA 2.6% Increase	Family Maximum	No. of Yrs. Creditable Coverage	Dec 1993 SPC MIN PIA 2.6% Increase	Family Maximum
11	25.10	37.80	21	277.90	417.10
12	50.10	75.70	22	303.00	454.90
13	75.60	113.80	23	328.50	493.40
14	100.80	151.50	24	353.70	531.10
15	126.00	189.10	25	378.90	568.70

16	151.40	227.50	26	404.40	607.20
17	176.60	265.40	27	429.70	645.00
18	202.00	303.20	28	454.80	682.70
19	227.20	341.20	29	480.00	720.80
20	252.30	378.90	30	505.30	758.50

SPECIAL MINIMUM PIA CONVERSION CHART

No. of Yrs. Creditable Coverage	**Dec 1994 SPC MIN PIA 2.8% Increase**	**Family Maximum**	**No. of Yrs. Creditable Coverage**	**Dec 1994 SPC MIN PIA 2.8% Increase**	**Family Maximum**
11	25.80	38.80	21	285.60	428.70
12	51.50	77.80	22	311.40	467.60
13	77.70	116.90	23	337.60	507.20
14	103.60	155.70	24	363.60	545.90
15	129.50	194.30	25	389.50	584.60
16	155.60	233.80	26	415.70	624.20
17	181.50	272.80	27	441.70	663.00
18	207.60	311.60	28	467.50	701.80
19	233.50	350.70	29	493.40	740.90
20	259.30	389.50	30	519.40	779.70

SPECIAL MINIMUM PIA CONVERSION CHART

No. of Yrs. Creditable Coverage	**Dec 1995 SPC MIN PIA 2.6% Increase**	**Family Maximum**	**No. of Yrs. Creditable Coverage**	**Dec 1995 SPC MIN PIA 2.6% Increase**	**Family Maximum**

11	26.40	39.80	21	293.00	439.80
12	52.80	79.80	22	319.40	479.70
13	79.70	119.90	23	346. 520.30	
14	106.20	159.70	24	373.00	560.00
15	132.80	199.30	25	399.60	599.70
16	159.60	239.80	26	426.50	640.40
17	186.20	279.80	27	453.10	680.20
18	212.90	319.70	28	479.60	720.00
19	239.50	359.80	29	506.20	760.10
20	266.00	399.60	30	532.90	799.90

SPECIAL MINIMUM PIA CONVERSION CHART

No. of Yrs. Creditable Coverage	**Dec 1996 SPC MIN PIA 2.9% Increase**	**Family Maximum**	**No. of Yrs Creditable. Coverage**	**Dec 1996 SPC MIN PIA 2.9% Increase**	**Family Maximum**
11	27.10	40.90	21	301.50	452.50
12	54.30	82.10	22	328.60	493.60
13	82.00	123.30	23	356.30	535.30
14	109.20	164.30	24	383.80	576.20
15	136.60	205.00	25	411.10	617.00
16	164.20	246.70	26	438.80	658.90
17	191.60	287.90	27	466.20	699.90
18	219.00	328.90	28	493.50	740.80
19	246.40	370.20	29	520.80	782.10

20	273.70	411.10	30	548.30	823.10

SPECIAL MINIMUM PIA CONVERSION CHART

No. of Yrs. Creditable Coverage	**Dec 1997 SPC MIN PIA 2.1% Increase**	**Family Maximum**	**No. of Yrs. Creditable Coverage**	**Dec 1997 SPC MIN PIA 2.1% Increase**	**Family Maximum**
11	27.60	41.70	21	307.80	462.00
12	55.40	83.80	22	335.50	503.90
13	83.70	125.80	23	363.70	546.50
14	111.40	167.70	24	391.80	588.30
15	139.40	209.30	25	419.70	629.90
16	167.60	251.80	26	448.00	672.70
17	195.60	293.90	27	475.90	714.50
18	223.50	335.80	28	503.80	756.30
19	251.50	377.90	29	531.70	798.50
20	279.40	419.70	30	559.80	840.30

Appendix D - SS Act Insured Status Requirements And Divisor Months

Effective 5-1-82

YEAR OF BIRTH	**YEAR ATTAINED AGE 65, DIED OR AWARDED DF**	**FULLY INSURED**		**DIVISOR MONTHS 1951 START**	
		Men	**Women**	**Men**	**Women**
1892	1957	6	6	24	24
1893	1958	7	6	24	24

1894	1959	8	6	36	24
1895	1960	9	6	48	24
1896	1961	10	7	60	24
1897	1962	11	8	72	36
1898	1963	12	9	84	48
1899	1964	13	10	96	60
1900	1965	14	11	108	72
1901	1966	15	12	120	84
1902	1967	16	13	132	96
1903	1968	17	14	144	108
1904	1969	18	15	156	120
1905	1970	19	16	168	132
1906	1971	20	17	180	144
1907	1972	21	18	192	156
1908	1973	22	19	204	168
1909	1974	23	20	216	180
1910	1975	24	21	228	192
1911	1976	24	22	228	204
1912	1977	24	23	228	216
1913	1978	24	24	228	228
1914	1979	25	25	240	240
1915	1980	26	26	252	252
1916	1981	27	27	264	264
1917	1982	28	28	276	276
1918	1983	29	29	288	288

1919	1984	30	30	300	300
1920	1985	31	31	312	312
1921	1986	32	32	324	324
1922	1987	33	33	336	336
1923	1988	34	34	348	348
1924	1989	35	35	360	360
1925	1990	36	36	372	372
1926	1991	37	37	384	384
1927	1992	38	38	396	396
1928	1993	39	39	408	408
1929	1994	40	40	420	420

Appendix E - Age Reduction Table – EE and SP Ann. Awarded Before 10/81

Effective 5-1-82

TABLE TO DETERMINE AMOUNTS OF AGE REDUCTION AND REDUCED RATES FOR EMPLOYEE ANNUITIES AND SPOUSE ANNUITIES AWARDED BEFORE 10-1-81

Employee annuities, and spouse annuities awarded before 10-1-81, (other than 60/30 annuities) are reduced by 1/180 (5/9, of 1%) for each month of entitlement between age 62 and 65.

Reduction Months	Decimal For Amount of Reduction	Decimal For Reduced Rate
1	.00556	.99444
2	.01111	.98889
3	.01667	.98333
4	.02222	.97778

5	.02778	.97222
6	.03333	.96667
7	.03889	.96111
8	.04444	.95556
9	.05000	.95000
10	.05556	.94444
11	.06111	.93889
12	.06667	.93333
13	.07222	.92778
14	.07778	.92222
15	.08333	.91667
16	.08889	.91111
17	.09444	.90556
18	.10000	.90000
19	.10556	.89444
20	.11111	.88889
21	.11667	.88333
22	.12222	.87778
23	.12778	.87222
24	.13333	.86667
25	.13889	.86111
26	.14444	.85556
27	.15000	.85000
28	.15556	.84444
29	.16111	.83889

30	.16667	.83333
31	.17222	.82778
32	.17778	.82222
33	.18333	.81667
34	.18889	.81111
35	.19444	.80556
36	.20000	.80000

Appendix F - Age Reduction Table- SP/Div. SP Awarded 10/1/81 or Later

Effective 5-1-82

TABLE TO DETERMINE AMOUNTS OF AGE REDUCTION AND REDUCED RATES FOR SPOUSE/DIVORCED SPOUSE ANNUITIES AWARDED 10-1-81 OR LATER WHO ATTAIN AGE 62 BEFORE 1/1/2000

Spouse annuities awarded 10-1-81 or later (other than 60/30 annuities) and divorced spouse annuities are reduced by 1/144 (25/36, of 1%) for each month of entitlement.

Reduction Months	Decimal For Amount of Reduction	Decimal For Reduced Rate
1	.00694	.99306
2	.01389	.98611
3	.02083	.97917
4	.02778	.97222
5	.03472	.96528
6	.04167	.95833
7	.04861	.95139
8	.05556	.94444
9	.06250	.93750

10	.06944	.93056
11	.07639	.92361
12	.08333	.91667
13	.09028	.90972
14	.09722	.90278
15	.10417	.89583
16	.11111	.88889
17	.11806	.88194
18	.12500	.87500
19	.13194	.86806
20	.13889	.86111
21	.14583	.85417
22	.15278	.84722
23	.15972	.84028
24	.16667	.83333
25	.17361	.82639
26	.18056	.81944
27	.18750	.81250
28	.19444	.80556
29	.20139	.79861
30	.20833	.79167
31	.21528	.78472
32	.22222	.77778
33	.22917	.77083
34	.23611	.76389

35	.24306	.75694
36	.25000	.75000

Appendix G - Age Red. Table – EE Age 62 – 1/2000 or Later – Less Than 30 Years of Service

TABLES TO DETERMINE AMOUNTS OF AGE REDUCTION FOR EMPLOYEE ANNUITANTS HAVING LESS THAN 30 YEARS OF SERVICE WHO ATTAIN AGE 62 ON 1/1/2000 OR LATER

Employee annuitants who attain age 62 on 1/1/2000 or later are subject to an increase in the age at which certain unreduced annuities can be paid. This is referred to as their Full Retirement Age (FRA).

The increased age reduction will apply to the tier 1 benefit and vested dual benefit for employees with less than 30 years of service. It will also apply to the tier 2 benefit of employees with less than 30 years of service who had no creditable railroad service prior to August 12, 1983.

The total age reduction factor equals 1/180 for each month of age reduction from 1 month through 36 months, added to 1/240 for each month of age reduction from 37 months through 60 months, when applicable.

EE YOB	Yr Att. age 62	Ret age for unred. ann. (FRA)	Maximum No. Mos A/R for this YOB	Maximum A/R for this YOB
1937 & earlier	1999 & earlier	65 yr 0 mo.	36	20.000%
1938	2000	65yr2mo.	38	20.833%
1939	2001	65yr4mo.	40	21.667%
1940	2002	65yr6mo.	42	22.500%
1941	2003	65yr8mo.	44	23.333%
1942	2004	65yr10mo.	46	24.167%
1943-54	2005-2016	66yr0mo.	48	25.000%
1955	2017	66yr2mo.	50	25.833%
1956	2018	66yr4mo.	52	26.667%

1957	2019	66yr6mo.	54	27.500%
1958	2020	66yr8mo.	56	28.333%
1959	2021	66yr10mo.	58	29.167%
1960 & later	2022 & later	67yr0mo.	60	30.000%

Count the number of months the employee is under full retirement age (FRA) based on the employee's year of birth using the table above. Using the table below, determine the age reduction factor corresponding to the total number of months the EE is under his FRA.

No. mos. A/R	**Total A/R factor**	**No. mos. A/R**	**Total A/R factor**
60	30.000%	30	16.667%
59	29.583%	29	16.111%
58	29.167%	28	15.556%
57	28.750%	27	15.000%
56	28.333%	26	14.444%
55	27.917%	25	13.889%
54	27.500%	24	13.333%
53	27.083%	23	12.778%
52	26.667%	22	12.222%
51	26.250%	21	11.667%
50	25.833%	20	11.111%
49	25.417%	19	10.556%
48	25.000%	18	10.000%
47	24.583%	17	9.444%
46	24.167%	16	8.889%

45	23.750%	15	8.333%
44	23.333%	14	7.778%
43	22.917%	13	7.222%
42	22.500%	12	6.667%
41	22.083%	11	6.111%
40	21.667%	10	5.556%
39	21.250%	9	5.000%
38	20.833%	8	4.444%
37	20.417%	7	3.889%
36	20.000%	6	3.333%
35	19.444%	5	2.778%
34	18.889%	4	2.222%
33	18.333%	3	1.667%
32	17.778%	2	1.111%
31	17.222%	1	0.556%

Example 1: An employee born 6/3/1942, has an ABD of 7/1/2004. The employee files for a reduced age 62 annuity. The employee will attain age 62 in 2004 and be entitled to a full unreduced annuity at age 65, 10 months. The age reduction is calculated:

6/2007 - age 65

4/2008 - add 10 months

7/2004 - ABD

Number of months under FRA = 45 months.

The age reduction factor is 23.750%.

Example 2: An employee born 10/2/1940, files for a reduced age 62 annuity with an ABD of 12/1/2002. The employee will attain age 62 in 2002. A full retirement annuity (FRA) will be payable at age 65 years, 6 months. The age reduction is calculated:

10/2005 - age 65

4/2006 - add 6 months

12/2002 - ABD

Number of months under FRA = 40 months.

The age reduction factor is 21.667%.

Example 3: An employee born on 2/1/1939, files for a reduced age annuity. The ABD is 1/1/2004. The FRA is payable at 65 years, 4 months. The age reduction is calculated:

1/2004 - age 65

5/2004 - add 4 months

1/2004 - ABD

Number of months under FRA = 4 months.

The age reduction factor is 2.222%.

Appendix H - Age Reduction Table- EE Age 62 – 1/2000 or Later – 60/30

TABLES TO DETERMINE AMOUNTS OF AGE REDUCTION FOR EMPLOYEE AND SPOUSE ANNUITANTS RETIRING BEFORE AGE 62 WITH 30 YEARS OF SERVICE WHO ATTAIN AGE 62 ON 1/1/2000 OR LATER

A) Employee annuitants who attain age 62 on 1/1/2000 or later are subject to an increase in the age at which certain unreduced annuities can be paid. This is referred to as their Full Retirement Age (FRA).

Early retirement reductions for those retiring with 30 or more years of service apply to tier 1 benefits only.

Employees retiring at age 62 with 30 years of service ARE NOT subject to any age reduction.

The total age reduction factors are based on 1/180 for each month under retirement age up to 36 months, added to 1/240 for each month of age reduction from 37 months through 60 months, if applicable.

		Tier 1 portion of annuity

EE YOB	Tier 1 portion of annuity is reduced by this A/R %	is reduced by recalculated A/R% at age 62
Before 1938	20.000%	19.444%
1938	20.833%*	20.417%
1939	21.667%*	21.250%
1940	22.500%	22.083%
1941	23.333%	22.917%
1942	24.167%	23.750%
1943-1954	25.000%	24.583%
1955	25.833%	25.417%
1956	26.667%	26.250%
1957	27.500%	27.083%
1958	28.333%	27.917%
1959	29.167%	28.750%
1960 or later	30.000%	29.583%

- If retirement is before the year 2000, only a 20% reduction is effective on the ABD, which will result in a slightly higher age reduction factor when the factor is recalculated at age 62.

Note: The recalculated age reduction factor at age 62 assumes the employee is NOT born on the second day of the month. If the employee is born on the second day of the month, the recalculated age reduction factor in the right-hand column will be the same as the pre-age 62 age reduction factor.

EXAMPLE: An employee born 7/5/41, has an ABD of 8/1/2001. The employee is filing for a reduced age 30/60 annuity. The tier 1 age reduction is 23.333%. When the employee turns age 62 (8/1/2003), the new age reduction will be 22.917%.

B) Spouse annuitants retiring before age 62 and the employee retires before age 62 with 30 years of service:

- The spouse's tier 1 amount will be one-half of the employee's annuity beginning date tier 1 amount.

- The spouse annuity tier 1 amount will be recomputed at age 62 (but not before the employee attains age 62) as shown below:

Spouse DOB	**Year Spouse Tier 1 Amount Will Be Recomputed Is**	**Age 62 Recomputed Tier 1 Amount Will Be Reduced By**
1937 or earlier	1999	25.000%
1938	2000	25.833%
1939	2001	26.667%
1940	2002	27.500%
1941	2003	28.333%
1942	2004	29.167%
1943-1954	2005-2016	30.000%
1955	2017	30.833%
1956	2018	31.667%
1957	2019	32.500%
1958	2020	33.333%
1959	2021	34.167%
1960 or later	2022 or later	35.000%

The above table assumes the full 36/180 month age reduction before actual age 65, as if the spouse was born on the second day of the month.

Retirement reductions for spouses or employees with 30 or more years of service only apply to tier 1 benefits and only if the employee retires before age 62.

EXAMPLE 1: An employee born on 3/4/42 files for a reduced 30/60 annuity. The ABD is 2/1/2003. The age reduction will be 24.167% on the employee's ABD. The spouse also files for a reduced 30/60 annuity with the same ABD. The spouse's DOB is 4/3/40. The spouse will receive 1/2 of the employee's age

reduced tier 1. The employee's tier 1 is recalculated beginning 4/2004. The new age reduction factor for the employee will be 23.750%. The spouse's recalculated age reduction will be:

4/2005 - age 65

10/2005 - add 6 months

4/2004 - recalc ABD

Number of months under FRA = 18 months.

The spouse's recalculated age reduction factor is 12.500%.

EXAMPLE 2: An employee born on 10/3/39 files for a reduced 30/60 annuity. The ABD is 11/1/99. The ABD age reduction is 20.000%. The spouse later files for a reduced age 30/60, with a DOB of 8/8/41. The ABD will be 9/1/2001. The spouse will receive 1/2 of the employee's age reduced tier 1 on the spouse's ABD. The employee's tier 1 will be recalculated on 11/1/2001. The new age reduction for the employee will be 21.250%. The spouse's tier 1 will be recalculated on 9/1/2003. The spouse's recalculated age reduction will be:

8/2006 - spouse age 65

4/2007 - add 8 months

9/2003 - recalc ABD

Number of months under FRA = 43 months.

The spouse recalculation age reduction factor is 27.917%.

Appendix I - Age Reduction Table – MA/XA Age 62 – 1/2000 or Later

TABLES TO DETERMINE AMOUNTS OF AGE REDUCTION FOR SPOUSES & DIVORCED SPOUSES ATTAINING AGE 62 ON 1/1/2000 OR LATER

Spouse/divorced spouse annuitants who attain age 62 on 1/1/2000 or later are subject to an increase in the age at which certain unreduced annuities can be paid. This is referred to as their Full Retirement Age (FRA).

The increased age reduction will apply to the tier 1 benefit with the maximum reduction gradually rising from 25% to 35% by the year 2022. The tier 2 reduction remains at 25% for a spouse if the employee had any railroad service before August 12, 1983.

The total age reduction factor equals 1/144 for each of the first 36 months under retirement age, added to 1/240 for each month of age reduction from 37 months through 60 months, if applicable.

SP YOB	YR age 62	Age for unreduced annuity (FRA)	Max No. Mos. A/R for this YOB	Max A/R for this YOB
1937 or earlier	1999 & earlier	65 yrs 0 mo.	36 mo.	25.000%
1938	2000	65 yrs 2 mo.	38 mo.	25.833%
1939	2001	65 yrs 4 mo.	40 mo.	26.667%
1940	2002	65 yrs 6 mo.	42 mo.	27.500%
1941	2003	65 yrs 8 mo.	44 mo.	28.333%
1942	2004	65 yrs 10 mo.	46 mo.	29.167%
1943-54	2005-2016	66 yrs 0 mo.	48 mo.	30.000%
1955	2017	66 yrs 2 mo.	50 mo.	30.833%
1956	2018	66 yrs 4 mo.	52 mo.	31.667%
1957	2019	66 yrs 6 mo.	54 mo.	32.500%
1958	2020	66 yrs 8 mo.	56 mo.	33.333%
1959	2021	66 yrs 10mo	58 mo.	34.167%
1960 & later	2022 & later	67 yrs 0 mo.	60 mo.	35.000%

Count the number of months the spouse/divorced spouse is under full retirement age (FRA) based on the spouse/divorced spouse's year of birth using the table above. Using the table below, determine the age reduction factor corresponding to the number of months the MA/XA is under his/her FRA.

TABLE OF AGE REDUCTION FACTORS FOR SPOUSES OF EMPLOYEES WITH LESS THAN 30 YEARS OF SERVICE AND DIVORCED SPOUSES ATTAINING AGE 62 ON 1/1/2000 OR LATER

NO. MOS. A/R	TOTAL A/R FACTOR	NO. MOS. A/R	TOTAL A/R FACTOR

60	35.000%	30	20.833%
59	34.583%	29	20.139%
58	34.167%	28	19.444%
57	33.750%	27	18.750%
56	33.333%	26	18.056%
55	32.917%	25	17.361%
54	32.500%	24	16.667%
53	32.083%	23	15.972%
52	31.667%	22	15.278%
51	31.250%	21	14.583%
50	30.833%	20	13.889%
49	30.417%	19	13.194%
48	30.000%	18	12.500%
47	29.583%	17	11.806%
46	29.167%	16	11.111%
45	28.750%	15	10.417%
44	28.333%	14	9.722%
43	27.917%	13	9.028%
42	27.500%	12	8.333%
41	27.083%	11	7.639%
40	26.667%	10	6.944%
39	26.250%	9	6.250%
38	25.833%	8	5.556%
37	25.417%	7	4.861%

36	25.000%	6	4.167%
35	24.306%	5	3.472%
34	23.611%	4	2.778%
33	22.917%	3	2.083%
32	22.222%	2	1.389%
31	21.528%	1	0.694%

EXAMPLE 1: A spouse born on 8/3/40 files for a reduced age 62 annuity. The ABD is 1/1/2004. An FRA is payable at age 65 years, 6 months. The age reduction will be calculated:

8/2005 - age 65

2/2006 - add 6 months

1/2004 - recalc age 62 ABD

Number of months under FRA = 25 months.

The age reduction at age 62 is 17.361%.

EXAMPLE 2: A spouse files for a reduced age 62 annuity with an ABD of 6/1/2022. Her DOB is 3/8/60. An FRA is payable at 67 years, 0 months. The age reduction will be calculated:

3/2025 - age 65

3/2027 - add 24 months

6/2022 - ABD

Number of months under FRA = 57 months.

The age reduction factor is 33.750%.

Appendix J - Spouse Annuity Maximums

For cases awarded prior to 10-1-81, the total of the spouse's tier I (before any reduction for her own SS benefits) and her tier II is subject to the spouse maximum.

Effective Date	Spouse Maximum

11-1-51	$40.00
9-1-55	54.30
1-1-59	59.50
2-1-59	60.50
6-1-59	66.60
2-1-60	69.90
1-1-65	74.80
1-1-67	83.60
1-1-68	92.40
2-1-68	104.50
1-1-69	112.20
1-1-70	138.00
1-1-71	151.70
9-1-72	182.10
1-1-73	188.50
1-1-74	203.30
3-1-74	217.50
6-1-74	225.70
1-1-75	246.95
6-1-75	266.75
1-1-76	283.36
6-1-76	301.51
1-1-77	311.85
6-1-77	330.22

1-1-78	342.32
6-1-78	364.54
1-1-79	376.64
6-1-79	413.93
1-1-80	447.04
6-1-80	510.95
1-1-81	556.38
6-1-81	618.64
1-1-82	655.71
6-1-82	704.00*

* The spouse maximum will no longer apply because a spouse annuity under the 1974 RR Act formula will always be less than this amount.

Appendix K - Age Reduction Table - Aged Widow(er)-Type Annuitants

The following chart gives the reduction factors for all widow(er)-type annuitants who were either born before 1/2/1940 or have an annuity beginning date before 1/2000. If the annuitant does not meet these criteria, refer to appendices M through X for the correct reduction factors.

Remarried widow(er)’s and surviving divorced spouse's annuity rates are reduced by 19/40 of 1% for each month of entitlement between age 60 and 65. Aged widow(er)s annuity rates are reduced by the same factor; however, they are deemed to be age 62 on the annuity beginning date.

The amount of the reduced tier I rate is obtained by multiplying the widow(er)'s original rate or reduced for maximum rate by the appropriate decimal. Round the result, if not a multiple of $.10, to the next lower multiple of $.10.

The amount of the reduced tier II rate for cases in which the employee died 10-1-81 or later, did not retire before 10-1-81, is obtained by multiplying the widow(er)'s gross or reduced for maximum tier II by the appropriate decimal. Round the result to the nearest penny.

Decimals for Reduced Age Widow(er)'s Rate,

Remarried Widow(er)'s Rate or Surviving

Divorced Spouse's Rate

Months under age 65 on ABD	Decimal for Reduced Rate
1	.99525
2	.99050
3	.98575
4	.98100
5	.97625
6	.97150
7	.96675
8	.96200
9	.95725
10	.95250
11	.94775
12	.94300
13	.93825
14	.93350
15	.92875
16	.92400
17	.91925
18	.91450
19	.90975
20	.90500
21	.90025
22	.89550

23	.89075
24	.88600
25	.88125
26	.87650
27	.87175
28	.86700
29	.86225
30	.85750
31	.85275
32	.84800
33	.84325
34	.83850
35	.83375
36	.82900

Since aged widow(er)s are deemed to be age 62 under the RR Act, the following decimals for reduced rates apply to remarried widow(er)s and surviving divorced spouses only.

Months under age 65 on ABD	**Decimal for Reduced Rate**
37	.82425
38	.81950
39	.81475
40	.81000
41	.80525
42	.80050

43	.79575
44	.79100
45	.78625
46	.78150
47	.77675
48	.77200
49	.76725
50	.76250
51	.75775
52	.75300
53	.74825
54	.74350
55	.73875
56	.73400
57	.72925
58	.72450
59	.71975
60	.71500

Appendix L - Age Reduction Table - Disabled Widow(er)-Type Annuitants

Use this chart to determine the age reduction factors for months under age 60 for disabled widow(er)s, remarried disabled widow(er)s and surviving disabled divorced spouses for dates before 1-1-1984. Effective 1-1-1984, they are deemed to be age 60. Use Appendix K to determine the age reduced rate effective 1-1984 or later.

The amount of the reduced tier I rate is obtained by multiplying the original or reduced for maximum rate by the appropriate decimal. Round the result down, if not a multiple of $.10.

The amount of the reduced tier II rate for cases in which the employee died 10-1-81 or later and did not retire before 10-1-81 is obtained by multiplying the gross or reduced for maximum tier II by the appropriate decimal. Round the result to the nearest penny.

Months under age 60 on ABD	Decimal for Reduced Rate
1	.71321
2	.71142
3	.70963
4	.70784
5	.70605
6	.70426
7	.70247
8	.70068
9	.69889
10	.69710
11	.69531
12	.69352
13	.69173
14	.68994
15	.68815
16	.68636
17	.68457
18	.68278
19	.68099
20	.67920

21	.67741
22	.67562
23	.67383
24	.67204
25	.67025
26	.66846
27	.66667
28	.66488
29	.66309
30	.66130
31	.65951
32	.65772
33	.65593
34	.65414
35	.65235
36	.65056
37	.64877
38	.64698
39	.64519
40	.64340
41	.64161
42	.63982
43	.63803
44	.63624

45	.63445
46	.63266
47	.63087
48	.62908
49	.62729
50	.62550
51	.62371
52	.62192
53	.62013
54	.61834
55	.61655
56	.61476
57	.61297
58	.61118
59	.60939
60	.60760
61	.60581
62	.60402
63	.60223
64	.60044
65	.59865
66	.59686
67	.59507
68	.59328

69	.59149
70	.58970
71	.58791
72	.58612
73	.58433
74	.58254
75	.58075
76	.57896
77	.57717
78	.57538
79	.57359
80	.57180
81	.57001
82	.56822
83	.56643
84	.56464
85	.56285
86	.56106
87	.55927
88	.55748
89	.55569
90	.55390
91	.55211
92	.55032

93	.54853
94	.54674
95	.54495
96	.54316
97	.54137
98	.53958
99	.53779
100	.53600
101	.53421
102	.53242
103	.53063
104	.52884
105	.52705
106	.52526
107	.52347
108	.52168
109	.51989
110	.51810
111	.51631
112	.51452
113	.51273
114	.57094
115	.50915
116	.50736

117	.50557
118	.50378
119	.50199
120	.50020

Appendix M - Age Reduction Factors For Widow(er)s, Surviving Divorced Spouses, and Remarried Widow(er)s

Age reductions apply to all regular aged widow(er)s, remarried widow(er)s, surviving divorced spouses and disabled widow(er)s under FRA on the WIA OBD (Widow Insurance Annuity Original Beginning Date).

- Regular age widow(er) between the ages 60-61 are deemed to be age 62 on the WIA OBD. Regular age widow(er) between the age 62 and FRA count the number of months under FRA on the WIA OBD to compute the age reduction.

- Remarried widow(er)s and surviving divorced spouses count the number of age reduction months based on their age on the OBD and their FRA attainment. They are not deemed to be age 62. They receive the maximum number of age reduction months.

- Disabled widow(er): Effective January 1, 1984 a disabled widow(er) receives a 100% share of the PIA or maximum reduced by 19/40 of 1% for each month between age 60 and 65. There is no additional reduction for months of entitlement before age 60.

Beginning in the year 2000, the eligibility age for a full widow(er)'s annuity will gradually rise from 65 to 67. The maximum reduction for disabled widower(er)s will remain at 28.5%; however, the maximum number of reduction months can now exceed 60.

The Basic formula to compute the monthly age reduction amount:

Step 1: Determine the monthly age reduction percent:

See Appendix N last column for the percent or to manually calculate it:

Divide 28.5% by the maximum number of age reduction months for the date of birth. Carry the results to 7 decimal places.

Step 2: Determine the Age Reduction Factor.

Multiply the number of months the widow(er) is under FRA on the original beginning annuity date times the factor from Step 1 (or Appendix N).

Subtract the results from 1 and drop the last two decimal (DO NOT ROUND).

Step 3: Calculate the widow(er)'s age reduced amount.

Multiply the results from Step 2 by the PIA. Round down to the dime.

Example 1: Aged Widow(er) DOB 5-5-1934 OBD 9-1-1996 PIA 1651.80

FRA 5-1999 Based on date of birth and Appendix N

Months under FRA 32

FRA Attainment Date: 1999-05

Less the OBD Date: 1996-09

Equals Months 2x12+8=32

Under FRA

Step 1: Maximum reduction months 60.

.285/60 = .0047500

Step 2: 32X .0047500= .1520000

1-.1520000= .84800

Step 3: 1651.80 X .84800 = 1400.70

Example 2: Aged Widow(er) DOB 6-16-1943 OBD 6-1-2005 PIA 1651.80

FRA 2-2009 Based on date of birth and Appendix N

Months under FRA 44

FRA Attainment Date: 2009-02

Less the OBD Date: 2005-06

Equals Months 3x12+ 8= 44

Under FRA

Step 1: Maximum reduction months 68.

.285/68 = .0041911

Step 2: 44X .0041911= .1844084

1-.1844084= .81559

Step 3: 1651.80 X.81559=1347.10

Example 3: Remarried Widow or Surviving Divorced Spouse

DOB 6-16-1941 OBD 8-1-2005 PIA 1651.80

FRA 10-2006 Based on date of birth and Appendix N

Months under FRA 14

FRA Attainment Date: 2006-10

Less the OBD Date: 2005-08

Equals Months 12+ 2 = 14

Under FRA

Step 1: Maximum reduction months 64.

.285/64 = .0044531

Step 2: 14 X .0044531= .0623434

1-.0623434= .9376566

Step 3: 1651.80 X.9376566 = 1548.80

Appendix N – Chart on Widow(er)s, Surviving Divorced Spouses, and Remarried Widow(er)s' Age Reduction

This chart is to help in the calculation the age reduction for Widow Annuities. The last column is the Factor to be used with Appendix M.

Date of Birth	FRA	28.5% maximum age reduction months	Step 1 results: Factor to use for Step 2 in Appendix E
Before 1-2-1940	65 years	.285/60	.0047500
1-2-1940 through 1-1-	65 years and 2 months	.285/62	.0045967

1941			
1-2-1941 through 1-1-1942	65 years and 4 months	.285/64	.0044531
1-2-1942 through 1-1-1943	65 years and 6 months	.285/66	.0043181
1-2-1943 through 1-1-1944	65 years and 8 months	.285/68	.0041911
1-2-1944 through 1-1-1945	65 years and 10 months	.285/70	.0040714
1-2-1945 through 1-1-1957	66 years	.285/72	.0039583
1-2-1957 through 1-1-1958	66 years and 2 months	.285/74	.0038513
1-2-1958 through 1-1-1959	66 years and 4 months	.285/76	.0037500
1-2-1959 through 1-1-1960	66 years and 6 months	.285/78	.0036538
1-2-1960 through 1-1-1961	66 years and 8 months	.285/80	.0035625
1-2-1961 through 1-1-1962	66 years and 10 months	.285/82	.0034756
1-2-1962 and Later	67 years	.285/84	.0033928

Appendix A - Preparing and Release Cash Refunds to Lockbox

Identification

The first thing to do when accepting a cash refund is to identify it as a retirement payment. The digit following B in the billing document ID number signifies the type of overpayment as follows: B2 = Retirement, B5 = Medicare, B8 = UI/SI.

If the cash refund is accompanied by a retirement overpayment notice, the billing document number should begin with "B2". "B2" billing document numbers signify retirement overpayments.

If the cash refund is not accompanied by the overpayment notice, check the payor number (claim number) on the program accounts receivable system (PARS). See FOM 1578.25 for PARS instructions. Use the case history line table (ARCL) screen. If a B2 billing document number appears, it is a retirement cash refund. If the billing document is other than B2, see instructions for the UI/SI cash refunds. If after checking PARS, you cannot find a billing document number, determine why the cash refund is being made. It is possible that the cash refund is being made before the overpayment is posted to PARS (e.g., a not due last payment).

Once you have determined that the cash refund is for a Retirement overpayment, it must be forwarded to the Retirement lockbox.

Preparation

All cash refunds sent to the Retirement lockbox must be properly identified and legible. Proper identification is the presence of the payor number and billing document number. If possible forward the cash refund with a copy of the overpayment notice. All overpayment notices should indicate the payor number and billing document number.

If a copy of the overpayment notice is not available, check the claim number on PARS. Determine the billing document number by checking the ARCL screen. Use form G-23 (Lockbox Identification Slip). Enter the payor number and billing document number exactly as it appears on PARS. It is not necessary to enter the claim number on the G-23. See G-23 form instructions for proper completion. See sample 2 in this appendix for the PARS (ARCL) screen and location of the payor number and billing document ID number.

If there is no record on PARS and you have determined that the refund is for Retirement, attach form G-23 showing the claim number. See sample 1 in this appendix. The lockbox will accept cash refunds identified only by a claim number. However, these cash refunds will require manual action for posting to PARS by the payment services group (PSG).

Release

When you forward a cash refund with related correspondence to the lockbox, the cash refund will be processed by the bank. The bank will return the correspondence with a copy of the check or money order to the Payment Services Group (PSG). PSG forwards the correspondence to be matched to the claim folder. All materials received by the lockbox are forwarded to PSG.

If you are submitting a cash refund and you need to send a memorandum requesting additional action on a case, you should forward the cash refund with overpayment notice copy or G-23 to the lockbox and forward your memorandum directly to the responsible unit in headquarters. The action on the case will not be delayed waiting for the cash refund to be matched to the file.

If you are releasing multiple cash refunds at the same time, you may package them in the same envelope. You should staple each remittance to the identifying correspondence. This will avoid any mismatching of remittance by bank personnel.

Appendix A - Employee Annuities

Employer	**Restrictions, Conditions or Exceptions, if any**
-A-	
Akron & Barberton Belt RR	
Akron Union Passenger Depot Co.	Current examination conducted if applicant has current employee status.
Alameda Belt Line	
Aliquippa and Southern RR	
American Refrigerator Transit Co.	See Attachment 3 to this Appendix.
Atchison, Topeka and Santa Fe Ry.	Medical reports furnished for members of hospital associations. Release RL-11 direct to Chief Surgeon of Hospital Association (See Contact Official List) with copy to Contact Officer. Request that medical reports be returned through Contact Officer's office.
Atlanta & Saint Andrews Bay Ry.	Current examinations conducted at company stations.
-B-	
Bangor and Aroostook RR	
Beaufort and Morehead RR	
Berlin Mills Ry.	
Birmingham Southern RR	
Board of Trustees of the Galveston Wharves	Current examinations conducted if applicant disabled in service, lives in or able to travel to Galveston area, and not out of service over one year.
Buffalo Creek RR (Lessees)	

Burlington Northern, Inc.	Current examinations not usually conducted. Reports of past examinations will be furnished. Release RL-11 to the Chief Medical Officer in St. Paul, MN in all cases.
-C-	
Cape Fear Railways, Inc.	
Carbon County Ry. Co.	
Chattahoochee Valley Ry.	
Chessie System (B&O, C&O and all subsidiaries)	Current examinations not usually conducted. Release RL-11 to Chief Medical Officer, Chessie System, 100 N. Charles St., Baltimore, MD 21201.
Chicago and North Western Ry.	Current examination conducted if applicant can report to company dispensary at 127 N. Clinton St., Chicago, IL.
Chicago, Milwaukee, St. Paul and Pacific RR	Current examination <u>not</u> conducted for employees East of Mobridge, SD. For employees West of Mobridge, SD, see Milwaukee Hospital Assn.
Chicago Union Station Co.	Current examination conducted if applicant has current employee status and can report to Chicago Union Station Depot, Chicago, IL.
Colorado and Southern Ry.	
Colorado and Wyoming Ry.	
CONRAIL	See Attachment 2 to this Appendix.
-D-	
Delray Connecting RR	Current examination conducted if applicant has current employee status.
Denver and Rio Grande Western RR	
Duluth Union Depot and Transfer Co.	
-E-	

Elgin, Joliet and Eastern Ry.	
-F-	
Florida East Coast Ry.	Current examinations not conducted. Reports of past examinations will be furnished. Release RL-11 to Chief Medical Examiner, Florida East Coast Railway Company, 2442 Atlantic Blvd., Jacksonville, FL 32207
Fonda, Johnstown and Gloversville RR	Current examinations conducted if applicant has current employee status and located in vicinity of Gloversville or Amsterdam, NY.
Fort Worth and Denver RY.	In addition to request for employer medical evidence, develop medical from designated examiner unless medical evidence is available from "applicant" sources.
-G-	
Great Western Ry.	
Green Bay and Western RR	Current examination conducted if DLW is not more than 6 months before the date of the request and if applicant has not worked in any other employment since leaving railroad service.
-H-	
Harbor Belt Line RR	Most applicants retain rights with company from which assigned - namely, AT&SF, UP, and SP. Request medical report from company with which applicant retained rights. If applicant does not retain rights with one of companies named, request report from SP.
Houston Belt & Terminal Ry.	Current examination conducted if applicant has current employee status.
-I-	
Illinois Terminal RR	See Attachment 3 to this Appendix.
-K-	

Kelley's Creek and Northwestern RR	
-L-	
Long Island RR	
Los Angeles Union Passenger Terminal	
Ludington & Northern RY.	
-M-	
Manufacturer's Ry. Co. (St. Louis)	See Attachment 3 to this Appendix.
Milwaukee Hospital Assn.	Employees of Chicago, Milwaukee, St. Paul and Pacific RR West of Mobridge, SD are members. Medical evidence will only be furnished for disqualified operating employees and other employees treated in Surgeon's office in Seattle, WA. Members of the Milwaukee Hosp. Assn. who have been examined by "on-line" assn. doctors should be furnished Form G-250 to be completed by the "on line" assn. doctor. Form G-250 should indicate the doctor is n assn. doctor.
Missouri-Illinois RR	See Attachment 3 of this Appendix.
Missouri-Kansas-Texas RR	For members of the Missouri-Kansas-Texas Employees Hospital Assn., release RL-11b to the Administrator, Missouri-Kansas-Texas Hospital: (1) At Parsons, KS 67357 for members residing north of the Oklahoma-Kansas border; (2) At Denison, TX 75020 for members residing in Oklahoma and Texas. In addition, if applicant disqualified by Missouri-Kansas-Texas Railroad Medical Director, release RL-11 to Medical Director, Missouri-Kansas-Texas, 101 E. Main St., Denison, TX 75020.

Missouri Pacific RR Co. and all Subsidiary Companies	See Attachment 3 to this Appendix.
Monongahela Connecting RR	
-N-	
Northwestern Pacific RR	See Southern Pacific
Transportation Co.	
-O-	
Ogden Union Ry and Depot Co.	
-P-	
Pacific Fruit Express	No medical records available for off-line employees.
Pearl River Valley RR	
Petaluma and Santa Rosa RR	See Southern Pacific Transportation Co.
Pittsburgh & Conneaut Dock Co.	
Port Terminal Railroad Assn.	Current examination conducted if applicant has current employee status.
Portland Traction Co.Portland RR and Terminal Div.	
Pueblo Union Depot and RR	
-Q-	
Quanah, Acme & Pacific Ry.	
-R-	
Rahway Valley Co., Lessee	Do not request medical report if personal injury case.
Richmond, Fredericksburg and Potomac RR	Current examination conducted if applicant has current employee status and able to report to company medical examiner.

-S-	
Salt Lake City Union Depot and RR	
San Diego & Arizona Eastern Ry.	See Southern Pacific Transportation Co.
Southern Pacific Transportation Co.	If applicant has terminated service but is still carried on roster and retains rights, examination will be conducted for the following period after termination of service: Less than 12 months service - same length of time as was in service. 1 year but less than 10 years service - not in excess of 1 year. 10 year but less than 25 years of service - not in excess of 18 months. 25 or more years service - not in excess of 24 months. If applicant has resigned or has been discharged, employer will not conduct current examinations but will furnish report of last examination prior to leaving service.
Staten Island Rapid Transit Ry.	See Attachment 1 to this Appendix.
St. Louis Refrigerator Car Co.	See Attachment 3 of this Appendix.
St Louis - San Francisco Ry.	Current examination conducted for member of hospital association only.
St. Louis Southwestern Ry. (Cotton Belt)	Current examinations are not available and G-3EMP cannot be completed. Complete medical records for in- or out-patients of the St. Louis Southwestern Ry. Hospital through 6/1972 are available on request, and will be furnished upon authorization by the employee. Address requests for these medical records to:
St. Louis-Southwestern Ry. P.O. Box 778 Tyler, Texas 75701	Lines Hospital Trust

St. Mary RR	
-T-	
Terminal RR Assn. of St. Louis	See Attachment 3 of this Appendix.
Tidewater Southern Ry.	
Toledo, Angola & Western Ry.	
Tooele Valley Ry.	
Trona Ry.	
-U-	
Union Pacific RR	Furnish employee applicant: 1.) Original of Form RL-11 (prepared in triplicate) addressed to the physician of the UPRREHA (Union Pacific Railroad Employees Hospital Association) who will conduct the examination. If the employee cannot report to the physician who last treated or examined him, he can be referred to <u>any</u> company physician for the examination. (Amend Form RL-11 so that the completed Forms G-3EMP are returned to the district office; 2.) Form G-3EMP (properly headed up) in duplicate; and 3.) An envelope pre-addressed to the district office. Instruct the employee to present all of the above forms to the physician shown on Form RL-11 as soon as possible. Upon return of completed Forms G-3EMP, send the duplicate copy with a copy of Form RL-11 to the contact officer. Enter on the copy of Form RL-11, sent to the contact officer, the notation "Original report forwarded

	to DBD." Forward the original Form G-3EMP with a copy of Form RL-11 to DBD.
Union RR (Pittsburgh, PA.)	Current examination conducted if applicant has current employee status.
United Transportation Union	Will conduct medical examinations for officers and employees who work at the international office. Forward Form RL-11 to the contact official.
-V-	
Visalia Electric RR	See Southern Pacific Transportation Co.
-W-	
Walla Walla Valley Ry.	
Ware Shoals RR	
Washington Terminal Co.	Current examination conducted if applicant has current employee status.
Western Pacific RR	
Wichita Union Terminal Ry.	
-Y-	
Youngstown and Northern RR	

Attachment 1 The Chessie System

The Chessie System, which includes the Baltimore and Ohio Railroad, the Chesapeake and Ohio Railway, and the Western Maryland Railway, requests that all forms RL-11 be released to the offices listed below for completion.

The following is a list of the Chessie medical offices, their mailing addresses, and the major cities located in each district. The medical district also includes areas adjacent to or between the cities listed. Released Form RL-11 to the office of district in which the applicant resides. Current examinations may be arranged at these locations.

Medical Examiner	**Cities Located in Medical District**
Regional Medical Examiner	Ashland, KY

Chessie System Box 1800 Operating Headquarters Bldg. 801 Madison Avenue Hunting, WV	Raceland, KY Russell, KY Portsmouth, OH Charleston, WV Huntington, WV
Chief Medical Officer Chessie System 100 N Charles Street Baltimore, MD 21201	Washington, D.C. Wilmington, DE Chicago, IL E. St. Louis, IL Garrett, IN Indianapolis, IN Covington, KY Louisville, KY Newport, KY Stevens, KY Baltimore, MD Dearborn, MI Detroit, MI Flint, MI Grand Rapids, MI Ludington, MI Saginaw, MI St. Louis, MO

	New York, NY Chillicothe, OH Cincinnati, OH Columbus, OH Dayton, OH Fostoria, OH Hamilton, OH Lima, OH Toledo, OH Wallbridge, OH Philadelphia, PA Charlottesville, VA Newport News, VA Norfolk, VA Richmond, VA Parkersburgh, WV

Current examinations will not always be conducted; however, when the applicant has a current employee status and could report, at his own expense for examination by an employer medical examiner, enter the following postscript on Form RL-11:

"If requested, applicant can report for examination at _____."

Advise the applicant to comply promptly if the employer requests that he report for examination.

The following is a list of the medical examiners, their addresses, and the major cities located in each district. These facilities do NOT have a full time medical examiner, and current examinations can usually not be arranged. They may, upon receipt of Form RL-11, however, be able to provide records of pertinent past examinations.

Medical Examiner	**Cities Located in Medical District**
Medical Examiner Chessie System YMCA Building 720 Virginia Ave.	Cumberland, MD; Hagerstown, MD; Martinsburg, WV, Grafton WV, Fairmont, WV, Clarksburg, WV, Pittsburgh, PA, Connellsville, PA, Buffalo, NY, Rochester, NY
Medical Examiner Chessie System Metropolitan Building 39 S. Main Street Akron, OH 44308	Akron, OH; Youngstown, OH; Newark, OH, Zanesville, OH, New Castle, PA, Willard, OH

When the applicant does not indicate recent examination by a company doctor, release RL-11 to proper source, but do not wait for response from the Chessie - schedule appropriate examinations immediately.

Attachment 2 The CONRAIL System

CONRAIL will conduct a current medical exam for a disability applicant provided:

(1) He has a current employee status, and

(2) He can report to one of the CONRAIL medical offices listed below.

If the applicant can report to one of the medical offices listed below, indicate in a footnote on Form RL-11:

Applicant can report for examination at (location).

The employer will notify the applicant to contact the appropriate medical office within 10 days for an appointment. Explain to the applicant the importance of complying with the employer's request to report for examination.

If the applicant states he was disqualified by a CONRAIL medical officer, question him closely to find out where he was examined, when, and by what doctor. Enter this information in the space provided on Form RL-11.

CONRAIL medical offices are located in the following cities:

Chicago, IL

Conway, PA

Indianapolis, IN

Philadelphia, PA

Pittsburgh, PA

Selkirk, NY

DO NOT DIRECT FORM RL-11 TO THE CONRAIL MEDICAL OFFICER; SEND IT TO THE CONTACT OFFICIAL.

CONRAIL has closed many medical offices since they became an employer in April 1975. If an applicant, for a disability annuity claims employer disqualification for medical reasons prior to the closing of one of the medical facilities, send an RL-11 to the contact official and specifically request a copy of the disqualification notice in a post script to that letter.

Attachment 3 Other Railroads

Developing medical evidence for an employee of one of the employers listed below:

EMPLOYERS	
American Refrigerator Transit	Missouri Pacific RR
Illinois Terminal RR	St. Louis Refrigerator Car Co.
Manufacturers Ry. Co. (St. Louis)	Terminal RR Assn. of St. Louis

HOSPITAL ASSOCIATIONS	
Chief Surgeon	Chief Surgeon
Missouri Pacific Employee's Hosp. Assn.	Gulf Coast Lines Employee's Hosp. Assn.
St. Louis-Little Rock Hospitals, Inc.	1601 West Alabama
If treated in the Little Rock	Houston, TX 77006

Hospital, send request: Missouri Pacific Employee's Hosp. Assn. Little Rock, AR 72201	

1. If applicant claims disqualification by employer, he should have a letter to that effect. If so, release RL-11 to disability contact officer as shown in contact official list.

2. If applicant is not disqualified by employer and is a member of one of the hospital associations shown above, release RL-11b direct to hospital association where treated. (If your experience indicates difficulty in securing medical reports form hospital association, schedule appropriate medical examination(s) with designated examiner simultaneously with release of request to hospital association.) 3. If applicant is not disqualified by employer and is not a member of one of the hospital associations shown above, schedule appropriate medical examination(s)..

Take the same tracer action on hospital associations as is taken on employers.

Appendix B - Field Guide

Medical Evidence Development And Evaluation

The following guide is used by field offices to both evaluate the adequacy of existing evidence and to determine which exams, tests, and X-rays are needed to supplement existing evidence.

Field Office Guide For Developing Medical Evidence

SYSTEM/IMPAIRMENT	EXAMINATION	LAB TEST and/or X-RAY
1. Musculoskeletal		
A. Inflammatory Arthritis	Orthopedic	Antinuclear Antibody, or Erythrocyte Sedimentation Rate, or Rheumatoid Factor

SYSTEM/IMPAIRMENT	EXAMINATION	LAB TEST and/or X-RAY
		X-ray of the most affected joints (maximum of three), you must specify the joints to be X-rayed.
B. Osteoarthritis	Orthopedic	X-ray of the most affected joints (maximum of three), you must specify the joints to be X-rayed.
C. Disorders of Spine	Orthopedic	X-ray of the portion of Spine affected.
D. Fractures	Orthopedic	X-ray of the fractured area
E. Amputation	Orthopedic	
F. Osteomyelitis	Orthopedic	Erythrocyte Sedimentation Rate X-ray of the affected area (maximum of three), you must specify the area to be X-rayed.
2. Sensory		
A. Visual Disorders		
(1) Visual Acuity Ophthalmology		
(2) Visual Field Ophthalmology		
B. Hearing Disorders		
(1) Meniere's Disease	Otolaryngology (with audiometric and caloric test)	

SYSTEM/IMPAIRMENT	EXAMINATION	LAB TEST and/or X-RAY
(2) Deafness	Otolaryngology (with audiometric test, and with air and bone condition pure tone studies)	
3. Respiratory		
A. Obstructive Disorders	Internist	Ventilatory Studies, Chest X-ray
B. Restrictive Disorders	Internist	Chest X-ray
C. Pulmonary Tuberculosis	Internist	Ventilatory Studies, Chest X-ray
D. Other Infectious Lung Diseases	Internist	Ventilatory Studies, Chest X-ray
E. Occupational Lung Diseases	Internist	Ventilatory Studies, Chest X-ray
F. Diseases of Larynx	Internist	
4. Cardiovascular		
A. Congestive Heart Failure	Internist	Electrocardiogram (EKG), Chest X-ray
B. Ischemic Heart	Internist	Electrocardiogram
C. Conduction Disturbances Arrhythmias	Internist	Electrocardiogram
D. Other Cardiovascular Conditions	Internist	Electrocardiogram
(1) High Blood Pressure	Internist	Electrocardiogram
(2) Aneurysms	Internist	Affected area, specify the area to be X-rayed.

SYSTEM/IMPAIRMENT	EXAMINATION	LAB TEST and/or X-RAY
(3) Chronic Venous Insufficiency	Internist	
(4) Arteriosclerosis Obliterans	Internist	Doppler Ultrasound Blood Flow Study
(5) Transient Ischemic Attacks	Internist or Neurologist*	Electrocardiogram
5. Gastrointestinal		
A. Recurrent Upper Gastrointestinal Hemorrhage	Internist	
B. Stricture Stenosis Obstruction of Esophagus	Internist	
C. Peptic Ulcer	Internist	
D. Chronic Liver Disease	Internist	Liver Function Studies
E. Chronic Ulcerative Colitis	Internist	
F. Regional Enteritis	Internist	
6. Genito-Urinary		
A. Chronic Renal Failure	Internist	Serum Creatinine**
B. Nephrotic Syndrome	Internist	Serum Albumin**
7. Hemo-Lymphatic		
A. Disorders of Red Blood Cell	Internist	Red Blood Cell Count**
B. Disorders of White Blood Cell	Internist	Complete Blood Count**
C. Hemorrhagic Disorders	Internist	Platelet Count**

SYSTEM/IMPAIRMENT	EXAMINATION	LAB TEST and/or X-RAY
D. Lymphomas	Internist	
E. Plasma Cell Disorders	Internist	Complete Blood Count,** Serum Protein Electrophoresis**
8. Skin	Dermatologist	
9. Endocrine		
A. Thyroid Disorders	Internist	Thyroid Evaluation** (T3-T4)
B. Diabetes Mellitus	Internist	Serum Glucose**
C. Diabetes Insipidus	Internist	Urinalysis**
D. Hyperparathyroidism	Internist	Serum phosphorus,** Bone X-ray (maximum of three), you must specify the area to be X-rayed.
E. Hypoparathyroidism	Internist	Serum Phosphorus**
10. Neurological		
A. Epilepsy (seizures)	Neurological*	Anti-convulsant serum level
B. Cerebrovascular Accident (stroke)	Neurological*	
C. Cerebral Palsy	Neurological*	
D. Head Injury	Neurological*	
E. Intracranial Tumor	Neurological*	
F. Parkinsonism	Neurological*	
G. Chorea	Neurological*	
H. Multiple Sclerosis	Neurological*	
I. Diseases of Spinal Cord	Neurological*	

SYSTEM/IMPAIRMENT	EXAMINATION	LAB TEST and/or X-RAY
J. Peripheral Neuropathy	Neurological*	
11. Mental		
A. Mental Retardation	I.Q. Evaluation	
B. Other Mental	Psychiatric*	
12. Malignant Tumors	Internist	
13. Multiple Organ Systems		
A. Systemic Lupus Erythematosus	Internist	Antinuclear Antibody
B. Obesity	Internist	
C. All other multiple systems disorders		Exams, tests, and X-rays of one or more body systems as necessary. You must specify the type of X-ray.

* All available medical evidence must be sent by overnight delivery to the contracted provider the same day the examination is ordered.

** Order only if advised so by DSUBD staff.

Appendix C - Medical Exam Reference Chart

NO.	DESCRIPTION
001	Dermatology (skin) exam
003	Otolaryngology (ear) exam including audiometric test with air and bone condition pure tone studies and with speech discrimination
005	Otolaryngology (ear) exam **with** Caloric test [i.e. test measuring balance]) including audiometric test
007	Ophthalmology (eye) exam
011	I.Q. Evaluation with psychometric testing
012	Neurology exam
013	Psychiatry exam
014	Minnesota Multiphasic Personality Inventory (MMPI) test

	REQUIRES APPROVAL FROM THE DISABILITY BENEFITS DIVISION (DBD)
016	Orthopedics exam
017	Internal medicine exam with Orthopedic involvement SCHEDULE THIS IF CONCURRENT ORTHOPEDIC AND NON-ORTHOPEDIC IMPAIRMENTS
018	Internal medicine exam
020	Serum Protein Electrophoresis REQUIRES APPROVAL FROM DBD
023	Arterial Blood Gas (Resting) test REQUIRES APPROVAL FROM DBD
024	Prothrombin Time and International Normalized Ratio (PT/INR) REQUIRES APPROVAL FROM DBD
026	Glycated Hemoglobin (also known as an “A1C” Test) REQUIRES APPROVAL FROM DBD
028	Hematocrit REQUIRES APPROVAL FROM DBD
030	Complete Blood Cell Count (CBC) REQUIRES APPROVAL FROM DBD
032	Serum Creatinine REQUIRES APPROVAL FROM DBD
033	Serum Albumin REQUIRES APPROVAL FROM DBD
034	Erythrocyte Sedimentation Rate
036	SMA series (SMA-12, etc.) REQUIRES APPROVAL FROM DBD
037	Anti-convulsant serum level
038	Liver Function Studies (SGPT, total protein, LDH, serum bilirubin and alkaline phosphatase)
039	Thyroid evaluation, T3-T4
040	Electro-encephalogram (EEG) REQUIRES APPROVAL FROM DBD
041	Ventilatory Function Studies (Pulmonary function test, spirometry)

042	Diffusing Capacity/Lungs (DLCO) REQUIRES APPROVAL FROM DBD
043	Stress (treadmill or bicycle) test with monitoring REQUIRES APPROVAL FROM DBD
044	Rheumatoid Factor
045	Electrocardiogram (EKG) with interpretation
046	Doppler Ultrasound Flow Detection Technique
047	Urinalysis (including chemical and microscopic examination) REQUIRES APPROVAL FROM DBD
048	Antinuclear Antibody
052/152	Left / Right ankle joint (X-ray) Anteroposterior, lateral views, and oblique
053/153	Left / Right upper arm (humerus) (X-ray) Anteroposterior, lateral views, and oblique
055	Chest, plain (X-ray)
058/158	Left / Right elbow (X-ray) Anteroposterior, lateral views and oblique
062/162	Left / Right foot (X-ray) Anteroposterior, lateral views and oblique
063/163	Left / Right forearm (radius and ulna) (X-ray) Anteroposterior, lateral views
067/167	Left/Right hand (X-ray) Anteroposterior, lateral views and oblique
068	Hip joints (right and left on one film) (X-ray) Anteroposterior view
073/173	Left/Right knee joint (X-ray) Anteroposterior, lateral views, and oblique
075/175	Left/Right lower leg (tibia and fibula) (X-ray) Anteroposterior and lateral views
079/179	Left/Right shoulder joint (X-ray) Anteroposterior view, internal and external rotation
085	Skull (X-ray)

	Anteroposterior, right and left lateral frontal and basal odontoid
087	Cervical spine (upper spine [i.e. neck area]) (X-ray) Anteroposterior and lateral views, odontoid
088	Dorsal spine (middle spine [i.e. upper-middle back area]) (X-ray) Anteroposterior and lateral views
089	Lumbar spine (lower spine [i.e. lower back area] (X-ray) Anteroposterior and lateral views
092/192	Left/Right thigh (femur) (X-ray) Survey film
094/194	Left/Right wrist (X-ray) Anteroposterior and lateral views
101	Cardiology Exam
102	Oncology Exam
103	Otolaryngology Exam
104	Endocrinology Exam
105	Otolaryngology –ENG Exam
106	Otolaryngology –HINT Exam
107	Ophthalmology Exam
108	Pulmonology Exam
109	Gastroenterology Exam
110	Hematology Exam
111	Urology Exam
112	Neurologist Specialist Exam
113	Psychiatric Specialist Exam
116	Orthopedic Specialist Exam (Prior to July 1, 2015, this exam was limited only to Hearings Officers. Effective July 1, 2015, this limitation was removed).
123	Arterial Blood Gas (Exercise) REQUIRES APPROVAL FROM DBD
200	Functional Capacity Exam REQUIRES APPROVAL FROM DBD

Appendix D - Daily Activities Questions

Identifying Information	The information contained in this worksheet is to be used when developing activities of daily living. The questions are to be used as guidelines when interviewing the applicant or the person representing the applicant. It is not necessary to ask each question. Rather the information provided can be used as a starting point in the discussion of the applicant's activities of daily living.		
Initiated by: ☐ HQ ☐ Field	Date	Name	RRB Claim Number
Applicant Name, Address and Telephone Number			
Daily Routine	Describe the applicant's daily routine - Include a discussion of the applicant's usual day and note any changes.		

Sleeping and Rest	Describe the applicant's sleeping habits - Does the applicant have any trouble sleeping; describe any **changes** in the applicant's sleep patterns, what has changed, and when the change occurred; what time does the applicant get up; how does the applicant wake himself/herself; when does the applicant go to bed; how often does the applicant nap.
Personal Hygiene	Describe the applicant's personal grooming habits - How often does the applicant bathe/shower, shave, and change clothes; does the applicant need help with any of the above; describe any **changes** in the applicant's personal grooming habits, what has changed, and when this change occurred.

Eating and Meal Preparation	Describe the applicant's eating habits - What kind of food does the applicant eat *(for example, sandwiches, frozen dinners, soup, full-course meals, etc.)*; describe any **changes** in the way the applicant prepares meals and why and when these **changes** occurred; does anyone help the applicant with meal preparation; if this is a **change**, explain why the applicant needs help and when this **change** occurred; describe any cooking accidents since the applicant's condition began; has the amount of food consumed by the applicant increased or decreased, and, if so, describe why and when the **change** occurred.
Housework and Hobbies	Describe the applicant's housework, hobbies, and/or odd jobs - What type of housework *(laundry, vacuuming, dusting, mopping floors, washing dishes, etc.)*, hobbies *(reading, listening to radio, watching TV or movies, sports, collecting, church/club organizations, etc.)*, and/or odd jobs *(household repairs, running errands, lawn care, taking out trash, washing the car, mending clothes, etc.)* does the applicant perform; how many hours per day does the applicant spend on housework/hobby/odd job; does the applicant need help doing the housework/hobby/odd job; who does the applicant's housework/hobby/odd job if they are unable; how often does the applicant need help; describe any **changes** in the way the applicant does the housework/hobby/odd job, what has **changed**, and when the **change** occurred.

Shopping	Describe the applicant's ability to shop - Does the applicant use a shopping list and, if so, do they prepare the list themselves or does someone else prepare it; what does the applicant usually shop for *(food, clothing, books, magazines, medicine, cigarettes, newspaper, etc.)*; where does the applicant shop; how does the applicant get to the shop; describe any **changes** in the applicant's shopping habits, what has **changed,** and when the **change** occurred.
Transportation	Describe the applicant's ability to use transportation - Does the applicant drive; if the applicant does not drive and this is a **change**, explain why and when this **change** occurred; how does the applicant get around (walk, public transportation, taxi, bicycle, etc.).
Finances	Describe the applicant's ability to handle financial matters - How does the applicant handle their money; does the applicant prepare a budget; does the applicant pay their own bills; does the applicant need to be reminded to pay their bills; if the applicant's ability to handle money has **changed**, explain what has **changed**, and when the **change** occurred.

Socialization and Entertainment	Describe the applicant's entertainment and social activities - Does the applicant visit friends and relatives; how often and for how long does the applicant stay; describe any **changes** in the applicant's social visits, what has **changed**, and when the **change** occurred; has the applicant's condition affected their concentration when reading, watching TV, or listening to the radio; explain what has **changed** and when the **change** occurred.
Employment and Work Routine	Describe the applicant's ability to perform job duties - Did the applicant have trouble getting to work on time and, if so, explain why there was a problem being on time; describe the applicant's attendance record; if absent, explain the cause of the absences; was the applicant able to maintain their work routine; did the applicant have the ability to complete all of their daily work; did the applicant have: (1) any problems concentrating at work; (2) any special needs at work such as frequent rest periods; or (3) any trouble getting along with supervisors, coworkers or customers; were there any times the applicant needed to leave work because of their condition; describe any **changes** made to the applicant's work duties that affected their job and the applicant's ability to adapt to these **changes**.

Additional Information	Enter any additional information that may be relevant. If we need any additional information about activities of daily living, who would best be able to give us that information? Provide name, address and telephone number of the person including their relationship to the applicant (i.e., neighbor, brother, spouse, etc).