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 <u>becomes</u> 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 FOM-I-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 FOM-I-610.30.4). See FOM1 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 FOM-I-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 <u>later</u> of:

- 7 months after the employee's death; or

- 90 days after the date of the initial inquiry.

B. <u>Action by Survivor Benefits</u> - 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. <u>SSA indicates file has been lost, destroyed, or cannot be located</u> - 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.