2.1.1 Widow(er) Defined

The term widow(er) refers to the surviving legal or de facto wife or husband of a deceased employee.

2.1.2 Legal Widow(er) Defined

The applicant must either:

- Have been legally married to the deceased employee under the laws of the State in which the employee was domiciled at death and not subsequently divorced; or

- Be capable of inheriting the employee's property, as the widow(er) under the intestacy law of the State in which the employee was domiciled at death.

NOTE: The term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam and American Samoa. If the employee was domiciled in a foreign country rather than any "State", the widow(er)'s status is determined by the laws applied by the courts of the District of Columbia.

2.1.3 De Facto (Deemed) Widow(er) Defined

A. General - Beginning 2-1-68, an applicant may qualify for a WIA as a de facto widow(er) if the marriage to the deceased employee was invalid because of:

- An impediment resulting from a prior undissolved marriage of the deceased employee; or

- An impediment arising out of a prior marriage or its dissolution; or

- A defect in the procedure of the purported marriage.

B. Requirements to Establish De Facto Marriage - An applicant may qualify as a de facto widow(er) if:

1. There was a marriage ceremony; and

2. The claimant went through the ceremony in good faith, not knowing of the impediment at that time; and

3. The claimant was living in the same household with the employee at the time of death (this requirement must be met even if the claimant was entitled to a spouse annuity at the time of the employee's death).

2.1.4 Full Retirement Age

Full retirement age is defined as follows:

- For widow(er) type annuitans born before January 2, 1940, full retirement age is 65.
- For widow(er) type annuitants born January 2, 1940, and later, with annuity beginning dates of January 1, 2000, and later, full retirement age is based on the year of birth as shown below:
- If the Widow(er) was born 1-2-1940 through 1-1-1941, FRA is 65 and 2 months.
- If the Widow(er) was born 1-2-1941 through 1-1-1942, FRA is 65 and 4 months.
- If the Widow(er) was born 1-2-1942 through 1-1-1943, FRA is 65 and 6 months.
- If the Widow(er) was born 1-2-1943 through 1-1-1944, FRA is 65 and 8 months.
- If the Widow(er) was born 1-2-1944 through 1-1-1945, FRA is 65 and 10 months.
- If the widow(er) was born 1-2-1945 through 1-1-1957, FRA is 66.
- If the widow(er) was born 1-2-1957 through 1-1-1958, FRA is 66 and 2 months.
- If the widow(er) was born 1-2-1958 through 1-1-1959, FRA is 66 and 4 months.
- If the widow(er) was born 1-2-1959 through 1-1-1960, FRA is 66 and 6 months.
- If the widow(er) was born 1-2-1960 through 1-1-1961, FRA is 66 and 8 months.
- If the widow(er) was born 1-2-1961 through 1-1-1962, FRA is 66 and 10 months.
- If the widow(er) was born 1-2-1962 or later, FRA is 67.

2.1.10 Amount of WIA

A. Normal Annuity

1) Tier I - The Tier I component is equal to a 100% share of the EE's PIA or maximum based on combined wages and compensation after 1936 reduced for age. This amount is reduced by:

- The amount of any SS benefit payable.
- The amount of any RR retirement annuity the widow(er) is entitled to as follows:

  If either annuity is based on some railroad service before 1975, the survivor annuity is reduced by the amount of the employee tier 1 as defined in the G-364.1 instructions for item 86.

  If neither annuity is based on any railroad service before 1975, the survivor annuity is reduced by the entire employee annuity (net tier 1, net tier 2, and vested dual benefit).

- Two-thirds of the amount of any public pension effective 12-84 or later. (See RCM 2.1.300-2.1.314 for further information on public service pensions.)

Payment of Tier I may be affected by certain SSA nonpayment provisions. Refer to RAC any cases in which alien nonpayment provisions, conviction for subversive activities, deportation, (including deportation of the deceased employee due to associations with the NAZI government of Germany during World War II), or other nonpayment provisions of the SS Act are involved.

2) Tier II

(A) 30% Rate - If the widow(er) was initially awarded an annuity under the 1937 RR Act or under the 1974 RR Act that was vouchered before 10-1-86 and the employee began receiving his RRA retirement or disability annuity before 10-1-81 or he died before 10-1-81, the tier II component is 30% of the gross tier I after reduction for age and the maximum. In certain cases, a spouse minimum additional amount may be payable in tier II. See RCM 8.9, G-364.1 instructions for specific information.

(B) Share of EE's Tier II - If the employee did not begin receiving an RRA retirement or disability annuity before 10-1-81 and he did not die before 10-1-81, or the voucher date of the initial survivor award is 10-1-86 or later, the tier II component is based on a percentage

of the EE tier II which would be payable if the employee was alive on the widow(er)'s OBD. The EE tier II is before reduction for age but after reduction for windfall. Widow(er)s are entitled to a 50% share of the employee's tier II. If there are other entitled beneficiaries, this statutory percentage may be reduced so that the total paid to all the beneficiaries does not exceed 80% of EE's tier II.

3) Vested Dual Benefit - The VDB amount is only payable to a widow(er) who is vested as of 12-31-74. An aged or disabled widow(er) is vested if the following requirements are met:

- The deceased EE had 10 years of RR service before 1-1-75; and
- The widow(er) has a permanently or transitionally insured status at SSA as of 12-31-74.

NOTE: A non-dependent widower is not entitled to a VDB. Refer to RCM 2.1.60 for detailed instructions for determining VDB entitlement. RCM 2.1.67 describes the terminating events for vested dual benefit entitlement.

In addition to meeting the above requirements, she must meet the following criteria:

- Her (his) initial annuity was authorized for payment before 8-31-81; and
- Her (his) DOB is <u>before</u> 8-14-19

OR

- Her (his) DIB date of entitlement at SSA is August 1981 or earlier.

NOTE: A widow(er) who meets these requirements and whose VDB amount is zero because (s)he is not entitled to an RIB under the SS Act can be paid the VDB when (s)he becomes so entitled even if that occurs after August 1981.

B. <u>Spouse Minimum Guaranty Amount</u>

If the widow(er) is entitled to a spouse annuity in the month preceding the employee's death, s(he) is guaranteed that the normal WIA amount will not be less than the spouse annuity rate. The spouse rate so computed is BEFORE any increase under the O/M provision, reduction by actuarial adjustment to recover an overpayment, or reduction to recover a commuted value payment, and AFTER any reduction for other benefits or early retirement. (See Appendix B for a list of maximum rates applicable to the spouse maximum rate if a windfall

is involved. Since 1-1975, the spouse maximum rate consists of the gross tier I amount and the net tier II amount.)

C. DWIA Previously Paid

If the widow(er) previously received a reduced insurance annuity as a disabled widow(er), at age 60 (s)he is entitled to an annuity equal to the amount (s)he received as a disabled widow(er). The beneficiary symbol remains an "R". The age reduction factor, ARF, is adjusted at age 62 and at full retirement age. Refer to RCM 2.2 for detailed information.

D. Sole Survivor Minimum

The sole survivor minimum provides a minimum annuity amount to any survivor, who is the only beneficiary entitled on the EE's wage record. Refer to RCM 8.9, G-364.1 for detailed instructions.

E. Widow(er) Initial Minimum Amount **(WIMA)** Guaranty

The Railroad Retirement and Survivor Improvement Act of 2001 guarantees that a widow(er) type beneficiary'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. This guaranty is called the WIMA, and is effective February 1, 2002.

The WIMA is computed as a component of the 1981 Amendment tier 2; therefore, only widow(er)s and young mother/fathers paid under the 1981 Act are eligible for the guaranty.

2.1.11 WIA Rate Is Zero

When the WIA is reduced to zero by a public service pension reduction (and no other beneficiaries are or will be entitled to monthly benefits), the RLS can be paid to the widow(er). The widow(er) will be considered a QRRB and will be billed direct for Medicare. Put in a call-up to have the folder sent to the Medicare Programs Section six months before the widow(er) attains age 65.

In such cases, the widow(er) should be sent a letter explaining that the widow(er) is entitled to a WIA, but the annuity rate is zero. Do not use AB-25 back stationery.

An explanation of why it is zero should also be given. Then explain that the RLS (give amount) is payable, and that since the annuity rate is zero, the RLS will be paid instead. Also explain that the widow(er) will be eligible for Medicare at age 65. Then, pay the RLS EDP, using the AA-17 as the application.

2.1.13 Annuity Adjustment When Legal Widow And Deemed (Defacto) Widow Are Entitled

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). When paying the tier 1, the deemed widow(er) is paid within the family maximum while the legal widow(er) is paid outside the family maximum. When paying the tier 2, both the legal widow(er) and the deemed widow(er) are paid within the maximum.

For applications filed prior to January 1, 1991, the deemed widow(er) loses entitlement as explained in RCM 2.1.27. For any months before the legal widow(er)'s month of filing, his/her annuity is subject to reduction to avoid overpayments to other family members. Effective with the legal widow(er)'s month of filing, all annuities should be adjusted if the family maximum is involved.

2.1.15 Eligibility Requirements

In addition to being the legal widow(er) of a deceased employee who had either 120 months of RR service <u>or</u> at least 60 months of RR service after 1995, and a C/C, an applicant must meet the following requirements:

A. <u>Age</u> - The widow(er) must have attained age 60.

> <u>NOTE</u> 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. <u>Marriage</u> - The widow(er) must:

1. Have been married to the employee for 9 months prior to death, or the death was accidental or occurred in the line-of-duty while the employee was a member of the U. S. Armed Forces PROVIDED that at the time of the marriage, the employee could have been reasonably expected to live for at least 9 months.

   - Prior to 2-1968, must have been married for 1 year prior to death.
   - Prior to 1-1-73, must have been married 3 months in the case of accidental or military service connected death.; <u>or</u>

2. 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; or

NOTE: A widow(er) who was not married to the employee for the required length of time must meet one of the alternative requirements listed below in items 3 through 8 in order to qualify.

3. Be the natural parent of the employee's child (the child must be born alive but need not still survive); or

4. Have legally adopted a child of the employee during their marriage and before the child attained age 18; or

5. Be the parent of a child legally adopted by the employee during their marriage and before the child attained age 18; or

6. Have been married to the employee at the time both of them legally adopted a child under age 18; or

7. Have been entitled or potentially entitled to a widow(er)'s, divorced spouse's, surviving divorced spouse's, parent's or disabled child's insurance annuity under the RR Act in the month before the month (s)he married the employee; or

8. Have been entitled or potentially entitled to a widow(er)'s, parent's, spouse's, divorced spouse's, surviving divorced spouse's or disabled child's insurance benefit under the SS Act in the month before the month (s)he married the employee. See 2.1.21 for the requirements and development action required when the widow(er) could only qualify under item 7 or item 8.

NOTE: In this situation, potentially entitled means that we can presume the filing of an application and the attainment of retirement age for a widow(er)'s, parent's, spouse's, divorced spouse's, surviving divorced spouse's benefit if the deceased W/E had the required status and the widow(er) 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 (s)he married the employee.

Do not consider a widow(er) entitled or potentially entitled to an SS Act widow(er)'s, parent's, divorced wife's, divorced widow's or disabled child's insurance benefit if (s)he was actually entitled to an RIB or DIB which equaled or exceeded such other benefit. Entitlement to an RIB or DIB cannot be presumed.

9. 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.

Headquarters 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 deemed marriage requirement under this provision. The field office will code the APPLE application for manual review and enter in remarks that the case is a special deemed 9 month marriage case that needs to be forwarded to P&S-RAC for a determination.

Since laws vary from state to state, the field office will not be required to take any preliminary development action. Policy and Systems will determine what needs to be developed and advise the field office accordingly. However, if the applicant has already submitted any material to support the claim, the field office will notate the remarks section accordingly and send the material to SBD. SBD will then forward the material to P&S-RAC along with the APPLE referral.

C. <u>One-Half Support</u> - 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 the annuity to begin before 3-1-77; after 2-1977 a widower does not have to prove one-half support except for payment of windfall or employee annuity restored amount. Proof of support must be filed within 2 years after the point at which the support requirement must be met.

In a case in which proof of support is not filed during the appropriate period, refer to chapter 2600 in the SSA Claims Manual to determine whether SSA would extend the 2 year period for filing proof of support. Extend the period if SSA would do so.

If a widower submits proof that is not sufficient to establish the one-half support requirement for payments before 3-1-77 or the windfall and/or restored amount computations, take action as described below:

- Proof Filed at Time of Annuity Award - Include in the award letter a special paragraph telling the widowers that he does not meet the one-half support requirement.

- Proof Filed After Annuity In Pay Status - Prepare a formal denial letter on an AB-25 back.

In both cases, the decision that he does not meet the support requirement is an initial decision and, therefore, may be appealed.

2.1.16 Employee Had Less Than 120 Months Of Service

A. No One on Rolls When WIA Application Filed - If the employee did not have 120 months of service and no member of the family group is on the rolls continuously from 10-30-51, the widow(er) is not eligible for an annuity under the RR Act. (On the rolls includes the retroactive period of a new application.) In such cases, transfer the claim to SSA.

B. Family Member on Rolls When WIA application Filed - If a member of the family group has been on the rolls continuously from 10-30-51, send the case to RAC.

2.1.18 Entitlement Requirements

In addition to meeting the eligibility requirements in the preceding sections, a claimant for a WIA must:

- Not have remarried; and

- Have filed an application for WIA unless a WCIA or spouse annuity is being converted to a WIA.

2.1.19 Beginning Dates

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.

2.1.20 Duration Of Marriage

A. Nine-Month Requirement - Effective 2-1-68, a widow(er) may qualify for monthly benefits even though (s)he was married to the employee for less than one year before the employee died. If the marriage existed for a period of a least 9 months immediately preceding the day on which the employee died, the widow(er) meets the marriage requirement.

B. Deeming Nine-Month Marriage - The widow(er) is deemed to meet the nine-month requirement if (s)he was married to the employee immediately preceding the day on which the employee died if the employee's death:

- Was accidental; or
- Occurred in the line of duty while serving on active duty as a member of the United States Armed Forces.

The nine-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.

NOTE: An exception is if the widow(er) was previously married to the employee for at least 9 months, divorced 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 marriage do not need to be considered.

C. Development of Deemed Nine-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.

If not already in file, 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, refer the case to a supervisor.

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, refer the claim to a supervisor. (For details of accidental death see SSA-CM 2474.3 - 2474.4.)

2.1.21 Development Of Widow(Er)'S Previous Actual Or Potential Entitlement Under SS Act Or RR Act

When a widow(er) was actually or potentially entitled to any of the SS benefits listed in RCM 2.1.15 (9) or any of the RR annuities listed in RCM 2.1.15 (8), which terminated or would have terminated when (s)he married the employee, the previous actual or potential entitlement may be used to establish eligibility for an RR annuity when the widow(er)'s marriage to the RR employee lasted less than 9 months and the employee's death was not accidental.

A. SS Act - From the information in file ascertain if the widow(er) was actually or potentially entitled to a qualifying SS benefit in the month before the month (s)he married the employee.

1. Previous Actual SS Entitlement - Verify the allegation of entitlement by securing an MBR on the SS A/N of the person on whose wage record the widow(er) qualified for an SS benefit.

   If the SS A/N of the person on whose wage record the widow(er) qualified for an SS benefit is unknown, request the widow(er) to furnish the person's full name, DOB, place of birth, mother's maiden name and father's name. When this information is obtained, release a G-37b teletype request to obtain the SS A/N. When the A/N is obtained, follow the procedure given in the preceding paragraph.

2. Previous Potential SS Entitlement - Verify the allegation of entitlement by releasing a G-60 request for a G-90, on the SS A/N of the person on who wage record the widow(er) was potentially entitled. Refer toe RCM 9.1 App. C for detailed instructions regarding the completing of the G-60. Upon receipt of the G-90, examine it to determine if the wage earner has an insured status under the SS Act. Based on the information in file and the G-90 ascertain if the claimant was potentially entitled.

B. RR Act - From the information in file ascertain if the widow(er) was actually or potentially entitled to a qualifying RR annuity in the month before the month (s)he married the employee.

1. Previous Actual RR Entitlement - Obtain the file for the claim number under which the widow(er) claims previous entitlement. Examine that file to verify the claimed entitlement.

2. Previous Potential RR Entitlement - Obtain the claim number under which the widow(er) claims potential entitlement. Obtain and examine the file to ascertain if the claimant was potentially entitled.

2.1.22 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 chapter 4.3, "Marriage-Divorce," for details on handling 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 RCM 4.3, Appendix B - 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, 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). (See RCM 2.1.13 for details.)

2.1.23 Work Restrictions

A. Restricted Employment - A WIA is not payable for any month the widow(er) works for an employer covered by the RR Act.

B. Earnings Restrictions Prior to the Year 2000 - A widow(er) under age 70 is subject to the regular survivor earnings restrictions. The annuity of a widow(er) between full retirement age and age 69 is subject to a deduction of $1 for every $3 the widow(er)'s earnings in a given year exceed the exempt amount that year. Widow(er) less than full retirement age are subject to a $1 for $2 deduction.

C. Earnings Restrictions Beginning in the Year 2000 -

2.1.25 Widow(er) Also Entitled To Other RR Act Annuity

A. Entitled to RR Act Retirement Annuity - A widow(er) may receive both a WIA and a retirement annuity under the RR Act, but the WIA must be reduced for the retirement annuity in Tier I. In some cases an "EE restored amount" is payable in Tier II. See RCM 8.9, G-364.1 instructions, for additional information.

B. Entitled to RR Act Spouse Widow(er)'s or Parent's Annuity - If an individual is entitled to two annuities only the larger of the two annuities is payable, unless (s)he elects to receive the smaller annuity.

If an applicant for a widow(er)'s annuity is already receiving this annuity, compare the amount of the other annuity with the amount (s)he would receive as a widow(er). If the widow(er) becomes entitled to a spouses annuity in the same month, it will be necessary for the survivor and retirement units to coordinate to

determine which annuity is larger. If the other annuity is larger, prepare a constructive award for the widow for that reason. If the widow(er)'s annuity is larger, and it would not be advantageous for the applicant to elect to receive the other annuity recover the overpayment from the widow(er)'s accrual.

This dual entitlement situation will come to the attention of a retirement examiner if an applicant for a spouse's annuity indicates that (s)he has previously filed for an annuity based on another EE. In that case, the retirement examiner will secure the folder to determine the dual eligibility. In some cases, the applicant may be entitled as a widow(er) but has not yet filed an application. The retirement examiner may need to request information from the survivor unit regarding the widow(er)'s annuity rates or RLS entitlement.

If (s)he is entitled to two survivor annuities, it may be to a widow(er)'s advantage to elect to receive the lesser survivor annuity because of an RLS that would be payable on the other record if such an election was made.

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 and must be made on Form G-126.

If it appears that it would be to a widow(er)'s advantage to receive the lesser survivor annuity, release a memo to the F/O advising them of the facts of the case and requesting a contact with 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.

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. 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.

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.

If it does not appear to be to the widow(er)'s advantage to receive the smaller annuity, award the higher annuity and suspend the current lower annuity. Recover the overpayment from the higher annuity.

C. Entitled to 1981 Act and 1974 Act Annuity - If the 1981 Act annuity is larger, entitlement to both annuities exists; however only the 1981 Act annuity is payable. If the 1981 Act annuity is smaller, no entitlement exists and the annuity should be terminated using code 46, or denied as appropriate. Any overpayment should be recovered from the 74 Act annuity.

If the 74 Act annuity terminates and the 1981 Act annuity is payable, a new application will be required.

NOTE: The widow cannot elect to receive a smaller 1981 Act annuity as there is no entitlement.

2.1.26 RLS Previously Paid To Widow(er)

A. Widow(er) Elected RLS - If the widow(er) previously elected and was awarded the RLS, deny the WIA application. The fact that (s)he elected the RLS prevents the payment of a WIA since the election of that payment was an agreement by widow(er) to give up rights to future benefits under the RR Act. In such cases, however, (s)he may qualify for an annuity at SSA if the employee was insured under the SS Act solely on the basis of wages.

B. Widow(er) Received RLS Without 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 10-12-06 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 9-1967, she files for a WIA as a "not living with" widow with full retroactivity of benefits to 11-1-66. However, before she can actually receive her annuity, the RLS must be recovered.

NOTE: If the RLS was paid to anyone other than the person who is now entitled to a WIA, do not recover it. Also, if the RLS was paid to more than one person, only recover the share paid to the person now eligible for a WIA.

2.1.27 When Entitlement Ends

A WIA ends with the month preceding the month in which:

- the widow(er) dies;
- the legal or de facto widow(er) remarries; or

NOTE: The annuity of a legal or de facto widow(er) terminates upon remarriage; but the widow can qualify for a remarried widow(er)'s insurance annuity. Refer to RCM 2.1.201.

- the widow(er) becomes entitled to another survivor or spouse annuity under the RR Act which is greater than the WIA.

Prior to 1-1-91, the deemed (or de facto) 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. (Also see RCM 2.1.13.)

Do not reexamine or reopen the prior award to the de facto spouse merely because the legal spouse has filed; do so only if the information indicates that the de facto spouse knew at the time of the ceremony that the purported marriage was invalid.

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.

2.1.40 Evidence Requirements

Evidence	**When Required**
Application	Always, unless converting from a spouse annuity or a WCIA. If (s)he if filing on behalf of entitled child(ren) an AA-18 is acceptable; SSA's survivor applications are also acceptable (see chapter 5.1).
Death of Employee	Always.
Proof of One-Half Support of Widower (G-134)	Always, if dependency is claimed and; • ABD could be before 3-1-77; or • A windfall is involved; or • An employee annuity restored amount is involved.
Compensation	Always.

Age of Widow(er)	Always.
Marriage	Always. (Prior to 6-1-58 documentary evidence was not required for a spouse annuity; spouse's statement was accepted if verified by the employee on G-346.)
Age of Employee	In “A” cases POA is always required if the employee's DOB has not been previously verified through submission of the employee’s POA, 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 of the above conditions apply, but the AFCS system indicates 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.
Legal Adoption of Child	Only when widow(er) seeks to qualify on that basis.
Guardianship (AA-5)	If guardian or other legal representative is selected as representative payee.
Amount of RRA Employee Annuity	Always.
Amount of SS Benefits	If widow(er) is age 62 or older or is under 62 and has indicated filing for benefits at SSA.
M/S	Only when employee's M/S after 1936 would be creditable either under the RR Act or under the SS Act.
Termination of Prior Marriage	If there is reasonable doubt whether a prior marriage of employee or widow(er) was ended.
Living in Same Household	If widow(er) seeks to qualify under deemed marriage provision.
Amount of VA Benefits	Only for annuities due before 1-1975, when the deceased employee's M/S after 1936 is creditable under the RR Act and

	a reduction in the RRA formula annuity is required. Send such cases to M&P for verification of these benefits.
Amount of Wages and SEI	When the employee was assigned an SS A/N lower than 700-00-0000, or worked in SS employment after 1936, or was self-employed after 1950.
Living With	Generally required only in cases of entitlement prior to 11-1-66.
Public Pension Information	Always.

2.1.45 Annuities That May Be Converted To WIA

There are two types of annuities which may be converted to a WIA: a spouse annuity and a WCIA. Conversion from a spouse annuity requires proof of the employee's death; conversion from a WCIA requires only the verification of the widow(er)'s age. Neither of these conversions require the filing of an application.

2.1.46 Spouse On Rolls When Employee Dies

So that (s) he may continue to receive benefits without interruption, the widow(er) of a completely insured annuitant is deemed to have filed an application for a WIA. (S)he continues to receive the spouse annuity until the WIA is awarded, unless evidence in file creates doubt as to eligibility for a WIA. 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, request the field office to determine why proof of the employee's death has not been submitted and whether payments made to the widow(er) after the employee's death were proper.

In cases handled prior to August 1, 1990, if a widow(er) met all requirements for entitlement to and receipt of a WIA, other than the filing of an application of G-476c report form, payments of the spouse annuity made to the widow(er) after the employee's death are not erroneous. This rule applies regardless of the reason for failure to file (i.e., whether (s)he died before filing or merely neglected to file) and, if the widow(er) died, regardless of the date (s)he died.

If the widow(er) dies before filing an application or G-476c, the accrued WIA, or any difference between the amount of the WIA to be formally awarded and the amount of the spouse annuity in force at the time (s)he died is an annuity due but unpaid at death (see chapter 2.7).

NOTE: Effective August 1, 1990, the filing of G-476c is no longer a requirement.

2.1.47 WCIA In Force When Widow(er) Attains Age 60

When the widow(er) of an employee with 120 months of RR service and a C/C is receiving a WCIA at the time (s)he attains age 60, (s)he continues to receive a WCIA until the earlier of the following dates:

1. 1st of the month in which the child in not in care; or

2. 1st of the month in which (s)he attains full retirement age.

At that time the WCIA is converted to a WIA. For additional information regarding the conversion, refer to RCM 2.3.47.

Under certain circumstances, a WCIA cannot be converted to a WIA. This is true for cases in which the widow was receiving a WCIA on 10-30-51 on the basis of an employee who had less than 120 months of creditable service. The widow can still continue to receive the WCIA after age 60 if she continues to have an entitled child in care.

2.1.48 Disabled Widow(er) Attains Age 60

When a disabled widow(er) on the rolls attains age 60, the DWIA is NOT actually converted to a regular WIA. Technically, a DWIA terminates with the attainment of age 60; however, do NOT take any action to convert Board records from a DWIA to a WIA. The widow(er)'s award form symbol remains "R" as long as (s)he is entitled under the application on which the DWIA was awarded.

Cases in which the DWIA was not payable for some months due to entitlement to a WCIA are called up when the widow(er) attains age 62. At that time, adjust the number of reduction months to eliminate those for which a DWIA was not paid and recertify the annuity; however, retain the symbol "R" for the widow(er) on the recertified award.

2.1.55 Remarried Widow(er)

From September 1965 through October 4, 1972, a remarried widow(er) could have been included in the computation of a survivor annuity under the O/M if she met the eligibility requirements. With the enactment of the 1972 RRA Amendments (after October 4, 1972), a remarried widow no longer qualified for inclusion in the O/M. However, if a remarried widow was included in the O/M prior to the enactment of the 1972 RRA Amendments, (s)he was not removed from the O/M computation unless one of the events described in RCM 2.1.27 occurred. In 1-1975 the eligible survivors's rate was equalized to the total 12-1974 O/M rate, which includes the ineligible widow(er)'s share.

2.1.56 Surviving Divorced Wife

From September 1965 through October 4, 1972, a surviving divorced wife could have been included in the computation of a survivor annuity under the O/M if she met the eligibility requirements. With the enactment of the 1972 RRA Amendments (after October 4, 1972), a surviving divorced wife no longer qualified for inclusion in the O/M. However, if a surviving divorced wife was included in the O/M prior to the enactment of the 1972 RRA Amendments, she was not removed from the O/M computation unless one of the events described in RCM 2.1.27 occurred. In 1-1975, the eligible survivor's rate was equalized to the total 12-1974 O/M rate, which includes the ineligible wife's share.

2.1.60 Vested Dual Benefit Entitlement

Under the 1937 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 widow(er)s, and this is only if they are "dually vested" as of 12-31-74. A widow(er) is 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, of if (s)he had sufficient QC's 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 1-1-75.

In the case of a widow(er) receving a DIB at SSA, this vested status determination can, at times, depend upon whether (s)he qualifies for a disability freeze. In this type of case a widow(er) may not be vested because of insufficient QC's as of 12-31-74 but by qualifying for a disability freeze and excluding the DF years from the elapsed years (see RCM 2.1.64), (s)he could then meet the QC requirement, be vested and get a vested dual benefit.

These additional restrictions apply:

- The case must be authorized before 8-13-81, and
- DOB is before 8-14-19, or
- the DIB DOE is before 8-1-81.

2.1.61 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, are preserved.

*NOTE: If a widow(er) filed an application before 1-1-75 and had an original beginning date before 1-1-75 (s)he is considered to be on the rolls on 12-31-74, even though her (his) annuity may not be awarded until after that date.

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 vested dual benefit. This transitional benefit is treated in the same manner as an RIB based on a regular SS Act insured status.

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 three quarters of coverage.

2.1.62 Widow(er) On The Rolls After 12-31-74

A widow(er) who comes on the rolls after 12-31-74 is vested for a vested dual benefit computation if the following requirements are met:

- the deceased employee had 10 years of RR service before 1-1-75; and
- the widow(er) had a permanently or transitionally insured status under the SS Act as of 12-31-74.

NOTE: A non-dependent widower whose OBD will be 3-1-77 or later is not entitled to a windfall.

2.1.63 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 vested dual benefit. The 1974 Act defines the widow(er) to be permanently insured if (s)he is fully insured when (s)he attains age 62 solely on the basis of QC's from SS earnings acquired before 1-1-75.

2.1.64 Definition Of Fully Insured Status

The widow(er) is fully insured if (s)he has 40 QC's or if (s)he has one quarter for each calendar year (four quarters) elapsing after 1950 (or, if later, the year in which (s)he attained age 21) and before the year in which (s)he attained age 62, except that in no case will an individual be permanently insured unless (s)he has at least 6 quarters of coverage.

In cases where the widow(er) is entitled to a DIB, do not count as an elapsed year any year any part of which is included in a period of disability. By getting a disability freeze, a widow(er) who does not have the QC requirement as of 12-31-74 may be able to meet that requirement by excluding the years in the period of disability from the elapsed years, thereby reducing the number of QC's needed to be insured.

NOTE: If a widow(er) who was not permanently insured under the SS Act based on the required quarters of coverage at age 62 becomes entitled to a DIB or DF at SSA after 5-1975, release a teletype to SSA to determine the disability freeze onset date.

> EXAMPLE 1: A widow (DOB 7-12-19) has 28 QC's as of 12-31-74. She will attain age 62 in 1981. Since there are 30 years elapsing after 1950 up to but not including 1981, she would need 30 QC's to be fully insured under the SS Act. Under these conditions the widow would not be vested as of 12-31-74.
>
> The widow becomes disabled and is granted a disability freeze with an onset date of 6-1-77. The 4 disability freeze years 1977-1980 are dropped as elapsed years leaving a total of 26 elapsed years. Now, the widow, still assuming she meets all other requirements, is vested since only 26 QC's are required for a permanently insured status and she has 28.
>
> EXAMPLE 2: A widow (DOB 2-3-20) has 26 QC's as of 12-31-74. She becomes disabled and is granted a disability freeze on 6-1-78. At the time, she has a total of 35 QC's.
>
> Based on her disability freeze she needs 27 QC's as of 12-31-74 for a permanently insured status. Since she had 26 QC's on 12-31-74, she would not be vested and would not be eligible for a windfall at age 62 or earlier. This applies even though she could qualify for a DIB at SSA beginning in November 1978 (after the 5-month waiting period beginning 6-1-78), assuming she also meets the 20/40 test at SSA.

2.1.65 Vested Dual Benefit Date Of Entitlement

The vested dual benefit (VDB) date of entitlement is the earlier of the month and year the widow(er):

- Attains age 62; or
- Becomes entitled to a DIB at SSA.

However, the VDB date of entitlement can be no earlier than:

- The widow's OBD, 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.

2.1.66 When 20/40 Wage QC's Must Be Acquired At SSA

If a widow(er) is entitled to a DIB (s)he must have met the 20/40 wage QC requirements, i.e., (s)he must have had at least 20 wage QC's during the 40 QC period

ending with the quarter in which the waiting period begins or in which (s)he is under a disability and for which her (his) application is effective.

To make a windfall entitlement determination, the qualifying 20 SS wage QC's need not have been acquired prior to 1975. The point in time when she acquires these 20 QC's prior to 1975 is immaterial so long as (s)he has sufficient SS wage quarters to be permanently insured under the SS Act in 1974.

2.1.67 When Entitlement Ends

Vested dual benefit payments end with the month in which:

- The widow(er) dies; or
- The widow(er) remarries; or
- The SS DIB is terminated. When an widow(er)'s DIB terminates, her (his) entitlement to the VDB ends effective with the month and year that SSA terminates the DIB, IF the widow(er) is not permanently insured on 12-31-74 without a disability freeze, or the widow is permanently insured on 12-31-74 without a disability freeze, but is under age 62 when her (his) DIB terminates.

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., RIB to WIB) or if the widow becomes entitled to a different type of RR annuity (i.e., WCIA to WIA or DWIA). Furthermore, there is no provision to recompute the VDB when the type of benefit changes at SSA or at RRB.

2.1.68 Cost-Of-Living Increases

Vested dual benefits will be frozen at the 1974 benefit levels. However, they will be initially increased by the cumulative percentage of the COL increases that occur in the period from 1-1-75 to the later of the widow's RIB/DIB DOE or the WIA OBD.

2.1.69 Elimination Of Vested Dual Benefit

No new vested dual benefits were awarded after August 13, 1981 with two exceptions:

- Widow age 62 before August 13, 1981 and receives an RIB later, or
- Widow entitled to a DIB before August 13, 1981.

2.1.100 Surviving Divorced Spouse Annuity

<u>Introduction</u>

The 1981 Amendments to the Railroad Retirement Act added the surviving divorced spouse as a new category of survivor beneficiary. The eligibility and computation rules for surviving divorced spouse's annuity under the RR Act are the same as for surviving divorced spouse's benefit under the SS Act.

The term "surviving divorced spouse" will be used to refer to both surviving divorced wives and surviving divorced husbands.

When Benefits Are Payable

Benefits are payable to surviving divorced spouses beginning October 1, 1981.

2.1.101 Surviving Divorced Spouse Defined

Definition

A surviving divorced spouse is an individual who was married to the deceased employee for at least ten years and was finally divorced from the employee prior to the employee's death.

Note: If a final divorce was not effective prior to the employee's death, the spouse may qualify as a legal or defacto widow(er).

2.1.102 Amount of Surviving Divorced Spouse’s Annuity

The annuity consists of a tier I component only. It is equal to a 100% share of the EE's PIA or maximum based on combined wages and compensation after 1936 reduced for the number of months the surviving divorced spouse is under full retirement age.

If the surviving divorced spouse was previously entitled to an age reduced or disabled widow(er)'s annuity, her (his) surviving divorced spouse's annuity will also be age reduced (even if (s)he is full retirement age at the time (s)he becomes entitled as a surviving divorced spouse) and the age reduction will be based on the number of months (s)he is under full retirement age on the beginning date of her (his) widow(er)'s annuity.

Payment of the tier I benefit may be affected by certain SSA nonpayment provisions. Refer to RAC any cases in which alien nonpayment provisions, conviction for subversive activities, deportation, (including deportation of the deceased employee due to associations with the NAZI government of Germany during World War II), or other nonpayment provisions of the SS Act are involved. (See the appropriate survivor benefit section of the POMS for nonpayment provision details.)

The tier 1 amount is reduced by the following:

1. Social Security Benefits

- The amount of any SS RIB/DIB, and

2. Railroad Retirement Employee Annuity

   - Net Tier 1 - If either the employee or the surviving divorced spouse had railroad earnings prior to 1975, the net tier I amount of any RR retirement EE annuity to which the surviving divorced spouse is entitled. (If the surviving divorced spouse becomes entitled to an RR spouse annuity or is entitled to two surviving divorced spouse's annuities only the higher of the two annuities is payable. See RCM 2.1.208.)

   - Total Employee Annuity - If neither the employee nor the surviving divorced spouse had railroad earnings prior to 1975, the tier 1 of the surviving divorced spouse's annuity will be reduced by the total employee annuity to which the surviving divorced spouse is entitled (net tier 1, net tier 2 and vested dual benefit).

3. Public Service Pensions

   - Two-thirds of the amount of any public pension if first eligible for a public pension effective 12-84 or later. (See RCM 2.1.300-2.1.314 for further information on public service pensions.)

2.1.103 Annuity Rate Is Zero

If the surviving divorced spouse is entitled to any social security benefit or combination of social security benefits which reduces the annuity rate to zero and there is no possibility of an ARF which will increase the rate above zero, (s)he cannot be eligible for an annuity as a surviving divorced spouse. In initial cases, the application must be denied (see RCM 2.1.104(C)). The RLS or LSDP may be paid if there is someone eligible to receive it. In post cases, the annuity must be terminated code 46 due to non-entitlement, and if applicable, certification of payment of social security benefits must be returned to SSA.

If the surviving divorced spouse is entitled to an employee annuity, a public service pension or SS benefit(s) that reduces her (his) rate to zero and there is no possibility of an ARF increasing the rate above zero, the RLS may be paid if there are no other beneficiaries who are or will be entitled to monthly benefits and there is someone eligible to receive it.

If the surviving divorced spouse is entitled to an employee annuity, public service pension or SS benefit that reduces her (his) annuity rate to zero and, an ARF at age 62 and/or full retirement age ARF will increase the annuity rate above zero, the following action will be taken:

- In initial cases prepare a constructive award. Advise the applicant that (s)he is entitled to an annuity but the annuity rate is zero and why. Explain that (s) he will

be eligible for Medicare at age 65 and enter an age 62 and/or full retirement age ARF tickler call-up, whichever is applicable. If the annuity later terminates, Bureau of Information Service – Information Resource Management Center-Data Management Group (BIS-IRMC-DMG) with a G-59.

- In post cases suspend code 16 and enter an age 62 and/or full retirement age ARF tickler call-up, whichever is applicable. If the annuity later terminates, notify BIS-IRMC-DMG with a G-59.

However, if the surviving divorced spouse is entitled to any social security benefit that is less than the employee's PIA but larger than her (his) age reduced rate and there is the possibility that an age 62 and/or full retirement age ARF will increase the annuity rate above zero, (s)he is entitled to an annuity as a surviving divorced spouse but her (his) annuity rate is zero. Enter an age 62 and/or full retirement age ARF tickler call-up, whichever is applicable.

NOTE: A surviving divorced spouse can be ARFed for non-payment months due to reduction for SS entitlement.

2.1.104 Eligibility Requirements

In addition to having been divorced from an employee who has died, who had 120 months of railroad service or at least 60 months of railroad service after 1995, and a current connection, an applicant must meet the following requirements:

A. Age - The surviving divorced spouse 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. Marriage - The surviving divorced spouse must:

- have been finally divorced from the employee; and
- be unmarried, unless (s)he remarried after (s)he attained age 60 or (s)he remarried after (s)he attained age 50 and (s)he was entitled to a disabled widow(er)’s annuity at the time of remarriage.
- This provision is effective for annuities payable 1-1-84 and later. Prior to that, a surviving divorced spouse who remarried after her (his) divorce from the employee could not be eligible for an annuity unless the later marriage(s) had terminated. If a surviving divorced spouse's annuity was terminated because (s)he remarried, a new application is required for her or him to be reentitled 1-1-84 or later.

- have been married to the employee for a period of 10 years immediately before the date the final divorce became effective (Note: For entitlement 1/1991 or later, a “deemed” marriage satisfies the 10- year duration of marriage requirement for divorced spouses); and

The 10-year marriage requirement is met if the divorce became final on or after the 10th anniversary of their marriage.

Even if this period was interrupted by a divorce, the requirement is met as long as (s)he and the employee remarried and 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 on 8-9-45, were divorced on 5-22-50, remarried on 9-15-51 and were divorced again on 12-1-55, she may qualify as a surviving divorced spouse. If the remarriage took place in 1952, she would not meet the 10-year marriage requirement.

If, at the employee's death, the divorce had not become effective so as to finally dissolve the marriage, the applicant may qualify as a widow(er) rather than as a surviving divorced spouse.

C. SS ENT - The SS entitlement requirements are explained in FOM1 405.10.1(E)

2.1.105 Filing

To be entitled to a surviving divorced spouse's annuity the applicant must:

- meet the eligibility requirements outlined in RCM 2.1.104.
- file an application, unless
- (s)he was entitled to a divorced spouse's annuity in the month before the month the employee died;
- (s)he was entitled to a surviving divorced mother's (father's) annuity when (s)he no longer has a child in care or when (s)he attains full retirement age;
- (s)he was entitled to an annuity based on disability in the month before the month (s)he attains full retirement age.

Applicants for a surviving divorced spouse's annuity will file an AA-17.

2.1.106 Beginning Date

The beginning date and retroactivity of a surviving divorced spouse annuity is explained in FOM-I-111.20, FOM-I-111.51 and FOM-I-112.9.2.

2.1.107 Surviving Divorced Spouse Also Entitled To Other RR Act Annuity

A. Entitled to Retirement Annuity - A surviving divorced spouse may receive both a surviving divorced spouse's annuity and a retirement annuity under the RR Act, but the surviving divorced spouse's annuity must be reduced for the net tier I amount of the employee annuity.

B. Entitled to 1974 Act Spouse's, Widow's or Parent's Annuity - If the surviving divorced spouse annuity is larger, entitlement to the other annuity exists; however, it is not payable. If the surviving divorced spouse annuity is smaller, no entitlement exists and the annuity should be terminated using code 46, or denied as appropriate. Any overpayment should be recovered from the 74 Act annuity.

If the 74 Act Annuity terminates and the surviving divorced spouse annuity is payable, a new application will be required.

NOTE: The surviving divorced spouse cannot elect to receive the smaller 1981 Act annuity as there is no entitlement.

C. More than One Surviving Divorced Spouse, Remarried Widow(er), Surviving Divorced Parent or Divorced Spouse Annuity Involved - If an individual files for more than one of these annuities, (s)he is only entitled to the larger annuity. Therefore, deny the smaller annuity per usual procedure.

2.1.108 RLS Previously Paid

A. No Election - If the RLS was previously paid to a surviving divorced spouse without an election, (s)he can be paid a monthly annuity as a surviving divorced spouse. However, the RLS must be recovered before the surviving divorced spouse's annuity can be paid.

If the RLS was paid to more than one person, only recover the share paid to the person now eligible for the surviving divorced spouse's annuity.

If the RLS was paid to someone other than the surviving divorced spouse, do not recover the RLS.

If the surviving divorced spouse's annuity is being withheld to recover the RLS, and the annuitant dies before the RLS is recovered, do not consider the amount of the RLS that has not been recovered to be an overpayment.

If recovery of the RLS by full withholding will take longer than 4 years, the surviving divorced spouse should be given the option of canceling her (his) application or making a cash refund in the amount of the RLS. A signed statement from the surviving divorced spouse indicating her (his) choice should be obtained. If (s)he cancels, (s)he should be advised that an application for

Medicare only must be filed in order to qualify for health insurance through RRB at age 65.

B. RLS Elected - If the RLS was previously paid to the widow(er) parent, or surviving divorced spouse based on a valid election, the surviving divorced spouse cannot be paid an annuity. If the employee was insured at SSA on wages alone, the surviving divorced spouse may file for a benefit at SSA.

Prior to the 2-11-1983 legal opinion which stated that an annuity cannot be paid to a surviving divorced spouse if the RLS had previously been elected, surviving divorced spouse benefits were awarded in cases where the RLS was elected and paid. In such cases, the surviving divorced spouse benefits paid were correct.

Payment of the RLS to a remarried widow(er) based on a modified election will not preclude payment of an annuity to the surviving divorced spouse. If the remarried widow is receiving benefit at SSA based on the employee's wages, refer the case to Supervisor-SAS.

2.1.109 When Surviving Divorced Spouse Marries

Effective 1-1-84, if a surviving divorced spouse remarries, her (his) annuity may continue. Prior to 1-1-84, if a surviving divorced spouse remarried, her (his) annuity terminated unless (s)he married an individual entitled to a widow(er)'s, father's/mother's, parent's or childhood disability benefit under the RR Act or SS Act. If a surviving divorced spouse's annuity was terminated because (s)he remarried, a new application is required for her or him to be reentitled 1-1-84 or later.

2.1.110 When Entitlement Ends

The entitlement of a surviving divorced spouse ends the month before the month in which one of the following occurs:

- (s)he dies;
- (s)he becomes entitled to an annuity which is higher than the annuity she is receiving as a surviving divorced spouse;
- she becomes entitled to any social security benefit which reduces the annuity rate to zero and there is no possibility of an ARF increasing the annuity rate above zero.

NOTE: Before 1-1-84, remarriage was a terminating event unless the marriage was to an individual entitled to a widow(er)'s, father's/mother's parent's or childhood disability benefit under the RR Act or SS Act.

2.1.111 Effect Of SS Entitlement On Surviving Divorced Spouse's Annuity

The surviving divorced spouse cannot be entitled to any social security benefit that equals or is larger than the EE's PIA.

A. SS Benefit Exceeds EE's PIA

- If the surviving divorced spouse is entitled to any social security benefit that equals or exceeds the EE's PIA at the time (s)he files for an annuity as a surviving divorced spouse, deny the application.
- If the surviving divorced spouse becomes entitled to a social security benefit that equals or exceeds the employee's PIA after her (his) entitlement as a surviving divorced spouse:
- terminate the surviving divorced spouse's annuity, and
- if applicable, transfer Medicare jurisdiction to SSA, and
- if applicable, transfer the payment certification of social security benefit(s) back to SSA using the PC transfer program.

B. SS Benefit Reduces Rate to Zero but Does Not Cause Non-entitlement - Any RIB/DIB or survivor SS benefit to which the annuitant is entitled is deducted from the annuity. (Refer to the "NOTE" in RCM 2.1.102 for the only exception for reducing for SS entitlement.)

If the surviving divorced spouse is entitled to a social security benefit that is less than the employee's PIA but larger than the age reduced rate and there is the possibility that an age 62 or full retirement age ARF will increase the annuity rate above zero, the applicant is entitled to a zero annuity. (Refer to the G-368.1, item 5d instructions to determine which non-payment months can be counted in applying an ARF to the surviving divorced spouse's annuity.)

When the possibility of an ARF exists, the examiner should process a constructive award and enter a call-up to ARF the case at age 62 and/or full retirement age.

2.1.112 Evidence Requirements

Evidence	When Required
Application	Always, except as described in RCM 2.1.105.
Death of employee	Always.

Compensation, Wages and SEI	Always.
Age of surviving divorced spouse	Always.
Marriage	Always.
Age of employee	In “A” cases POA is always required only if the employee's DOB has not been previously verified through submission of the employee’s proof of birth Effective 03-01-2004 POA of deceased employee is required in all “D” cases when a survivor recurring application is filed.
Legal adoption of child	Only when surviving divorced spouses seeks to qualify on that basis.
Guardianship (AA-5)	If guardian or other legal representative is selected as representative payee.
Amount of RRA Employee Annuity	Always.
Amount of SS Benefits	If surviving divorced spouse is age 62 or older or is under age62 and has indicated filing for benefits at SSA.
M/S	Only when employee's M/S after1936 would be creditable under the RR Act or SS Act.
Termination of Prior Marriage	If there is reasonable doubt whether prior marriage of employee or surviving divorced spouse was ended.
Proof of divorce from EE	Always.
Proof of termination of remarriage	If the surviving divorced spouse had remarried after her(his) divorce from the EE or if (s)he remarried after her (his) initial entitlement to a surviving divorced spouse's annuity and her (his) annuity terminated.
Public pension information	Always.

2.1.113 Annuities That May Be Converted To A Surviving Divorced Spouse's Annuity

There are two types of annuities that may be converted to a surviving divorced spouse's annuity: a divorced spouse's annuity and a surviving divorced mother's/father's annuity. Prior to August 1, 1990, only the conversion from a divorced spouse's annuity requires the filing of an application (G-476c) and proof of the employee's death. Effective August 1, 1990, the conversion from a divorced spouse's annuity no longer requires the filing of an application. The only verification needed is proof of the employee's death.

2.1.114 Divorced Spouse On The Rolls When EE Dies

The conversion from divorced spouse to surviving divorced spouse will be handled in the same way as a spouse-to-widow conversion except that payment will be made manually. So that (s)he may continue to receive benefits without interruption, the surviving divorced spouse of a completely insured annuitant is deemed to have filed an application for a surviving divorced spouse annuity. (S)he continues to receive the divorced spouse annuity until the surviving divorced spouse annuity is awarded, unless evidence in file creates doubt as to eligiblility for a surviving divorced spouse's annuity.

When the surviving divorced spouse annuity is ready to be processed, terminate the divorced spouse's annuity. Recover the divorced spouse annuity payments made after the employee's death from the surviving divorced spouse's annuity accrual and then award the surviving divorced spouse annuity.

2.1.115 Surviving Divorced Mother's/Father's Annuity In Force When Surviving Divorced Mother (Father) Attains Age 60

When a surviving divorced mother (father) attains age 60, (s)he continues to receive a surviving divorced mother's (father's) annuity until the earlier of the following:

- the first of the month in which (s)he does not have a child under age 16 in her (his) care; or
- the first of the month in which she attains full retirement age.

(Exception: If a surviving divorced mother (father) who does not meet the 10-year marriage requirement has a child under age 16 or over age 16 and disabled in her care when (s)he attains full retirement age her (his) annuity may continue.)

At that time the surviving divorced mother's annuity is converted to a surviving divorced spouse's annuity, provided (s)he meets the 10-year marriage requirement.

For additional information see RCM 2.3.114.

2.1.116 Disabled Surviving Divorced Spouse Attains Age 60

Under SS Act rules a disabled surviving divorced spouse's annuity is not considered an age annuity until (s)he attains full retirement age.

When a disabled surviving divorced spouse on the rolls attains full retirement age, her (his) annuity is not actually converted to a surviving divorced spouse's annuity. The award form symbol remains "KR" or "KA" as long as (s)he is entitled under the application on which the disabled surviving divorced spouse's annuity was awarded.

Cases in which the disabled surviving divorced spouse's annuity was not payable for some months due to entitlement to a surviving divorced mother's/father's annuity are called up when the surviving divorced spouse attains age 62. At that time adjust the number of reduction months to eliminate those for which a disabled surviving divorced spouse's annuity was not paid and recertify the annuity; however, retain the symbol "KR" or "KA" for the surviving divorced spouse on the recertified award.

2.1.200 Remarried Widow(er)’s Annuity

Under the 1981 Amendments to the RR Act, widow(er)s who have remarried, but who would qualify for widow(er)'s benefits under the SS Act, may qualify for annuities as "remarried widow(er)s".

To qualify as a widow(er) under the SS Act, a widow(er) must be remarried. If a widow(er) remarries after age 60 that marriage is deemed not to have occurred and widow(er)'s benefits may continue.

The 1981 Amendments provided eligibility to these two categories of remarried widow(er)s/widow(er) who remarried after the employee's death but are now unmarried, and widow(er)s who remarried after age 60.

Young mothers or fathers who have remarried but are now unmarried or who, after their entitlement, marry an individual entitled to certain types of benefits may also qualify as remarried young mothers or fathers (see RCM 2.3.200 et seq.)

The 1983 SS Act Amendments provide that if a surviving divorced spouse remarries after age 60 that marriage is deemed not to have occurred. In addition, if a widow or surviving divorced spouse remarries after age 50 that marriage is deemed not to have occurred if (s)he was entitled to disability benefits before the marriage occurred. If a disabled widow(er) or disabled surviving divorced spouse remarries after age 50 and after becoming disabled (i.e., after the disability onset date) that marriage is deemed not to have occurred.

2.1.201Remarried Widow(er) Defined

A remarried widow(er) is the surviving legal or de facto wife or husband of a deceased employee who remarried after the employee's death but is now unmarried unless that

marriage took place after (s)he attained age 60 or after (s)he attained age 50 if (s)he was entitled to a disabled widow(er)'s annuity at the time of remarriage.

(A) Widow remarried before age 60 but is now unmarried. It does not matter how her (his) marriage(s) after the employee's death ended as long as (s)he is now unmarried.

Example 1: Employee dies. Widow remarries at age 45. Her second husband dies. She is eligible at age 60 for a remarried widow's annuity.

Example 2: Employee dies. Widow remarries. She and her second husband get a divorce. She is eligible at age 60 for a remarried widow's annuity.

(B) Widow remarried after age 60.

A widow(er) who remarried after age 60 may be married at the time (s)he files or, if (s)he is receiving a widow(er)'s annuity when she remarries, her (his) widow(er)'s annuity ends and (s)he will be entitled to further benefits as a remarried widow(er).

Example 1: Widow has been receiving a widow's annuity since 6-79. She remarries in 3-82 at 64. Her widow's annuity ends in 2-82 and she is entitled to a remarried widow's annuity in 3-82.

Example 2: Widow was receiving a widow's annuity until 3-80 when she remarried. She was 62 when she remarried. She may qualify as a remarried widow effective 10-81.

(C) Widow remarried after age 50 and was entitled to a disabled widow's annuity when the marriage occurred.

A widow(er) who was previously entitled as a disabled widow(er), remarried after age 50 and after (s)he became entitled to a disabled widow(er)'s annuity, and subsequently lost entitlement may file at age 60 for an annuity as a remarried widow.

Example: Widow became entitled as a disabled widow at age 51 in 6-2006. She recovered from her disability and her disabled widow's annuity terminated in 5-2010. She remarried in 3-2009. She may file for a remarried widow's annuity at age 60 since her marriage took place after age 50 and she was entitled to a disabled widow's benefit when the marriage occurred.

2.1.202 Amount of Remarried Widow(er)’s Annuity

The annuity consists of a tier I component only. It is equal to a 100% share of the EE's PIA or maximum based on combined wages and compensation after 1936 reduced for the number of months the remarried widow(er) is under full retirement age.

If the remarried widow(er) was previously entitled to an age reduced or disabled widow(er)'s annuity, her (his) remarried widow(er)'s annuity will also be age reduced (even if (s)he is full retirement age at the time (s)he becomes entitled as a remarried widow(er)) and the age reduction will be based on the number of months (s)he is under full retirement age on the beginning date of her (his) widow(er)'s annuity.

Payment of the tier I benefit may be affected by certain SSA nonpayment provisions. Refer to RAC any cases in which alien nonpayment provisions, conviction for subversive activities, deportation, (including deportation of the deceased employee due to associations with the NAZI government of Germany during World War II), or other nonpayment provisions of the SS Act are involved. (See the appropriate survivor benefit section of the POMS for nonpayment provision details.)

The tier 1 amount is reduced by the following:

1. Social Security Benefits

   - The amount of any SS RIB/DIB, and
   - For remarried widow(er)s annuities awarded on August 12, 1983 or later, the amount of any social security benefit.

   NOTE: In any case where the remarried widow(er)'s annuity was awarded prior to August 12, 1983, no reduction should be made in the annuity for any social security benefit other than one based on old age or disability, i.e., RIB or DIB.

2. Railroad Retirement Employee Annuity

   - Net Tier 1 - If either the employee or the remarried widow(er) had railroad earnings prior to 1975, the net tier I amount of any RR retirement EE annuity to which the remarried widow(er) is entitled. (If the remarried widow(er) becomes entitled to an RR spouse annuity or is entitled to two remarried widow(er)'s annuities only the higher of the two annuities is payable. See RCM 2.1.208.)
   - Total Employee Annuity - If neither the employee nor the remarried widow(er) had railroad earnings prior to 1975, the tier 1 of the remarried widow(er)'s annuity will be reduced by the total employee annuity to which the remarried widow(er) is entitled (net tier 1, net tier 2 and vested dual benefit).

3. Public Service Pensions

   - Two-thirds of the amount of any public pension if first eligible for a public pension effective 12-84 or later. (See RCM 2.1.300-2.1.314 for further information on public service pensions.)

2.1.203 Annuity Rate Is Zero

If the remarried widow(er) is entitled to any social security benefit or a combination of social security benefits which reduces the annuity rate to zero and there is no possibility of an ARF which will increase the rate above zero, (s)he cannot be eligible for an annuity as a remarried widow(er). In initial cases, the application must be denied (see RCM 2.1.204(C)). The RLS or LSDP may be paid if there is someone eligible to receive it. In post cases, the annuity must be terminated code 46 due to non-entitlement, and if applicable, certification of payment of social security benefits must be returned to SSA.

If the remarried widow(er) is entitled to an employee annuity, public service pension or SS benefit(s) which reduces her (his) rate to zero and there is no possibility of an ARF increasing the rate above zero, the RLS may be paid if there are no other beneficiaries who are or will be entitled to monthly benefits and there is someone eligible to receive it.

If the remarried widow is entitled to an employee annuity, public service pension or SS benefit that reduces her (his) annuity rate to zero and, an ARF at age 62 and/or full retirement age ARF will increase the annuity rate above zero, the following action will be taken:

- In initial cases prepare a constructive award. Advise the applicant that (s)he is entitled to an annuity but the annuity rate is zero and why. Explain that (s) he will be eligible for Medicare at age 65 and enter an age 62 and/or full retirement age ARF tickler call-up, whichever is applicable. If the annuity later terminates, notify Bureau of Information Service – Information Resource Management Center-Data Management Group (BIS-IRMC-DMG) with a G-59.

- In post cases use suspend code 16 and enter an age 62 and/or full retirement age ARF tickler call-up, whichever is applicable. If the annuity later terminates, notify BIS-IRMC-DMG with a G-59.

However, if the remarried widow(er) is entitled to any social security benefit that is less than the employee's PIA but larger than her (his) age reduced rate and there is the possibility that an age 62 and/or full retirement age ARF will increase the annuity rate above zero, (s)he is entitled to an annuity as a remarried widow(er) but her (his) current annuity rate is zero. Enter an age 62 and/or full retirement age ARF tickler call-up, whichever is applicable.

NOTE: A remarried widow can be ARFed for non-payment months due to reduction for SS entitlement.

2.1.204 Eligibility Requirements

The eligibility requirements for the remarried widow is explained in FOM1 405.10.1 [redacted] and FOM1 405.10.2[redacted].

2.1.205 When Application Required

To be initially entitled as a remarried widow(er) the applicant must:

- meet the eligibility requirements outlined above.
- file an application (AA-17).

No application will be required for a remarried widow(er)'s annuity if the individual is entitled to a widow(er)'s annuity in the month of remarriage.

2.1.206 Beginning Date

A. Not Previously Entitled to a Widow(er)'s Annuity - The annuity of a remarried widow(er) who was not previously entitled to a widow(er)'s annuity begins on the latest of the following:

1. If (s)he is full retirement age or over in the month of filing:

- 10-1-81; or
- the first day of the month in which the employee died; or
- first day of the month (s)he attains full retirement age or (for filing) dates of July 1983 or later) the first day of the month preceding the month remarried widow(er) attains full retirement age if the employee died in that preceding month; or
- first day of the sixth month before the month of filing (e.g., if the applicant filed in August her (his) annuity may begin in February).
- first day of the month in which her (his) marriage ends, if (s)he remarried before age 60.

2. If (s)he is under age full retirement age in the month of filing:

- the first day of the month in which the EE died;
- 10-1-81; or
- first day of the month (s)he attains age 60; or
- first day of the month of filing, or (for filing dates of July 1983 or later) the first day of the month preceding the month of filing if the employee died in that preceding month; or

- first day of the month in which her (his) marriage ends, if (s)he remarried before age 60.

B. Previous Entitled to a Widow(er)'s Annuity - The annuity of a remarried widow(er) who was previously entitled to a widow(er)'s or disabled widow(er)'s annuity begins on the latest of the following:

- the first day of the month in which the EE died;
- 10-1-81; or
- first day of the month of remarriage; or
- first day of the sixth month before the month of filing. (NOTE: Even if the remarried widow(er)'s annuity is age reduced, it can retroact six months since the age reduction is fixed by the beginning date of the widow(er)'s annuity.)
- 1-1-84, if (s)he remarried before attaining age 60 and after attaining age 50 and was disabled before the marriage occurred.

2.1.207 Earnings Restrictions

A remarried widow under age 70 is subject to regular survivor earnings restrictions.

2.1.208 Remarried Widow(er) Also Entitled To Other RR Act Annuity

A. Entitled to RR Act Retirement Annuity - A remarried widow(er) may receive both a remarried widow(er)'s annuity and a retirement annuity under the RR Act, but the remarried widow(er)'s annuity must be reduced for the EE tier I amount as defined in RCM 8.9 G-364.1 item 86 instructions.

B. Entitled to 1974 RR Act Spouse Widow(er)'s or Parent's Annuity - If the remarried widow(er)'s annuity is larger, entitlement to the other annuity exists; however, it is not payable. If the remarried widow(er)'s annuity is smaller, no entitlement exists and the annuity should be terminated using code 46, or denied as appropriate. Any overpayment should be recovered from the 74 Act annuity.

If the 74 Act annuity terminates and the remarried widow's benefit is payable, a new application will be required.

NOTE 1: The remarried widow cannot elect to receive the smaller 1981 Act annuity as there is no entitlement.

NOTE 2: When the RIB is greater than the 1981 Act annuity the 1974 Act annuity would still be payable.

C. More than One Surviving Divorced Spouse, Remarried Widow(er), Surviving Divorced Parent or Divorced Spouse Involved - If an individual files for more than one of these annuities, (s)he is only entitled to the larger annuity. Therefore, deny the smaller annuity per usual procedure.

2.1.209 RLS Previously Paid

A. No Election or Modified Election Filed - If the RLS was previously paid to a remarried widow(er) either without an election or with a modified election, (s)he can be paid a monthly annuity as a remarried widow(er). However, the RLS must be recovered before the remarried widow(er)'s annuity can be paid.

If the RLS was paid to more than one person, only recover the share paid to the person now eligible for the remarried widow(er)'s annuity.

If the RLS was paid to someone other than the remarried widow(er), do not recover the RLS.

If the remarried widow(er)'s annuity is being withheld to recover the RLS, and the annuitant dies before the RLS is recovered, do not consider the amount of the RLS that has not been recovered to be an overpayment.

If RLS recovery by full withholding will take longer than 4 years, the remarried widow(er) should be given the option of canceling her (his) application or making a cash refund in the amount of the RLS. A signed statement from the remarried widow(er) indicating her (his) choice should be obtained. If (s)he cancels, (s)he should be advised that an application for Medicare only must be filed in order to qualify for health insurance through RRB at FRA.

If an applicant for a remarried widow(er)'s annuity signed a modified election and is receiving a widow(er)'s benefit at SSA on the basis of the employee's wages only, refer the case to SAS.

B. Election Filed - If the remarried widow(er) previously elected and was paid the RLS, her application for a remarried widow(er)'s annuity must be denied. By electing the RLS, (s)he agreed to give the rights to future benefits under the RR Act. However, (s)he may qualify for a benefit at SSA if the employee was insured under the SS Act solely on the basis of wages.

2.1.210 When Entitlement Ends

The entitlement of a remarried widow(er) ends the month before the month in which one of the following occurs:

- (s)he dies;

- (s)he becomes entitled to any social security benefit which equals or exceeds the employee's PIA and reduces the annuity amount to zero;

- (s)he becomes entitled to a railroad spouse or widow(er)'s annuity which is higher than the annuity (s)he is receiving as a remarried widow(er).

2.1.211 Effect Of SS Entitlement On Remarried Widow(er)'s Annuity

The remarried widow(er) cannot be entitled to any social security benefit that equals or is larger than the employee's.

A. SS Benefit Exceeds EE's PIA

- If the remarried widow(er) is entitled to any social security benefit that equals or exceeds the EE's PIA at the time (s)he files for an annuity as a remarried widow(er), deny the application.

- If the remarried widow(er) becomes entitled to a social security benefit that equals or exceeds the employee's PIA after her (his) entitlement as a remarried widow(er):

- terminate the remarried widow(er)'s annuity, and

- if applicable, transfer Medicare jurisdiction to SSA, and

- if applicable, transfer payment certification of social security benefit back to SSA using the PC transfer program.

B. SS Benefit Reduces Rate to Zero But Does Not Cause Non-Entitlement

Any RIB/DIB or survivor SS benefit to which the remarried widow(er) is entitled to is deducted from the annuity. (Refer to the "NOTE" in RCM 2.1.202 for the only exception for reducing for SS entitlement.)

If the remarried widow(er) is entitled to a social security benefit that is less than the employee's PIA but larger than the age reduced rate and there is the possibility that an age 62 or full retirement age ARF will increase the rate above zero, the applicant is entitled to a zero annuity. (Refer to the G-368.1, item 5d instructions to determine which non-payment can be counted in applying an ARF to the remarried widow(er)'s annuity.)

When the possibility of an ARF exists, the examiner should process a constructive award and enter a call-up to ARF the case at age 62 and/or full retirement age.

2.1.212 Evidence Requirements

Evidence	When Required
Application	Always, unless the remarried widow(er) was entitled to a widow(er)'s annuity in the month (s)he remarried.
Death of employee	Always.
Compensation, Wages and SEI	Always.
Age of remarried widow(er)	Always.
Marriage	Always.
Proof of termination of remarriage	If widow(er) remarried before age 60.
Proof of remarriage	If widow(er) was not previously entitled to widow(er)'s benefits after (s)he attained age 60 (to verify that the remarriage occurred after age 60).
Age of employee	In “A” cases POA is always required only if the employee's DOB has not been previously verified through submission of the employee’s proof of birth Effective 03-01-2004 POA of deceased employee is required in all “D” cases when a survivor recurring application is filed.
Legal adoption of child	Only when remarried widow(er) seeks to qualify on that basis.
Guardianship (AA-5)	If guardian or other legal representative is selected as representative payee.
Amount of RR Employee Annuity	Always.
Amount of SS Benefit	If remarried widow(er) is age 62 or older or is under age 62 and has indicated filing for benefits at SSA.
M/S	Only when employee's M/S after 1936 would be creditable under the RR Act or SS Act.

Termination of prior marriage	If there is reasonable doubt whether a prior marriage of employee or remarried widow(er) was ended.
Public pension information	Always.

2.1.213 Widow(er) Currently On The Rolls Remarries

If an aged widow(er) currently on the rolls remarries, her (his) widow(er)'s annuity terminates, but (s)he may be entitled to further benefits as a remarried widow(er) since (s)he will have remarried after age 60.

A. Handling - When notice is received that the widow(er) has married, terminate the widow(er)'s annuity. Use code 44 on FAST/S-T.

- If (s)he is entitled to a remarried widow(er)'s annuity, compute the amount of the remarried widow(er)'s annuity and reinstate benefits under the new beneficiary symbol and payee code. If (s)he is entitled to an SS benefit, allow that benefit to continue under the widow(er)'s claim number.
- If (s)he is not entitled to a remarried widow(er)'s annuity (e.g., her (his) RIB exceeds the EE's PIA), transfer payment of her (his) SS benefit to SSA as described in SSC Procedures sec. 1000 et seq.)
- If (s)he is entitled to a zero annuity, handle according to the instructions in RCM 2.1.203.

B. Overpayment Involved

- If checks have been released for any month in which there is no entitlement, ask for the gross amount back according to current overpayment procedures.
- If there is entitlement to a remarried widow(er)'s annuity for a month for which a not-due payment of her (his) widow(er)'s annuity was made, withhold the accrual to recover her (his) widow(er)'s annuity overpayment, start benefits in the current month, and follow due process procedures to recover the remaining overpayment.

2.1.214 Remarried Young Mother's/Father's Annuity In Force When Remarried Young Mother/Father Attains Age 60

When the remarried young mother/father attains age 60, (s)he continues to receive a remarried young mother's/father's annuity until the earlier of the following:

- first of the month in which a child under age 16 is not in care; or

- first of the month (s)he attains full retirement age.
- At this time the remarried young mother's/father's annuity is converted to a remarried widow(er)'s annuity. For additional information regarding the conversion, refer to RCM 2.3.213.

2.1.215 Remarried Disabled Widow(Er) Attains Age 60

Under the SS Act rules a disabled remarried widow(er)'s annuity is not considered an age annuity until (s)he attains full retirement age.

When a remarried disabled widow(er) on the rolls attains full retirement age, her (his) annuity is not converted to a remarried widow(er)'s annuity. The widow(er)'s award form symbol remains "RR" or "RA" as long as (s)he is entitled under the application on which the disabled remarried widow(er)'s application was awarded.

Cases in which the disabled remarried widow(er)'s annuity was not payable due to entitlement to a remarried young mother's annuity are called up when the widow(er) attained age 62. At that time, adjust the number of reduction months to eliminate those for which a disabled remarried widow's annuity was not paid and recertify the annuity. Retain the symbol "RR" or "RA" for the remarried widow(er) on the recertified award.

2.1.300 Public Service Pensions

The 1977 SS Act Amendments provided that individuals receiving both an SS widow(er) benefit and a pension based on their own public service (i.e., government) employment may have their SS benefit reduced by the amount of their public service pension. The purpose of the public pension offset was to ensure that these individuals would not receive a combined monthly benefit greater than the monthly benefit received by individuals getting both an SS widow(er) benefit and a RIB/DIB based on their own employment.

The 1983 SS Act Amendments changed the public pension offset amount from the full amount of the public service pension to two-thirds of the pension amount.

Because the widow(er)’s tier I is computed like an SS Act benefit, we must reduce it for the public service pension just as SSA would.

2.1.301 When Public Service Pension Provisions Apply

Unless the conditions for exception to the public service offset as explained in 2.1.312 are met, tier I must be reduced for any public service pension (PSP) when a pension is payable based on her own employment by a unit of the Federal, state or local government; and:

The individual is entitled to an RR Act widow(er)-type annuity based on an application filed on or after December 1, 1977; and

FICA taxes were not deducted from the employment on which the pension is based as defined in RCM 2.1.310.

NOTE: If an individual converts from one type to another and no application is required, an individual is not subject to offset if her prior entitlement was based on an application filed prior to December 1977.

2.1.302 "Public Service" Defined

Public service means service performed for the U.S. government, a state government or any political subdivision of a state, such as a city, county, town, township, village, school or sanitation district. Service for the government of a foreign country or any political subdivision in not included. The definition of "state" includes the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

Interstate instrumentalities (i.e., an instrumentality of two or more states organized as a body corporate) are not considered public service for reduction purposes.

2.1.303 "Pension" Defined

A public service pension means any periodic benefit, or lump-sum payment made in lieu of a periodic benefit, payable to an individual because of her own employment with a Federal, state or local government unit. A pension is a payment based on earnings from employment and, as such, includes both retirement pensions (based on age and service) and disability pensions. The program under which the pension is paid does not have to be administered by the government entity by which the individual was employed; it may be administered by a different government agency or a private insurance company.

Full salary benefits paid to a retired or resigned judge under the Federal Judiciary Retirement System are considered public service pensions.

2.1.304 Payments Not Considered a PSP

The following types of payments are not considered Public Service Pensions for offset purposes:

- Lump-Sum Payments - A lump-sum payment that is actually a refund of the individual's contributions plus interest is not a pension for offset purposes.

- Periodic Benefits - Periodic benefits that are not considered pensions for reduction purposes are: payments under the Federal Employee 's Compensation Act (Office of Worker's Compensation Programs); black lung benefits; Railroad Retirement annuities; Social Security benefits; and VA payments of any kind.

- Military Service Pensions - Effective 1-95, military service pensions are also excluded from PSP offset. If a PSP offset was deducted before January 1995, it should have been removed effective January 1, 1995.

  Before 1-95, the PSP offset would not apply if the last day of employment in active military service was after 1956. However, if active duty after 1956 was not used to determine the pension or if the last day of service on which the pension is based was non-active duty reserve time, the MS pension will cause a PSP offset. All MS pensions which began before 1957 will cause a PSP offset, even though the individual may have received gratuitous SS wage credits for the pre-57 MS.

- Worker's Compensation Payments - Payments made under a specific Federal or state law which would cause an offset against disability benefits at SSA are not considered pensions for reduction purposes. However, periodic benefits made to state and local government employees because of work-related injury or disease (i.e., payments in lieu of worker's compensation) may not be exempt for reduction purposes. If such a case comes to your attention, refer it to Policy and Systems/RAC for handling.

2.1.310 Exemption Based on FICA Coverage

A. Employed by Federal Government.--If, on the last day of employment, the widow(er) was employed by the federal government, use this chart to determine if the PSP offset applies.

FICA Deductions Claimed	FERS Elected Before 7-1-1988	FERS Elected in 1998	Action to Be Taken
Yes	No	No	The record should show that Federal employment began after 12/31/83. If the claim is supported, do not apply the PSP offset. If not, contact the F/O and have the widow secure proof.
Yes	Yes	No	If the record shows that SS deductions were made on the date last worked, do not apply the offset. If the earnings are shown under MQGE-non-covered or Medicare Total, apply the reduction.
No	No	No	Apply the PSP reduction.

Yes	No	Yes	If the records show that SS deductions were made for 60 or more months after FERS was elected and before the OBD, do not apply the PSP offset.

Federal employees who receive a pension under the CSRS Offset retirement plan are in a unique class. In order to receive a CSRS Offset pension, the widow(er) must have been an employee of the federal government before 1983, had a break in service of at least 365 days and then returned to federal service after 12-1-83.

Note: Federal employment covered by Medicare only will not exempt the person from PSP offset.

B. Employed by State or Local Government.--If, on the last day of employment, the widow(er) was employed by a state or local agency, determine if the PSP offset applies using the following instructions:

1. The widow(er)'s exemption is determined under P,L.108-203. P.L.108-203, enacted on March 2, 2004, changed the requirements for exemption from the PSP offset.

   If the widow(er)'s application is filed after March 2004 and the last day of public service employment is after June 30, 2004, FICA taxes must have been deducted from the public service wages for the last 60 months of employment. If not, the PSP offset applies.

   NOTE: If a determination is being made for a widow(er) who was initially paid as a spouse and entitlement was continuous, use the filing date of the spouse application to determine if P.L.108-203 applies

Grandfather Provision

P.L.108-203 includes a grandfather provision to lessen the impact on public service employees who will retire within the next 5 years. Under this provision, any months before March 2004 in which FICA taxes were deducted from the public service wages are subtracted from the 60 months needed for exemption. They need not be continuous. A maximum of 59 months can be subtracted. The months of FICA covered service necessary to fulfill the 60-month period must be continuous and include the last month of public service employment.

Example: Ms. Jones was working for a state agency in March 2004. FICA taxes were not being deducted from her wages. For 12 months in 1997 and 3 months in 2002, she worked under the same retirement plan and FICA taxes were deducted.

Because FICA taxes were previously deducted for 15 months, the requirement that her last 60 months of public service employment have FICA deductions is reduced. Only the last 45 months of her public service employment must have FICA deductions.

The grandfather provision cannot apply if the applicant's day last worked is after March 2, 2009.

2. If the widow(er)'s application was filed before April 2004 or the last day of public service employment is before July 1, 2004, exemption is determined under the 1977 Social Security Act Amendments. Under these amendments, a widow(er) employed by a state or local agency was exempt from offset if FICA taxes were deducted on the last day of employment. Last day of employment is defined in the next section.

2.1.311 Last Day of Employment Defined

The last day of employment is usually the same as the "last day worked" or the official "termination date." It is not the same as the last day worked when the position held on the last day worked is not covered under the pension plan. Do not develop the last day of employment unless there is reason to believe that the date furnished is incorrect.

These situations may require development:

- The individual terminates employment in a position covered by a pension plan but not covered under the SS Act, and then returns to work for the same employer in a position not covered by a pension plan, but covered under SSA (e.g., a part-time position). Since the pension would not be based on any of the employment covered under the SS Act, the individual would be subject to reduction; or

- The individual terminates employment in a position covered by a pension plan but not covered under the SS Act, and then returns to work for the same employer in a position covered by the same pension plan and covered under SSA. Since the pension is based on employment covered under the SS Act, the offset will not apply; or

- NOTE: This situation applies primarily to school teachers. Their teaching jobs were not covered under social security. On or after their last day of teaching, they worked at a non-teaching position that was covered under both the teacher retirement system and Social Security. The Office of the General Counsel has determined that if the last day of employment is covered under the SS Act and is used to compute the pension, the PSP offset will not apply. The length of employment in the second position does not matter.

- The individual is transferred by his or her employer from a position not covered by SS to a position which is covered by SS. If only the position not covered by SS was covered under the pension plan, the individual's last day of employment is the last day she held the non-covered position. Since that position was not covered under the SS, the offset would apply.

- If, however, both positions were covered under the pension plan, the individual would be exempt from PSP reduction because the position held was covered under SS on the last day of employment; or

- The individual holds a second job with the same employer for whom she is working full-time in a position covered by a pension plan, but not by SS. If the second job (i.e., a part-time position) is covered by SS, but not by the pension plan and the individual ceases employment in both positions on the same day, she would still be subject to reduction for PSP since the pension was based on the full-time position.

2.1.312 Exception to the PSP Provision

Exceptions to the PSP provision were made to lessen the impact on individuals who were within a few years of eligibility to their public service pension at the time of enactment.

Conditions for Exception - Annuities payable for any month after November 1977 will never be subject to reduction for a PSP if at the time of filing the applicant:

1. Could meet the entitlement requirements for an SS widow(er) benefit, as in effect and being administered in January 1977 (if the EE 's RR earnings had been covered under the SS Act); and

2. Is entitled to or eligible for the PSP for any month in the period from December 1977 through November 1982. If the applicant would have been eligible for the PSP before December 1982 except for a requirement which postponed eligibility until the month after the month in which all other requirements were met, the annuity will not be subject to a PSP reduction effective December 1, 1984.

For the purpose of applying this exception, the RRB filing date and OBD are immaterial. The applicant need not file for or become entitled to any annuity prior to December 1982 for it to apply.

In addition, for annuities payable for months after November 1982, the public service pension offset will not apply if the applicant:

1. Is entitled to or eligible for the PSP for any month prior to July 1, 1983; and

2. Was dependent on the employee for one-half support at the employee's tier I beginning date, disability onset date or date of death.

Proof of one-half support guidelines are in RCM 4.7. The usual time limit for filing proof of support does not apply in this situation.

2.1.313 SSA's January 1977 Requirements

To meet the first condition of the exception, all of the requirements necessary for an SS Act widow(er) benefit that were in effect and being administered in January 1977 must be met at the time of filing for an RR Act annuity. The requirements need not have actually been met in January 1977 for this condition to apply. (For example, a widow filing in 1981 must be age 60 in 1987, not 1977.)

Below is a list of survivor beneficiaries who meet the SSA requirements in effect in January 1977:

- Widows
- Dependent Widowers
- Young Mothers/Fathers
- Remarried Widows
- Dependent Remarried Widowers if remarriage occurred after age 60
- Dependent Remarried Widowers
- Surviving Divorced Spouses married to the employee for at least 20 years
- Surviving Divorced Mothers
- Remarried Young Mothers/Fathers

Categories of beneficiaries who do not meet the January 1977 SS requirements and do not qualify for exception in their benefits are:

- Non-dependent Widowers
- Surviving Divorced Husbands
- Surviving Divorced Fathers
- Surviving Divorced Spouses married to the employee for less than 20 years
- Non-dependent Remarried Widowers
- Dependent Remarried Widowers who remarried before age 60

- Non-dependent Remarried Widowers

2.1.314 "Entitled to" Defined

"Entitled to" means that all of the requirements for the pension have been met, the application has been filed and the pension is either being paid or is due to be paid for the month, although payment may not yet have actually been made.

2.1.315 "Eligible For" Defined

"Eligible For" means that the pension would be payable (i.e., all age and service requirements have been met) but the individual has not yet ceased employment for the employer paying the pension or any other employer, and has not filed an application for the pension.

If a widow(er)'s PSP was first payable after November 1982 or July 1983 and she meets the other condition for exception explained above, she must prove that she was eligible for a pension before December 1982 or July 1983 in order to qualify for that exception.

2.1.316 "Eligible For" Provision and Federal Employment

SSA has determined that the following types of Federal employees may qualify for exception under the "eligible for" provision:

- Those who meet the requirements for an "early-out" prior to December 1982 or July 1983 but continue to work after that date.

- Those eligible for a discontinued service annuity (involuntary separation not due to misconduct, at age 50 with 20 years or any age with 25 years) prior to December 1982 or July 1983 regardless of whether they take advantage of it or not; and,

- Those who elected a deferred retirement annuity (stopped Federal employment at an early age knowing they would not be eligible for their pension until age 62) provided age 62 is attained prior to December 1982 or July 1983. This is regardless of whether or not they begin to receive their pension prior to December 1982 or July 1983.

2.1.320 Timetable for Applying the Provision

The PSP reduction provision applies to RRB widow(er) annuitants payable for months after November 1977, based on applications filed December 1, 1977 or later. Specific categories of annuities are affected as follows:

PSP Eligibility/ Entitlement Date	Widow(er)s Subject To PSP Offset	Widow(er)s Exempt From PSP Offset
A. Before12-1-82	Non-Dependent Males Divorced Female Married Less Than 20 Years Divorced Males	Females Divorced Female Married 20 or More Years Dependent Males
B. Before7-1-83	All Non-dependent: Males Females Divorced Males Divorced Females Regardless of Length of Marriage	Beginning with Annuities Payable for months after November 1982, All Dependant: Males Females Divorced Males Divorced Females Regardless of length Of Marriage
C. After6-30-83	All Categories Regardless of Dependency	Widow(er)s who elected FERS during the Open Season which ended 7-1-1988. Widow(er)s who elected FERS during the Open Season which ended 12-31-1998 and worked in covered Federal Employment for 60 months or more after the effective date of the election and before the OBD.

2.1.321 Examiner Action

Take the following actions when handling a case with PSP involvement:

Initial Cases:

1. Review or develop for PSP information;

2. Determine if the employment was "public service";

3. Determine if the pension meets the criteria for reduction;

4. Compare the applicant's PSP statement and SS wage record;

5. Determine the pension amount;

6. Determine the effective date of reduction;

7. Determine if verification of the pension amount is necessary; and

8. Make a SURPASS award.

Post Entitlement Cases - When an annuitant notifies the RRB of receipt of a PSP after she has been receiving an annuity, have the F/O secure a completed Form G-208, "Public Service Pension Questionnaire" and follow the steps 2 through 8 given above.

PSP Offset Does not Apply - If you determine that the widow is entitled to a PSP but exempt from offset, this information must be entered into the PREH record. Take one of the following actions to do this:

Using the PREH On-Line Correction facility, enter a "1" in 3200-PSP-RED-STAT-CD. If the PSP is paid by OPM, enter a "1" in 3200-PSP-SOURCE-CD. If the PSP is not paid by OPM, enter a "2". **OR**,

If award action is necessary, on the TIER 1/RATE DEDUCTION screen, enter a "2" in Select Deduction Type, and a "1" in PSP Reduction STATUS. Enter a "1" in PSP Pay Source if the pension is paid by OPM. Enter a "2" if it is not paid by OPM.

Use the PREH on-line correction facility to keep the Research record up to date whenever a change in PSP rate or entitlement occurs that does not require award activity. Enter the correct offset amount in 3210-PSP-AMT.

2.1.322 PSP Information

PSP information should be handled as follows:

Initial Cases - If PSP information is not submitted with the application, or is incomplete, develop for the information needed through the servicing F/O. A G-208 should be submitted in every case in which the widow(er) is receiving a monthly PSP unless the widow(er) states on the application that she was an employee of a state or local government and FICA taxes were deducted on her last day of employment. Do not delay payment of a case pending receipt of this information if the net tier I without reduction for a PSP equals zero. Continue to control for the outstanding information even after payment, as the PREH record must be notated if a PSP reduction applies. If the net tier I does not equal zero, apply a temporary maximum reduction equal to PIA 1.

See RCM 2.1.327 for how to handle cases with future PSP entitlement.

Post Cases. - The annuitant is responsible for reporting any change in PSP entitlement or amount. If the net tier I rate after the change is not zero, it must be verified. Otherwise the annuitant's signed statement regarding the change will be sufficient. Use

the on-line correction facility to enter the new rate into PREH when no award action is necessary.

Refusal to Furnish Information - When an individual refuses to furnish information about the receipt of a PSP or the pension amount, apply a total tier I offset equal to PIA 1.

2.1.323 Comparing Applicant's Statement with the Earnings Record

When determining whether or not a case should be reduced for a PSP, always compare the applicant's allegation regarding SS coverage with the SS earnings posted on the AUX G-90. The AUX G-90 can be viewed on-line through SURPASS. If the AUX G-90 is not on SURPASS or gives insufficient information, request a DEQY.

Employed by State or Local Government.--If, on the last day of employment, the widow(er) was employed by a state or local government, use this chart to determine if the PSP offset applies.

SS Deductions Claimed	Action to Be Taken
Yes	If the earnings record shows that SS deductions were made, do not apply the PSP reduction. If the earnings are shown under MQGE-Non-covered or Medicare Total, apply the offset.
Yes	If the wage record does not support the claim, have the F/O contact the widow for verification of coverage.
No	Apply the PSP reduction.

2.1.325 How to Determine the Pension Amount.

For reduction purposes, the pension is the amount payable before deductions for health insurance, allotments, bonds, etc., but after reduction for early retirement or survivor benefits. If the widow(er) is receiving a "Medicare reimbursement, do not include this in the total payable. If the widow(er) receives more than one PSP, add the pensions together to determine the amount of reduction. If the pension is not a multiple of $.10, round it up to the next multiple of $.10.

Periodic Payments.--Because annuities are paid on a monthly basis, the PSP reduction should be based on the monthly rate. Multiply weekly pensions by 4.33 to find the monthly rate. Multiply bi-weekly pensions by 2.166 to find the monthly rate.

Pension Begins on Other than First Day of Month.--If the pension begins on other than the first day of the month, the monthly pension rate should be prorated to equal the exact pension amount payable for that month. Subtract the day on which the pension begins from 31. Multiply the monthly pension rate by this figure and divide the product by 30. Prior to 12/84, use the prorated amount computed above as the PSP reduction for that month. Beginning 12/84 and later, multiply the prorated pension amount by 2/3 to determine the PSP reduction for that month.

Example: The pension begins on 5/10/2005. Multiply the monthly pension rate by 21/30 (31 – 10 = 21 divided by 30), and then multiply this amount by 2/3. Use the result as the PSP reduction amount for the month of May (following normal rounding rules).

Only prorate the pension if it begins on a day other than the first of the month. If the pension increases, adjust tier 1 for the full amount of the increase from the first day of the month in which it becomes payable regardless of the effective date of the increase or the date on which the increase is actually paid.

Lump Sum Payments.--If the lump sum paid was actually a refund of the applicant's contributions plus interest to an employee pension fund, it will not result in offset.

If a lump sum payment was made in place of a periodic benefit for a specific period of time (e.g., 10 years), and the amount of the monthly pension for which it was substituted can be determined based on proof from the applicant or agency, use the determinable amount as the monthly rate for that same period of time. The pension should begin with the month it would have been payable. Enter a call up to remove the reduction at the end of the time period of the annuity it replaced.

If the period of time over which the pension would have been payable is known, but the monthly amount is not determinable, prorate the lump sum over that period of time, beginning with the month the pension would first have become payable.

If the only alternative to a lump sum was a life annuity, and the amount of the life annuity monthly benefit is known, use that amount for reduction purposes.

1) Full Lump Sum Payments: Defined as a lump sum payment in lieu of any periodic payment for a specific period of time (e.g., life), with no additional periodic payments being made. Determine the amount of the monthly pension for which the full lump sum was substituted and for the period of time that it covers. The PSP offset should begin with the month the periodic benefit would have been payable.

If the period of time is known, but the amount is not determinable, prorate the lump sum over that period of time, beginning with the month the pension would first have become payable.

If the only alternative to a lump sum is a life annuity, and the amount of the life annuity monthly benefit is known, use that amount for reduction purposes.

EXAMPLE: The spouse/widow elects a lump sum of $30,000.00 in lieu of periodic payments of $150.00 per month for life. The PSP reduction would be $100.00 (2/3 of $150.00).

If either the monthly reduction amount or period of time cannot be determined, refer to RCM 2.1 Appendix C.

A lump sum payment that is actually only a refund of the employee's contributions to a pension fund, plus interest, is not a PSP for offset purposes.

2) Partial Lump Sum Payments: Defined as a lump sum benefit made in lieu of some part of the periodic payment due for a specified period. These lump sum payments, also known as the partial lump sum option (PLOP), can be elected by the beneficiary and paid ***in addition*** to a reduced periodic benefit. Oftentimes, the beneficiary can choose from a number of PLOP's.

EXAMPLE 1: The widow elected both a survivor option and a PLOP from her public service employer at the time of her retirement. Her periodic PSP would have been $1900 per month had she not chosen either option. Her survivor election reduced her periodic payment to $1700, while her election for a PLOP of $20,000 further reduced her periodic payment to $1500. Because PSP offset is based on a PSP ***after*** reduction for survivor benefits, but ***before*** the PLOP, the $1700 figure would be the basis of the PSP offset (2/3 of $1700 is the PSP offset amount = $1133.40), even though the spouse will be receiving a periodic payment of $1500.

Later increase in periodic rate where PLOP was paid: For the beneficiary who previously elected a PLOP and is now entitled to an increase in the periodic PSP rate, add the amount of the PSP periodic rate increase to the amount of the PSP previously used to determine the PSP for offset purposes.EXAMPLE 2: In the same example as example 1 above, the widow's periodic payment is increased the following year from $1500 to $1550. The basis for the new PSP rate for offset purposes is $50 plus the earlier amount used which includes the amount relinquished for the PLOP). Add $50 to $1700 for the new PSP amount = $1750. 2/3 of $1750 = $1166.70 is the new PSP offset amount, effective with the month of the PSP increase.

3) Teachers Retirement System of Texas (TRS) January 2008 Lump Sum Payment: The TRS paid an extra check in January, 2008 to PSP recipients, who began receiving their PSP prior to January, 2007. The payment represented something of a substitute for a cost-of-living increase for 2007, and was in the amount of the August, 2007 payment, but not to exceed $2400. This one-time payment is treated as a PSP partial lump sum for purposes of PSP offset, and is prorated over the lifetime of the beneficiary for determining the new PSP offset amount effective January, 2008.

RBD/SBD will recompute the PSP offset factoring in the one-time payment prorating it based on the amount of the payment and the spouse/widow's age as of January 1, 2008. Actuarial tables for prorating the partial lump sum can be found in both RCM 1.3

Appendix D, and RCM 2.1 Appendix C. The percentages to use for these cases will be those in the "Factors for Lump Sum Award Dates 6/1/2007 or Later" column.

Steps for determining the January 2008 PSP offset amount is as follows:

Step	***Action***
1	Determine the lump sum amount, which is equal to the August, 2007 PSP rate (use $2400 if the lump sum amount exceeds $2400)
2	Determine the spouse/widow age as of January 1, 2008.
3	Determine the actuarial value from the tables in RCM 1.3 Appendix D or RCM 2.1 Appendix C.
4	Divide the lump sum amount from step 1 by the actuarial value from step 3.
5	Multiply the result from step 4 by 2/3.
6	Round the result from step 5 up to the dime.
7	Add the result from step 6 to the existing PSP offset amount = **the new PSP offset amount.**

Example 1: The widow is receiving a monthly PSP of $645.00 since January 2001 from TRS. The PSP offset is $430.00 (2/3 of $645.00). We assume the one-time payment is in the amount of $645.00 (still in effect August 2007), without evidence to the contrary. The widow is 65 years of age (DOB 5/9/1942) as of January 1, 2008. Divide the pension lump sum amount ($645.00) by the actuarial value in the table corresponding the widow's age on the date of the lump sum payment (123.8), which equals $5.21. Multiply that result by 2/3, which equals $3.47, and round up to the dime ($3.50). Add that amount to the existing PSP offset amount totaling $433.50 ($430.00 + $3.50), as the new PSP offset amount effective January, 2008.

Example 2: The widow is receiving a monthly PSP of $2703.30 since February, 1998 from TRS. Her PSP offset is $1802.20 (2/3 of $2703.30). We assume the one-time payment is in the amount of $2400.00, the maximum. The widow is 72 years of age (DOB- 3/10/1935) as of January 1, 2008. Divide the pension lump sum amount ($2400.00) by the actuarial value in the table corresponding to the widow's age on the date of the lump sum payment (101.2), which equals $23.72. Multiply that result by 2/3, which equals $15.81, and round up to the dime ($15.90). Add that amount to the existing PSP offset amount, totaling $1818.10 ($15.90 + $1802.20), as the new PSP offset amount effective January 1, 2008.

Future PSP offset adjustments

Any future PSP offset adjustment for changes in the PSP after January, 2008 will need to factor in this one-time payment. We are compiling a list of TRS PSP cases in a Word document on the J drive, in the "PSP Texas Teachers" folder. It will serve as an aid to examiners in determining whether a one-time PSP lump sum was paid by TRS under this provision.

While the list may not be all-inclusive, those cases identified by Field Offices this year should be on the list. Examiners should feel free to add cases to the listing, as identified, and then "save" the document to drive J.

If not otherwise available, examiners should be able to determine the amount of the re-computed PSP monthly rate used for PSP offset, by checking PREH screen 3210, page 1 of 2, PSP-AMT effective with the 1/08 date break, multiplying the PSP offset amount by 3/2 and rounding the result down to the dime.

Example: Using the widow in Example 2 above, $1818.10 would be shown on PREH as the PSP offset amount as of January 2008. Multiply $1818.10 x 3/2, and round down to the dime = $2727.10, the PSP rate used as the basis for the PSP offset effective January 2008. If for example, the widow received a $15.00 increase in her periodic monthly PSP (from $2703.30 to $2718.30) effective January 2009, the $15.00 increase would be added to $2727.10 as the new PSP monthly rate ($2742.10). 2/3 of $2742.10 ($1828.10, rounded up from $1828.07) would be the new PSP offset amount effective January 2009.

Tolerance

As the example above shows, the PSP offset amount increase is small for most cases. Consider applying tolerance for any resulting overpayment, when applicable.

2.1.326 How to Determine the Reduction Amount.

Once the pension amount has been determined, compute the reduction amount as follows:

Two-thirds Reduction Effective 12-84 and Later.--Effective 12-1-84, the annuity is reduced by 2/3 of the PSP amount. Multiply the pension amount by .66667. If the product is not a multiple of $.10, round it up to the next higher multiple of $.10.

PSP Eligibility Before 7-1-83.--If the widow(er) was eligible for a public pension before 7-1-83, reduce the annuity by the full amount of the public pension. This is true even if she was not entitled to a public pension until after 7-1-83. The full reduction is reduced to 2/3's effective 12-84.

PSP Eligibility 7-1-83 or Later.--If the widow(er) was first eligible for a public pension 7-1-83 or later, the annuity is reduced by 2/3's of the amount of the public pension. Multiply the pension amount by .66667. The product, if not a multiple of $.10, is rounded to the next higher multiple of $.10.

2.1.327 When to Begin Reducing for PSP.

Apply the reduction as using the following instructions:

Current Entitlement.--Reduce for the PSP beginning with the tier I effective date or the pension beginning date, whichever is later.

If a widow(er) filed on or after 12-1-77 and the OBD is before that date, do not reduce for PSP until 12-1-77.

If a widow(er) filed on or after 12-1-77 and reports receipt of a PSP after she has begun to receive the annuity, recertify the annuity rate, reducing tier I for the PSP effective with the first month for which the pension is payable, but not before December 1977.

Potential Entitlement.--Reduce for potential entitlement only when the widow(er) claims to have already filed an application for the pension. Base the effective date of the PSP on the expected date of receipt and apply a reduction equal to PIA 1. Include paragraph 437 on the award letter.

If the widow(er) has not filed an application for a PSP, set a tickler call-up for one month before the expected date of entitlement (item 16 on the G-208). **Upon receipt of the case, initiate development action through the F/O. Do not suspend or reduce the annuity until development has been completed and a determination has been made.**

2.1.328 Verifying the Pension Amount.

The pension amount should be verified as follows:

When Not to Verify.--Do not verify the pension rate if, after reduction for PSP, age, SS benefit and/or EE annuity, the net tier-one or spouse O/M benefit equals zero. The individual's allegation of the pension payable is sufficient for the purpose of applying total offset.

When to Verify.--Verify the pension rate before initially paying or increasing a net tier-one rate in any annuity reduced for PSP. The net tier-one can increase because of a RECOMP or decrease in PSP or SS benefit rate. Do not verify the rate if the recalculated tier-one remains zero.

Verify the pension rate with a copy of an award notice or other document from the agency issuing the pension

2.1.330 Proofs Needed for Exemption from Offset.

The following gives the evidence needed to exempt the widow(er) from the PSP offset:

Exemption Based on PSP Eligibility Date.--If the applicant claims to have been eligible for the pension before 12-1-82 or 7-1-83, but the pension did not begin until on or after 12-1-82 or 7-1-83, a letter from the employer or pension paying agency showing the date she was first eligible to retire and receive a pension is the desired proof.

Exemption Based on Receiving a CSRS Offset Pension.—The widow(er) must submit a statement from OPM stating that (s)he is receiving a CSRS Offset pension.

Exemption Based on Dependency .--If the applicant could be exempt from the PSP offset because she was dependent on the employee for one-half support and was eligible for the PSP before 7-1-83, she must complete Form G-134, Statement of Contributions and Support. Do not develop for Form G-134 if the applicant is entitled to a 1981 amendment tier II and tier I is reduced to zero by an SS benefit or employee annuity. There is no time limit for proving dependency in order to qualify for this exception.

Exemption Based on FICA Taxes Being Deducted.--If the applicant is receiving a PSP from a State or local employer and claims that FICA taxes were withheld on the day last worked, verify her claim with an AUX Widow Wage Record or a DEQY.

Exemption Based on FICA Taxes Being Deducted on Last Day of Employment.--If the applicant is receiving a PSP from a State employer and claims that FICA taxes were not deducted during the majority of working years but were deducted on the last day of employment, secure proof that FICA taxes were being deducted (e.g., a pay stub) and a statement from the agency paying the pension verifying her claim. It must state that the day last worked is included in the pension computation.

Exemption Based on FERS Election Before 7/1/88.--If the applicant claims to have elected FERS before 7/1/88 secure one of the following:

- An Election of Coverage Form (OPM Form 1555) signed by the claimant, or a statement from OPM, or the employing agency showing a timely or belated election was filed, or
- A FERS annuity statement from OPM showing an annuity commencement date before 1/1/88, or
- A statement from OPM showing an open season election was deemed to have been filed before 7/1/88, or
- A statement from the Merit System Protection Board (MSPB) showing a correction retroactive to 12/31/87 was allowed, or
- A DEQY showing that covered Federal employment began before 1/1/88, or
- A statement from OPM or the employing agency showing the Federal employment was covered under Social Security regulations.

Exemption Based on FERS Election in 1998.--If the applicant claims to have elected FERS in 1998 secure a DEQY showing the 60 months of covered Federal employment. If the DEQY does not prove the applicant's claim, secure one of the following: the following:

- An Election of Coverage Form (OPM Form 1555) signed by the claimant, or a statement from OPM, or the employing agency showing an election was filed, or
- A FERS annuity statement from OPM showing the commencement date, or
- A statement from OPM showing an open season election was filed.

Federal Employee Hired After 12/31/1983.--If the applicant claims to be exempt from offset because she was hired for federal employment after 12/31/1983, use the AUX WID wage record or a DEQY to verify her statement.

State or Local Employees Claiming Exemption Under P.L.108-203.-- If FICA taxes have been continuously deducted from the widow(er)'s wages for at least the last seven years, the claims representative will secure a statement from the employing agency giving this information.

If the applicant is unable to secure a statement, the field office will indicate, on APPLE, that headquarters will secure proof. In this situation, request a DEQY to verify the FICA deductions.

If FICA deductions were not made on a regular basis, a statement from the employing agency detailing the months in which FICA taxes were deducted is needed.

2.1.331 Public Service Pension Monitoring.

Public service pensions are monitored as follows:

Non-OPM Pensions.--The annual COLA operation identifies widow(er)s who are receiving a public service pension with a net tier 1 greater than zero. These cases are referred to the field offices for monitoring.

OPM Pensions.--Federal Public Service Pensions receive a COLA each December. The COLA operation determines the new PSP reduction amount based on the cost-of-living increase payable to federal employees.

Once each year, a match is run to compare our records to OPM's. Refer to RCM 6.8 for instructions on handling referrals generated by this run.

2.1.332 SS Benefits Subject to the PSP Provision

SSA's terminology for PSP reduction is "Government Pension Offset-GPO." When paying an RRB annuitant entitled to an SSA auxiliary or survivor benefit, always check the LAF CODE to determine if a GPO has been applied. If the LAF CODE is "SH," the GPO applies and the benefit is in suspense. When applying the SS reduction in tier I, remember that we only reduce for benefits payable.

Since our PSP reduction provisions are based on the SS Act, the conditions for reduction and exception apply to all auxiliary and survivor SS beneficiaries who filed their applications on or after 12-1-77. A GPO IS NEVER APPLIED TO A RIB OR DIB.

Appendices

Appendix A – Widow(er) Legislative History

Effective Date	Widow(er) Annuity Provision
1-1-47	Unremarried widow of completely insured employee eligible to receive annuity equal to 3/4 basic amount at age 65.
11-1-51	Dependent widower of completely insured employee eligible at age 65.
11-1-51	Benefit increased to full basic amount and Survivor O/M computation introduced. Survivor O/M widow annuity equal to 75% of deceased employee's PIA.
9-1-54	Age requirement for widow(er)s lowered to age 60. Widow(er)'s deemed age 65 for O/M purposes.
9-1-55	Dual benefit reduction in RR formula annuity no longer required.
9-1-57	Not "living with" widow(er)s can be included in Survivor O/M computation.
8-1-61	Widow(er)'s annuity increased to 82-1/2% of deceased employee’s PIA..
10-1-61	Remarried widow eligible on second husband's earnings if he dies within one year.
9-1-65	Widow(er) of transitionally insured employee eligible at age 72 (employee is deemed completely insured).
9-1-65	Survivor O/M can include:

	• Unmarried surviving divorced wife (married to employee at least 20 years); • Employee's widow who is now remarried if her remarriage occurred at or after age 60, and employee's widower who is now remarried if he remarried at or after age 62; and • Remarried widow(er) who is now unmarried (age at the time of remarriage is immaterial if the subsequent marriage has terminated).
11-1-66	"Living-with" no longer required to qualify for WIA.
2-1-68	De facto widow(er) eligible for an annuity.
2-1-68	Duration of marriage requirement lowered to 9 months (3 months if death was accidental).
10-5-72	Excluded from survivor O/M are: • Surviving divorced wife; • Remarried widow; and • Remarried widower.
1-1-73	At age 65, widow(er)'s share of deceased employee's PIA increased to 100% before the widow(er) age reduction. Widow(er) deemed age 62 for survivor O/M purposes.
1-1-73	Removal of duration of marriage requirement for accidental or military connected deaths provided that at the time of marriage, the employee could have been reasonably expected to live for at least 9 months.
1-1-75	The 1974 RRA revised the annuity calculation to Tier 1, Tier 2 and Vested Dual Benefit.
	The 1974 RRA did not provide a survivor O/M computation. However, if an IPI had been paid under the 1937 RRA, the additional amount was added to the survivor annutant's tier 2 for conversion cases.
3-1-77	Dependency not a requirement for a widower's annuity.
12-1-77	Non-dependent widowers subject to reduction in tier I for entitlement to a public service pension.

6-1-78	Include DRCs earned by employee in widow(er)'s tier I.
8-13-81	No survivor vested dual benefit (VDB) for those newly entitled to a survivor annuity after this date. However, those already entitled to as survivor annuity could be paid a VDB.
10-1-81	Added: • Surviving divorced spouse annuity at age 60 (tier 1 only); and • Remarried widow(er) annuity (tier 1 only). Legal or de facto widow(er) who remarries after attaining age 60 is eligible. Widow(er) who remarries before age 60 or surviving divorced spouse who remarries at anytime are eligible if marriage terminates. • Surviving divorced spouse married to employee less than 20 years subject to reduction in tier I for entitlement to a public service pension.
6-1-82	Retroactivity of aged widow(er) application limited to six months for tier I.
9-1-83	Retroactivity of tier I and tier II limited for applications filed 9-1-83 or later. Five full month railroad retirement disability waiting period applies for disabled legal or de facto widow(er) applications filed 9-1-83 or later.
1-1-84	Restrictions on remarriage eased for surviving divorced spouse, disabled widow(er), and disabled surviving divorced spouse.
1-1-91	Simultaneous entitlement of legal and defacto widow(er).
1-1-1991	The Omnibus Budget Reconciliation Act (OBRA) of 1990 repealed the more restrictive definition of disability for entitlement to disabled widow(er)'s benefits under the SS Act. Under the new law, vocational factors can also be considered for widow(er)'s remarried widow(er)'s and surviving divorced spouses when rating these individuals for Medicare under the SS Act.
1-1-2001	Definition of “full retirement age” gradually changes from age 65 to age 67 for survivor annuitants born after 1939. This does not affect annuity rates until 1-1-2003.

1-1-2002	Widow(er) may qualify for a survivor annuity based on the earnings record of a deceased employee who had less than 120 months of railroad service, but at least 60 months of railroad service after 1995 and a current connection with the railroad industry. Tier 1 is payable only when the employee had sufficient quarters of coverage based on combined railroad compensation and SSA wages.
2-1-2002	Widow(er) Initial Minimum Amount (WIMA) established for widow(er)'s, disabled widow(er)'s and surviving young mother/father's annuity rates payable from 2-1-2002.

Appendix B - Spouse Minimum Guaranty Amounts (Maximums Only)

Aged Widow's And Widower's Insurance Annuity

Amount	Effective Date
$ 40.00	11-1-51
54.00	9-1-55
59.50	1-1-59
60.50	2-1-59
66.60	6-1-59
69.90	2-1-60
74.80	1-1-65
83.60	1-1-67
92.40	1-1-68
104.50	2-1-68
112.20	1-1-69
138.00	1-1-70
151.70	1-1-71
182.10	9-1-72

188.50	1-1-73
203.30	1-1-74
217.50	3-1-74
225.70	6-1-74
246.95	1-1-75
266.75	6-1-75
283.36	1-1-76
301.51	6-1-76
311.85	1-1-77
330.22	6-1-77
342.32	1-1-78
364.54	6-1-78
376.64	1-1-79
413.93	6-1-79

Appendix C – Determining the PSP Amount When the Widow(er) Receives a Lump-Sum Payment

If the widow(er) receives a lump-sum payment for an unspecified period of time, determine the monthly PSP amount as follows:

1. Divide the lump-sum amount by the factor in the table shown below. Use the value that corresponds to the widow(er)'s age, in years, at the time the lump-sum payment is made.

Age When Lump sum was Paid	Factors for Lump Sum Award Dates 6/1/2011 or Later	Factors for Lump Sum Award Dates 6/1/2007 thru 5/31/2011	Factors for Lump Sum Award Dates 5/31/2007 or Earlier
40 or under	183.1	179.7	172.7

Age When Lump sum was Paid	Factors for Lump Sum Award Dates 6/1/2011 or Later	Factors for Lump Sum Award Dates 6/1/2007 thru 5/31/2011	Factors for Lump Sum Award Dates 5/31/2007 or Earlier
41	181.7	178.3	171.1
42	180.2	176.8	169.3
43	178.6	175.2	167.6
44	177.1	173.6	165.7
45	175.4	172.0	163.8
46	173.7	170.2	161.8
47	171.9	168.4	159.7
48	170.1	166.6	157.6
49	168.2	164.7	155.4
50	166.3	162.7	153.2
51	164.3	160.6	150.8
52	162.2	158.4	148.4
53	160.1	156.2	146.0
54	157.9	153.9	143.5
55	155.6	151.5	140.9
56	153.2	149.0	138.3
57	150.7	146.5	135.6
58	148.2	143.9	132.8
59	145.5	141.2	130.0
60	142.8	138.4	127.2
61	140.1	135.6	124.2

Age When Lump sum was Paid	Factors for Lump Sum Award Dates 6/1/2011 or Later	Factors for Lump Sum Award Dates 6/1/2007 thru 5/31/2011	Factors for Lump Sum Award Dates 5/31/2007 or Earlier
62	137.3	132.8	121.3
63	134.4	129.8	118.2
64	131.4	126.8	115.2
65	128.4	123.8	112.1
66	125.3	120.7	109.1
67	122.1	117.5	106.0
68	118.8	114.4	102.9
69	115.5	111.1	99.8
70	112.2	107.8	96.7
71	108.7	104.5	93.5
72	105.3	101.2	90.4
73	101.8	97.8	87.2
74	98.3	94.4	84.0
75	94.8	91.0	80.9
76	91.2	87.5	77.7
77	87.6	84.0	74.6
78	84.0	80.5	71.6
79	80.4	77.1	68.6
80 or older	76.8	73.6	65.6

2. If after multiplying the PSP rate by 2/3, the result is not a multiple of $.10, round up to the nearest $ .10.