

## 2.9.1 Scope of Chapter

This chapter contains information about when a residual lump sum (RLS) is payable, the benefits deducted from the gross RLS, and the priority of payments. Instructions for the payment of the RLS in both RRB and SSA jurisdiction cases are given. Detailed instructions on payment of the RLS to the employee's (EE) estate are given in RCM chapter 2.10.

## 2.9.2 The Residual Guaranty

Under the RR Act, employees and survivors are guaranteed to receive at least as much as the employee paid in RR taxes from 1937 through 1974.

A RLS may be payable if the following conditions are met:

- The employee died after 12-31-46; and,
- The benefits paid to an employee, auxiliary beneficiary or survivor are less than the gross RLS; and,
- A survivor with potential entitlement to a monthly annuity, payable by either the RRB or SSA, waives rights to the annuity in order for the RLS to be paid; and,
- No deductible benefits are currently payable or may be payable in the future. This includes cases in which a survivor is entitled to a zero annuity rate.

## 2.9.3 The Gross RLS Amount

- A. Military Service - Creditable military service (M/S) performed before 1957 may be included in the gross RLS. M/S performed after 1956 can only be included in the gross RLS if the EE has 120 months of RR service, including creditable M/S.
- B. Obtaining The Gross RLS - This amount should be shown on the Certification of Service and Compensation, Form G-90, dated 1-74 or later. The manual computation of the RLS should not be necessary; however, if an inquiry asking for the formula used to determine the RLS is received, the following can be used.

The gross RLS is equal to the following percentages of the employee's creditable compensation:

Percent	Period
4%	1-1937 through 12-1946

7%	1-1947 through 12-1958
7.5%	1-1959 through 12-1961
8%	1-1962 through 12-1965
8.1%	1-1966 through 12-1966
8.65%	1-1967 through 12-1967
8.8%	1-1968 through 12-1968
9.45%	1-1969 through 12-1970
9.85%	1-1971 through 12-1972
10.1%	1-1973 through 9-1973
5.35%	10-1973 through 12-1973
5.45%	1-1974 through 12-1974

The maximum compensation which may be credited per month for computing the RLS:

<b>Compensation</b>	<b>Period</b>
\$300	1-1937 through 6-1954
\$350	7-1954 through 5-1959
\$400	6-1959 through 10-1963
\$450	11-1963 through 12-1965
\$550	1-1966 through 12-1967
\$650	1-1968 through 12-1971
\$750	1-1972 through 12-1972
\$900	1-1973 through 12-1973
\$1100	1-1974 through 12-1974

The maximum gross RLS may be high as \$14,699.15 if the 10.1% rate applies through December 1974; it would be \$13,943.60 when the 5.35% rate applies from October 1973 through 1974.

## 2.9.10 Determining The Net RLS - EE Had 120 Service Months

The following section details the deductible benefits in a case in which the RRB paid retirement and survivor benefits.

## 2.9.11 Retirement Annuity Deductions

- A. 1937 Act Payments - The gross annuity rates, excluding supplemental annuities, paid to the employee and spouse from the ABD through 12-74 are deductible.
- B. 1974 and 1981 Act Payments - Effective with the later of 1-1-75 or the ABD, only benefits based on the EE's compensation are deductible. Refer to RCM 8.10, form G-63c instructions, for the computation of the deductible amounts.
- C. O/M Payments - Deduct the full amount.
- D. Waived Annuity Payments - The waiving of an annuity payment does not make the RLS payable nor does it affect the amount of the RLS. In computing deductible benefits, use the rate before waiver on form G-63c.
- E. Advancement of ABD to Increase Net RLS - When RUIA benefits were deducted from the employee's initial accrual check, the ABD may be advanced to avoid deducting the RUIA benefit if the following conditions apply:
  - The employee died before the annuity was awarded or before negotiating the accrual check; and
  - The person who will receive the accrued annuity is the same person in the same capacity as the RLS beneficiary.

If the above conditions are met, call the claims operations section in the Bureau of Unemployment and Sickness Insurance to secure the last day for which benefits were paid. Forward the case to P&S. P&S will determine if a change in the ABD is advantageous to the claimant.

If the above conditions are not met, deduct the full retirement annuity from the RLS as instructed in RCM 8.10.

- F. Tax Refund - The full tax refund is deductible.
- G. Lump-Sum - The full lump-sum is deductible even if the \$5.00 tolerance rule was applied and the person entitled to the lump-sum payment is not eligible for the RLS.

## H. Overpayments

1. **Unrecovered or Waived Overpayments:** Unrecovered overpayments made to an employee annuitant, his spouse, his entitled survivor, or the person who is, or would have been, entitled to the RLS are deductible. An overpayment made to another individual but caused by the person entitled to the RLS is also deductible. Any overpayment that has been waived is deductible from the RLS.

NOTE: Overpayments made to or caused by a person entitled to only a share of the RLS should first be deducted from that person's share. If the overpayment exceeds that person's share, the remaining overpayment should be deducted equally from the other RLS shares.

2. **Recovered Overpayments:** Recovered overpayments are not deductible. However, if an overpayment has been or is being recovered by actuarial adjustment, the total amount of the overpayment should be deducted from the RLS. The deductible monthly rate for the period beginning with the effective date of the actuarial adjustment is the monthly rate after reduction for the actuarial adjustment.

### **2.9.12 Survivor Annuity Deductions**

Even though survivor benefits are based on wages and compensation, the entire annuity rate is deducted from the gross RLS.

### **2.9.13 Non-Deductible Benefits**

Benefits which would not be deducted from the gross RLS are:

- Pensions (H cases)
- Supplemental Annuities
- Retirement Benefits payable after 1974 based on wages
- Vested dual benefits paid to the EE or spouse.

### **2.9.20 Payment Of The RLS**

If, after making all deductions, a net RLS remains, it would be paid in the priority given in this section. If no one is in a category, the priority of payment goes to the next class of beneficiaries.

Before computing the net RLS or initiating development action, examine the case to see if any of the following conditions are met. If so, the net RLS should be zero:

1. 1937 Act Case - The employee received a benefit for 3 or more years.
2. 1974 or 1981 Act Case - The employee received a benefit for 5 or more years.
3. Other Cases - A survivor received a annuity for 3 or more years.

### **2.9.21 Priority Of Payment**

The RLS is payable in the following order of precedence:

- Designated beneficiaries.
- Living-with widow(er). (Refer to RCM 4.4 for the definition of living-with.)
- Children of the deceased EE, with the exception of step-children.
  - See RCM 4.4 for the states in which an adopted child retains the right to inherit from a natural parent and for inheritance rights of children adopted by the EE.
- Grandchildren of the deceased EE.
- Parent or parents of the EE.
  - Submit the case to the attorney advisor for determining the inheritance rights of an applicant who is an adopting parent, or a parent whose child (the deceased EE) was adopted by another person.
- Brothers and sisters of the EE.
- The estate of the EE.

### **2.9.22 Application Forms**

An RLS cannot be paid unless an application for this payment, form AA-21, is filed with the Board by a person eligible to receive the payment. If an application for another benefit under the RR Act has already been filed by the eligible person due to the same employee's death, a new application is not required for the RLS. However, in these cases it may be necessary to request an AA-21 in order to obtain additional information. There is no time limitation for filing an application for an RLS payment.

AA-21 - An eligible person who wishes to receive any part of the RLS must complete and file an AA-21 with the Board.

### 2.9.23 Accepting Applications And Proofs Filed With SSA

- A. Applications - Although one or more beneficiaries may have filed an application with SSA, do not pay an RLS unless an RRB application for this payment has been filed with the Board. (See the preceding section.)
- B. Proofs and Evidence - Proof of the employee's death filed with SSA is sufficient to establish the death of the employee. In such cases, do not request POD from potential applicants. If a description of any other proofs filed with SSA (i.e., marriage, relationship, etc.) has been transcribed by an RRB or SSA employee from SSA records on a G-91 or SSA-704, accept these proofs provided they are otherwise acceptable under the Board's regulations.

When information on a G-91 indicates that SSA has determined the status of survivors under applicable State Law, use their determination in connection with the award of a residual payment, unless there is evidence in our file to the contrary. If SSA has not made a status determination, or none is pending, BSB must make an independent determination of the claimant's status.

### 2.9.24 Assignment Of Interest (Form G-131)

An eligible person may submit a Form G-131 instead of an application, if he wishes to assign his share of the RLS to another eligible applicant providing the share does not exceed \$500. The F/O will furnish Form G-131 to an eligible person, and inform him of the amount of his share, if that person expressed a desire to make an assignment. If a beneficiary whose share exceeds \$500 requests permission to assign his share, submit the case to the attorney advisor through the usual channels.

### 2.9.25 Types Of Evidence

Evidence	When Required
RR Applications (AA-21)	Always.
Death of Employee	Always (for presumptive death, see chapter 4.5.)
Employee's Compensation Record	Always.
Marriage	If the residual exceeds \$25 and the applicant is the widow or widower who is not the designated beneficiary.

Remarriage of Under Age 60 Widow(er) or Surviving Divorced Spouse	In a case in which the RLS is being paid without an election because of the widow(er)'s or surviving divorced spouse's remarriage. The evidence may be either the usual POM or the widow(er)'s signed statement giving the date and place of the marriage and the new spouse's name.
Living With	If the residual exceeds \$25 and the applicant is the widow or widower who is not the designated beneficiary, providing the employee died after 9-1958.
Relationship	If the applicant is a (1) relative of the deceased employee either by blood or adoption; and (2) is not the designated beneficiary; and (3) his share of the RLS exceeds \$25; or (4) relationship is questionable.
Guardianship (AA-5)	If a guardian has been appointed and is selected as representative payee.
Assignment of Interest (G-131)	If an eligible survivor wishes to waive his share in favor of another eligible survivor.
Election to Receive an RLS Instead of Future Monthly Benefits (G-126)	If a widow(er) or parent who has future eligibility wishes to give up those rights and have the residual paid in a single lump-sum, or a surviving divorced spouse who has future eligibility wishes to give up those rights so that someone else can be paid the residual.

### 2.9.30 Designated Beneficiaries

An EE may file a designation of beneficiary or beneficiaries for the RLS. (S)he may designate one or more persons as beneficiaries and specify the share that each is to receive. (S)he may also designate alternative beneficiaries in the event that the primary beneficiary is not living on the date the residual becomes payable.

To be acceptable, a designation of beneficiary must have been filed with the RRB after 6-22-48 and on or before the EE's date of death. An acceptable designation filed with the EE's employer can be considered to have been filed with the Board on the date it was filed with the employer.

A designation of beneficiary which was not signed by two witnesses, neither of whom is named as a beneficiary, is not valid unless its validity is proven to the satisfaction of the Board.

### 2.9.31 Forms Of Designation

- A. Form AA-11a - A designation of beneficiary is normally made on the AA-11a. (See Exhibit 1.) All AA-11a's are folderized; therefore, the folder should be carefully checked before making a residual payment.
- B. Written Statement - When the EE submits a written statement making an unambiguous designation it may be used as an AA-11a if:
- The designation is made in basically the same manner as if an AA-11a had been filed; and,
  - An AA-11a was never filed.

Refer this type of case to the section supervisor before development action is taken.

- C. Validity of Designation - If the validity of a designation is questionable, submit the case to the attorney advisor. Validity may be questioned if an AA-11a has not been properly completed and is stamped "Unacceptable." (Refer to RCM 10.2.)

NOTE: An employee may file more than one AA-11a or revoke a previous designation of beneficiary. The EE may make these changes with, or without the consent of previous beneficiaries. However to be valid, changes must be filed in the same manner as an original designation.

### 2.9.32 Priority Of Payment If There Is More Than One Designated Beneficiary

- A. Beneficiary is Alive When the RLS Becomes Payable - Primary beneficiaries (Sec. 1 of the AA-11a) receive the RLS before any alternate beneficiaries (Sec. 2 of the AA-11a). The primary beneficiaries must be alive on the date the RLS becomes payable. If a primary beneficiary dies after the RLS becomes payable, but before payment is made or the check cashed, the share is due his estate.
- B. Primary Beneficiary Dies Before RLS Becomes Payable - If a primary beneficiary dies before the date on which the RLS becomes payable, his share is payable to the other primary beneficiaries, if any. If none are named, the RLS is payable to alternate beneficiaries. If no alternate beneficiaries were designated, the RLS is payable to the EE's relatives.

### 2.9.33 Amount Payable

- A. Primary Beneficiaries - If only one primary beneficiary is entitled, (s)he is entitled to the full RLS. If more than one primary beneficiary is entitled, each shares in



the RLS equally unless the employee specified the percentage or amount to be paid each beneficiary.

- B. Alternate Beneficiaries - If there is no entitled primary beneficiary, follow the instructions in RCM 2.9.33A for distribution of the RLS.

### **2.9.35 Widow(er) Or Parent As Beneficiary**

This section explains the actions to be taken after it has been determined that a net RLS remains. If a request for the RLS has not been received from a potential beneficiary, do not initiate development action if:

- The RLS is \$10.00 or less; or
- The RLS is \$25.00 or less and the address of survivors or a current address for the deceased EE is not in file.

### **2.9.36 Notifying Widow(er) Or Parent Under 60 That RLS Is Payable RRB Has Survivor Jurisdiction**

- A. Notification When LSDP Award is Made - If a widow(er) (if no dependent parent) or parent (if no widow(er)) under age 60 survives, and the following three conditions exist at the time the LSDP is awarded, include form G-475 with the LSDP award.

- There is an RLS payable.
- No other survivor is actually or potentially entitled to survivor benefits, (e.g., unmarried children under age 22, or surviving divorced spouse who is unmarried.)
- The widow(er) or parent has not inquired about the RLS.

Form G-475 explains that there is an RLS payable immediately or monthly benefits payable in the future. It explains that if further information is needed about the opportunity to elect the RLS, the widow(er) or parent should contact the nearest Board office.

- B. Notification When Last Child Attains Age 22 - If there is a net RLS, but there is also a child between ages 18-22 at the time the LSDP is awarded, check to see if the widow(er) (if no dependent parent) or parent (if no widow(er)) will still be under 60 when the last child attains age 22. If so, enter an SIS call-up for the month of age 22 attainment. Use "99" as the reason code and enter "release RL-475 if applicable" as the reason for the call-up.

When the call-up expires, determine if an RLS is still payable. If so, form letter RL-475 should be released to the widow(er) or parent if they have not already inquired about the RLS. The file will not be controlled.

NOTE: Widow(er)s who remarry before age 60 can be paid the RLS without filing an election, unless they remarry after entitlement to a disabled widow(er)'s annuity.

- C. Notification Can Not Be Given - If there is a child between ages 18-22, and the widow(er) if no dependent parent survives or parent (if no widow(er) survives) will attain age 60 before the last child attains age 22, do not release the G-475 or RL-475. In such cases the widow(er) or parent does not have the option to elect the RLS.

Do not notify the widow(er) or parent that the RLS is payable if there is a designated beneficiary who would preclude payment based on relationship.

### 2.9.40 When An Election Is Required

An RLS election is required any time an employee, who died insured under the RR Act or SS Act is survived by a widow(er), surviving divorced spouse or parent who may be entitled to future monthly benefits under either Act upon attaining the qualifying age. If the widow(er) or surviving divorced spouse remarries before attaining the qualifying age, (s)he will not be considered to have future entitlement and no election is required. Refer to RCM 2.1 for marriage requirements.

NOTE 1: Effective 9-1-65, an election by a widow to have the residual paid instead of future monthly benefits has to be made before age 60. Prior to that date, if future monthly benefits were payable only under the SS Act, a widow under age 62 could make an election.

NOTE 2: Effective 6-29-71 thru 7-12-79, a child between age 18 and 22, not in full time attendance, could waive his rights to future monthly RR benefits, thus enabling a widow to file an election for the RLS. Effective 7-6-73 thru 7-12-79, such child could also waive his rights to future monthly SS benefits.

Payment of the RLS based on a child's waiver deprived that child of any future student benefits under either Act. Therefore, any child who previously executed a waiver, so that the RLS could be paid, was precluded from receiving monthly benefits.

Effective 7-13-79 a child between ages 18 and 22 was no longer permitted to waive his entitlement to future RR or SS benefits in order that the RLS be paid. Therefore, an election to permit payment of the residual may no longer be filed if there exists a child who has not yet attained age 22.

## 2.9.41 Who Must File An Election

- A. General - An election must be filed by the person who is under retirement age and who has eligibility to future monthly benefits under either the RR Act or the SS Act based on the employee's earnings record.

This would include a widow(er) who does not meet the living with requirement for receipt of the RLS but who does qualify for future monthly benefits. If the RLS is not payable to the widow(er), no election should be solicited.

Also included is a surviving divorced spouse. Although an election will not be solicited from her, (s)he must waive her rights to an annuity in order for the RLS to be paid to someone else, including the widow(er).

Widow(er)s and surviving divorced spouses who remarry before age 60 are not considered to have eligibility to future monthly benefits (unless they remarry after entitlement to a disabled widow(er)'s or disabled surviving divorced spouse's annuity) since the termination of the marriage cannot be presumed.

### B. Specific Cases in Which Elections Must Be Filed

1. Widow(er) Survives, No Parent - If the employee is survived by a widow(er) who has future eligibility to monthly benefits, has not attained age 60 and, in the case of a widow(er), the birth of a posthumous child is not expected, the widow(er) must file an election.
2. Widow(er) and Parent Survive - If the employee is survived by both a widow(er) and parent(s) who have not attained age 60, both the widow(er) and the parent(s) (if the parent is dependent) must file an election. If the widow(er) is under retirement age, and the parent is age 60 or over, the widow(er) must file an election and the parent must file a statement of non-dependency.
3. Parent Survives No Widow(er) - If only a parent who is under age 60 and claims to be dependent survives, the parent must file an election.
4. Divorced Spouse Survives - If the employee is survived by a divorced spouse who has future eligibility to monthly benefits, the surviving divorced spouse must file an election waiving her rights to future benefits in order for the RLS to be paid to someone else, including the widow(er).
5. If both a surviving divorced spouse and widow(er) survive, the widow cannot elect the RLS unless the surviving divorced spouse waives her rights to future benefits.

## 2.9.42 Effect Of Disability On Election Of RLS

A surviving divorced spouse or widow(er) who has not attained age 60 may elect to receive the RLS even though (s)he is disabled at the time the election is made. If a disabled widow(er) has already been awarded an annuity, she may at any time prior to attaining age 60, cancel the application for the disability annuity and elect to receive the RLS. However, all annuity payments received must be refunded.

## 2.9.43 When Election Not Required

The RLS may be paid without election only when there is no current or potential entitlement to monthly benefits on the deceased employee's account. This situation may exist because no eligible relatives survived the employee, or because entitlement of any eligible survivors to monthly benefits has ceased. An election is not required to pay the RLS in the following circumstances when the employee's eligible widow(er), surviving divorced spouse or parent survived and entitlement ceases:

- The widow(er) or parent annuitant becomes entitled to a higher survivor annuity on the earnings record of another employee; or
- The widow(er) or surviving divorced spouse dies; or
- There is no eligible widow(er) and the only eligible parent remarries (unless the marriage is to certain SS beneficiaries (see RCM 2.5)) or dies.
- The widow(er) or surviving divorced spouse is 60 or older and the public pension reduction in Tier I causes the annuity rate to be zero.
- The widow(er) remarries before attaining age 60, unless (s)he was entitled to a disabled widow(er)'s annuity before the marriage occurred, and there is no eligible surviving divorced spouse.
- The surviving divorced spouse remarries before attaining age 60 (unless (s)he was entitled to a disabled surviving divorced spouse's annuity before the marriage occurred) and there is no eligible widow(er).
- The only widow(er) is a remarried widow(er) or a surviving divorced spouse who is or becomes entitled to an SS benefit(s) which exceeds the employee's PIA.
- The only widow(er) is a remarried widow(er) or a surviving divorced spouse who is entitled to SS benefit(s) (other than a DIB) which reduce the annuity to zero.
- There is no eligible widow and the only eligible parent is a 1983 Amendment parent who is entitled to SS benefits (other than a DIB) which reduce the annuity to zero.
- There is no eligible widow(er) and the only eligible parent is a 1983 Amendment parent who is or becomes entitled to an SS RIB which exceeds the employee's PIA.

## 2.9.44 When A Valid Election Cannot Be Made

A valid election cannot be made when any of the following conditions exist:

- The widow(er), surviving divorced spouse or parent desiring to make the election has attained retirement age and is eligible for or potentially entitled to monthly annuities under the RR Act or monthly benefits under the SS Act; or
- The widow(er) and/or child of an employee is currently entitled to either a WCIA or CIA under the RR Act, or an MIB or an CIB under the SS Act; or
- There is a posthumous child of the deceased expected; or
- A widow(er) is receiving a survivor annuity deriving from a J&S annuity under the RR Act; or
- There is a surviving child under age 22, unless the child can never qualify for benefits under the RR Act or the SS Act; for instance, the child is married. An election cannot be made when a child age 18-21 survives, because the child may become entitled to benefits under the RR Act or the SS Act by becoming disabled.

## 2.9.45 How Election Is Made

An election to have the RLS awarded instead of future monthly benefits must be made on a G-126.

- A. When Election Form Must Be Filed - Generally, to be valid, a G-126 must be filed before the widow(er), surviving divorced spouse or parent attains age 60 in RRB jurisdiction cases. In SSA jurisdiction cases, the election must be filed before the widow(er) or surviving divorced spouse attains age 60 or the parent attains age 62.
- B. When Election Is Considered Timely Filed - If a widow(er), surviving divorced spouse or parent files an election after attaining the age of eligibility, the election is considered timely filed if:
1. Prior to attaining the age of eligibility, the person notified the Board, in writing, of his intention or desire to file an election and FILED the election within 90 days after he was furnished with the G-126, or
  2. The person had not been informed by the Board that an election must be filed on a G-126, at least 90 days before the end of the period in which a timely election can be filed, but filed the election before the award of monthly benefits and within 90 days after being furnished the G-126.

## 2.9.46 Effect Of Election

Payment of the RLS based on an election serves to deprive any beneficiary of any future benefits (s)he would have become entitled to, from the employee's death, under the RR Act on the basis of combined compensation and wage credits. However, an election does not deprive a widow(er), surviving divorced spouse or parent of any future benefits to which (s)he may become entitled under the SS Act, based solely on the employee's SS earnings.

After an election has been made and filed with the Board and payment has been made, the election cannot be revoked or changed in any way. Under a Federal statute the date on which "payment is made" is the date the check is cashed. Thus, the withdrawal or cancellation of an election may be permitted at any time before payment is made (check is cashed) provided the request by the person who made the election is received BEFORE payment is made.

Prior to 10-1-81, widow(er)s who remarried were asked to file a modified election in order to receive the RLS. Remarried widow(er)s who were previously paid the RLS based on a modified election can receive an annuity. Refer to RCM 2.1 for detailed instructions.

## 2.9.47 Forms And Form Letters Used In Election Cases

The following forms and form letters are used in election cases:

- A. Folder Documentation - Prepare Form G-63c pc in ALL residual cases. Complete this form in accordance with the instruction in this chapter and in Part 8.10. Prepare Form G-63b in addition to the G-63c pc when the employee or spouse was assessed RR work deductions. Complete this form in accordance with the instruction in Part 8.10.
- B. Request for Field Preparation of RLS Letter - Prepare Form G-64, Request for Field Preparation of Residual Payment Letter To Widow(er), when one of the letters in the RL-38 or RL-39 series must be released to a widow living in an area serviced by a F/O. See section 2.9.48 and 2.9.91 for information concerning rate entries.
- C. Election Form - G-126.
- D. Election Letters - When an inquiry is received from a widow who will be awarded the residual if she files an election, request the servicing F/O by means of Form G-64 to prepare whichever of the following letters is appropriate:
  - RL-38-F - Jurisdiction is with RRB and there is no insured status under the SS Act on wages alone.

- RL-38a-F - Jurisdiction is with RRB and there is an insured status under the SS Act on wages alone.

### **2.9.48 Estimating Rate Of Future SS Survivor Benefit**

If there is no wages only PIA 1 in file and the widow(er) could be entitled at SSA based on wages alone, use the current SS minimum rate as the estimate.

### **2.9.49 Selecting Election Letter**

When an inquiry about the residual payment is received from a widow who will be awarded the residual if she files an election, release a RL-85 to the widow and request the field by means of a G-64 to prepare the appropriate residual letter (see sec. 2.9.56). If the inquiry is received from a widow who will not be awarded the residual (i.e., not living-with or employee designated someone else as beneficiary) even if she files an election, or if the widow lives in an area not serviced by a F/O, furnish full information in a dictated letter, using RL-38-F or RL-38a-F as a guide.

If a guardian or other legal representative, or a person recognized under the RR Act requests residual information for the survivor for whom he is acting, take the same action described above; however, show the person's name in the address block of the G-64 above the widow; for example, "John Doe for Mary Smith." Follow the instructions in Chapter 5.10 when a request for an election form is received from someone who, allegedly acting on behalf of a mentally incompetent survivor, expresses a desire to waive the rights of the survivor and be paid the RLS.

### **2.9.50 Furnishing Election Form**

- A. Survivor Lives in Area Serviced by F/O - If a request for an election form is received by BSB in reply to the RLS information letter, notify the field of the request and ask them to secure a completed election form and otherwise develop for payment. Release Form RL85 to the widow.
- B. Survivor Lives in Area Not Serviced by F/O - If, as the result of an RLS letter, a request for an election form is received from a person who lives outside the continental U.S. and Canada, transmit the G-126 by means of a dictated letter which explains what is required for payment. Request whatever proofs are outstanding and enclose an AA-21 for completion, if necessary.

### **2.9.55 Relatives As Beneficiaries**

If there is no entitled designated beneficiary, entitlement passes to the EE's relatives. To qualify as a relative, an individual must:

- Have the required relationship status under the laws of the state in which the EE last lived. If both a legal and de facto widow(er) survive the employee, entitlement to an annuity for the de facto widow(er) must be determined before paying the RLS; and

NOTE: Neither a step-child, step-grandchild, step-brother/sister or step-parent can be eligible for the RLS on the basis of relationship.

- Not have been finally convicted of the felonious homicide of the employee. If such a charge is pending, payment cannot be made until (s)he has been cleared or no further action will be taken on the charge; and,
- Not be disqualified from inheriting the employee's intestate personal property under the laws of the state in which the EE last lived. If this disqualification is claimed, refer the case to the attorney advisor. Effective 2-1-68, this provision does not apply to widow(er)s who had entered into a valid marriage with the EE.

## 2.9.56 Relationship

- A. Employee Died Before 10-1958 - A person entitled to a residual payment by virtue of relationship to the deceased employee must be living on the date the RRB determines his relationship in order to bar entitlement of others possessing rights below his. The date "RRB determines relationship" has been interpreted to be the date on which an authorizer approves such person's claim for the RLS. For example: If an employee's widow files for the RLS but dies before the date on which her claim is approved for payment, the employee's children may file and become entitled. On the other hand, if the widow dies on or after the date her claim was approved for payment, entitlement to the RLS passes to her estate.
- B. Employee Died After 9-1958 - If a person entitled to an RLS on the basis of relationship to the deceased employee dies before negotiating the check for payment, the amount to which he would have been entitled becomes payable to other survivors in the same class, if any, or to persons in the next class.

The residual is payable in the following order of priority:

1. Widow or widower if living with the employee at the time of the employee's death. (See chapter 4.4 for definition of living with.) Remarriage before age 60 of a widow(er) does not bar entitlement to the residual if otherwise eligible. The widow receives the full share of the RLS.
2. Children of the deceased employee. Refer to RCM 4.4 for states in which an adopted child retains the right to inherit from a natural parent and for inheritance rights of children adopted by the EE. Step-children cannot receive the RLS. Children receive equal shares.
3. Grandchildren of the deceased employee. Grandchildren receive equal shares.



4. Parent or parents of the deceased employee. One parent receives the full share of the RLS. Two parents receive one-half share each.

Submit to the attorney advisor the question of determination of the inheritance rights of an applicant who is an adopting parent, or a parent whose child (i.e., deceased employee) was adopted by another person.

5. Brothers and sisters: Equal shares if more than one survive; full amount to sole survivor. Half blood brother and sisters share equally with full blood brothers and sisters.
6. Estate of deceased employee: Full amount. (See chapter 2.10.)

### 2.9.57 When Relationship Is Questionable

There are some cases in which an RLS is payable to a class of relatives, such as children of the deceased employee, and the legal relationship of one of the potential applicants is questionable or cannot be established. Do not develop the questionable relationship and eligibility of that person if:

- All eligible persons agree that the person with the questionable relationship is in the same degree of relationship to the deceased employee and is entitled to share in the benefit; and
- The person with the questionable relationship files a Form G-131 assigning his share (the amount which would be payable to him if his relationship was established) to an eligible applicant.

If the above requirements are met, pay the appropriate shares to the eligible applicants including the share assigned.

NOTE: This method CANNOT be used if an eligible person claims that the person with questionable relationship is not a relative in the same degree of relationship or if the individual shares exceed \$500. In such cases, relationship will have to be developed and either established or disallowed before we can pay the questionable share.

### 2.9.60 Estate As Beneficiary

The deceased employee's estate is entitled to the RLS under the following conditions:

- The employee designated his estate as the beneficiary; or
- In the case of an employee who died before 10-1958, the employee did not designate a beneficiary, and no relative who could qualify is living on In the case of an employee who died after 9-1958, the employee did not designate a beneficiary, and no qualified relative survived or each surviving relative who could qualify died before negotiating his check for the RLS.

### 2.9.61 Payment To Deceased Employee's Estate

When the estate of the deceased employee is entitled, payment is made as follows:

- A. Through Legal Representative - If a legal representative of the employee's estate has been appointed and has not been discharged, pay the residual to the legal representative. If appointment of a legal representative is expected, withhold payment to the estate until either proof of the appointment is received or it is established that no appointment will be made.
- B. Under "No Administration" Procedure - When there is no legal representative of the employee's estate and one is not expected to be appointed. The Board is authorized to act as administrator for the purpose of paying certain priority creditors and distributees.

NOTE: See chapter 2.10 for detailed instructions on payments to a deceased employee's estate.

### 2.9.62 Payment To A Deceased Beneficiary Estate

If the estate of a deceased beneficiary is entitled to a share of the RLS because the beneficiary died before negotiating the check, payment is made to the estate in the same manner as to the deceased employee's estate.

### 2.9.70 G-80 RLS Cases

A residual may be payable in cases in which the RRB does not have survivor jurisdiction (G-80 RLS). The G-80 RLS is payable in much the same way as the RLS. This section of the chapter primarily covers the differences in the handling of the RLS and G-80 RLS; however, the entire procedure for payment of the RLS to the widow(er) is being repeated as it is the most frequently used.

A G-80 RLS may be payable in the following situations:

- The employee has 120 CSM or has at least 60 CSM after 1995, but no current connection; or
- The employee has less than 120 CSM or 60 – 119 CSM, but less than 60 CSM are after 1995.

### 2.9.71 When To Investigate If A G-80 RLS May Be Payable

Investigate the possibility that a G-80 RLS might be payable if:

- The gross RLS is \$265.00 or more; and
- A specific inquiry has been received; or

- The LSDP application was transferred to SSA; or
- An inquiry is received from someone who previously submitted an application or general inquiry.

### **2.9.72 Information Needed From The F/O**

If the following information is not in file, it must be secured from the F/O:

- The name and address of the widow(er) or inquirer,
- The widow(er)'s date of birth,
- The widow(er)'s social security number,
- The employee's date of death.

### **2.9.73 Other Information Needed**

In order to determine the net RLS, take the following actions:

- Secure a full MBR on the EE's SSA number. This will show all benefits paid to the employee, auxiliary benefits paid and survivor benefits paid.
- Release a G-60s (code 12) on the EE's and widow(er)'s SSA numbers. This will give the employee's compensation and wages and SSA benefit information for the widow(er).

### **2.9.75 Determining The Net RLS**

The deductible retirement benefits are determined by whether or not the EE had 120 CSM. If the EE had 120 CSM, no SS benefits paid while the employee was alive are deducted from the gross RLS. Determine the deductible RR benefits in accordance with RCM 2.9.10 through 2.9.11.

### **2.9.76 The EE Had Less Than 120 CSM**

If the EE had less than 120 CSM, RR compensation would be transferred to SSA if he applied for benefits. Therefore, the deductible benefits paid to the EE and any auxiliary beneficiaries by SSA are determined on the basis of the proration that the EE's compensation has to the sum of his wages and compensation. However, if SSA did not use the railroad credits to establish insured status or compute the PIA, no SS benefits paid while the EE was alive are deductible from the gross RLS.

#### **A. RR Credits Used By SSA**

RR-RCU will appear on the ACCOUNT data line (RR field) of the MBR if railroad earnings were used to establish insured status and/or compute the PIA.

1. Compensation and Wages. - Section 2 of the G-90 will give the EE's total compensation. Section 7H gives the total wages.
2. Formula for Computing Deductible SS Benefits. - The following formula should be used to determine the factor which will give the portion of the SS benefit(s) paid based on compensation.

Compensation		=	Portion of the SS
-----			benefit paid based
Wages and Compensation			on compensation

Multiply this factor by the benefits paid to the EE, spouse, divorced spouse, children, etc. taken from the full MBR on the EE's SSA number.

NOTE: Computations should be made on form G-363. The most efficient means of determining the deductible amount is to compute the total benefits paid by SSA and multiply it by the factor.

**B. RR Credits Not Used By SSA**

RR-INV will appear on the ACCOUNT data line (RR field) of the MBR if the RR credits were not used to establish insured status or compute the PIA. Do not deduct any SSA benefit from the gross RLS.

**2.9.77 Survivor Benefits**

The total amount of benefits paid to survivors is deductible from the gross RLS, even if RR credits were not used by SSA. If the EE's date of death is 9-81 or later and (s)he was survived by a living-with widow(er), deduct the \$255.00 lump-sum death benefit, even if it is not shown as having been paid on the MBR. If the EE did not have an insured status at SSA, the lump sum would not be payable and should not be deducted from the gross RLS.

NOTE: If the MBR shows that a survivor is currently being paid, notify the inquirer that the RLS is not payable or deny the applicant.

**2.9.80 Payment To Widow(er)**

Unlike the regular RLS, the G-80 RLS can be paid to a widow(er) who has attained retirement age. The handling of the case depends on the widow(er)'s age.

### 2.9.81 Widow(er) Under Age 60

A widow(er) under age 60 must file an election to receive the G-80 RLS. In order to complete the G-64, attach the employee's G-90 to a form G-563, Request to BREA-DCC For Service and Compensation Data. On the G-563, ask for PIA 1 to be computed with wages and compensation and with wages only. Give the EE's date of death.

### 2.9.82 Widow(er) Age 60 But Under Full Retirement Age

If the widow(er) is age 60 but has not attained full retirement age, (s)he must be receiving an RIB or auxiliary benefit equal to or greater than the WIB payable on the employee's account in order for the G-80 RLS to be payable. This information can be found on SSA's MBR. If the G-80 RLS is payable, no election is required.

### 2.9.83 Widow(er) Full Retirement Age Or Older

If the widow(er) is full retirement age and not receiving a RIB, have BREA-DCC compute her PIA. If the EE's PIA is not in file, it must also be computed using both wages and compensation. If the widow(er)'s PIA is greater than the EE's, the G-80 RLS can be paid. No election is required.

### 2.9.85 Who Must File An Election

- A. General - An election must be filed by the person who is under retirement age and who has eligibility to future monthly benefits under either the RR Act or the SS Act based on the employee's earnings record.

This includes a widow who does not meet the living with requirement for the RLS but does qualify for future monthly benefits. As the RLS is not payable to the widow(er), no election should be solicited.

This also includes a surviving divorced spouse. Although an election will not be solicited from her, (s)he must waive her rights to an annuity in order for the RLS to be paid to someone else.

Widow(er)'s and surviving divorced spouses who remarry before age 60 are not considered to have eligibility to future monthly benefits unless they remarry after entitlement to a disabled widow(er)'s or disabled surviving divorced spouse's annuity since the termination of the marriage cannot be presumed.

- B. Specific Cases in Which Election Must Be Filed

1. Widow(er) Survives, No Parent - If the employee is survived by a widow(er) who has future eligibility to monthly benefits, has not attained retirement age, and, in the case of a widow, the birth of a posthumous

child is not expected, the RLS can be paid if the widow(er) files an election.

2. **Widow(er) Under Age 60 and Parent Under Age 62 Survive** - A not-living-with widow(er) who has future eligibility under the SS Act on the employee's earnings record, must file an election before the RLS can be paid. The fact that the election may destroy the employee's insured status, thus preventing the payment of monthly benefits to the surviving parent is immaterial.

If the widow(er) could never become entitled to future monthly benefits under the SS Act (9-month marriage requirement not met and cannot be deemed), only the parent must file an election.

3. **Widow(er) Is Under Age 60, Parent Is Age 62 Or Over**
  - a. If the widow(er) has future eligibility to monthly SS benefits and the residual can be paid at her election, a statement of non-dependency is required from the parent.
  - b. If the widow(er) is not eligible for future monthly benefits under either Act, and the parent is alleged to be non-dependent, the parent must sign a statement that he or she was not dependent on the employee. If, in such a case, it develops that the parent was dependent, the parent's entitlement or potential entitlement must terminate before the RLS can be paid.
4. **Divorced Spouse Survives** - If the employee is survived by a divorced spouse who has future eligibility to monthly benefits, the surviving divorced spouse must file an election waiving her rights to future benefits in order for the RLS to be paid to someone else.

### **2.9.86 When Election Not Required**

The RLS may be paid without election only when there is no current or potential entitlement to monthly benefits on the deceased employee's account. This situation may exist because no eligible relatives survived the employee, because he was not insured at death, or because entitlement of any eligible survivors to monthly benefits has ceased. An election is not required to pay the RLS in the following circumstances when the employee's eligible widow(er), surviving divorced spouse or parent survived and entitlement ceases:

- The widow(er) or surviving divorced spouse age 65 or over becomes entitled or potentially entitled to an RIB that equals or exceeds the widow(er)'s insurance benefit; or

- The widow(er) or surviving divorced spouse under age 65 becomes actually entitled to an RIB that equals or exceeds the widow(er)'s insurance benefits; or
- An eligible widow(er) or surviving divorced spouse does not survive and the eligible parent;
  - Remarries before attaining age 62 (if the parent remarries at or after age 62, it is possible that entitlement to the parent's benefit may continue, depending on the SS benefit status of the parent's new spouse. See RCM 2.5.5;
  - Becomes entitled or potentially entitled at age 65 or over to an RIB that equals or exceeds the parent's insurance benefits; or
  - Becomes actually entitled before age 65 to an RIB that equals or exceeds the parent's insurance benefit.

NOTE: If future entitlement to a monthly survivor benefit of either the eligible widow(er), surviving divorced spouse or eligible parent terminates because of entitlement to a DIB, obtain an election before paying the RLS.

### **2.9.87 When A Valid Election Cannot Be Made**

A valid election cannot be made when any of the following conditions exist:

- The widow(er) surviving divorced spouse or parent desiring to make the election has attained retirement age and is eligible for or potentially entitled to monthly annuities under the RR Act or monthly benefits under the SS Act; or
- The widow and/or child of an employee is currently entitled to either a WCIA or CIA under the RR Act, or an MIB or an CIB under the SS Act; or
- There is a posthumous child of the deceased employee expected; or
- A widow(er) is receiving a survivor annuity deriving from a J&S annuity under the RR Act; or
- There is a surviving child under age 22, unless the child can never qualify for benefits under the RR Act or the SS Act; for instance, the child is married. An election cannot be made when a child age 18-21 survives, because the child may become entitled to benefits under the RR Act or the SS Act by becoming disabled.

### **2.9.88 How Election Is Made**

An election to have the RLS awarded instead of future monthly benefits must be made on a G-126.

- A. When Election Form Must Be Filed - In G-80 RLS cases, the election must be filed before the widow(er) or surviving divorced spouse attains age 60 or the parent attains age 62.
- B. When Election Is Considered Timely Filed - If a widow(er), surviving divorced spouse or parent files an election after attaining the age of eligibility, the election is considered timely filed if:
1. Prior to attaining the age of eligibility, the person notified the Board, in writing, of his intention or desire to file an election and FILED the election within 90 days after he was furnished with the G-126, or
  2. The person had not been informed by the Board that an election must be filed on a G-126, at least 90 days before the end of the period in which a timely election can be filed, but filed the election before the award of monthly benefits and within 90 days after being furnished the G-126.

### 2.9.89 Effect Of Election

Payment of the RLS based on an election serves to deprive a widow(er), surviving divorced spouse or parent of any future benefits (s)he would have become entitled to, from the employee's death, on the basis of combined compensation and wage credits. However, an election does not deprive a widow(er), surviving divorced spouse or parent of any future benefits to which (s)he may become entitled under the SS Act, based solely on the employee's SS earnings.

After an election has been made and filed with the Board and payment has been made, the election cannot be revoked or changed in any way. Under a Federal statute the date on which "payment is made" is the date the check is cashed. Thus the withdrawal or cancellation of an election may be permitted at any time before payment is made (check is cashed) provided the request by the person who made the election is received BEFORE payment is made.

### 2.9.90 Forms And Form Letters Used In Election Cases

The following forms and form letters are used in election cases:

- A. Folder Documentation - Prepare Form G-63c pc in ALL residual cases. Complete this form in accordance with the instruction in this chapter and in Part 2.10. Prepare Form G-363 in addition to the G-63c pc when the employee or spouse received SS benefits based on wages and compensation.
- B. Request for Field Preparation of RLS Letter - Prepare Form G-64 when one of the letters in the RL-38 or RL-39 series must be released to a widow living in an area serviced by a F/O. See section 2.9.48 and 2.9.91 for information concerning rate entries.



- C. Election Form - G-126.
- D. Election Letters - When an inquiry is received from a widow who will be awarded the residual if she files an election, request the servicing F/O by means of Form G-64 to prepare whichever of the following letters is appropriate:
- RL-39-F - Jurisdiction is with SSA but there is no insured status on wages alone.
  - RL-39a-F - Jurisdiction is with SSA, there is an insured status on wages alone, and the amount of the benefit based on wages alone is less than the benefit based on combined wages and compensation.
  - RL-39b-F - Jurisdiction is with SSA, there is an insured status on wages alone, the amount of the benefit based on wages alone is equal to the benefit based on combined wages and compensation, and an application and/or proofs are required from a widow living in the U.S. (except Alaska and Hawaii) or Canada.

If a widow lives in an area not serviced by a F/O (including Alaska and Hawaii) prepare a dictated letter using the appropriate letter as a guide. If a letter using the RL-39b-F as a guide is released, include the election Form G-126 with the letter. This is done because the widow will not lose anything by electing the residual since the benefit rate based on wages alone is equal to the rate based on combined wages and compensation.

### **2.9.91 Estimating Rate Of Future SS Survivor Benefit**

When an inquiry about the RLS is received from a survivor who on attaining retirement age may be entitled to an annuity under the SS Act based on wages alone, compute this rate by multiplying the "wages only" PIA by .71500. This entry will be used on the G-64.

### **2.9.95 Notifying SSA That An RLS Has Been Paid**

If a widow(er) or parent elects the RLS and the EE has one or more quarters of coverage, send an RR-24 to the program service center which services the EE's SSA number.

### **2.9.100 Awarding The RLS**

The majority of RLS payments can be awarded through SURCAL using forms G-359a and G-359b (see RCM 9.1 Appendix B).

Cases which cannot be paid through SURCAL must be paid on form G-359 (see RCM 8.10). See exhibit 4 for code paragraphs to be included on a manual award letter.

