

## 1121.05 Background

Under the 1988 amendments to the Railroad Retirement Act, effective 12-1-88, an employee and spouse may continue to work for their last pre-retirement non-railroad employer and receive an annuity. However, work deductions are applied to tier II and the supplemental annuity based on last person earnings (LPE). If the LPE exceed the yearly earnings exempt amount, they may also cause regular work deductions to apply to tier I and the vested dual benefit.

Unlike deductions for excess earnings, LPE work deductions apply regardless of the annuitant's age, and regardless of the amount of the LPE. LPE work deductions are applied on a monthly basis, rather than on an annual basis.

## 1121.10 Last Person Earnings

Last Person Earnings (LPE) is the gross earnings after the ABD from the last person, company or institution an employee or spouse was employed with before the annuity began. Earnings from LPE employment in the ABD month will not cause a reduction if the ABD follows the date last worked in LPE. Refer to [FOM 1 330.15.1](#) for a broader explanation on what constitutes LPE.

Self-employment (SEI) activities are not LPE. If the annuitant has both SEI and LPE in the same earnings year, a net loss in SEI (reported on Form 1040 Schedule SE) cannot be deducted from earnings from an LPE employer (wages reported on Form W-2) when determining the amount of LPE earnings.

For the purpose of computing the reduction to tier 2 and the supplemental annuity:

- A "Work Deduction Insured Status" is not required to apply LPE work deductions; and,
- The annual exempt amounts listed in Appendix A and the monthly exempt amounts listed in Appendix B do not apply to LPE earnings; and,
- Deductions are not applicable for months in which no services are rendered.
- Deductions apply, even if the annuitant has attained full retirement age.

If the amount of the LPE earnings exceeds the annual exempt amount, those earnings will also create tier 1 and vested dual benefit work deductions

## 1121.15 Special Payments and Employment

- A. Deductions for Months in Which Services Rendered - LPE work deductions are to be applied for any month after the ABD in which an annuitant performs service

for pay, regardless of when the payment is actually made, as in the following examples.

1. Teacher - If a teacher receives his or her salary in 12 monthly installments, but only works in 9 months, work deductions only apply to the 9 months in which the teacher actually worked.
2. Salesman - If a salesman receives commissions in 1 month for sales made in prior months and does not work in that month, LPE work deductions only apply to the months in which the annuitant actually worked. Commissions should be attributed to months in which the salesman did work.

The annuitant's signed report of earnings (usually Form G-19L) is sufficient for RBD's assessment of work deductions. However, RBD may ask you to contact the LPE employer when there is conflicting evidence in file.

#### B. Contributions to a 401(k) Plan from Last Person Earnings

If an annuitant has contributions to a plan under section 401(k) of the Internal Revenue Code, LPE work deductions are to be based on the earnings amount before deduction for the 401(k) contribution.

#### C. Earnings from Employment Outside of the U.S.

Foreign currency must be converted into U.S. dollars. Whenever possible, contact representatives should do the conversion and annotate Remarks when entering the average LPE salary in on-line applications. If the conversion is not done, the application must be coded for manual review on the Form G-230 screen.

When the annuitant provides the final earnings report, RBD will use the rate of exchange that was effective on the first business day of the earnings year.

## 1121.20 Calculations

### 1121.20.1 Reduction In The Employee Annuity For Last Person Earnings

The employee's tier II and supplemental annuity are reduced by \$1.00 for every \$2.00 of the employee's last person earnings (LPE). If the result of dividing the LPE by 2 is not a multiple of \$1.00, the deductible earnings are rounded down to the nearest multiple of \$1.00. For example, if the employee had an LPE of \$403.00 in a month, the deductible earnings would be \$201.00.

The deductions cannot exceed 50% of the total of the net tier II and supplemental annuity. Work deductions are applied to the amount of the supplemental annuity after any reduction for an employer pension, but before any legal process deductions or

cutback. If the deductible earnings are less than half of the total of the tier II and supplemental annuity, the deduction is applied proportionately to the two components. (An example of this prorated deduction follows the discussion of LPE deductions in the spouse annuity.)

If only the spouse has LPE earnings, no deduction is applied to the employee annuity.

Until a final report of earnings is obtained, temporary work deductions are applied based on average monthly earnings.

### 1121.20.2 Reduction In The Spouse Annuity For Last Person Earnings

The spouse tier II is reduced if either the employee or spouse has LPE.

- A. Only the Employee or Spouse Has LPE - The spouse tier II is reduced by \$1.00 for every \$2.00 of LPE, not to exceed 50% of the spouse tier II.
- B. Both the Employee and Spouse Have LPE - The spouse tier II is reduced by \$1.00 for every \$2.00 of the employee's LPE earnings and \$1 for every \$2 of the spouse's LPE earnings, not to exceed 50% of the spouse's tier II.

Until a final report of earnings is obtained, temporary work deductions are applied based on average monthly earnings.

EXAMPLE 1: An employee stopped LPE employment on 12-15-90, earning \$401.00 for the month. He and his wife filed annuity applications the same day. They requested the earliest ABD of 12-1-90. LPE work deductions apply to his tier II, his wife's tier II and the supplemental annuity for any annuity payment due for December.

The LPE WD is \$200.00 or one-half the LPE earnings. (Any remaining cents are dropped.) Both annuitants have components large enough to permit recovery of the LPE WD in full, without limiting the deduction to 50% of the annuity components. The annuity components and deductions are as follows:

	<b>COMPONENT</b>	<b>LPE WD</b>		<b>NET COMPONENT</b>
EE T2	\$1,000.00	\$191.75	*	\$ 808.25
Supp	43.00	8.25	*	34.75
MA T2	450.00	200.00		250.00
Total	1,493.00	\$400.00		\$1,093.00

- The employee's LPE work deduction is the product of one-half the LPE, and the ratio of each LPE WD component to the sum of the LPE WD components.

For example, the EE T2 LPE WD is the product of \$200.00 times (\$1,000.00/\$1,043.00), which equals \$191.75.

LPE work deductions apply on the basis of a formula that can produce higher deductions for the spouse than for the employee. (See example 2 below.) A spouse who is also receiving an employee annuity could have a larger LPE work deduction because her tier II includes a restored amount to compensate for the tier I offset.

**EXAMPLE 2:** A male employee continues LPE employment and expects to earn \$1,000.00 per month. He has a small tier II of \$20.00 and is not entitled to a supplemental annuity.

His wife is not employed. She receives an annuity as a railroad employee which zeroes out the tier I of the annuity she receives as a spouse. She has a tier II of \$400.00 after restoration of the EE annuity deducted from her tier I.

Although half the LPE earnings is \$500.00, neither annuitant can lose more than 50% of tier II. While the employee's tier II is subject to an LPE work deduction of \$10.00, the spouse's tier II is subject to a deduction of \$200.00.

If the employee (male, in this example) files for a spouse's annuity, that annuity would also be subject to LPE work deductions without regard to the deductions applied under his own claim number.

Where more than two annuities (i.e., a working male employee's own employee annuity, his female spouse's spouse annuity, and the male employee's own spouse annuity on his female spouse's earnings record) are subject to the same LPE work deductions, the total amount of annuities reduced for LPE cannot exceed the amount of the actual earnings. The LPE reductions are to be applied in the following order up to the amount of the LPE earnings total:

- 1) the worker's own employee annuity;
- 2) the spouse annuity on the worker's earnings record;
- 3) the worker's own spouse annuity.

**EXAMPLE:** The working employee earns \$700 per month in LPE. The working employee's tier 2 is \$600; the spouse annuity tier 2 is \$270, and the working employee's spouse tier 2 on his spouse's earnings record is \$600. No supplemental annuities are payable. Under normal conditions, the working employee's tier 2 is reduced by \$300, the spouse's tier 2 is reduced by \$135, and the working employee's own spouse tier 2 is reduced by \$300. However, because the total amount being reduced (\$300 + \$135 + \$300 = \$735) exceeds the LPE earnings (\$700), the employee's own spouse annuity tier 2 can be reduced by only \$265 (\$300 + \$135 + \$265 = \$700).

Where the rounding down of earnings causes a LPE reduction slightly less (usually \$1 or \$2) than the earnings total, it is not necessary to apply a LPE reduction for the amount of that rounding difference to the other earnings record. If the worker's own spouse annuity is not being reduced for LPE due to this provision, a note to file should be placed in that folder explaining why LPE work deductions are not being applied to the spouse annuity.

## 1121.30 Temporary Deductions

If an employee or spouse is continuing in LPE when the annuity is awarded or when the annuitant returns to last person earnings (LPE), temporary deductions are applied to tier II and the supplemental annuity to prevent an overpayment when the case is handled for a final adjustment. The amount of the temporary deduction is based on the average monthly LPE.

Temporary deductions ordinarily apply to LPE in the current year. They may also be used, if necessary, to avoid making an overpayment in a previous year, if it is not possible to make a final adjustment for LPE earnings at the time the annuity is being certified. LPE earnings in excess of the yearly exempt amount may also result in temporary work deductions for excess earnings in tier I and the VDB.

### 1121.30.1 RASI Awards

- A. General - RASI applies temporary LPE work deductions to the employee and/or spouse if their applications indicate LPE employment after the ABD. Deductions are based on the average monthly earnings indicated on the applications. If the LPE earnings are not available, RASI reduces tier II and supplemental annuity by the maximum 50% deduction. If LPE employment ceases during the accrual period of the initial award, RASI will apply temporary work deductions and remove them beginning with the month following the date last worked in LPE.

NOTE: RASI's LPE work deduction processing is independent of the system's excess earnings processing. LPE/non-railroad data from the application is not considered when RASI calculates deductions for excess earnings.

- B. Spouse LPE TWDs Based on Employee's Earnings - RASI applies work deductions to the spouse annuity when the employee has LPE. If the employee's earnings amounts are not available in the RASI master, RASI assumes that the employee's LPE are twice the sum of the employee tier II and supplemental annuity work deduction amounts, and applies deductions to the spouse tier II based on assumed earnings. If the employee's actual or assumed earnings are unavailable, RASI reduces the spouse tier II by the maximum 50% deduction.

If work deductions had been applied to an employee annuity but the Research record indicates that they have been removed, RASI will apply LPE work deductions based on the spouse LPE only, and will produce an award message

requesting examiner review. However, work deductions will be applied to the spouse annuity for the employee's LPE, if:

- The employee has continuing LPE;
  - The employee has a net tier II of zero; and
  - The spouse has a net tier II greater than zero due to an employee annuity restored amount.
- C. Both Employee and Spouse Have LPE - RASI computes a work deduction amount for the spouse based on the combined earnings of the employee and spouse, rounded down to the dollar. As a result, RASI's LPE TWDs for the spouse may be slightly overstated if the LPE deduction is less than 50% of the spouse's tier II.
- D. Prior year TWDs - If LPE work deductions are applied in a year prior to the voucher year, RASI produces an award review message advising that permanent work deductions should be applied for a prior year. RASI cannot apply permanent work deductions. In this situation, the case will not be monitored mechanically for a final report of the prior year's earnings.
- E. Two LPE employers - If the application indicates two periods of non-railroad employment, RASI will use the combined earnings in the LPE temporary deductions for any overlapping months. RASI will exclude the appropriate LPE salary the month after an LPE employment period ends.
- F. Employment after the ABD - If the employee or spouse has a period of non-railroad employment that begins after the ABD, RASI assumes the employment is not LPE and does not apply LPE deductions.

### 1121.30.2 Applying TWD's in ROC or PC Awards

Temporary deductions for LPE are applied to initial manual awards based on the average monthly earnings on the annuity application. If the applicant provided a monthly breakdown of prior year earnings (e.g., on Form G-19L), the claims examiner will calculate final work deductions for the ABD year.

### 1121.30.3 Partial Rate Exceeds Final Rate

A partial annuity rate might exceed the final rate if the IMPACT or SPAR did not include deductions for LPE. RASI produces a compute-only award, requiring manual award action by a claims examiner.

Because temporary work deductions are based on estimated earnings, the annuity cannot be considered overpaid until there is a final report of earnings. The claims examiner may therefore withhold any other accrual in the case as a temporary work deduction.

EXAMPLE: LPE TWDs of \$40.00 should have been made on an employee's final award, but were omitted in the partial award. The final tier I is \$25.00 higher than the MARC tier I. When recertifying the annuity, the examiner would use \$25.00 as the tier II LPE work deduction from the ABD through the accrual period. The examiner would subtract the full LPE TWD (\$40.00) when setting up the recurring annuity rate.

The award letter will explain that we were unable to withhold the full amount deductible, but that the computation will be reviewed in the following year when a final earnings report is made.

If the employee stopped working in LPE after the ABD and RASI was not able to withhold TWDs, TWDs may be withheld later in the year.

EXAMPLE: TWDs should have been applied in January through March. RASI produces a comp only award in April. TWDs can be applied in May and removed in August.

#### 1121.30.4 Cases in Payment Status

If an annuitant resumes LPE after the annuity is in force, examiners withhold temporary LPE work deductions effective with the award voucher month.

If an annuitant notifies the RRB that he expects to earn more in LPE than he previously estimated, the examiner adjusts the annuity rate only if:

- Less than 50% of the tier II and supplemental annuity are being withheld; and
- The revised estimate would result in a change of more than \$1.00 per month in the annuity payments.

In all other cases, the examiner will acknowledge the annuitant's revised estimate and note that any required adjustments will be made after the end of the year when the annual report of earnings is reviewed.

#### 1121.31 Field Office Action When Earnings Report Received

When a report of excess earnings from a Form G-19L or other report is received from a retirement annuitant, enter the earnings information into SPEED. See [FOM 1-15125.5](#) for detailed instructions for accessing and using SPEED. Field offices should scan and image all earnings documents as they are received.(See [FOM 1-1115.35.3](#)). Screen prints, route slips, envelopes, or other unnecessary attachments **should not be** scanned with earnings reports.

## 1121.40 Final Work deductions

### 1121.40.1 Control for Final Adjustment

Cases that have been adjusted for temporary LPE work deductions are controlled for an adjustment for final earnings. Research maintains work deduction monitoring codes, amounts and effective dates in its record.

Annuitants who had recurring or nonrecurring LPE TWDs on record at the end of the year will receive a questionnaire (Form G-19L) on which to make a final report of earnings. Spouses will receive a questionnaire if the Research record indicates that LPE deductions are based on the spouse's own LPE.

Applicants who expect their annuity to begin in the year prior to filing, and who had LPE earnings after the ABD, are asked to make a final report of earnings when they file their application.

Annuitants having LPE earnings and an ABD in the year of filing, but who are not paid final until the following year, will not be included in the ABD year monitoring program. In these cases, examiners manually release Form G-19L to secure a final earnings report for the ABD year.

### 1121.40.2 Earnings Reports

#### A. General

After the end of each year, annuitants are required to report the final amount of their earnings for the previous year. As part of its monitoring program, the RRB releases Form G-19L to secure this report from annuitants who had LPE in the previous year. Form G-19L also collects information on regular and disability excess earnings.

The first annual LPE monitoring was for 1989. Most final earnings reports for December 1988 were secured by field offices as a supplement to the employee or spouse annuity application.

In addition to annual earnings information, a report of LPE earnings for an earlier year must show the actual gross earnings for every month that the annuitant worked in LPE, the employer's name and address and an estimate of average monthly earnings. Annuitants receiving Form G-19L are instructed to return completed earnings reports to the field office address shown on the back of the form. Return envelopes are provided. A second copy of each Form G-19L is provided to field offices for use in tracing, if necessary. The form can also be found on RRAILS. Use Form G-19L, Annual Earnings Questionnaire and Form G-19L.1, Instructions for Completing the Annual Earnings Questionnaire, for retirement annuitants in LPE for the year in question when:

1. The annuitant did not make an earnings report for an earlier year.



2. The annuitant did not make a timely report of LPE; or
3. The annuitant says he did not receive a Form G-19L (an indication that he was bypassed in the annual earnings operation).

Form G-19F is also used to request annual earnings information. It is designed for use during the initial application process to request last pre-retirement non-railroad employment earnings in retirement cases when:

1. The ABD is in a prior year, or
2. The ABD is in the current year and the applicant has ceased work after the month of the ABD.

B. Discrepant Report of Earnings - A discrepancy between the annual earnings amount reported to SSA and the sum of the monthly earnings amounts may need to be investigated. The reported earnings are used to adjust the annuity unless:

- The total earnings reported for the year are less than the earnings reported to SSA; and
- The annuity is subject to less than the maximum offset of 50% of tier II and the supplemental annuity using the earnings reported to the RRB; and
- The difference between the total earnings reported to RRB and SSA is more than \$50.00 (twice the tolerance amount for overpayments.)

If SSA employment data shows that all of the earnings are from LPE employment, the field office is asked to contact the annuitant to resolve the discrepancy.

### **1121.40.3 Final Adjustment for LPE Earnings**

The final LPE adjustment compares what was paid with what should have been paid based on actual rather than estimated LPE. If there was an underpayment because too much money was withheld for temporary deductions, the additional amount due will be certified for payment at the time the final adjustment is made. If there is an overpayment, the overpayment will be recovered according to the usual overpayment recovery procedure.

If an annuitant is uncooperative in providing a breakdown for the yearly earnings, work deductions should be assessed by dividing the annual amount by 12 to determine the monthly LPE amount.

### **1121.50 When Annuitant Ceases LPE**

If an annuitant reports that he has stopped LPE employment, the claims examiner will recertify the annuity to remove temporary LPE deductions. The adjustments effective

with the month after the date last worked. If the annuitant expects no LPE in the current year, the case will be coded to prevent the release of a questionnaire at the beginning of the following year. If the annuitant had LPE in the current year, the case will be coded as having had nonrecurring work deductions. This will indicate that, although LPE work deductions are no longer in effect, a final report of earnings must be obtained for the current year.

When an annuitant reports that he has stopped LPE employment, enter the earnings information into SPEED. See [FOM 1-15125.5](#) for detailed instructions for accessing and using SPEED.

## **1121.55 Examiner Handling of LPE Cease Work Reports**

When SPEED cannot process the LPE cease-work report, the case is referred off for manual handling. Examiners should use the same ALTA code paragraphs and RRAILS letters as SPEED uses. SPEED uses the following ALTA code paragraphs when creating a ROC award to remove LPE work deductions:

### 5005 Employee Cease Work LPE – Removing Employee Tier 2 WD

Since you stopped working for your last person employer on (1), the reduction applied to your Tier 2 has been removed effective (2). Please notify us of any changes in earnings or employment involving your last person employer.

- 1) Enter date last worked
- 2) Enter effective date

### 5006 Employee Cease Work LPE – Removing Employee Sup WD

Since you stopped working for your last person employer on (1), the reduction applied to your supplemental annuity has been removed effective (2). Please notify us of any changes in earnings or employment involving your last person employer.

- (1) Enter date last worked
- (2) Enter effective date

### 5007 Employee Cease Work LPE – Removing Employee Tier 2 & Sup WD

Since you stopped working for your last person employer on (1), the reduction applied to your Tier 2 and supplemental annuity has been removed effective (2). Please notify us of any changes in earnings or employment involving your last person employer.

- 1) Enter date last worked
- 2) Enter effective date

5008 Employee Cease Work LPE – Removing Spouse Tier 2 WD

Since the railroad employee stopped working for his/her last person employer on (1), the reduction applied to your Tier 2 has been removed effective (2).

- 1) Enter date last worked
- 2) Enter effective date

5009 Spouse Cease Work LPE – EE not in LPE - Removing Spouse Tier 2 WD

Since you stopped working for your last person employer on (1), the reduction applied to your Tier 2 has been removed effective (2). Please notify us of any changes in earnings or employment involving your last person employer.

- 1) Enter date last worked
- 2) Enter effective date

If the examiner is creating a PREH Update award only for the spouse, the RRAILS SPEED letter RL-169SR should be released to the spouse. The inserts for this letter is either code paragraph 5012 or 5020 as described below.

5012 Spouse Cease Work LPE - EE Still in LPE

We have received notification that you stopped working for your last person employer on (1). The reduction applied to your Tier 2 cannot be removed at this time because the railroad employer is still working for his/her last person employer. Please notify us of any changes in earnings or employment involving your last person employer.

- 1) Enter date last worked

5020 Employee Cease Work LPE – Spouse Still Working

We have received notification that the railroad employee has stopped working for his/her last person employer. The reduction applied to your Tier 2 cannot be removed at this time because you are still working for your last person employer. Please notify us of any changes in earnings or employment involving your last person employer.

Also, SPEED creates PREH update only awards when the LPE work deductions cannot be removed from the spouse annuity, (either the employee or the spouse is still working). Examiners should not create a PREH update award for the spouse in this situation. Instead, examiners should use the PREH on-line correction facility to update the SP-WD-MONIT-FLG code, (3200 screen) and release the appropriate award letter to the spouse using either code paragraph 5012 or 5020 above.