

935.5 General

935.5.1 "Living With" Defined

A spouse or widow(er) is "living with" if:

- A. The claimant and the employee are members of the same household; or
- B. The employee is contributing to the spouse's or widow(er)'s support; or
- C. The employee is under court order to contribute to the spouse's or widow(er)'s support.

935.5.2 When "Living With" Is Required

- A. Life cases - The 1983 RR amendments eliminated the "living with" requirement except when:
 - 1. The spouse is filing as a de facto (deemed) spouse; or
 - 2. The spouse's entitlement may begin prior to 8-12-83.
- B. Survivor cases - "Living with" is required for a widow(er) to qualify for an accrued employee annuity due but unpaid at death, LSDP or RLS on the basis of that relationship.

For eligibility to an LSDP in cases where the employee acquired his 120th railroad service month after 1974, or 60-119 months after 1995, the widow must meet the "living with" requirement by "living in the same household" as the employee at the time of the employee's death. For further information about eligibility for an LSDP, see [FOM1 605.20.4](#). For a definition of "living in the same household", see [FOM1 935.10.1](#).

Effective 11-1-66, "living with" is not required for a legal widow(er) to qualify for an insurance annuity. However, a de facto widow(er) must always be living in the same household with the employee at the time of the employee's death to qualify for an insurance annuity.

935.5.3 Point When "Living With" Requirement Must Be Met

- A. Members of same household
 - 1. Life case - The employee and spouse must be members of the same household on the date on which the spouse annuity application is filed.
 - 2. Survivor case - The employee and widow(er) must be members of the same household at the time of the employee's death.

B. Contributions toward support

1. Life case - The employee must be contributing to the spouse's support as of the day on which the application for a spouse annuity is filed. However, the phrase "as of the day on which the application for a spouse annuity is filed" has a broad meaning.

In this case, it means if the employee made contributions on any regular basis within the 12-month retroactivity period, the spouse may be qualified if all other requirements are met. This applies even though contributions may have been discontinued before the actual filing date of the spouse application.

When a spouse annuity has been denied for not meeting this requirement, the spouse may qualify at a later date upon establishing that the employee has made regular contributions subsequent to the denial. If proof is submitted that the employee made substantial contributions in each of at least 6 consecutive calendar months, examiners will consider the regularity of the contributions established as of the 6th month. The annuity, if otherwise payable, could begin in the following month.

2. Survivor case - The employee must be contributing to the widow(er)'s support at the time of the employee's death.

C. Court order for support

1. Life case - The court order for support must be in effect on the date on which the application for a spouse annuity is filed.
2. Survivor case - The court order for support must be in effect at the time of the employee's death.

In either case, the "living with" requirement is met even if the employee does not actually make the payments, as long as the court order is in effect.

935.5.4 Effect of Employee's Place of Death on "Living With" Development

The fact that the employee died away from the family household is not in itself reason for full development of "living with." Many deaths occur away from the family residence. When there is an allegation of "living with," but the file indicates that death occurred away from the family residence, an explanation showing that the employee died at a hospital, at work, on a business trip or vacation is usually sufficient. This is not true, of course, when other evidence casts doubt on the "living with" allegation. In such case, develop the "living with" allegation fully.

935.10 Members Of Same Household

935.10.1 Defined

A husband and wife are considered "members of the same household" if they customarily live together as husband and wife in the same abode. If they are living at the same address, assume they are living together in the absence of evidence to the contrary.

A husband and wife are also considered members of the same household if they have shared and again intend to share the same abode, even though:

- A. They live apart temporarily because of circumstances beyond their control (such as financial difficulties, ill health, working away from home, service in the Armed Forces, etc.); or
- B. They live apart temporarily because one spouse is in a curative, custodial or penal institution.

While temporarily living apart as described above does not defeat "living with," the facts must establish that there is an intent to resume living together and that the living apart is temporary in nature.

If the employee and spouse were separated solely for medical reasons, see FOM-I-935.15.3.

935.10.2 Proof Required

In retirement cases, the Form AA-3 does not request living with information. A deemed spouse and the employee must submit signed statements that they are members of the same household on the date the spouse files an annuity application. The statements may be separate, or a joint statement signed by both individuals. These statements are acceptable as proof unless information received in the course of development raises doubt. Statements would also be required in the rare case of a spouse eligible before 8-12-83.

Prior to 5-1-84, "living with" information was furnished on Forms AA-3 and G-346.

In most survivor cases, proof that the husband and wife were members of the same household consists of a statement made by the applicant on the application form. This statement is acceptable to establish that the husband and wife were members of the same household, unless information received in the course of development raises doubt. However, if the required information is not furnished on the application, or if additional information is required, a sworn statement may be submitted.

Living with information is not requested on Form G-476c in a spouse to widow(er) conversion. We do not assume the former spouse annuitant was living with the employee, since it is no longer a requirement for the spouse annuity. If the information

in file is sufficient to establish a "living with" relationship, BRC will award due but unpaid accrued annuities to the widow(er). If the file information is not sufficient, BRC will ask you to develop.

935.15 Temporary Separations

935.15.1 Effect

Statements of intent to live together again from the husband and wife (or survivor) will prove "living with" unless the evidence shows other than temporary causes for separation. However, the intent to resume living together must be present at the time of the separation. Consider the reason for the separation and its duration in determining whether the intent existed or changed. Whether a separation is temporary is governed by the circumstances at the time of the separation, duration of the separation and what occurred during the living apart, as well as by the intention of the parties.

When the temporary separation resulted from domestic difficulties or when a permanent separation was the initial intent, handle in accordance with the following sections.

935.15.2 Separation Due to Domestic Trouble or Incompatibility

When the separation is due to incompatibility, ill treatment or other domestic difficulty, do not assume the separation is temporary without proof that it is. When there is a history of separations due to domestic difficulties, the fact that the parties resumed living together on prior occasions does not necessarily mean that the last separation is a temporary one. The single fact that on previous occasions the parties did resume living together does not justify an assumption that they would resume living together on the last occasion. However, consider the history of those prior separations and resumptions of living together in determining whether or not the last separation was temporary.

- A. Effect of reconciliation - The fact that a couple may have considered their separation permanent at one time does not prevent a finding of "living together" if they later reconcile AND demonstrate their intention to resume cohabitation. When BOTH these conditions are met, the separation will be considered ended unless one party denies reconciliation. The mere intention to resume cohabitation cannot justify a finding that the parties were members of the same household on either the application filing date or the date of the reconciliation agreement.

A conditional agreement to resume cohabitation does not become a reconciliation agreement until the condition is fulfilled. However, the fulfillment of the condition is not an overt act since it relates only to the completion of the conditional reconciliation agreement, but not to the execution of such agreement. For example, the parties agree to resume living together if the husband goes to work. His employment fulfills the condition of the agreement, but the parties

must also perform an overt act (e.g., rent an apartment) to complete the reconciliation.

- B. Development of reconciliation - Secure evidence of acts showing that the couple reconciled with intent to resume living together. Evidence may include receipts for rent, furniture, etc., combined with evidence of a resumption of cohabitation. Obtain statements from the applicant, the employee (if living) and from one other person who knows the facts, as to:
1. The date and cause of the separation;
 2. The history of other separations;
 3. The action of the parties while separated;
 4. Remarks made by either spouse to the witness (or in his presence) showing whether there is an intent to resume living together and the conditions under which the remarks are made;
 5. Whether the husband or wife performed an act preparatory to living together again, and the basis for the witness' knowledge of this act.

Evidence showing that the other party is living with someone else in a marital or meretricious relationship also rebuts the intention to resume living together.

935.15.3 Separation Due to Confinement of One Spouse

- A. Examiners will consider a husband and wife members of the same household even though one party is confined in a curative, custodial or penal institution if:
1. They are living together at the time one of them is confined; and
 2. There is a continuing intent to resume living together.
- B. Separation for medical reasons - If the employee and spouse were separated solely for medical reasons, consider them to be living in the same household, even if the separation was likely to be permanent and there was little or no expectation of them living together again. As long as one spouse continued to demonstrate strong personal and/or financial concern for the other, assume they would have lived together (absent evidence to the contrary) had the medical reasons not necessitated a separation.
- C. Party committed to penal institution - A finding of "living together" when one party is in a penal institution is not justified if (s)he is committed:
1. For life; or
 2. For a period of years exceeding life expectancy; or

3. Under a sentence of death.

935.20 Contributions Toward Support

935.20.1 Defined

Contributions by the employee to the spouse may be in cash or in kind, but they must be regular and substantial. No fixed amount has been set. The test is whether the employee recognized an obligation to contribute to the support of the spouse and does so contribute. For example, contributions are proved if a husband lets his wife live rent free in a house that he owns. However, if they own the house jointly, the employee's contribution is equal to one-half of the amount by which the fair rental value exceeds the cost of maintenance. ((Maintenance costs include repairs, taxes, mortgage payments and interest, etc.) This factor merely establishes regularity; it is still necessary to determine whether the contribution is substantial.

935.20.2 Proof Required

In the rare case of a spouse eligible before 8-12-83, secure statements from the employee and the spouse stating if the employee is contributing to the spouse's support and the frequency and the amount of the contributions. The statements should also state why the employee and spouse are not living together.

Prior to 5-1-84, the statements on Forms AA-3 and G-346 were generally acceptable as proof of contributions toward support.

In most survivor cases, the statement by the applicant on the application is sufficient to establish contributions toward support. Obtain a sworn statement to establish contributions toward support if:

- A. The information required is not furnished by the applicant on the application; or
- B. Reasonable doubt exists about the accuracy of the statements in view of other information in file; or
- C. Additional information is needed before making a determination.

"Living with" information is not requested on Form G-476c in a spouse to widow(er) conversion. If information regarding living with and contributions toward support is requested, secure a statement from the former spouse giving the date the employee and spouse stopped living together, the reason they stopped living together and if the employee was making regular contributions to the spouse's support when the employee died.

The above rules apply regardless of whether the applicant lives in this country or in a foreign country.

If it is alleged that the employee had been contributing but had been forced to stop, secure the required statement showing why he was unable to continue contributing.

935.20.3 Federal Benefit Programs

Contributions made to a spouse in the form of regular payments from a Federal agency may be considered "contributions toward support."

- A. Monthly social security benefits - The receipt of a wife or husband's monthly benefit under the SS Act does not always constitute "contributions toward support." The 1957 SS Act amendments eliminated "living with" as a requirement for entitlement to a spouse's, widow(er)'s and mother's monthly benefit for months after 8-1957. Therefore, only the receipt of a monthly spouse benefit awarded before 9-1957 can possibly establish "contributions toward support" on that basis.
- B. Railroad Retirement Act spouse annuity - An RR Act spouse annuity properly paid or payable before 8-12-83 on the employee's compensation record for the month before the month the employee died is a contribution toward support and establishes "living with" for the purpose of paying the widow(er) survivor benefits.

A spouse annuity payable 8-12-83 or later is a contribution toward support only if the spouse met the living with requirement on the filing date of the spouse annuity application.

- C. Veterans Administration payment - VA payments to a wife based on her husband's entitlement to veteran's payments are deemed to be contributions by him if they are paid or payable before his death. It is immaterial whether he agreed to such payments.

935.20.4 Court Order to Support

When the employee is ordered by a court to contribute to the applicant's support, secure a certified copy of the order. Any such court order must be certified by the court clerk or custodian of the records as not having expired or been vacated before the actual date on which the spouse application is filed, or, in a survivor case, before the date of the employee's death.

An uncertified photocopy of the order is acceptable, providing that there is an indication of court approval (e.g., signature of the judge or court clerk is shown) and the photocopy does not show any interlineation or other signs of alteration.

