

Railroad retirement annuities are meant to replace, in part, earnings lost to an individual or a family because of old age, disability or death. Consequently, an annual earnings limit was established to limit the amount of earnings a retired individual may have. The amount of earnings an individual under full retirement age (age 70 prior to the year 2000 and under age 72 before 1-1-83) has in a year may affect the amount of annuities payable, if earnings exceed the annual limit. Earnings over the annual limit are considered to be "excess earnings" and may cause deductions from annuity payments, depending on the kind of annuity and the amount of earnings.

The concept of "excess earnings" is relevant to the retirement age and service tier 1 and vested dual benefit (VDB) work deduction components and to the full survivor nondisability annuity rate which is subject to work deductions. These amounts are reduced as follows:

- Beginning in the year 2000, annuitants who have excess earnings and are under full retirement age for the entire year lose \$1 for every \$2 of excess earnings (earnings over the annual exempt amount). Annuitants who will attain full retirement age during the earnings year will lose \$1 for every \$3 of excess earnings over the annual exempt amount. However, only the earnings through the month before the month of attainment will be counted for work deduction purposes. Work deductions no longer apply beginning in the month the annuitant attains full retirement age. **(Note: Work deductions cease when the annuitant attain full retirement age. This does not include LPE work deductions.)**

Example 1 - Mr Jones is under full retirement age for the entire year of 2004 and he reports an estimate of earnings of \$20,000.

\$20,000.00	Estimated earnings.
-11,640.00	- 2004 limit for annuitants under full retirement age
8,360.00/2	- Excess earnings and divisor for annuitants under FRA
4,180.00	- Amount to be recovered from work deduction components

Example 2: Mrs. Martin attains FRA in June of 2004 and reports an estimate of earnings through May 2004 of \$39,000.

\$39,000	Estimated earnings through April 2004.
- 31,080	2004 limit for annuitants who attain FRA in 2004
7,920/3	Excess earnings and divisor for annuitants who attain FRA.
2,640	= Amount to be withheld. Withholding cannot extend past April 2004, the month before the annuitant attains FRA.

- For the period January 1983 through December 1989, all annuitants under age 70 lose \$1 for every \$2 of excess earnings over the annual exempt amount.

Beginning in January 1990, annuitants under age 65 lose \$1 for every \$2 of excess earnings over the annual exempt amount. Annuitants who are age 65 through 69 lose \$1 for every \$3 of excess earnings over the annual exempt amount. (**Work deductions ceased at age 70.**)

Example 1 – Mrs. Johnson is under age 65 in 1999 and had earnings of \$23,000 in that year.

\$13,000.00	Final 1999 earnings.
- 9,600.00	- 1999 limit for annuitants under age 65.
3,400.00/2	- Excess earnings and divisor for annuitants under FRA
1,700.00	- Amount that was recovered from work deduction components

Example 2: Mr. Johnson attained age 65 in 1999 and he reported earning of \$25,500.

\$25,000.00	Final 1999 earnings.
- 15,500.00	1999 limit for annuitants age 65 through 69.
9,500.00/3	Excess earnings and divisor for annuitants who age 65 through 69.
<u>3,166.67</u>	= Amount recovered from the employee's work deduction components.

- Prior to January 1983, annuitants under age 72 lost \$1 for every \$2 of excess earnings over the annual exempt amount. (**Work deductions ceased at age 72.**)

1105.5 Test to Determine if Work Deductions Apply

The test to determine if work deductions apply to an annuity consists of three basic parts:

- A. Work Deduction Insured Status - In order to be subject to work deductions, an annuitant must have a "Work Deduction Insured Status." A work deduction insured status is defined as follows:
 1. Employee - The employee has a "Work Deduction Insured Status: if he or she:
 - Has sufficient quarters of coverage based on his or her own non-railroad earnings to be eligible for a social security benefit or,
 - Has accumulated wage quarters of coverage and/or railroad compensation quarters of coverage after 1974 which would equal the number of quarters of coverage to have an "Insured Status" under Social Security Administration rules.

2. Spouse or Divorced Spouse - The spouse or divorced spouse has a "Work Deduction Insured Status" if the employee has a "Work Deduction Insured Status".
 3. Survivor Annuitants - All survivor annuitants are considered to have a "work deduction insured status" under the Social Security Act rules and are therefore, subject to annuity work deductions.
- B. Annual Earnings Test - An annuitant, whose total yearly earnings are over the annual exempt amount, will be subject to annuity work deductions if the annuitant has a work deduction insured status. Only the earnings through the month before the month the annuitant attains full retirement age are counted in determining if earnings exceed the annual exempt amount.
- EXCEPTION: There is no age limit for LPE work deductions.
- C. Monthly Earnings Test - Regardless of total annual earnings, annuities are payable in full for any month in which the monthly earnings test applies and the annuitant neither earns wages over the limit set for his age nor performs substantial services in self-employment. The monthly exempt amount is one-twelfth of the annual limit. Restrictions on the use of the monthly earnings test are explained in [FOM1 1105.40](#).

EXCEPTION: If LPE work deductions apply, the monthly earnings test is not applicable.

The earnings test applies to all work performed in the United States and to certain work outside the United States that is covered under the Social Security (SS) Act. A separate earnings test (the foreign work test) applies to non-covered work outside the United States. See [FOM1 1105.85](#).

The Railroad Retirement (RR) Act requires these deductions under the earnings test, which are the same as the deductions defined in the SS Act. However, the RR Act also withholds payment for any month in which an annuitant works for a railroad employer.

Disability annuitants (employee, widower, or child) are not subject to the annual earnings test. Instead, any work activity by a disability annuitant is evaluated in terms of whether the ability to work demonstrates that disability has ceased. The earnings restrictions for a disabled employee are explained in [FOM 1125](#). However, the annual earnings test does apply when a disabled widow(er) attains age 60, because these benefits are then considered as age rather than disability benefits.

1105.10 Annual Exempt Amounts

The annual exempt amount is the maximum amount of money that may be earned in a year without loss of annuities. Any earnings over the annual exempt amount will cause annuity deductions for a non-disability annuitant who is under full retirement age (age 70 prior to the year 2000 and under age 72 before 1-1-83). Beginning 1-1-78, there is a separate annual limit for annuitants who are full retirement age and over; this limit is higher than the annual exempt amount for annuitants under full retirement age. Prior to 1978, the earnings limit was the same for all annuitants.

Effective November 11, 1988, the higher exempt amount will apply to persons who die before their birth date in the year that they would have otherwise would have attained full retirement age.

1105.10.1 Table of Exempt Amounts

[Click here for a table of yearly and monthly exempt amounts for annuitants under, attaining, or over full retirement age.](#)

1105.10.2 Increase in Annual Exempt Amount

The 1977 SS Act amendments established the annual exempt amount for annuitants full retirement age and over through 1982. After 1982, the annual exempt amount for annuitants full retirement age and over will be adjusted automatically, as it is for annuitants under full retirement age. The increase in the exempt amount is based on the percentage rise in the average national wage for the second preceding year. For example, the increase in the under full retirement age exempt amount for 1981 is based on the percentage rise in the average national wage from 1978 to 1979.

New exempt amounts are usually available in mid-October.

1105.15 Determining Exempt Amount When Annuitant Dies

Effective November 11, 1988, the higher exempt amount will apply to persons who die before their birth date in the year that they would have otherwise attained full retirement age. Previous to that these rules applied.

Date of Death	Monthly Exempt Amount
Before the month of the annuitant's full retirement age attainment.	Use the under full retirement age limit.
In or after the month of the annuitant's attainment of full retirement age. (Whether	Use the full retirement age or over limit.

the annuitant dies before the actual birthday is irrelevant).	
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Effective November 11, 1988, excess earnings are calculated using a 12-month taxable year. However, for deaths prior to November 11, 1988, when the year ends because of death, the annual limit must be calculated for the short taxable year. The monthly exempt amount for the year an annuitant dies is multiplied by the number of months in the year the annuitant was living, including the month of death. The 1988 exempt amount for a full retirement age annuitant who died in September 1988 is \$6,300.00 (9 x \$700.00).

Recalculation of the exempt amount for a short taxable year applies only when entitlement ends because of death. When entitlement terminates for a reason other than death, see [FOM 1 1105.25](#).

Before November 11, 1988

To compute the annual exempt amount applicable for the year the annuitant dies based on a "short taxable year", multiply the number of months the annuitant was alive in the year (including the month of death) times the monthly exempt amount.

If the annuitant dies in the year he would have attained full retirement age, but dies before the month of his attainment, his annual exempt amount becomes the amount for beneficiaries under full retirement age. If he dies in the month he attained or would have attained full retirement age, whether before or after the actual day, use the full retirement age annual exempt amount.

Example - An annuitant dies in June 1988 at age 67. His exempt amount is calculated as follows:

\$ 700.00 (monthly exempt amount for annuitant over full retirement age in 1988)
 X 6 (number of months annuitant is alive in 1988)
 \$4,200.00 (exempt amount for 1988)

1105.20 Earnings after Age Attainments

- Full Retirement Age Attainment

Beginning in the year 2000, no work deductions apply beginning in the month in which the annuitant attains full retirement age. Only the earnings through the month before the month of attaining full retirement age are counted for work deductions. If the annuitant's earnings in that period do not exceed the annual exempt amount, no work deductions are applied.

When assessing TWDs in a full retirement age attainment case, you should base the withholding on the amount of expected earnings through the month before the month of attaining full retirement age. *If using an annual estimate based on*

the previous year's earnings, divide it by 12, then multiply the monthly amount by the number of months before the full retirement age attainment month.

When assessing PWDs, release a field assignment to secure a monthly breakdown of the earnings through the month before attainment of full retirement age in survivor cases.

In retirement cases, remove the regular work deductions and include code ALTA code paragraph 414.10 in the adjustment award letter. Code paragraph 414.10 advises the annuitant to contact the field office and provide them with a monthly breakdown of the earnings. The field office will enter the monthly breakdown into SPEED.

B. Age 70 (or age 72) Attainments for Taxable Years Ending After December 1973

If the annuitant attained age 70 (or age 72) after December 1973, the charging of work deductions depends on whether the earnings are from wages or self-employment:

1. Earnings are Wages - Only earnings earned in the months before the month of attainment of full retirement age, (age 70 prior to January 2000), (or age 72) are used in determining annual earnings for charging tier I/VDB and survivor annuity work deductions. Earnings after age 70 (or age 72) are not used. Work deductions no longer apply effective with the month in which the annuitant attains age 70 (or age 72).

Example - The annuitant (DOB 11-5-21) earns \$10,550 through the month of October 1991 and \$1,450 from November through December 1991. The total earnings for work deductions in 1991 is \$10,550. Work deductions do not apply November 1, 1991 or later.

If a monthly breakdown of the annuitant's earnings cannot be obtained, follow the procedure in section 2 below.

2. Earnings are Self-Employment Earnings - If the annuitant worked to the end of the taxable year, the net earnings or loss for the full year are prorated for the months before the employee attains full retirement age (age 70 prior to the year 2000 or age 72 before 1-1-83). Only the earnings prorated to the months before attainment of full retirement age are used in determining annual earnings for charging tier I/VDB and survivor annuity work deductions. Work deductions no longer apply effective with the month in which the annuitant attains full retirement age.

Example - The annuitant (DOB 11-5-21) earns \$12,000 for the taxable year 1991. These earnings are prorated as \$1,000 per month for each month in 1991. The earnings of \$10,000 are credited through the month of October 1991. The remaining \$2,000 is credited to November through

December 1991. The total earnings for work deductions in 1991 is \$10,000. Work deductions do not apply November 1, 1991 or later.

C. Age 72 Attainments for Taxable Years Ending Before January 1973

If an annuitant has attained age 72 in a taxable year ending before January 1973, the earnings for the entire year are used to determine the amount of excess earnings. However, only months prior to the month of attainment of age 72 are charged work deductions.

Example - The annuitant (DOB 11-5-00) earns \$15,550 for the taxable year of 1972. This would normally require 12 permanent work deductions for 1972. However, the annuitant attained age 72 in November 1972. Therefore, work deductions do not apply November 1, 1972 or later.

1105.25 Earnings After Entitlement Ends

These rules for counting earnings apply when annuity entitlement ends for a reason other than the death of the annuitant. When an annuitant died before November 11, 1988, the rules in [FOM 1 1105.15](#) should be used.

1105.25.1 Retirement and O/M Annuities

In retirement age and service cases (employee, spouse, divorced spouse, or retirement overall minimum), use the same rules as SSA when determining the earnings to be used in the tier 1/VDB annual earnings test. This means that the total earnings for the earnings year are counted for the annual earnings test.

A spouse annuitant (entitled only by reason of having a child in his or her care) is entitled to a "termination grace year" if the entitlement is ending because there is no longer a child-in-care. This means that the "monthly exempt amount" can be applied in for any month in the terminating year in which the spouse has a non-work month. This is true even if the spouse was previously paid for a non-work month in a prior year.

1105.25.2 Survivor Annuities

Earnings for months beginning with the month the person is no longer qualified for an annuity are not counted for deduction purposes, if entitlement ends for a reason other than death. Excess earnings deductions may apply only if the annuitant earned over the annual limit in his short entitlement year (January through the last month of entitlement). This rule applies to survivor annuities. It does not apply when an annuity continues to be paid with no break in entitlement (e.g., a mother becomes entitled as an aged widow or a child has continuous entitlement to a student's annuity).

EXAMPLE: A mother received an annuity for January through July; her annuity was terminated because she remarried in August and she was under age 60. The mother's earnings are counted only in the months January through July to determine if work

deductions apply. If she earned more than the annual exempt amount in January through July, work deductions apply in her case.

If an annuitant's entitlement ends, but the annuitant again becomes qualified for later months in the year, see [FOM 1 1105.60](#).

1105.30 Taxable Year

Earnings for deduction purposes are counted for a period of a taxable year. In the absence of evidence to the contrary, the calendar year is considered to be the taxable year in assessing work deductions. When a taxpayer dies, his taxable year ends with the date of death regardless of whether the taxable year was a calendar year or a fiscal year.

Effective November 11, 1988, the taxable year for purposes of excess earnings is defined as being 12 months. Previously, the taxable year ended with the date of death regardless of whether the taxable year was a calendar year or a fiscal year.

1105.31 Fiscal Year

A fiscal year is an accounting period of 12 months ending on the last day of any month other than December, or is a period varying from 52 to 53 weeks. When a beneficiary reports earnings on the basis of a fiscal taxable year, the annual report must be made on or before the 15th day of the fourth month following the close of the fiscal taxable year. You should make the appropriate changes on the annual report form to conform with the fiscal year. The applicable earnings test is determined by when the fiscal year ends during the calendar year. For example, a fiscal year annual report for 2/82 through 1/83 would have the 1983 yearly and monthly exempt amounts apply for all 12 months subject to the earnings test.

1105.35 Determining Amount of Excess Earnings

Annuity payments are subject to deduction if a non-disability annuitant has earnings over the annual exempt amount. The amount of earnings in excess of the annual limit is the basis for determining the amount of annuities to be withheld. An annuitant may lose \$1.00 in annuities for every \$2.00 earned over the annual limit if the annuitant is under full retirement age. The year the annuitant attains full retirement age, the annuitant may lose \$1.00 for every \$3.00 earned over the annual exempt amount.

The term "excess earnings" refers to the amount of annuities to be withheld because of earnings over the annual limit. To determine the amount of excess earnings, deduct the annual limit from the reported earnings, and divide the result by two or three depending on the annuitant's age. The amount of excess earnings should be rounded down to the next lower multiple of \$1.00, if it is not a multiple of \$1.00.

EXAMPLE: The employee reported earnings of \$15,781.63 for 1991. Since the employee is over full retirement age, the annual limit for 1991 is \$9,720. The amount of excess earnings to be withheld from the annuity is \$2,020.00.

\$15,781.63	
- 9,720.00	annual limit equals:
<u>6,061.63</u>	divided by 3 equals:
\$2,020.54	excess earnings rounds down to:
\$2,020.00	

1105.40 Monthly Earnings Test And Grace Year

The annual earnings test determines the amount of annuities to be withheld based on the amount of earnings over the annual exempt amount. A monthly earnings test may be used to determine which months of annuities should be withheld.

Under the monthly earnings test, annuities are payable in full for any month the annuitant does not earn wages over the monthly exempt amount and does not perform substantial services in self-employment, regardless of the total annual earnings. However, the 1977 SS amendments restricted the use of the monthly earnings test.

1105.40.1 Initial Grace Year

The initial monthly earnings test cannot be used except in the grace year. The grace year is the first year after 1977 in which an annuitant has an entitlement month in which he does not earn wages over the monthly exempt amount and does not perform substantial services in self-employment (a non-work month). The first year an annuitant has a non-work month is the grace year, and that is the only time the initial monthly earnings test may be used. Once the monthly earnings test has been applied after 1977, deductions for subsequent years are determined by the annual earnings test, regardless whether the annuitant worked every month.

EXAMPLE: A widow's annuity began 8-1-2004. She earned \$50,000.00 before her retirement in July. She returned to work in 2005, but she earned less than the monthly exempt amount in March through May. Her 2005 earnings were \$40,000.00.

Because she was entitled to an annuity and had non-work months in 2004 (August through December), 2004 is the widow's grace year. The monthly earnings test allows payment of her annuity August through December, even though her earnings of \$50,000.00 would have caused deductions under the annual earnings test.

The monthly earnings test may not be used in 2005, because the grace year has expired. Deductions will be charged under the annual earnings test beginning with January, and for every succeeding month until the excess is recovered, regardless whether she had a non-work month.

1105.40.2 Grace Year for Break in Entitlement or a Termination Year

There are two other cases when the monthly earnings test may be used:

- A. Break in entitlement - A grace year may apply when there is a break in entitlement. When an annuitant becomes entitled to a different kind of annuity and there is a break in entitlement of at least 1 month, the monthly earnings test may be used in the new grace year. The different kinds of annuity are an employee, spouse, child, widow(er), mother/father or parent annuity. A change from a spouse's to a divorced spouse's annuity or a widow(er)'s to a remarried widow(er)'s annuity is not a break in entitlement for a grace year determination.

The grace year is the first year of entitlement to the new annuity in which the annuitant has a non-work month. The grace year must be after 1977.

- B. Termination year - A grace year applies in the termination year for a child, or for a wife or mother/father entitled based on a child in care, unless the annuity terminates because of the death of the beneficiary. A termination grace year may apply to a child's annuity or O/M share, a spouse annuity or O/M share based on a child in care, or a surviving mother's/father's annuity based on a child in care. The monthly earnings test may not be used if the beneficiary is entitled to any other kind of annuity in the month after entitlement to the child's annuity or child in care annuity ends. This provision does not apply to a spouse's or widow(er)'s annuity based on age. The grace year must be after 1977.

This provision was added to prevent an overpayment because of earnings after the benefit terminated. The RR Act already provided that earnings after survivor annuity ends are not included in determining excess earnings. However, the termination grace year will benefit the wife, surviving child, or mother/father who has a non-work month and excess earnings in the year that entitlement ends, because it permits use of the monthly earnings test in a year after the initial grace year.

1105.40.3 Legislative Background

Before 1978, the monthly earnings test could be used in every year. Retirement work deduction components (tier I and the vested dual benefit), O/M shares and survivor annuities could be paid in any non-work month, regardless of total yearly earnings or the number of non-work months.

The 1977 SS amendment restriction on using the monthly earnings test was designed to cease benefit payments to certain annuitants for parts of the year, when their work patterns had not changed and their yearly earnings were substantial. The intent of the law is to allow annuitants to begin receiving monthly benefits upon retirement, when all work may cease. However, the grace year may actually apply before the year the annuitant retires, if he is entitled to an annuity and has a non-work month.

When the 1977 SS amendments were first enacted, the grace year was the first year in which an annuitant had a non-work month during a period of entitlement. There was no restriction on which years could be a grace year. The result was that when the monthly earnings test had been used before 1978, annuities could not be paid for non-work months in 1978. This was an unfair disadvantage to annuitants who would have otherwise been paid for 1978 non-work months, and could not have anticipated the change in the law.

Consequently, Public Law 96-473 (the 10-19-80 SS amendments) was enacted to alleviate the harsh effects of the 1977 amendments. The change restricted the grace year to years after 1977. The monthly earnings test could be applied without restriction to years before 1978.

EXAMPLE: An annuitant became entitled in 1976 and had non-work months in 1976, 1977 and 1978. The monthly earnings test can be applied in 1976 and 1977, under the law in effect before 1978. The monthly earnings test can also be applied in 1978 under the 10-19-80 amendments, because 1978 is the first year after 1977 in which the annuitant was entitled and had a non-work month.

1105.45 Non-Work Months

1105.45.1 Definition of Non-work Month

A non-work month is one in which the annuitant is entitled to an annuity and did not earn wages over the monthly exempt amount and did not render substantial services in self-employment.

A non-work month can exist whether or not the annuitant has excess earnings for the year, whether or not a payment is made on the basis of the non-work month, and whether or not the annuitant waives payment for the non-work month. The existence of the non-work month controls the grace year, not whether the annuitant receives an annuity based on the existence of the non-work month.

EXAMPLE: An annuitant became entitled to an annuity in January 2000. At a salary of \$700.00 per month, his total yearly earnings were \$8,400.00. He had no excess earnings, but 2000 is the first year in which he had a non-work month of entitlement (he did not earn over the monthly exempt amount of \$840.00). Therefore, 2000 is the only year in which the monthly earnings test may apply. The fact that he had no excess earnings in 2000 is immaterial.

1105.45.2 Requirement to Reveal Non-Work Months

An entitled annuitant does not have a completely free option to determine the year to which the monthly earnings test applies. Once he is entitled, the monthly earnings test will be applied to the first year he has a non-work month of entitlement, regardless of whether he accepts payment for those months or waives payment for the non-work months. The existence of the non-work month is the controlling factor. In addition, an

annuitant does not have the option of concealing a non-work month solely for the purpose of eliminating use of the monthly test, to retain the use of the monthly earnings test for what he believes will be a more advantageous year.

1105.50 Applicant Options For Selecting Grace Year

An applicant with excess earnings should consider the use of the grace year when he files for an annuity. He may be able to determine the most advantageous use of the monthly earnings test according to when he files his annuity application. It is impossible to establish guidelines for selecting the most advantageous grace year, because many factors are involved.

It is generally advantageous to use the monthly earnings test in the year of retirement, when employment ceases. This is true when earnings are high enough to prevent payment of the annuity unless the monthly earnings test applies. Annuities may then be paid beginning the month that earnings do not exceed the monthly exempt amount. In this case, an individual may wish to defer filing for an annuity until the year he wishes to use the monthly earnings test. The regular rules for canceling an application apply if the annuitant chooses to cancel an application and re-file.

However, if the individual's earnings are low enough to permit payment of the annuity before he actually stops working, an earlier beginning date may be advantageous. Remember that retroactivity limitations may affect the benefits payable.

This consideration will have more effect on a survivor annuitant, because part of a retirement annuity is payable even when an annuitant has excess earnings.

1105.55 Monthly Withholding Of Work Deductions

Withholding for excess earnings is deducted from monthly annuities on a dollar-for-dollar basis, beginning with the first month of the entitlement year and proceeding to the second and succeeding months until the required amount has been withheld. Annuities are not withheld for a month in the grace year if earnings do not exceed the monthly limit.

EXAMPLE: A retirement annuitant has excess earnings of \$3390.00. His work deduction components total \$400.00 each month. The components are withheld beginning with the first month of entitlement and for three succeeding months until \$3390.00 has been deducted. If the grace year applies and his earnings in the second month do not exceed the monthly exempt amount, no deduction will be applied for that month. Deductions will then be applied in the fourth succeeding month.

1105.60 Two Periods Of Entitlement

When there are two periods of annuity entitlement in the earnings year, the amount of earnings used in the annual earnings test for retirement age and service tier 1/VDB and survivor nondisability work deductions depends on the type of annuity:

- A. Retirement Age and Service Cases - For each period of entitlement in the annual earnings test, count the total earnings for the earnings year. However, do not charge work deductions to any month for which an annuity is not payable due to a break in entitlement.

Example: A spouse has two periods of entitlement 1992. The first period based on child in care is from January through May. The second period based on age is from September through December. Total earnings for the year (January through December) are \$6830.

Excess earnings for the first period of entitlement are:

\$11,030 (Earnings January - December 1992)
 7,440 (1992 exempt amount for those under full retirement age)
 $\$3,590/2 = \$1,795$ (excess earnings first period of entitlement)

Excess earnings for the second period of entitlement are the same:

\$11,030 (Earnings January - December 1992)
 7,440 (1992 exempt amount for those under full retirement age)
 $\$3,590/2 = \$1,795$ (excess earnings second period of entitlement)

The amount of the work deduction components withheld during the first period of entitlement are subtracted from the excess earnings of the second period of entitlement and only the remaining excess earnings are recovered in the second period of entitlement. Therefore, if the work deduction components withheld in the first period of entitlement totaled \$295, the remaining excess earnings to be recovered from the second period of entitlement are \$1,500 (to the extent of the work deduction components available).

- B. Retirement Disability to Age and Service Cases

Beginning with the month the employee attains full retirement age, work deductions no longer apply.

- C. Survivor Cases - For the first period of entitlement, count earnings from January through the last month in that period and charge any excess earnings to months in that period of entitlement.

For the second period of entitlement, count earnings from January through the last month in the second period. Determine total excess earnings and subtract any excess chargeable against the first period. Charge the remaining excess only against the months in the second period of entitlement.

Example - A survivor has two periods of entitlement in 1992. The first period based on child in care is from January through May. Earnings for this period are \$4926. The second period based on age is from September through December. Total earnings for the year (January through December) are \$6,830.

Excess earnings for the first period of entitlement are:

\$9,126 (Earnings January - May 1992)
 7,440 (1992 exempt amount for those under full retirement age)
 $\$1,686/2 = \843 (excess earnings first period of entitlement)

Excess earnings for the second period of entitlement are the same:

\$11,030 (Earnings January - December 1992)
 7,440 (1992 exempt amount for those under full retirement age)
 $\$3,590/2 = \$1,795$ (excess earnings second period of entitlement)

However, the amount of the work deduction components withheld during the first period of entitlement are subtracted from the excess earnings of the second period of entitlement and only the remaining excess earnings are recovered in the second period of entitlement. Therefore, if the survivor annuity withheld in the first period of entitlement totaled \$843, the remaining excess earnings to be recovered from the second period of entitlement are \$952.

- D. Retirement and Survivor Combined - Spouse-to-Widow(er) Conversion - For the period of entitlement as a spouse, count the total earnings for the taxable year. Charge the excess earnings as explained in section (A). For the widow's period of entitlement, count earnings from January through the last month of the taxable year. Determine total excess earnings and subtract any excess earnings chargeable against the spouse entitlement period. Then charge the remaining excess earnings only against months in the widow's period of entitlement.

Example - An individual is entitled as a spouse from January through May 1978. Total earnings for the year (January through December) are \$6,830.

Excess earnings for the spouse entitlement are:

\$11,030 (Earnings January - December 1992)
 7,440 (1992 exempt amount for those under full retirement age)
 $\$3,590/2 = \$1,795$ (excess earnings first period of entitlement)

The survivor entitlement begins June 1992 and extends through December 1992. Excess earnings for the survivor entitlement are the same:

\$11,030 (Earnings January - December 1992)
 7,440 (1992 exempt amount for those under full retirement age)
 $\$3,590/2 = \$1,795$ (excess earnings second period of entitlement)

However, the amount of the work deduction components withheld during the spouse entitlement are subtracted from the excess earnings of the survivor entitlement and only the remaining excess earnings are recovered in the second period of entitlement. Therefore, if the work deduction components withheld in the spouse entitlement totaled \$295, the remaining excess earnings to be

recovered from the survivor entitlement are \$1,500. The amount of earnings used in the annual earnings test for retirement age and service tier 1/VDB and survivor non-disability work deductions depends on the type of annuity:

1105.61 Estimated Earnings In Short Entitlement Year

When assessing TWDs in short entitlement year cases, the withholding should be based on the amount of expected earnings through the last month of entitlement. If you are using an annual estimate based on the previous year's earnings, divide it by 12, then multiply the monthly amount by the number of entitlement months in current year.

This situation arises mostly in family group cases in which a working parent is receiving an annuity based on having a minor child in care. Be sure to check and see when the youngest child entitling the parent will attain age 18 (age 16 for cases with surviving divorced or remarried young mothers/fathers).

EXAMPLE: A KM, whose youngest child will attain age 16 in July 1999, had 1998 earnings of \$24,000.00. Permanent work deductions were assessed for 1998. No 1999 estimate was provided so normally, we would use the final 1998 earnings amount as an estimate for 1999.

However, since the KM is only entitled through June 1999, the 1999 estimate should be revised as follows:

\$24,000.00 divided by 12 months = \$2,000.00.

\$2,000.00 times 6 months (Since the youngest child will attain age 16 in July, the KM is only entitled through June 1999) = \$12,000.00.

When accessing PWDs in the short entitlement year, secure a monthly breakdown of the earnings through the last month of entitlement

1105.65 Annuities To Which Excess May Be Charged

When a retirement employee has excess earnings the excess may be charged against his/her annuity and the annuities of all others entitled on his/her earnings record. A spouse annuity or divorced spouse annuity may be affected by the employee's earnings, as well as the benefit of any auxiliary beneficiary included in the O/M computation. See [FOM1 1105.65.1](#) for the specifics on when a divorced spouse is subject to withholding based on the employee's excess earnings. The earnings of any auxiliary beneficiary receiving a benefit directly or included in the O/M, will affect the payment only of his or her own benefit. That is, the earnings of a spouse or divorced spouse included in the O/M or receiving an annuity, a child O/M auxiliary beneficiary, or a survivor annuitant affect only the payment of that person's own benefits.

1105.65.1 Divorced Spouse Annuities

Prior to January 1, 1985, a divorced spouse's annuity was subject to withhold based on the employee's earnings in the same manner as if she was a spouse.

Beginning January 1, 1985, a divorced spouse who has been divorced from the employee for at least 2 years will not be affected by the employee's earnings.

Beginning January 1, 1991, based on a change in the Social Security Act, the following changes apply regarding the divorced spouse annuity being impacted by the employee's earnings:

- If the employee's ABD was prior to the month of the divorce, none of the divorced spouse annuity is subject to deductions based on the employee's excess earnings.
- If the employee's ABD is in the month of the divorce or later, the divorced spouse benefit is subject to deductions until the spouse has been divorced from the employee for at least two years.

Beginning August 17, 2007, based on amendments to the RRA, the divorced spouse is not subject to withholding for the employee's excess earnings if the employee is receiving a disability.

1105.70 When Deductions Are Not Made

Excess earnings deductions are not made for any month in which:

- A. The annuitant is not entitled to an annuity, or the annuity was waived;
- B. In the first year the annuitant is entitled to the monthly earnings test and has a month of entitlement in which he did not work for wages of more than the monthly exempt amount and did not render substantial services in SE.
- C. The annuitant is full retirement age or over (age 70 prior to the year 2000 and age 72 before 1-1-83).EXCEPTION: 1. In retirement cases in which the spouse's or divorced spouse's work deduction components or O/M shares are used to recover the employee's excess earnings, the age of the spouse or divorced spouse is immaterial. The spouse's or divorced spouse's work deduction components or O/M shares may be withheld even if she is over FRA;
- D. An employee disability annuitant is under full retirement age;
- E. The annuitant is entitled to a disabled child's insurance annuity or is included in the employee's O/M as a disabled child;
- F. A surviving divorced spouse is under full retirement age and entitled to a disabled surviving divorced spouse's annuity;

- G. A remarried widow(er) is under full retirement age and entitled to a disabled remarried widow(er)'s annuity; or
- H. A widow(er) is under age 60 and entitled to a disabled widow(er)'s insurance annuity.

1105.75 Work Deductions For Dual Annuitant

When an employee is entitled to both an age and service annuity and a spouse or widow(er)'s annuity, both annuities are subject to work deductions if the employee has a work deduction insured status. However, the amount of the employee annuity work deductions withheld (tier 1 and VDB) must be subtracted from the total amount of excess earnings to be withheld from the spouse or survivor annuity. If the amount withheld from the employee annuity equals the amount of excess earnings, no work deductions are assessed against the spouse or survivor annuity.

EXAMPLE: An employee who is also receiving a widow's insurance annuity earned \$35,506.00 in 1999. The employee has a work deduction insured status. Retirement computed the employee's final 1999 work deductions. They withheld the employee's full tier 1 work deduction component for the entire year totaling \$4,825.00. The survivor examiner should assess 1999 work deductions as follows:

\$35,506.00		Amount of Earnings
- 15,500.00		Minus Exempt Amount
20,006.00	/3 =	\$6,668.00 Amount Subject to Withholding
		-4,825.00 Minus Amount Withheld by Retirement
		\$1,843.00 Amount to be withheld from the Survivor Annuity

When processing a dual case, the earnings information from the most recently filed application can be used to adjust the annuitant's current work deduction status. For example, if a spouse has tier 2 work deductions when applying for own employee annuity and ceases to work from all employers, the existing tier 2 work deductions applied in the spouse annuity should be removed effective as of the date that work stopped.

1105.80 Limited Retroactivity For Reduced Age Annuitant

Under the provisions of the RR Solvency Act, a retirement or survivor annuity that is reduced for age is not payable before the month the annuity application is filed.

Under the SS Act, an age-reduced benefit may not retroact before the month of filing if it causes a further reduction for age.

1105.85 Foreign Work Test

The Social Security Administration has determined that, in some cases, differences in the values of foreign currencies make it administratively impractical to apply a test

based on the dollar amount of earnings to work outside the U.S. that is not covered under the SS Act. The foreign work test is used to determine if earnings in non-covered employment outside the U.S. will result in annuity deductions. The U.S. includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa.

1105.85.1 Foreign Work Test For Age and Service Cases

Earnings from work outside the United States, even when not covered for benefits under the Social Security Act, is still considered "earnings" for work deduction purposes. The 45 hour Work Test (also referred to as the "Special Work Test") applies to retirement age and service tier 1/VDB cases.

The 45 hour work test does not apply in survivor work deduction cases.

Effective May 1, 1983 or later, the "Special Test" provides for the withholding of the full monthly amount of the annuity subject to work deductions for any month the annuitant engages in non-covered remunerative activity outside the United States for 45 or more hours in a given month. For months preceding May 1, 1983, the special test provided for withholding the full work deduction amounts if the annuitant worked in any part of seven or more days per month.

A deduction may be imposed for non-covered self-employment outside the U.S. even if no "substantial services" were performed. All that is required is that the person "carry on a trade or business". Therefore, the "substantial service" determinations do not apply to services performed outside the U.S.

The following chart determines whether the special test or the regular annual earnings test applies:

A. Deductions For Work As Employee Outside U.S

Type of Employment	Test Applicable
1. <u>U. S. Citizens</u> a. Employment covered by the SS Act for American employer; or foreign subsidiary of U.S. corporation where corporation has entered into agreement with the Internal Revenue Service (IRS) for coverage.	Annual

b.	Employment not covered by the SS Act for employer other than above, or because specifically excluded from coverage.	Special
2.	<u>Aliens</u>	
a.	Employment covered by the SS Act because of U.S. vessel or aircraft <u>and</u> contract of employment entered into in U.S. <u>or</u> during performance of contract of employment, vessel or plane touched a port or airfield in U.S.	Annual
b.	Employment not covered by the SS Act because (a) is not applicable.	Special

B. Deductions for Self-Employment of U. S. Citizens Outside the U. S.

Type of Employment		Test Applicable
1.	Practice of Profession as Physician	Special
2.	Activity Would Be Covered if Carried on in U. S. and:	
	<ul style="list-style-type: none"> Income from personal services and capital investment (in which case part of the net earnings is covered). 	Annual
	<ul style="list-style-type: none"> Income from personal services only (in which case none of the net earnings is covered). 	Special
	Exception No. 1: Minister who works for American employer or has U. S. congregation.	Annual
	Exception No. 2: Earnings are in excess of the exempt amount.	Annual

C. Deductions for Self-Employment of Aliens Outside U. S.

Self-Employment Activity	Test Applicable
1. Resident of U.S. and Self-Employment would be covered if carried on in U.S. (including resident ministers, whether or not they have elected coverage).	Annual
2. Non-resident of U.S.	Special

Do not impose work deductions under either the annual earnings test or the special test against citizen or aliens on the basis of income which is not considered to be "earnings", such as rentals from real estate, capital gains, dividends, interest, or other excluded income.

1105.85.2 Work Covered by the Foreign Work Test

The foreign work test applies if an annuitant engages in the following non-covered remunerative activities:

- A. Employment outside the U.S. which is not covered under the U.S. Social Security Act. Generally, this includes work for foreign employers, unless the employer is a subsidiary of a U.S. corporation. Coverage determinations may be affected by the existence of a totalization agreement (international social security agreement).

A beneficiary working outside the U.S. who might normally be covered under the U.S. Social Security system may find that, because of an international agreement, his work is covered only under the foreign system. Consequently, his work would be subject to the foreign work test instead of the annual earnings test.

EXAMPLE: A U.S. citizen beneficiary, permanently residing in Germany, works as a self-employed person. Since he is a U.S. citizen, he would normally be subject to U.S. Social Security coverage. Under the terms of the international social security agreement with Germany, however, his work is subject only to the German laws on social security coverage and he is exempt from U.S. coverage. Therefore, his self-employment activity is subject to the foreign work test rather than the annual earnings test. Whether or not his earnings are actually covered by Germany is immaterial. As long as the work activity is exempt from U.S. coverage, the annual earnings test is not applicable.

- B. Self-employment outside the U.S. which will not be reported as earnings for U.S. social security tax purposes; or
- C. Self-employment outside the U.S. by a nonresident alien, unless the SE will be reported for U.S. social security tax purposes.

The annual earnings test applies for any employment outside the U.S. that is covered for U.S. social security tax purposes and for self-employment outside the U.S. by a

U.S. citizen or a resident alien. When a U.S. citizen or resident alien is self-employed outside the U.S., the net earnings from SE will be reported for U.S. social security tax purposes unless a U.S. citizen established "foreign residence" or "presence in a foreign country". Refer to [FOM 1 1105.85.4](#).

A deduction may be imposed under the foreign work test for non-covered SE outside the U.S. even though no services were performed. All that is required is that the person carries on a trade or business, i.e., holds himself out to others as engaged in the selling of goods or services for profit. The fact that a person has not actively participated in the business, nor derived a profit from it, does not matter. However, deductions do not apply under either the foreign work test or the annual earnings test for income that is excluded from net earnings (rentals from real estate, capital gains, dividends, interest or other excluded income).

Practice as a physician outside the U.S. is non-covered remunerative activity, and deductions are governed by the foreign work test.

1105.85.3 Work Covered by the Annual Earnings Test

Because the earnings are reportable for U.S. social security tax purposes, the following kinds of work are covered by the annual earnings test:

- A. Employment of a U.S. citizen or resident alien by an American employer;
- B. Employment of a U.S. citizen or resident alien by a foreign subsidiary of a U.S. corporation that actually has entered into an agreement for coverage for its employees under the SS Act;
- C. SE in a trade or business that results only in income such as rentals from real estate, capital gains, interest income, dividends, etc.;
- D. SE of an alien who is a resident of the U.S.;
- E. SE of a citizen of the U.S., when the citizen has not established "foreign residence" or "presence in a foreign country". See [FOM 1 1105.85.4](#); and
- F. Services of ministers. A minister is a duly ordained, commissioned or licensed minister of a church performing services in the exercise of his/her ministry, or a member of a religious order performing the duties required by the order. A minister is not performing services in the exercise of his/her ministry when he/she is working as an employee of any governmental entity. In applying the retirement tests, all ministers, whether citizens or aliens, are treated as if they had elected SS coverage, even though they may not have done so. Thus, the fact that a minister has not elected coverage would not prevent his being subject to the annual earnings test with respect to his/her SE outside the U.S., if his/her work would be covered under the SS Act had he/she made the election.

1105.85.4 Citizens Self-Employed Outside the U.S.

Practice as a physician outside the U.S. is always subject to the foreign work test. Other SE carried on by a citizen outside the U.S. is subject to the annual earnings test only if it can give rise to net earnings from SE (i.e., net earnings are subject to U.S. SS taxes). Whether such SE can give rise to reportable SS taxes may depend on whether the citizen has established "foreign residence" or "presence in a foreign country." All or part of a citizen's income or loss may be excludable in determining the amount of net earnings from SE if the citizen established "foreign residence" or "presence in a foreign country."

"Foreign residence" means bona fide residence in a foreign country (or countries) for an uninterrupted period that includes an entire taxable year. Mere presence is not enough to establish "bona fide residence." Generally, one who goes to a foreign country for an extended or indefinite stay for any reason and maintains a home there is a bona fide resident, even though he intends to return to the U.S. at some future time. "Presence in a foreign country" means presence in a foreign country (or countries) during a total of at least 510 full days during any period of 18 consecutive months. "Foreign residence" or "presence in a foreign country" must exist for the particular taxable year under consideration in order for a person to qualify for a special tax exemption for that year.

1105.85.5 Advising Annuitants

When inquiries about or notices of changes to foreign addresses are received, advise a retirement annuitant that work in a foreign country may affect payment of the annuity. Emphasize the annuitant's responsibility to report earnings over the monthly exempt amount or work outside the U.S. for more than 45 hours per month. A report should include the annuitant's citizenship status and whether or not the annuitant is self-employed.

1105.85.6 Definition of Terms Used Pertaining to Employment Outside the United States

- A. U.S. Citizen - A citizen of the U. S. by birth or naturalization.
- B. U.S. - Effective 9-13-60, the term means the 50 states, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

The inclusion of Guam and American Samoa in the definition of resident and non-resident alien (for purposes of work deductions outside the U.S.) is effective from 1-1-61, for services performed as an employee and to taxable years beginning after 1960 for self-employment in a trade or business.

- C. Outside the U.S - This term applies to the place where a person performs his services or to the place where the trade or business is conducted but not to the place where the person lives.

- D. Carry On a Trade or Business - This term means the person holds himself out to others as engaged in the selling of goods or services for profit. The fact that a person has not actively participated in the business nor derived a profit from it is not material. The mere holding himself out as being available to participate is sufficient to find that he was carrying on a trade or business during any given period even though circumstances (such as illness) may have prevented actual participation.

1105.90 Returning Annuity Because Of Excess Earnings

When an annuitant reports excess earnings, (s)he may have already incurred an overpayment. The following guidelines should be used in advising an annuitant about the return of an annuity payment. When an annuitant is advised to return a payment, no tracing action is necessary. Any overpayment will be determined when permanent work deductions are assessed.

- A. An employee disability annuitant should be advised to return his/her check for any month (s)he earns over the disability earnings monthly limit. See [FOM 1 1125.5.2](#) for more information about disability earnings limit after deduction of disability related work expenses.
- B. A non-disabled survivor annuitant should be advised to return the check;
- C. A disabled survivor annuitant should not return a payment when work is started because a continuance of disability determination must first be made; and
- D. A retirement or spouse annuitant, under either the RR or the O/M formula, should not return a payment because part of that annuity is payable.

1105.95 Recovery Of Earnings Overpayment

An overpayment because of excess earnings is generally recovered by cash refund or by credit card and in some retirement cases partial withholding can be an added option, if one of the conditions listed in the next section applies. Penalty deductions that are applied in retirement age and service or disability cases, including the overall minimum, are recovered by the same method as the overpayment.

Partial withholding or an actuarial adjustment may be used to recover an overpayment due to excess earnings if one of the conditions in [FOM 1105.95.1](#) is met. Overpayments in survivor cases must be recovered by cash refund or full withholding.

1105.95.1 Partial Withholding

Partial withholding may be offered in a retirement case if one of the following conditions exist and partial withholding would normally be offered. See [FOM 1 1205.25.3](#).

- A. The overpaid annuitant is at least FRA or (age 70 prior to the year 2000 and 72 before 1983); or

- B. Work deductions are assessed only in the month of the annuity beginning date; or
- C. The overpaid person states he is no longer working, and future excess earnings are not likely; or
- D. Tier II is at least \$10.00 greater than the partial withholding amount plus the amount of the current Medicare premium.

NOTE: Partial withholding may be offered even if temporary work deductions are being applied.

1105.95.2 Actuarial Adjustment

An actuarial adjustment may be offered in a retirement case if tier II is at least \$10.00 greater than the actuarial adjustment amount plus the amount of the current Medicare premium. Actuarial adjustment may be offered even if temporary work deductions are being assessed, but not if any of the other conditions in [FOM 1 1205.25.4](#) apply.