

310.5 Entitlement Requirements

The Railroad Retirement Board (RRB) pays 2 types of disability annuities (D/A), based on either an occupational or total and permanent disability. Each type has different eligibility criteria.

DSUBD will release an RL-121f (Disability Allowance Notice) in all initial disability allowances. Please see [DCM 11 RL-121f](#) Disability Allowance Notice for additional information about this letter.

310.5.1 Occupational Disability

An employee must:

- A. Be under full retirement age (FRA); and
- B. File an application for a disability annuity; and
- C. Cease compensated service to an employer under the Railroad Retirement Act (RRA); and
- D. Have a current connection with the railroad industry; (The “deemed” current connection provision does not apply to occupational disability annuities.) and
- E. Be permanently disabled for work in his regular railroad occupation; and either
- F. Have completed at least 20 years of creditable railroad service; or
- G. Have attained age 60 and have completed at least 120 months of creditable railroad service.

310.5.2 Total and Permanent Disability

An employee must:

- A. Be under FRA; and
- B. File an application for a disability annuity; and
- C. Cease compensated service to an employer under the RRA: and
- D. Be permanently disabled for all regular employment; and
- E. Have completed at least 120 months of creditable railroad service; or
- F. Acquired 60-119 service months, and at least 60 months are after 1995, and ABD is 1-2-2002 or later; however:

- Tier 1 is not payable unless the applicant has enough quarters of coverage (based on RR and SS earnings) to have an insured status under the Social Security Act. If under age 62, the applicant must have 20 QC's in the 10 years immediately preceding the onset of the disability.
- Tier 2 is not payable until age 62.
- If the applicant is under age 62 and does not have enough QC's to be insured under the SS Act, nothing is payable and the application must be denied.

NOTE: A disability annuitant is not required to relinquish his rights to return to railroad employment until FRA.

310.10 Evidence Requirements

Application (AA-1 and AA-1d)	Always.
Self-Employment Questionnaire (AA-4)	<p>When the employee was self-employed</p> <ul style="list-style-type: none"> • in the 12 months preceding the application filing date, or • at any time after leaving railroad work in cases where self-employment vs. LPE decision is needed for a C/C determination or for work deduction purposes, or • any time in the last 15 years immediately prior to the alleged onset date.
Notice of Protection of Filing Date for Social Security Benefits (RR-8)	Used with the Form AA-1 only if the employee is eligible for social security benefits or will be eligible within 3 months, and he wishes to use the filing date of the Form AA-1 as the filing date of an application for social security benefits.
Verification of Worker's Compensation and Public Disability Benefit Information (G-204)	When an employee files a disability application, and he has received or expects to receive worker's compensation or public disability benefits and he does not have an award letter that provides the necessary information (see FOM-I-1720).

Proof of Age	Always; however, a D/A may be awarded before establishment of the date of birth when age is not a factor of eligibility.
Disability Background Report	When an applicant is present during the application process and the contact representative observes something pertinent or DBD requests a personal interview.
Vocational Report (G-251)	Always; however, it is not necessary to furnish Form G-251 for employees filing for a period of disability (DF) and/or early Medicare if they have previously filed a G-251 and have not worked since they last filed for disability.
Proof of Disability (medical evidence)	Always.
Proof of Military Service	If the employee performed military service which could be creditable under either the Railroad Retirement (RRA) or the Social Security Act (SSA).
Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-railroad Employment (LPE)(G-19L)	If the employee had LPE earnings after the ABD, and the ABD is in a prior year.
Notice of Retirement and Request for Service Needed for Eligibility (G-88A.2)	When a report of railroad service for the lag period is required.
Employee's Certification of Termination of service and Relinquishment of Rights (G-88)	If a disability annuitant under FRA becomes eligible for a supplemental annuity or if his spouse becomes eligible for an annuity, and his application Form AA-1d had a revision date before 5-76. Forward Form G-88 to RBD. This is an internal use form and is not to be released to the employer. A disability annuitant automatically relinquishes his rights at FRA.
Application for Substitution of Payee (AA-5)	If a substitute payee is required.

Check List for Employee, Spouse/ Divorced Spouse Annuity, and HIB Applications (G-230)	Always required for transmittal of an application.
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310.15 Annuity Beginning Date

The "annuity beginning date" (ABD) of disability applications are explained in FOM-I-111.10.2 Retroactivity of applications is explained in [FOM-I-112.6](#).

Instructions for changes in the ABD after the application is released to Headquarters are in [RCM 6.2.41](#).

310.15.1 Waiting Period Requirement

The 1983 RRA amendments added this requirement for applications filed 9-1-83 or later. The annuity may not begin until the railroad retirement waiting period has expired. The waiting period begins the first day of the month after the month in which disability began, and continues for 5 calendar months. The waiting period cannot begin before the first day of the 17th month before the month in which the application is filed. This allows for the 5-month waiting period and the 12-month application retroactivity.

If the disability began the first day of the month, the waiting period still begins the first day of the following month. (This differs from the Social Security Administration's rule of counting that first month in the waiting period if disability began on the first day of the month.)

EXAMPLE: An employee's disability began 10-1-82. He filed an application on 10-1-83. His annuity cannot begin until 4-1-83, after the railroad retirement waiting period.

The railroad retirement waiting period is not the equivalent of a disability freeze (DF) for a disabled employee. A DF affects the employee's eligibility year for PIA computations, early Medicare eligibility and entitlement to a vested dual benefit. The railroad retirement waiting period only affects the ABD. A disabled employee must still have a DF for early Medicare and a vested dual benefit based on disability.

310.15.2 When a Waiting Period Is Not Required

A waiting period is not required if the employee becomes disabled again within 60 months of the month a previous railroad retirement disability annuity terminated. This rule applies even when the disabled employee was previously entitled before 9-1-83, when no waiting period was required.

310.15.3 Effect Of Railroad Work On The ABD For A Disability Annuity

In some disability cases an employee will attempt a return to railroad work. This return to railroad work can affect the ABD depending on when the disability application was filed and when the return to railroad work was attempted.

- If the return to railroad work occurs after the disability application is filed, the railroad work can be considered an unsuccessful work attempt (UWA). If the railroad work is considered an UWA, it would not have an effect on the annuity beginning date. However no annuity is payable for any month the annuitant was in compensated service.
- If the return to railroad work occurs before the disability application is filed, that railroad work is considered the employee's date last worked. This would mean the ABD could be no earlier than the day after the DLW.

310.20 Protected Filing Date

When a D/A application is denied, and the employee was eligible for an age and service annuity (A&SA) at the time the initial application was filed, the filing date of the original Form AA-1 (Application for Employee Annuity) may be used to protect the ABD of the age and service annuity. If the disability applicant indicated on Form AA-1 that he will accept a reduced age annuity if he is not eligible for a disability annuity, a new application is not required to pay the reduced age annuity. RASI (Retirement Adjudication System Initial) will not drop the application from the system. Instead, the application will be recycled as a reduced age application, and the examiner will enter a reduced age IMPACT (Initial Monthly Partial Annuity Certification in Tiers). The employee's rights were relinquished on the Form AA-1d (Application for Determination of Employee Disability).

In addition, a denied A&SA application may be used to protect the beginning date of a D/A if the employee was eligible for a D/A when the initial application was filed. Full disability development is required.

310.25 Switch in Type Of Annuity After Award

When an annuity has been awarded, the type of annuity cannot be changed unless the original application is cancelled and a new application is filed. The new ABD is determined by the filing date of the new application.

However, an application for an A&SA may be reopened to pay a D/A, if the employee was disabled when the original application was filed. This usually occurs when an employee files for an A&SA, but also files for a disability insurance benefit at the Social Security Administration.

When the Social Security Administration notifies us that a period of disability (disability freeze) has been established, the disability programs section will ask you to develop a

Form AA-1d for payment of the D/A. The filing date of the age annuity application will be used to pay the D/A, even if the notice of disability was received more than 1 year after the original filing date.

If an employee who is receiving an A&SA does not file for a disability insurance benefit at the Social Security Administration, but he later informs the RRB that he was disabled when the A&SA application was filed, he must establish that he was deterred from filing for a D/A. Submit the employee's statement of why he did not originally file for a disability annuity, and develop a Form AA-1d and medical evidence. DPS will determine if the age annuity application may be used to pay a D/A.

310.30 Changing ABD to Qualify Under 60/30 Provision

A disability annuitant who has 30 years of service but an ABD before 7-1-74 may wish to cause termination of his disability annuity in order to qualify for a full annuity at age 60 under the 60/30 provision with an ABD of 7-1-74 or later. A disability annuity terminates when the annuitant dies or medically recovers from his disability.

Returning to railroad service does not necessarily cause termination of the D/A. Although the D/A is suspended for any month in which creditable RR service is performed, termination occurs only when the RRB determines that the individual has recovered based on medical evidence that shows he can resume the full range of duties of his regular railroad occupation for a reasonable period of time. Generally, the annuitant must return to his regular occupation for at least 12 months to demonstrate medical recovery. The decision on medical recovery is based on the facts in each individual case.

310.35 Relinquishment Of Rights For A D/A

A disability annuitant is not required to relinquish his rights before he attains full retirement age (FRA); at FRA, his rights are automatically relinquished by the RRB. If, before a disability annuitant attains FRA, he becomes eligible for a supplemental annuity or his spouse becomes eligible for an annuity, he must relinquish his rights before either of those benefits may be paid. A SUPP ANN may not begin before the first day of the 12th month prior to the month the employee relinquishes his rights.

A disability annuitant, who files a Form AA-1d with a revision date of 5-76 or later, authorizes the RRB to relinquish his rights when he becomes eligible for a SUPP ANN, or his spouse becomes eligible for an annuity. On the Form AA-1d, revised 5-84, a disability applicant also relinquishes his rights if he elects to receive a reduced age annuity if his disability is denied. In addition Form G-346, Employee Certification, with a revision date of 10-92 or later, includes a statement authorizing the RRB to relinquish his rights when the annuitant's spouse becomes eligible for an annuity.

However, certain employees may not wish to relinquish their rights before attaining FRA because of possible adverse effects on their benefits from the railroad. If an employee

does not wish to relinquish his rights before he attains FRA, secure a signed statement when he files the Form AA-Id.

Instruct the employee that he must notify the RRB if he does later wish to relinquish his rights before FRA. In order to prevent automatic payment of the SUPP ANN, mark the "To Be Prepared" box in item 13 of Form G-230. Also note in the remarks section on the Form G-230, "Rights not relinquished; see attached statement."

If a disability annuitant protests the RRB's automatic relinquishment of rights before it becomes effective, or if an individual cancels a previously submitted relinquishment of rights before it becomes effective, no annuities that require the individual's relinquishment of rights are payable. A disability annuitant cannot revoke the automatic relinquishment of rights in disability cases, once relinquishment of rights has become effective, even if the annuitant offers to refund the amount of the Railroad Retirement Act annuities that were paid based on the relinquishment of rights.

310.36 Child Care Dropout Years Provision

Under the 1980 Social Security Act (SSA) disability amendments, additional years may be dropped from the PIA (primary insurance amount) computation of a disability annuitant. Beginning 7-1-81, a year may be dropped if the disabled employee was under age 37, not employed, and living with a child under age 3. See [FOM I305.50](#).

DPS initiates development when this provision may apply.

310.37 Reduction for Worker's Compensation Or Public Disability Benefits

Tier I of a disability annuity is reduced when the employee is entitled to worker's compensation (WC) or a public disability benefit. The tier I of a spouse or divorced spouse annuity is reduced first, when the WC offset applies to the employee. The reduction applies to all disability annuities under the 1974 Railroad retirement Act (RRA); it was implemented beginning with payments made 9-1-82 or later.

FOM-I-120 has more information on WC/public disability benefits.

310.37.1 Worker's Compensation/Public Disability Benefit Defined

Worker's compensation (WC) payments are made to a worker because of a work-related injury or disease, under a Federal or state worker's compensation law or plan. Black lung benefits are included as WC payments if the application for black lung benefits was filed 7-1-73 or later.

Public disability benefits (called MEGACAP by the Social Security Administration) are periodic disability benefits paid under a law or plan of the United States, a state or state instrumentality, or a political subdivision of a state. Generally, these benefits are

government pensions based on disability, for employment that is not covered under social security.

Veterans Administration (VA) and welfare benefits are not included. FOM-I-120 lists other benefits that do not cause reduction.

The applicant may have the option of receiving his WC in a lump-sum payment in lieu of periodic payments. Electing such a lump-sum payment will not exempt his WC from offset; it will simply be prorated for offset purposes, based on the periodic rate to which he would have been entitled if he had selected installment payments. Generally, most lump-sum settlements are in lieu of periodic payments.

310.37.2 Applying the Reduction

The initial WC or public disability benefit reduction is equal to the difference between:

- A. The family tier I total plus the amount of the WC/public disability benefit; and
- B. The higher of the family tier I total or 80% of the employee's average current earnings (ACE) before his disablement. The ACE is defined in FOM-I-120.

The reduction equals zero if the family tier I total plus the WC/public disability benefit is lower than 80% of the ACE. The reduction is never greater than the amount of the WC/public disability benefit. When a spouse or divorced spouse annuity is paid, the reduction is first applied to that annuity, then to the employee's annuity. The reduction no longer applies when the employee attains age 65, if his annuity began 9-1-81 or later, or his disability freeze began 3-2-81 or later. On December 19, 2015, the age for which the offset applies was extended for annuitants who attain age 65 on December 19, 2015 or later to full retirement age.

310.37.3 Developing Worker's Compensation/Public Disability Benefit Information

Forms AA-I and AA-ID ask if the employee has received or expects to receive WC or a public disability benefit.

If the employee has an award notice or other verification of the WC/public disability benefit that includes the information necessary to make an offset determination (see [FOM-I-1720](#)), submit a copy and do not release a Form G-204. If the award letter or other verification provides some, but not all information, submit a copy but also release a Form G-204. Until the payment is verified, RBD will use the maximum WC rate payable by the state of the employee's residence for the offset amount, or the claimed public disability benefit amount, if it is higher. RBD will adjust the amount of the reduction, if necessary, after verification is received.

If the amount of the employee's monthly WC payment or public disability benefit increases or decreases, notify RBD. The tier I will be adjusted effective with the date of the change.

310.38 Offset For Non-Covered Service Pension and Public Disability Benefit

By definition a public disability benefit can, under certain situations, also be considered a NCSP. This occurs when a pension meeting the requirements as a NCSP is based on disability. When this happens, a manual calculation of PIAs 1, 9, 17 and SSEB is required for a NCSP-reduced PIA #1, in addition to testing for PDB offset that is applied to the tier 1 benefit. The NCSP-reduced PIA #1 is used in the PDB offset computation. A NCSP not based on disability is not considered a public disability benefit.

If a disability applicant receives a PDB, which also meets the requirements as a NCSP, the Tier 1 calculation must be adjusted for both NCSP and PDB reduction.

While it may appear that the disability tier 1 is being reduced twice (NCSP & PDB) for the same benefit, normally the total reduction is the same when compared to a PDB only reduction.

EXAMPLE:

NCSP REDUCED PIA vs. FULL PIA		
	PDB Offset Formula	Same Case with NCSP Only
PDB	\$1000.00	\$1000.00
PIA (Full)	<u>+1000.00</u>	<u>+ 700.00</u> (NCSP Red. PIA)*
	\$2000.00	\$1700.00
-80% ACE	<u>-1500.00</u>	<u>-1500.00</u>
PDB Deduction	\$ 500.00	\$ 200.00
Net Tier I	\$ 500.00	\$ 500.00

In each instance above, the net tier 1 amount is the same.

*Because the PIA 1 is NCSP reduced, the PDB offset becomes \$1 for \$1 reduction.

RRB follows the same rules as SSA for purposes of computing PIA 1 for NCSP and PDB. Age and service annuities apply only the NCSP reduction. Disability annuities must consider both.

Any PDB offset ends at age 65 or full retirement age for annuitants who attain age 65 on December 19, 2015 or later, while the NCSP reduction continues until death.

310.40 Suspension of D/A

310.40.1 Nonpayment Months

A D/A is not payable for any month in which an annuitant:

- A. Works in RR service; or
- B. Earns more than the monthly earnings amount ([See FOM1 1125.5.2](#)) after deduction of disability related work expenses in employment or self-employment of any type.

Exception: Payments to volunteers under The Domestic and Volunteer Service Act of 1973 do not eliminate eligibility for any government program. That act consolidated the domestic volunteer programs throughout the Federal government under the ACTION agency. The services are meant to be provided by volunteers, and stipends or allowances are paid to enable volunteers to effectively carry out their assignments. Earnings under the following programs do not affect payment of a disability annuity:

- 1. Title I - National Volunteer Antipoverty Programs.
 - a. Part A - Volunteers in Service to America (VISTA).
 - b. Part B - Service-Learning Programs.
 - c. Part C - Special Volunteer Programs.
- 2. Title II - National Older American Volunteer Programs.
 - a. Part A - Retired Senior Volunteer Program.
 - b. Part B - Foster Grandparent Program and Older American Community Service Programs.
- 3. Title III - National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.

310.40.2 Administrative Suspensions

A D/A may be suspended if the annuitant under FRA fails to submit proof of the continuance of disability, as requested by the RRB.

310.45 Termination Of D/A

A D/A terminates as of the last day of:

- A. The month before the month in which the annuitant dies; or

B. The second month after the month in which the annuitant's disability ceased.

A disability annuitant whose annuity was terminated because his disability ceased must file a new application to receive any annuity for which he may later qualify. He will be given credit for any additional years of service he acquires.

A disability annuity technically terminates at FRA, when the annuity is payable based on age. This does not change the record of the type of annuity paid (occupational or total and permanent disability) or cause any adjustment in the annuity rate. The disability annuitant is simply no longer subject to the disability work restrictions when he attains FRA, but is instead subject to the work restrictions of an age and service annuitant.

310.50 Deductions When Annuitant Earns More Than The Monthly Disability Earnings Limit In A Month After Deduction Of Disability Related Work Expenses

A disability annuity is not payable for any month in which the annuitant is under FRA and earns more than the monthly disability earnings limit in employment or self-employment of any kind after deduction of disability related work expenses except volunteer work under The Domestic and Volunteer Service Act of 1973 (see [FOM-I-310.40.I](#)).

For years in which a disability annuitant's earnings in non-RR employment are less than the monthly disability earnings limit, any annuities and penalties withheld during the year because of monthly earnings in excess of the disability earnings limit will be payable after the end of the year. If an annuitant's earnings exceed the disability earnings limit in a year, annuities and penalties withheld in excess of 1 month's annuity (and 1 penalty) for each dollar amount equal to the monthly disability earnings limit of earnings over the yearly disability earnings limit will be payable after the end of the year. For this purpose, fractions of 50% of the monthly earnings limit or more are counted the same as the monthly disability earnings limit.

For instance, an annuitant who earned \$12,749.99 in calendar year 2022 earned \$149.99 over the \$12,600.00 (\$1,050 x 12 months) yearly disability earnings limit. Since this excess is less than \$525.00 (50% of \$1,050), no work deductions will be imposed. [FOM1 11](#) has more information on work deductions.

310.55 Adjusting Earnings For Special Expenses

The 1980 Social Security Act Disability amendments (PL96-265) provide that the cost of certain impairment-related items and services that a person needs in order to work can be deducted from the earnings used to determine whether a disability annuitant has performed substantial gainful employment. The cost of these items and services, called impairment-related work expenses (IRWE), can be deducted even if the services and items are also needed for non-work activities.

Effective January 1, 1989, the cost of these same items and services can also be deducted from a disability annuitant's earnings which are used to determine whether work deductions must be imposed. Prior to the 1988 amendments, these expenses were not deductible for this purpose. When these expenses are deducted for work deduction purposes, they are called disability related work expenses (DRWE).

310.55.1 Deductible Expenses

Deductions from earnings may be made for DRWE and IRWE for the costs of attendant care services, medical devices, equipment, prostheses and routine drugs and medical services necessary to control the impairment. These types of expenses apply to employee, widow, and child disability annuitants who require assistance to work, whether or not such assistance is also needed to carry out normal daily functions. The amount of expenses that may be deducted is subject to reasonable limits, and will apply only if the beneficiary or his family paid for them. A chart of deductible expenses is presented as Appendix J (paper appendix in the Supplemental Procedure Manual). This information is also contained in [DCM 10.4.6](#).

310.55.2 Development of IRWE

The disability post section (DPS) or the beneficiary compliance (BC) will request the field office to obtain certain information about extraordinary IRWE and information from employers about the value of services, when all other information about the continuance of disability is developed. Determine if there was any impairment-related work expenses that the annuitant or the annuitant's family paid that were necessary for the annuitant to work. If there are any IRWE, also develop information about the nature and the monthly amount of the expenses. DPS will determine if the IRWE are extraordinary, and the amount, if any, to be deducted from the earnings for the work test.

310.55.3 Verification

To determine whether expenses may be excluded, the RRB may contact the appropriate source for general information about special expenses that an annuitant may have. Contact may also be made to verify an annuitant's allegations regarding:

- Need for service or item which is:
 - required to control a disabling condition thereby enabling work,
 - essential to performance of physical and/or mental demands of job,
 - necessary in preparing for trip to work, in traveling to and from work, or assistance needed immediately upon returning from work.
- Payment for service or item, or where annuitant cannot provide proof of the amount.

310.55.4 Development of DRWE

Annuitants with disabilities and monthly earnings over the monthly disability earnings limit are being instructed to contact field offices in order to establish DRWE. Develop as described in [310.55.1](#) and forward to DBD.

EXAMPLE 1: A disabled annuitant who uses a wheelchair reports that he/she will have monthly earnings of \$2,000 per month and \$24,000 per year as an office worker in the year 2020. The annuitant has the following disability related work expenses:

- \$3,000.00 Vehicle modification to add electric lift
- \$1,500.00 Home modification to add ramp
- \$6,539.20 Operating costs (monthly mileage)

Any nonrecurring expenses such as the lift and ramp can be attributed to the month they were incurred or prorated on a monthly basis for the whole year as the annuitant chooses. If the non-recurring expenses are allocated on a monthly basis for the whole year, the monthly expenses that can be deducted are \$919.93 (\$11,039.20 divided by 12). The monthly countable earnings are reduced to \$1080.07 and the yearly total is \$12,960.84. The annuitant's excess earnings equal the difference between \$12,960.84 and \$11,400.00, or \$1,560.84. Using the \$990 earnings withholding amount effective in 2020, this annuity is subject to withholding for one month in that year.

If the non-recurring expenses (\$4,500) are used during the month they occurred (in this case January), the monthly countable earnings for January are -0-. The monthly countable earnings for February through December are \$1405.53 (\$2,000 less \$594.47, the monthly mileage costs). The yearly total in this example would then be \$15460.83. Using the \$990 earnings withholding amounts effective in 2020, this annuity is subject to withholding for four months.

In this example, it is to the annuitant's advantage to allocate the non-recurring expenses over the whole year.

EXAMPLE 2: A disabled annuitant who is blind and, therefore, needs a seeing eye dog to get to work, earns \$2,000 per month starting in March 2020. The annuitant has the following disability related work expenses:

- \$240-per month taxicab expenses (because seeing eye dogs are not allowed on public transportation in the community)
- \$500 - vision aid for the blind

The aid which is a nonrecurring expense can be attributed to the month it was incurred or prorated on a monthly basis. By allocating the nonrecurring expenses on a monthly basis, the monthly countable earnings are reduced to \$1,710.00. The yearly amount

earned is therefore \$17,100.00. Using the new \$990 earnings withholding amounts effective in 2020, this annuity is subject to withholding for the whole year.

310.60 Effect of Work And Earnings On D/A

A disability annuity (D/A) is not payable for any month in which an annuitant is under FRA and works in RR employment, or earns more than the monthly earnings amount ([See FOM1 1125.5.2](#)) after deduction of disability related work expenses in employment or self-employment of any type, except volunteer work under The Domestic and Volunteer Service Act of 1973 (see [FOM-I-310.40.1](#)).

310.60.1 Annuitant Returns to RR Service

If an annuitant returns to RR employment, RBD will suspend payments immediately; Form G-88 (Employee's Certificate of Termination of Service and Relinquishment of Rights) will be sent to the annuitant with a letter explaining the suspension. If the annuitant returned to RR service, information about the supplemental annuity closing date will be included.

DPS will review the case after 6 months to determine if the employee's disability has ceased. Additional information may be requested by DPS, such as an earnings breakdown, information about impairment-related work expenses, Form G-254 (Continuing Disability Report), memorandum from the contact representative to the DPS giving observations of the annuitant's appearance, stance, walk, behavior, etc., and Form G-250 (Medical Assessment). Unless medical recovery occurs first, a determination will be made at the end of the appropriate work period (usually 9 months) as to whether the work may be reconciled with the disability rating. If the employee's work is not reconciled with the disability rating, disability may cease based on the employee's work and earnings, even though he may not have medically recovered from his disability.

310.60.2 Annuitant Begins Other Work

A disability annuitant must report all work and earnings. Payments will be suspended immediately if the annuitant earns more than the monthly earnings amount ([See FOM1 1125.5.2](#)) in any month after deduction of disability related work expenses. A letter explaining the suspension will be sent to the annuitant.

NOTE: Under the 1988 Amendments, work for the annuitant's last non-railroad employer is subject to the same restriction as of other types of annuities i.e., the tier II and supplemental annuity if any are subject to deduction. This deduction is \$1 for \$2 in earnings not to exceed 50% of these components.

DPS will review the case after 6 months to determine if the employee's disability has ceased. Additional information may be requested by DPS, such as an earnings breakdown, information about impairment-related work expenses, Form G-254, memorandum from the contact representative to the DPS giving observations of the

annuitant's appearance, stance, walk, behavior, etc., and Form G-250. Unless medical recovery occurs first, a determination will be made at the end of the appropriate work period (usually 9 months) as to whether the work may be reconciled with the disability rating. If the employee's work is not reconciled with the disability rating, disability may cease based on the employee's work and earnings, even though he may not have medically recovered from his disability.

When DPS requests additional earnings breakdown, the information should contain a signed and dated statement with all items shown in [FOM1 1125.25](#). The statement should be imaged as file only "Earnings Report" **and** an email should be sent to DPS mailbox regarding the report of work. To ensure all statements are handled accordingly, it is important to send the report of work email to the DPS mailbox as soon as the report of work statement is imaged on Workdesk.

310.65 Annuitant Works and Has A Disability Freeze

If the annuitant has a disability freeze (DF), a determination of continuance of disability under the Social Security Administration's rules is required. Disability under the Social Security Act (SSA) ceases when the individual's physical or mental impairment is no longer of such severity as to prevent him from performing substantial gainful activity (SGA) or, subject to the trial work period provisions, he demonstrates the ability to engage in SGA by working (except in certain cases based on statutory blindness).

Even though the determination of continuance of disability is required under the SSA, the work restrictions of the Railroad Retirement Act (RRA) still apply. A disability annuity will be suspended for each month an annuitant earns more than the monthly earnings amount (See [FOM1 1125.5.2](#)) after deduction of disability related work expenses in employment or self-employment of any type, except volunteer work under the Domestic and Volunteer Service Act of 1973 (see [FOM-I-310.40.I](#)).

310.65.1 Substantial Gainful Activity

Substantial gainful activity means the performance of significant duties over a reasonable period of time in work for remuneration or profit or in a kind of work generally performed for remuneration or profit. The duties must be useful in the accomplishment of a job or the operation of a business and they must have a degree of economic value. Work performed in self-care or one's own household tasks, and non-remunerative work in hobbies, institutional therapy, or training school attendance, etc., does not by itself constitute SGA. Volunteer work for VISTA or other programs under the Domestic and Volunteer Service Act of 1973 (see [FOM-I-310.40.I](#)) does not demonstrate an ability to engage in SGA.

NOTE: Although annuitants with a period of disability or disability based on total and permanent disability can earn up to the monthly earnings amount ([See FOM1 1125 5 2](#)) in each month without incurring work deductions, the application of SGA rules could cause the termination of their annuity or period of disability.

The following are general statements regarding earnings as a reflection of SGA:

- A. Earnings averaging over the monthly amount for substantial gainful activity will ordinarily demonstrate an individual's ability to engage in SGA. (See [DCM 10.4.4b](#) for a history of SGA amounts.);
- B. Individuals who are statutorily blind are deemed not to be engaging in substantial gainful activity if their monthly earnings from work activities do not exceed the monthly amount of substantial gainful activity for the blind. (See DCM 10.4.4b(ii)(c) for a history of SGA for statutorily blind individuals.)

310.65.2 Application of the Trial Work Period Under SSA Rules

Under the SSA, a 9-month trial work period is allowed. The individual who has not medically recovered may work in as many as 9 calendar months (which do not have to be consecutive) during which his work will not be used as the basis for determining that disability has ceased. Effective 1-92, the TWP is complete only when the disabled annuitant completes 9 service months on or after 1-92 and within 60 consecutive months. Any month in which a person performs services is considered a trial work month; work is considered services if it is performed as an employee for more than the yearly level [See DCM 10.5.4](#)). When work is performed as a self-employed person, it is considered services if the net earnings are more than the yearly level [See DCM 10.5.4](#)) or if the time spent in work is more than 80 hours a month.

After the 9 months of services, the individual's work will be considered in determining whether he has demonstrated the ability to engage in SGA. Any such services (including the services performed during any of the 9 months) may be considered in determining whether he is able to engage in SGA for any month after that.

- A. A trial work period applies if a disabled employee annuitant:
 - 1. Returned to work; and
 - 2. Has a disability freeze; and
 - 3. Is entitled to the disability overall minimum (DIB O/M) increase, even if the increase does not apply.
- B. A trial work period extension may apply if the employee is receiving the DIB O/M, or if a disabled child is included in the O/M (see [FOM- I-325.95](#)).
- C. A trial work period does not apply if:
 - 1. No waiting period for DIB O/M benefits was required; or

2. The employee already had a trial work period within the same disability freeze period; or
3. The employee is under age 55 and statutorily blind but he is not entitled to the DIB O/M because he is engaging in SGA; or
4. The employee is age 55-month prior to FRA and is statutorily blind UNLESS:
 - a. He returns to work which is comparable to the activity he engaged in during the 10 years prior to his blindness or age 55, whichever is later; or
 - b. His last previous work activity was terminated because of impairment or other reasons related to his capacity to engage in SGA and his return to work involves a significant vocational adjustment.

NOTE: This section pertains to a trial work period under the Social Security Act. Under the Railroad Retirement Act a trial work period may apply to an occupational disability annuitant whether or not that annuitant has a disability freeze.

310.70 Work Reconciled With Disability

If an annuitant's work is reconciled with his disability, payments will continue unless the annuitant returned to RR service or is earning more than the monthly earnings amount ([See FOM1 1125.5.2](#)) after deduction of disability related work expenses in any month. The annuitant should continue to report any changes in his work or earnings.

310.75 Applicant Has Medically Recovered From Disability

Benefits will be terminated if the annuitant has medically recovered from disability under the RRA. The D/A will be paid through the end of the second month after the month in which the disability ceased.

310.80 Reinstatement and Re-computation Of Annuity

When annuity payments were suspended because the annuitant returned to RR service, payments are reinstated effective with the first day of the month following the date last worked. A disability annuitant under full retirement age must still be disabled to have payments reinstated.

310.80.1 RR Service Ceased

- A. Field office action -- The annuitant must complete Form G-88 to have payments reinstated. A new application is not required. The field office should also send an E-mail message to P&S Inquiry - Policy and Systems e-mail box, attention RAC to add the employee to the monthly G-88A.1 listing to verify the DLW-RR

and DRR (when applicable). The E-mail should include the employee's payroll name, SSN, Job Title, Dept-Div, Location, DLW-RR, Date Last Carried on Payroll (if later), DRR (when applicable) and the BA number of the employee's last railroad employer.

A disability annuitant under full retirement age must still be disabled; you should obtain an earnings statement with a monthly breakdown for the current and previous calendar years, information about impairment-related work expenses, a completed Form G-254, and Form G-250 if the field office file indicates these forms have not been submitted within the last 12 months. If the contact representative has personal contact with the annuitant and observes something pertinent, submit a report of personal observations.

- B. Headquarters action -- RBD will reinstate the annuity when the Form G-88 is received. If the Form G-88A.1 listing is returned to correct the date last worked or date rights relinquished, RBD will review the file and make any necessary adjustment.

When the railroad submits its annual report after the end of the year, RBD will determine whether or not an increase is payable. If applicable, the annuity will be recertified and an adjustment letter will be sent to the employee with a copy to the district office.

If, after the annual report is received, it is determined that inclusion of the additional service would not yield a payable increase, a Form Letter RL-23b will be sent to the employee with a copy to the field office, advising that an increase is not payable.

310.80.2 Annuitant Earned More Than \$990 After Deduction of Disability Related Work Expenses

Disability Related Work Expenses

When a D/A was suspended because the annuitant had earnings from employment or self-employment of more than the monthly earnings amount ([see FOM1.1125.5.2](#)) after deduction of disability related work expenses, payments are reinstated effective with the earlier of:

- A. The first day of the month in which the annuitant does not have earnings of more than the monthly earnings amount after deduction of disability related work expenses, and is still disabled; or
- B. The first day of the month in which the annuitant attains Full Retirement Age. The disability annuitant is no longer subject to RR disability work restrictions at Full Retirement Age.

A new application is not required if the D/A was suspended because of excess earnings; you should, however, obtain an earnings statement with a monthly

breakdown for the current and previous calendar years and information about impairment-related work expenses and disability related work expenses. Also obtain completed Forms G-254 and G-250, and a memorandum from the contact representative to DBD giving observations of annuitant's appearance, stance, walk, behavior, etc., if the field office file indicates these forms have not been submitted within the last 12 months.

310.80.3 Annuity Payments Previously Terminated

When a D/A was previously terminated due to medical recovery, secure a new application. If an annuitant reports his D/A was previously suspended, but the record of a suspended annuity does not appear on PREH, medical recovery may be assumed in the absence of evidence to the contrary if the annuitant returned to his previous job and actually performed all the regular duties of that job for at least 12 months.

310.85 Vested Dual Benefit Entitlement Requirements

Under the 1974 RRA, an annuitant who is entitled to social security benefits in addition to a railroad retirement annuity does not receive the full advantage of receiving both benefits. That is because a railroad annuity must be adjusted for the amount of social security benefits payable. However, an annuitant will benefit from social security coverage if he is vested. The vested annuitant receives an additional annuity amount called a vested dual benefit (VDB), which is added to the annuity computation. It is designed to simulate the additional amount that the employee would receive because of entitlement to both RR and SS benefits. Although it is not necessary for the employee to be on the rolls on 12-31-74 to be vested, more stringent vesting requirements must be met by employees who come on the rolls after that date.

Because of separate funding, VDBs may be subject to a percentage cutback if the total amount appropriated is insufficient to pay total VDBs for that fiscal year.

The VDB benefit may not be paid without first determining the vested status of the annuitant. In the case of the disability annuitant, this determination may at times depend on whether he qualifies for a disability freeze. Unlike a non-disability case, the disability annuitant may not be vested because of insufficient quarters of coverage (QC) as of 12-31-74, but by qualifying for a disability freeze and excluding the DF years from the elapsed years, he may then meet the QC requirement and be vested for a VDB benefit.

EXAMPLE 1: An employee (date of birth 6-15-20) has 26 years of RR service and 28 QCs as of 12-31-74. He will attain age 62 in 1982. Since 31 years elapse after 1950 up to but not including 1982, he would need 31 QCs to be fully insured under the SSA.

Under these conditions the employee would not be vested as of 12-31-74, even though he has over 25 years of RR service and a C/C.

The employee becomes disabled and is granted a disability freeze with an onset date of 6-1-76. The 6 disability freeze years 1976-1981 are dropped as elapsed years leaving a total of 25 elapsed years. Now the employee, still assuming he meets all other requirements, is vested since only 25 QCs are required for the permanently insured status, and he has 28 QCs.

EXAMPLE 2: An employee (date of birth 4-9-20) has 28 years of RR service and 27 QCs as of 12-31-74. He becomes disabled and is granted a disability freeze on 6-1-79. At the time he has a total of 33 QCs.

Based on his disability freeze, he needs 28 QCs for a permanently insured status, because 28 years elapse after 1950 up to but not including 1979. Since he has only 27 QCs on 12-31-74, he would not be vested and would not be eligible for a VDB at age 62 or earlier. This applies even though he could qualify for a DIB at SSA beginning in November 1979 (after the 5-month waiting period beginning 6-1-79), assuming he also meets the 20/40 test at SSA.

The entitlement requirements for a disability annuitant to be entitled to a VDB are the same as those for an A&S annuitant (see FOM-I-305.50).

310.90 When the Vested Dual Benefit Is Payable

The vested dual benefit (VDB) amount becomes payable to the annuitant at the earliest point at which he would qualify for an SS benefit or on his ABD, whichever is later. If the annuitant is entitled to a VDB benefit because he is the spouse of a person who is fully insured under the Social Security Act (SSA) as of 12-31-74 (or earlier in some cases), that person must be entitled to a retirement insurance benefit (RIB) or a disability insurance benefit (DIB) for the annuitant to be eligible for an SS benefit. Therefore, the VDB may not be paid prior to the beginning date of the wage earner's SS benefit.

The earliest point at which the annuitant would be eligible for an SS benefit (depending on whether eligibility is based on his own wage record or someone else's wage record) is:

310.90.1 Eligibility Based on Own Wage Record

A. Age 62 if he is eligible for a reduced RIB.

If the employee attains age 62 on 9-1-81 or later (date of birth 9-2-19 or later), the VDB may not be paid until the first full month the employee is age 62. The VDB is payable in the month the employee attains age 62 only if his 62nd birthday is on the first or second day of the month. If the employee's 62nd birthday is on or after the third day of the month, the VDB may not begin until the first day of the next month; or

- B. Any age if he is eligible for a DIB at the Social Security Administration. Since the Social Security Administration would not pay the DIB until after the expiration of the 5-month waiting period, the VDB would also not be payable until after the 5-month waiting period. The annuitant does not have to receive a social security DIB to be eligible for a VDB, but he does have to be eligible for a DIB at the Social Security Administration.

In order to be eligible for a DIB at the Social Security Administration and a VDB based on disability, an annuitant must have a DF and he must normally meet the 20/40 current work test. He must have had at least 20 wage QCs during the 40 QC period ending with the quarter in which the disability waiting period begins or, if no waiting period is necessary, in which he is under a disability and for which his application is effective. However, a blind disabled person is eligible for a DIB and VDB based on disability without meeting the 20/40 requirement. A blind person only has to meet the regular insured status requirements.

For VDB purposes, the qualifying 20 SS wage QCs need not have been acquired prior to 1975. When the annuitant acquires these 20 QCs is immaterial as long as he has sufficient SS wage QCs prior to 1975 to be permanently insured under the SSA on 12-31-74.

A person who meets the SS disability requirement but does not meet the 20/40 test may not receive a VDB until he is eligible for a reduced RIB at age 62.

EXAMPLE: An employee (date of birth 5-17-21) has 15 years of RR service, RR service in 1974 and 28 QCs as of 12-31-74. Since 32 years elapse after 1950 up to but not including 1983, he would need 32 QCs to be fully insured under the SSA.

However, he becomes disabled and is granted a disability freeze with an onset date of 5-7-78. The 5 DF years 1978-1982 are dropped as elapsed years, leaving a total of 27 elapsed years. The annuitant is vested since only 27 QCs are required for permanently insured status and he has 28 QCs.

This annuitant meets the 20/40 test based on SS QCs alone; therefore, he is eligible for a DIB. Since the Social Security Administration would not pay the DIB until after the 5-month waiting period, the VDB would not be payable until 11-1-78. The annuitant does not have to actually receive a DIB to be eligible for a VDB.

310.90.2 Eligibility Based on Someone Else's Wage Record

All the requirements in FOM-I-305.51 must be met for payment of the VDB 8-13-81 or later. The earliest point at which an employee would be eligible for an SS benefit on someone else's wage record is:

- A. Age 62 if the employee is eligible for a wife's or husband's SS benefit; or

- B. Age 60 if the employee is eligible for a widow(er)'s or remarried widow(er)'s SS benefit; or
- C. Age 50 if the employee is eligible for a disabled widow(er)'s SS benefit; or
- D. Any age if the employee is eligible for a mother's SS benefit based on having in her care a child entitled to a child's SS benefit on her husband's or deceased husband's wage record.

310.95 Preservation Of Vested Dual Benefit For D/A Who Recover

If an employee in a 1937 Railroad Retirement Act (RRA) case meets the vested dual benefit (VDB) requirements when his 1937 act disability annuity is converted under the 1974 RRA, and he is entitled to his annuity in both December 1974 and January 1975, his VDB entitlement is preserved if his annuity is terminated because he recovers from his disability. The VDB amount payable when a later age and service or disability annuity is awarded equals the 1974 RRA conversion amount paid previously. This amount may not be adjusted for COL increases or recomputed under 1974 RRA rules.

In a 1974 RRA case, if the employee is vested for a VDB solely because his disability freeze reduced the QC requirement and he later recovers from his disability, his VDB entitlement must be re-determined when he later becomes entitled to an age annuity at age 62. If he does not have enough quarters of coverage to be fully insured under the Social Security Act (SSA) at age 62, he will not be entitled to a VDB at age 62.

310.100 Disability Freeze Conflict Cases

There are cases in which the RRB grants a DF to a beneficiary but the Social Security Administration either denies the period of disability (e.g., no DIB insured status based on wages only) or establishes a different disability onset date. In these cases, although the DF established by RRB (based on combined wages and RR compensation) may be used in awarding the disability annuity, the annuitant's vested dual benefit (VDB) eligibility and date of entitlement are based on the wages only disability onset date established by the Social Security Administration. If that agency denies the period of disability, no VDB benefit based on disability may be paid.

310.101 Waiver of Vested Dual Benefit Entitlement

When entitlement to a vested dual benefit (VDB) causes a decrease in the annuity rate, the annuitant may wish to waive entitlement to the VDB. An annuitant may request VDB waiver at any time. However, RBD will initiate the development of VDB waiver only in the following situations:

- A. The VDB entitlement causes the annuity rate to decrease. This may happen if the tier II reduction for the RIB/DIB VDB exceeds the amount of the RIB/DIB VDB. The cases affected are generally 1974 Railroad Retirement Act (RRA) conversion cases, or cases in which an auxiliary VDB had been paid; or

- B. The VDB cutback percentage is greater than 75%. The tier II reduction for VDB entitlement is 25% of the VDB. If the VDB is cut back more than 75%, the tier II reduction will exceed the amount of the WF payable. VDB entitlement, therefore, will cause the annuity rate to decrease.

Whenever entitlement to an RIB/DIB VDB is waived, the annuitant's tier II is not reduced for the VDB. The employee's VDB waiver does not affect any other annuity; the spouse tier II and the RRA maximum computation will be based on the employee's tier II after reduction for VDB entitlement. The spouse may still receive the spouse VDB, if the conditions for payment before the 1981 amendments are met.

The effective date of the waiver and other general information is in FOM-I-110. If the VDB has not been awarded, the waiver may be effective with the WF date of entitlement. If the VDB has been paid, the rules in FOM-I-110 apply.

When RBD initiates development in the situations listed in this section, you will receive a memorandum which explains the advantages of waiving the VDB. The memo will include the annuity rates with and without the VDB, and the effect on annuity payments if the VDB is not waived (e.g., an overpayment). You should contact the annuitant to explain the advantages of waiving the VDB. Your response to RBD should be:

1. If the annuitant agrees, a clear and unambiguous statement waiving VDB entitlement; or
2. If the annuitant does not wish to waive the VDB, notify RBD; or
3. If the annuitant does not respond immediately, notify RBD of the date you contacted the annuitant. If RBD has not received a response within 60 days of the date of your contact, the VDB will be paid and any overpayment will be recovered. An extension of the time for response will be granted if requested.

310.105 When Vested Dual Benefit Entitlement Ends

Vested Dual Benefit (VDB) payments end with the earliest of the following dates:

- A. The last day of the month before the month in which the annuitant dies; or
- B. The last day of the month before the month of termination of entitlement to a DIB or wife's, husband's, mother's, or widow(er)'s benefit under the Social Security Act (see note after C.); or
- C. The last day of the second month after the month in which the annuitant is medically recovered from his disability. In a DF conflict case the date the VDB terminates is based on the date the Social Security Administration terminates the disability (see following note).

NOTE: The VDB is not terminated when one SS benefit is terminated because the annuitant becomes entitled to a new type of SS benefit (e.g., from a reduced

RIB to a DIB, from a widow's to a remarried widow's benefit, DIB converted to RIB at FRA, etc.) since the annuitant is still eligible for an SS benefit. However, if there is a change in the type and rate of the SS benefit, the VDB benefit will be recomputed. If VDB entitlement was established before 8-13-81, the VDB may be recomputed even if the change in computation is 8-13-81 or later.

