

### 5.8.1 Waiver Provision

The waiver provision became effective 9-1-54 and covers all types of monthly benefits.

Generally, an applicant or annuitant executes a waiver to prevent a decrease in the annuity rate or to reduce his annual income to a level which permits him to receive benefits from another source. He may wish to reduce his income to accept payments from the VA, Welfare, or to qualify for public housing, or entrance to a home for the aged.

Under the waiver provision of the RRA, any person may waive payment of all or part of his regular retirement or survivor annuity or pension. This also includes waiving entitlement to a RIB/DIB windfall when 1) the total annuity rate decreases due to inclusion of the windfall; 2) the windfall would not be payable due to expected excess earnings; and 3) the windfall cutback results in an annuity rate lower than without windfall entitlement. (If a SUP ANN is involved, refer to sec. [5.8.28](#) for instructions to be followed.)

### 5.8.2 Effect on RRA Benefits

A. Annuities Payable While Waiver Is In Effect - A waiver affects an annuity as follows:

- The amount of annuity waived is deduced from the full amount of the annuity otherwise payable to the person who made the waiver. Annuities payable to other beneficiaries in the same case are not affected.
- The part of the annuity which was not paid because of a waiver can never be paid to anyone for the period during which the waiver was in effect.
- If entitlement to a RIB/DIB windfall is waived, the annuitant's tier 2 is not reduced for the RIB/DIB windfall entitlement.

B. Residual Payments - Waiving of an annuity payment does not make the RLS payable, nor will it affect the amount of the RLS:

- The total annuity payments (not including SUP ANN) which would have been payable had the annuitant not filed a waiver are deductible when computing the amount of the RLS.
- A deduction from the RLS should not be made for any month in which the annuity was not payable for a reason other than the waiver (no deduction can be made from the RLS for any month in which an annuity could not be paid because a work deduction applied).

C. Jurisdiction of Death Benefits

- Waiver of an RRA annuity, which is due and payable, cannot transfer jurisdiction to SSA to make the survivor eligible for an SS Act LSDP or an insurance benefit on the employee's wages.
- Jurisdiction for payment of death benefits remains with RRB if the employee died insured under the RRA.. (This does not affect an election to waive future monthly benefits in order to receive the residual. See [chapter 2.9.](#))

### 5.8.3 Effective Date of Waiver

A. Annuity in Force - When an annuity is in force, a waiver is effective with the later of these payments:

1. The payment due on the first day of the month specified in the waiver.
2. The payment due on the first day of the month following the month in which RRB receives the waiver.

NOTE 1: A waiver may apply to any payments due after receipt of the waiver. Example: An employee was paid a monthly annuity of \$314.14 beginning 3-1-82. Later it was found that his annuity effective 3-1-82 should have been \$354.10 under the DIB-O/M. Any time before recertification to pay the additional amount due the employee, he may waive all or any part of it.

NOTE 2: If windfall waiver is being considered in a case where the windfall has not been paid yet, the waiver can be effective with the windfall date of entitlement, even if the waiver request is not received until a later month.

B. Annuity Not in Force - When an annuity is not in force because an award has not yet been made or payments are in suspense, a waiver may be effective with the later of these payments:

1. The payment due on the first day of the month specified in the waiver.
2. The payment effective with the beginning date or the reinstatement date of the annuity.

### 5.8.4 Duration of Waiver

An annuitant's or pensioner's acceptable waiver continues in effect until RRB receives a clear and unambiguous request that it be terminated. The request must be signed by him or by his legal representative.

### 5.8.5 Effective Date of Revocation of Waiver

A. Annuity in Force - When an annuity is in force, a revocation of a waiver is effected with the later of these payments:

1. The payment due on the first day of the month specified in the revocation.
2. The payment due on the first day of the month following the month in which RRB receives the revocation.

NOTE: A spouse, whose windfall entitlement was waived prior to 8-13-81, may cancel that waiver after 8-13-81, and receive the full windfall payment subject to the above 2 conditions.

B. Annuity Not in Force - Revocations affect reinstatements as follows:

1. When annuity payments are in suspense for a reason other than the waiver, a revocation of a waiver may be effected with the later of these payments:
  - The payment due on the first day of the month specified in the revocation.
  - The payment effective with the beginning date or the reinstatement date of the annuity.
2. When annuity payments are in suspense because of a waiver, a revocation of the waiver may be effective with the later of these payments:
  - The payment due on the first day of the month specified in the revocation.
  - The payment due on the first day of the month following the month in which RRB receives the revocation.

### 5.8.10 Waiver for VA Purposes

Under the Veterans Pension laws, certain monthly VA benefits are paid without regard to income from other sources although other types of monthly VA benefits are affected by the amount of income the beneficiary receives.

In those cases where an RR Act is income for VA purposes, the increase payable under the 1968 RR Act amendments is not counted as income until 1969.

Since we cannot give authoritative opinions about VA pensions, anyone who asks for information on the subject should be referred to VA.

### 5.8.11 Effect of Waiver of Annuities on VA Pensions - VA Benefits Paid to Veteran

A veteran should not waive his RRA annuity to receive VA benefits since such action would not affect the amount of his VA payments.

If a veteran has filed a waiver that has not been revoked, refer the person to VA for advice unless the claim folder clearly shows the waiver was made for other than VA purposes.

Following is a summary of the effect of RR Act annuities on VA pensions and whether waiver of RRA benefits might be acceptable for VA purposes:

- A. Service-Connected VA Benefits - A veteran's other income, including an RRA annuity, does not affect his VA benefit if he receives VA compensation for a service-connected disability.
- B. Non-Service-Connected VA Benefit
  - A veteran's RRA annuity is not considered income for VA purposes if he qualifies under the VA laws in effect before 7-1-60 for a VA pension based on a disability which is not service connected.
  - If a veteran could qualify under the VA laws in effect before 7-1-60, but elects to qualify under the VA laws effective 7-1-60 or later, his RR Act annuity is considered income. (See C below.)
- C. Non-Service-Connected VA Benefit - Veteran Qualifies under VA Laws Beginning 7-1-60 - The full amount of a veteran's RR Act annuity is considered income for VA purposes, regardless of whether he waives payments, if he qualifies under the VA law of 7-1-60 or later for a VA pension based on a disability which is not service connected.

### **5.8.12 Effect of Waiver of Annuities on VA Pensions - VA Benefit Paid to Survivor**

Waiver of all or part of his RRA annuity may be advantageous for an annuitant receiving a VA benefit which is based on the military service of another person.

A waiver should be considered only if the RRA annuity is income for VA purposes and if the waiver could be honored under VA pension laws.

Following is a description of the types of VA survivor benefits and the effect of the waiver of an RRA annuity:

- A. Non-Service Connected VA Benefits - The RRA annuity received by a veteran's survivor is considered income for VA purposes if the veteran's death was not service connected.
  - The VA beneficiary may waive payment of his RRA annuity, and the portion waived will be excluded from income for VA purposes, if the beneficiary qualifies under the VA laws in effect before 7-1-60.

- If the VA beneficiary could qualify before 7-1-60 but elects to qualify under the VA laws of 7-1-60 or later, his RR Act annuity is considered income. See B below.

B. Non-Service-Connected VA Benefits - Survivor Qualifies under VA Laws Beginning 7-1-60 - The full amount of the RR Act annuity is considered income to the beneficiary, even if waived, if the veteran's death was not service connected and the beneficiary qualifies under the VA laws of 7-1-60 or later.

C. Service-Connected VA Benefits

- If the veteran's death was service connected, a monthly VA benefit paid to his widow or child will not be affected by other income, including an RRA annuity.
- If the VA beneficiary is the veteran's parent, the RR Act annuity, under certain circumstances, is considered income to the parent.

Whether a waiver of the RR Act annuity would be effective in cases where the parent's annuity is considered income depends on the date of the applicable VA law, just as in cases where the veteran's death was not service connected. See A and B above.

### 5.8.15 Inquiry on Waiver

When an inquiry about a waiver is received:

- Give an inquirer a full explanation of the waiver provision of the Act; and
- Tell him that if he wishes to reduce his annuity to meet the income limitations set by VA or some other agency or organization, he should seek full information from the agency concerned; and
- He should find out whether his waiver of RRA benefits could be honored and, if so, exactly what amount he should waive.

Tell the person that he may waive payment of all or any part of his annuity by furnishing RRB with an unambiguous and signed statement (see sec. 5.8.16) and suggest that he contact a field office. If the inquirer is an annuitant's legal representative, also include in the letter information shown in sec. [5.8.17](#).

Do not tell a person or a person's legal representative of the amount of annuity that he should waive. That is a matter between him and the agency whose income limitations he is trying to stay within.

In addition, do not question the desire or the decision of any person to waive all or any part of his annuity. The BRC function in that area is solely that of giving the person the facts about the waiver provision. What he does with those facts is up to him. (Make

sure all the person's questions about the waivers are answered, or if the questions cannot be answered by this bureau the person is so informed.)

### 5.8.16 Waiver by Applicant or Annuitant

The person may waive payment of all or any part of his annuity by furnishing RRB with an unambiguous and signed statement expressing his desire to waive and specifying that he wishes to waive:

- The full amount of his annuity beginning with the monthly payment due on the first day of a month and year; or
- That part of his monthly annuity over a stated amount beginning with the monthly payment due on the first day of a month and year; or
- A specified dollar amount of his annuity beginning with the monthly payment due on the first day of a month and year; or
- Entitlement to his RIB/DIB windfall.

The annuitant may specify the amount of annuity that he wishes to waive in any other clear and unambiguous manner; for example, he may state that he wishes to waive a lump-sum amount in one specified calendar month of a year.

### 5.8.17 Waiver by Representative Payee

When a representative payee seeks to file or revoke a waiver, have the appropriate D/O determine whether the action is in the annuitant's best interest. In addition, after showing that the action is in the annuitant's best interests, a representative payee who is a court-appointed guardian or legal representative also must secure a court order approving the action as outlined below:

- A. Waiver - A waiver executed and filed by a person's legal representative may be given effect only if it is supported by a court order:
1. That was issued by the same court which appointed the representative, and
  2. That specifically authorizes the representative to waive payment of the person's annuity.

No greater amount may be waived by the legal representative than the amount specified in the court order.

- B. Revocation of Waiver - When a legal representative wants to revoke a person's waiver, he must furnish a court order:

1. That was issued by the same court which appointed him representative, and
2. That specifically authorizes him to revoke the waiver.

### 5.8.18 Unacceptable Waiver

If a statement of waiver is unacceptable for any reason (ambiguous, unsigned, etc.), inform the person of the reasons that it is not acceptable and how he may complete an acceptable statement. (District offices will send to this bureau for appropriate action any unacceptable waiver received by them through the mail.)

Tell the person also that if he properly completes an unambiguous statement and returns it to RRB so that RRB receives it within thirty days from the date of the letter to him, his waiver may be effective:

- A. If his annuity is in force, with the payment due on the first day of the month following the month in which RRB received his unacceptable waiver; or
- B. If his annuity is not in force (for any reason), with the payment effective on the beginning date or the reinstatement date of the annuity; or
- C. With the payment later than the one indicated in A or in B, which payment he may have specifically designated in his unacceptable waiver or may specifically designate in his acceptable waiver.

NOTE: If windfall waiver is being requested and the windfall has not been paid yet, the waiver can still be effective as early as the windfall date of entitlement, provided an acceptable certification is submitted.

In giving the above-indicated data, spell out, where possible, effective dates by dates of checks. By doing so, the person should have a clearer idea of which of his checks may be the first one affected by his waiver.

### 5.8.19 Soliciting Windfall Entitlement Waiver

The only situations in which examiners should solicit windfall waivers are:

- 1) In any case when WF entitlement causes the annuity rate to decrease; and
- 2) In spouse cases where a RIB/DIB WF is being paid based on 50% of the employee's RIB/DIB WF but a spouse WF could be paid which provides a higher rate because the spouse's tier 2 is not reduced.

All other requests for WF waiver should be initiated by the annuitant and should be referred to PP&PAS.

If the rate after windfall entitlement is less than the rate before windfall entitlement, prepare a memo to the D/O requesting windfall entitlement waiver. In the memo, explain the advantage of the annuitant's waiving his/her windfall entitlement. If RIB/DIB WF entitlement should be waived. Give the rate with and without waiver and the consequence of not waiving; i.e. lower rate, overpayment, etc.

The D/O will contact the annuitant to explain the advantages of waiving his/her windfall entitlement. If the annuitant submits an acceptable waiver request, follow the instructions in RCM [5.8.27](#) A and B to effect the waiver. If the annuitant does to give an immediate response, the D/O will inform the examiner of the date they contacted the annuitant. If the annuitant does not request waiver or does not reply within 60 days of the D/O contact, pay the case with the windfall and recover any overpayment that might result. Additional time before the reply must be received may be granted if necessary.

### 5.8.25 Preparation of G-96

When an acceptable waiver is received it should be put in effect as follows:

- A. Annuity in Force - Prepare a G-96 to suspend payments; under appropriate heading, check box opposite "Other (see remarks)"; enter in remarks block: Waiver of regular retirement annuity, waiver of SUP ANN, waiver of spouse annuity, waiver of windfall entitlement, etc. If the WF is being waived in a case where the RIB/DIB WF has never been paid, a G-96 is not necessary since the annuity rate in force will not be affected.
- B. Annuity Not in Force - If the annuity is already in suspense (for any reason), another G-96 is not necessary.

A waiver is not cause for a termination of an annuity, even though the person waived all or part of the annuity payments.

### 5.8.26 Waiver of Full Annuity Payments Requested

When a person waives all of his annuity, the payments will not be resumed after suspension. However, the person must be notified that his waiver has been placed into effect.

If the appropriate payment cannot be withheld, the person must also be told of that fact and what he should do. He should:

- Return the check representing the payment with which his waiver was effective; or
- Refund to RRB the amount of that payment; or
- Make a new waiver effective with the payment immediately following the last made. Suggest that he contact the appropriate district office.



Pend the cause for call up when the appropriate payment could not be withheld to insure that the person takes one of the suggested courses of action. If he does not answer the RRB letter, ask the field to get a properly completed and signed statement effective with the date payments were actually suspended. (Be sure to give the field the complete facts of the case.)

### 5.8.27 Partial Waiver of Annuity Payment

A waiver statement may be completed to show the monthly payment which the person wishes to receive after his waiver is in effect.

Some persons may use the second alternative listed in sec. [5.8.16](#), and set forth their own language. In the letter event, the amount of the annuity waived should be converted, when necessary, to a monthly basis so that the same amount of annuity is withheld each month.

#### A. Award Actions

When a person waives payment of part of his annuity that is in force, a reinstatement-recertification should be prepared immediately following suspension.

However, it may be necessary to withhold payments as follows:

- If a waiver is received too late in a month to adjust the appropriate payment; and
- The payment for the following month must be adjusted to take into account the amount waived for the first and second months of the waiver; or
- If the amount waived for the first and second months of the waiver equals or exceeds the full monthly annuity rate.

If payments are withheld the case must be pended for call-up on the date when reinstatement-recertification action can be taken.

When an employee waives a RIB/DIB windfall that has not been paid yet, prepare an informational G-354.1 (original and copy) showing the computation with the windfall. Indicate the vested status and windfall date of entitlement in item 20. In item 38, "X" the box next to "WF WAIVED." Put an asterisk next to this item and in item 20. File one copy of the G-354.1 on the left side of the folder. Attach the other copy of the G-354.1 to a G-59 and indicate "Windfall Waived." Route the G-59 and G-354.1 to Research.

When an employee or spouse WF is being waived and the Research record contains previous WF data (i.e. WF DOE, PIA 4, PIA 21, etc.), a G-59 must be submitted in addition to checking the "WF Waived" box on the G-354.1 or G-

355.1 award form. On the G-59, enter "WF Waived-zero out all WF data." If the spouse RIB/DIB WF is being waived but you are still paying the spouse WF, enter on Form G-59 "RIB/DIB WF WAIVED -Now entitled to spouse WF."

#### B. Notifying Person About Waiver Actions

- The notification letter to the person should include an explanation of actions taken (use code paragraph 496 in [RCM Chapter 10.5](#) for WF waiver cases;) or
- When a case has been pended for call-up, inform the person in a special letter when his payments will be resumed after giving effect to his waiver.

Do not ask him to return the last check, or to refund any amount, or to make a new waiver because two or more actions might be simultaneously taken and result in a further delay in the resumption of payments.

If the person objects to the withholding, he will undoubtedly protest; at which time he can be told what he should do to get his case promptly back in payment channels.

### **5.8.28 Waiver of SUP ANN**

An employee can waive payment of a SUP ANN in the same manner as any other RR annuity. The amount of a SUP ANN waiver, however, is limited to the net SUP ANN rate; an employee cannot waive any part of the reduction made for an employer pension.

### **5.8.29 Revocation of Waiver**

When a person revokes his waiver, increase or resume his payments as of the effective date of the revocation. Take the following actions:

#### A. Making Recertification or Reinstatement-Recertifications.

1. Take into account any increase provided under past legislation, which may not be reflected on the latest award form in file, and
2. Have the award computed by computing clerks when monthly annuity rates cannot be transcribed from the preceding award form, or
3. If recertifying an award, show the monthly amount to be deducted under previous payments as the amount actually paid, i.e., the regular monthly rate minus the amount waived.

In a case in which payments are in force and a revocation is received too late in a month to adjust the appropriate payment, make the required adjustment in the following month.

- B. Notifying Person About Revocation - In the notification to the person, explain the action taken to effect revocation of his waiver.

